



TC03476

Appeal number: TC/2013/07530

*Flat rate Penalties imposed for late filing of Company Tax Returns -
reasonable excuse – appeal dismissed and penalties upheld*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CRESTDATA I T LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

TRIBUNAL: JUDGE PETER PETHERBRIDGE

The Tribunal determined the appeal on the 05 February 2014 without a Hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated the 01 November 2013 (with enclosures), HMRC's Statement of Case submitted on the 02 November 2013 (with enclosures).

The Appellant has requested full written findings and reasons, which are now provided.

© CROWN COPYRIGHT 2014

DECISION

1. The Tribunal decided that the Appellant's appeal against the imposition of two flat rate penalties of £200 imposed on it for its late filing of its Company Tax Returns for the accounting periods ending 30 June 2010 and 30 June 2011 was in accordance with the legislation and the Appellant had not provided a reasonable excuse for failing to file those Returns on time or throughout the failure period.
2. The Appellant wishes to appeal against that decision and has requested a full written findings and reasons.

10 The Facts

Company Tax (CT) Return for the accounting period to 30 June 2010

3. The Appellant was required to file a CT Return for APE 30 June 2010 by electronic means. The filing date for the return was the 30 June 2011.
4. HMRC sent the Appellant a Notice to File for the specified period 01 July 2009 to the 30 June 2010 on the 19 July 2010. An extract from HMRC's computer records for the Appellant is at folio 2 of the HMRC's submission.
5. The Return was not received by HMRC by the filing date and a late filing flat rate penalty was imposed in accordance with paragraph 17 Schedule 18 Finance Act 1998.
6. A Notice of Penalty determination in the amount of £100 was issued on the 18 July 2011.
- 20 7. A paper Return for APE 30 June 2010 was received on the 26 July 2011.
8. As a valid Return had still not been received 3 months after the filing date, HMRC increased the flat rate penalty imposed on the Appellant to £200 in accordance with paragraph 17 (2) (b) Schedule 18 Finance Act 1998.
9. A further penalty determination increasing the penalty to £200 was issued on the 18 October 2011.
- 25 10. A paper Return for APE to 30 June 2010 was received and rejected on the 13 January 2012, as the Return had to be filed on line.
11. As a valid Return was not filed within 18 months after the end of the accounting period, a tax related penalty was chargeable under paragraph 18 (2) where any tax is unpaid.
- 30 12. A valid CT Return was filed by the Appellant on line on the 28 October 2012.

APE 30 June 2011

13. The Appellant was required to file a CT Return for APE 30 June 2011 by electronic means and the filing date for the Return was the 30 June 2012. A valid CT Return was filed on line by the Appellant on the 27 November 2012.

The Appellant's appeal

- 5 14. The Appellant by its agent, Ronald Metson & Co, appealed against the penalties on the ground that they were unable to file the Returns on time due to not being able to obtain an agent or on line activation code.
15. HMRC carried out a review and issued their review conclusion on the 04 October 2013.
- 10 16. On the 01 November 2013, the Appellant appealed to the Tribunal on the grounds that the Return had been delivered on time, it was not possible to input the Return by computer, in all the circumstances they did all that could be reasonably expected.
17. The Appellants contend that they had difficulty getting password access, but no details or evidence has been provided as to what actions were taken to resolve the problem by them.

The Tribunal's decision

- 15 18. The Appellant failed to file its CT Returns for two consecutive years. It tried to file the Returns on paper, but on both occasions the paper returns were rejected as the obligation upon them was to file the Returns on line.
19. The Appellant was advised by Notice to deliver CT Returns issued on the 19 July 2010 and 17 July 2011 that if they failed to do so a penalty would be charged and that the Return had to be delivered electronically if the APE was later than the 31 March 2010.
- 20 20. Although the Appellant states that their Returns were delivered on time, HMRC had no record of that, although it did have the Appellant's paper Returns, but those had to be rejected as invalid and they were returned to the Appellant with instructions to file on line.
- 25 21. HMRC notified the Appellant by way of various penalty notices, the first one being issued on the 18 July 2011, that a complete/valid Return for APE 30 June 2010 had not been filed, advising that it had to be filed and the consequences to the Appellant of not doing so.
22. The Appellants failed to take timely action to rectify that failure or ensure that their Return for APE 30 June 2011 would be filed on time.
- 30 23. The Tribunal did not accept the Appellant's excuse that it was not possible for them to input the Return by computer. They also state that they had difficulty obtaining password access.
24. The Tribunal accepts that HMRC had no details or evidence as to what action had been taken by the Appellants to resolve their problem nor what steps the Appellants took in order to try and meet their legislative filing deadlines.

25. Information on CT Returns and their filing are available on line and HMRC confirmed through HMRC Digital Services that neither the agent nor the Appellants attempted to enrol for CT on line filing prior to the 31 August 2012.

5 26. Further, although the Appellants activated the CT on line filing service on the 10 September 2012, they still waited until the 28 October 2012 and the 27 November 2012 to file their Returns.

10 27. If the Appellant, as in this case, used an agent, the Appellant still was in general under an obligation to ensure that the agent filed the Returns on time. Failure of the agent to meet his or her obligations to the Appellant might entitle the Appellant to some recourse against the agent, but in the Tribunal's view, reliance on a third party such as an accountant cannot relieve the Appellant of its own obligation to file its Returns on time and in the manner as laid down in the legislation.

28. The Tribunal does not accept that the bare facts that responsibility had been entrusted by the Appellant to a third party or itself amounted a "*reasonable excuse*".

15 29. The appeal is dismissed.

30. The Appellant has a right to apply for permission to appeal against this decision pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The parties are referred to "*Guidance to accompany a decision from the First-Tier Tribunal (Tax Chamber)*" which accompanies and forms part of this decision notice.

20

**P M PETHERBRIDGE
TRIBUNAL JUDGE**

25

RELEASE DATE: 9 April 2014

