



**TC03511**

**Appeal number: TC/2013/06699**

*CORPORATION TAX - penalty for late submission of return – whether there was a “reasonable excuse” – no*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ANIMALS AT HOME (NORTH WILTS) LIMITED      Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S      Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE JOANNA LYONS**

**The Tribunal determined the appeal on 02 April 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 20 September 2013, HMRC’s Statement of Case (with enclosures) acknowledged by the Tribunal on 30 January 2014 and the Appellant’s Reply dated 04 March 2014.**

## DECISION

### Introduction

1. This is an appeal against a penalty of £200 imposed for the late filing of the Corporation tax return for the accounting period ending 31 March 2012.
2. Roger Hatherall & company accountants (“the agents”), represent the appellant company (“the company”) and appeal on their behalf.

### The issue

3. The appellant appeals on the grounds that there was a reasonable excuse for the late filing of the return. This is opposed by HMRC.

### The Law

4. In so far as it is relevant to this appeal the relevant law is set out below.

#### *Obligation to file the return*

5. HMRC “may by notice require a company to deliver a return”. Paragraph 3(1) Schedule 18 Finance Act 1998 (“FA”). “The return must be delivered ....not later than the filing date”. Para 3(4).

#### *Imposition of flat rate penalty*

6. Paragraph 17 Schedule 18 FA provides as follows :

- “A company which is required to deliver a company tax return and fails to do so by the filing date is liable to a flat rate penalty ..
- (2) The penalty is
- (a) £100 if the return is delivered within three months after the filing date, and
- (b) £200 in any other case”

#### *Powers of the Tribunal*

7. The Tribunal can set aside the penalty if it has been incorrectly applied s100(1) Taxes Management Act 1970. (“TMA”).

#### *Reasonable excuse*

8. The Tribunal can set aside a penalty if the company has a “reasonable excuse” for the late submission of the return throughout the default period s118(2) TMA.
9. In the case of *Rowland v HMRC [2006] STC (SCD) 536* it was decided that “reasonable excuse” was “a matter to be considered in the light of all the circumstances of the particular case”

*Delegation to a third party*

10. The mere fact that responsibility had been delegated to a third party does not amount to a reasonable excuse. *Westbeach Apparel Uk Ltd v Her Majesty's Revenue and Customs [2011] UKFTT 561*.

- 5 11. The Tribunal can look behind act of delegation in order to determine whether the third party, themselves, has a reasonable excuse. *Customs and Excise Commissioners v Steptoe [1992] STC 757*.

*Burden of proof*

- 10 12. HMRC has the burden of proving that the penalty has been incurred. The company has the burden of proving that there was a reasonable excuse. *Jussila v Finland 73053/01 [2006] ECHR Grand Chamber*.

**The facts**

*The agreed facts*

- 15 13. The company was required to file a Corporation Tax return (“the return”) for the Accounting period ending (APE) 31 March 2012. HMRC sent the company a notice to file on 22 April 2012. The filing date for the return was 31 March 2013. The return was required to be filed online.

14. The return was not filed by the due ate and an initial penalty of £100 was imposed on 17 April 2013.

- 20 15. The return remained outstanding on 31 July 2013, three months after the due date, and a late filing flat rate penalty of £200 was imposed on 15 August 2013.

16. The return remains outstanding.

*The contested facts*

- 25 17. The agents state that they have acted for the Company since April 2010. Paper returns were submitted for the previous financial year.

18. The agents registered for online filing and the company’s name appeared on their client page. They attempted to activate the online authorisation code before and after the due date without success. They contacted HMRC to investigate but were informed that they did not have the relevant authorisation from their client.

- 30 19. They contend that it was not possible for them to file the return. In support of their case they have provided a printout showing “authorisation failed” dated 21 March 2013.

20. HMRC maintain that the agents had the necessary authorisation to act on the Company's behalf from 06 April 2013. They have no record of any contact from the agents regarding authorisation difficulties.

### **The arguments**

5 21. The appellant submits that they have been prevented from filing the return online due to authorisation errors and a refusal on the part of HMRC to resolve the problems.

22. HMRC submit that the agents were not prevented from filing online and indeed they were properly registered to file online from 06 April 2013. The agents did not  
10 contact them to try to resolve the problems before or after the due date despite being properly authorised to do so.

### **Reasons for decision**

#### *Findings of fact*

23. I accept that the agents attempted to activate the online registration on 21 March  
15 2013 as this is clear from the printout. I am not satisfied that the agents contacted HMRC for advice regarding their online activation before or after the due date because HRMC have no record of any such contact and the agents have not provided any documentary evidence in support of their assertion.

24. I am not satisfied that HMRC declined to resolve the problems with the agents  
20 due to lack of authorisation because HMRC's records show that the relevant authorisation was in place from 06 April 2013.

#### *Reasonable excuse*

25. I accept that the company delegated the task of filing the return to their agents. However the mere act of delegation does not provide a reasonable excuse unless the  
25 agent can show that they took all reasonable steps to avoid the failure. In this case there is no evidence to show that the company took steps to monitor the actions of their agents.

26. I accept that the agents experienced difficulties in online registration. However I am not satisfied that they took active steps to overcome these difficulties despite the  
30 lengthy default period. In making these findings I note that the agents had the opportunity to contact HMRC for advice regarding online filing but did not do so.

27. For these reasons I do not find that there was a reasonable excuse for the late submission of the return throughout the period of the default.

**Decision**

28. There was no reasonable excuse for the failure to submit the Corporation Tax return throughout the period of the default.

29. The appeal against the late filing penalty of £200 is dismissed.

5 **Right of appeal**

30. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. 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.

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**JOANNA LYONS  
TRIBUNAL JUDGE**

**RELEASE DATE: 23 April 2014**

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