



TC05122

Appeal number: TC/2015/02058

Penalties under Para 17 Schedule 18 Finance Act 1998 for failure to deliver company tax return - application for permission to appeal out of time - whether there had been continuing good reason for the delay in submitting a Notice of Appeal - no - application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

THE YOUNG PERSONS THEATRE CO LTD Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL CONNELL
 MEMBER JANE SHILLAKER**

Sitting in public at Fox Court, Brooke Street, London on 13 January 2016

The Appellant did not attend and was not represented

Ms Siobhan Brown, Officer of HMRC, for the Respondents

DECISION

The Appeal

1. The Young Persons Theatre Co Ltd (“the Appellant”) appeals against a decision
5 by HM Revenue & Customs (“HMRC”) dated 16 November 2011 and also a decision
dated 16 February 2012, each imposing a £500 penalty for failure to deliver the
company tax return for the accounting period to 31 October 2010, by the due date.
2. The Appellant had thirty days from the date of each decision to appeal. The
Appellant’s Notice of Appeal which related to both decisions, dated 14 October 2013,
10 was received by the Tribunal on 2 March 2015 and was therefore out of time.
3. The Appellant applies for leave to bring the appeals out of time.
4. HMRC objects to the Appellant’s application on the grounds that it has not
demonstrated a reasonable excuse for the lateness.
5. The Appellant did not attend the hearing. The Tribunal was however satisfied that
15 the Appellant had been given notice of the time, date and venue of the appeal hearing
and that it was in the interests of justice to proceed.

Background to the late application

6. The Appellant, of 186 Waltham Way, Chingford, London E4 8AZ, which was
20 incorporated on 26 October 2006, is a training theatre and film company for young
people aged 13 -18 offering courses in the performing arts.
7. The Flat Rate Penalties totalling £1,000 were charged under Para 17 Schedule
18 Finance Act 1998, for failure to deliver the company tax return for the accounting
period to 31 October 2010 by the due date of 31 October 2011.
8. The first penalty of £500 was issued on 16 November 2011. A further penalty of
25 £500 was issued on 16 February 2012. The Appellant had thirty days from the date of
the penalty being issued to appeal against the decision. The penalty notice would have
included details of the right to appeal including the timescale for doing so.
9. Since 1 April 2011, in accordance with Regulation 3(2A) of the Income and
Corporation Taxes (Electronic Communications) Regulations 2003, companies must
30 file their company tax returns electronically for all accounting periods ending on or
after 1 April 2010 using HMRC’s CT Online Services.
10. The statutory filing date for the return is twelve months after the end of the
accounting period. A company or agent must register with CT Online Services before
they can file a return.
- 35 11. HMRC records indicate that a Notice to File was issued to the Appellant on 22
November 2010.

12. The company tax return was filed online on 9 March 2012; over four months late.
13. Earlier returns had also been filed late.
- The company tax return for the accounting period to 31 October 2008 due by 31 October 2009 was received 27 November 2009 and a £100 penalty was charged.
 - The company tax return for the accounting period to 31 October 2009 due by 31 October 2010 was received 3 December 2010 and a £100 penalty was charged.
14. As this was a third consecutive time the company's return was late, a flat rate penalty of £500 was issued on 16 November 2011 and a further £500 penalty issued on 16 February 2012 under Para 17 Schedule of Finance Act 1998.
15. On 22 August 2012 in response to a letter from the agent dated 1 August 2012 appealing the penalties, HMRC wrote to the Appellant's agent advising them that they had not provided a reasonable excuse why the return was late other than stating they were unable to file online. They were advised that the appeal was not accepted and the penalty remained due and payable.
16. The thirty day appeal period within which to appeal to the Tribunal would have elapsed on 20 September 2012.
17. On 20 March 2013, the Appellant wrote to HMRC saying that they did everything in their power to submit the return but could not do so because they did not receive the pin number to submit the returns. They said that they were told that a paper copy was not acceptable; the return had to be submitted electronically.
18. On 7 May 2013 HMRC treated the Appellant's letter as an application for a review and replied saying that:
1. HMRC records show that the company set up an account with the online Government Gateway on 14 May 2011 and enrolled for the online PAYE service (although this was never activated), however there is no record that the company enrolled for the online Corporation Tax (CT) service. HMRC therefore cannot accept that you did not receive either a code or a pin number to submit your CT return online as a reasonable excuse as you had not enrolled for the CT service to enable codes to be issued.
 2. The Income and Corporation Taxes (Electronic Communications) Regulations 2003 as amended by SI 2009/3218 states that from 1 April 2011 onwards companies must submit their CT returns online for any accounting period ending after 31 March 2010. Furthermore, if they have to prepare accounts under the Companies Act 2006, they must submit their accounts and computations in a set format – Inline eXtensible Business Reporting Language (iXBRL).

5 A complete company tax return is not just the CT600 form. It is also such information that is required by legislation i.e. full company accounts covering the relevant accounting period, director;s report, balance sheet, etc. and a return is not deemed as per Paragraph 4 Schedule 18 Finance Act (FA) 1998 to have been delivered if any component is missing, incomplete or in an incorrect format.

HMRC have no discretion in the calculation of the penalty amount as it is set in statute, Paragraph 17 Schedule 18 FA 1998 refers.

10 To assist taxpayers HMRC set up a dedicated Business Payment Support Service (BPSS) in November 2008, The BPSS was designed to meet the needs of all businesses and individuals affected by the adverse economic conditions and who have difficulties paying monies owed to HMRC; details of this service is well within the public domain and has been extensively advertised,

15 The BPSS can be contacted directly by telephone on 0845 302 1435 (Mon-Fri 8.00 am to 8.00 pm, Sat and Sun 8.00am to 4.00pm). Further details can also be found on the HMRC website or by contacting any of the tax help lines, local tax offices or calling at any public counter.

20 HMRC notified the Appellant that the decisions to issue the penalties were upheld and that the Appellant had thirty days within which to appeal to the Tribunal Service if it wished to do so. HMRC also advised where to find further information on how to appeal.

19. A Notice of Appeal dated 14 October 2013 was received by the Tribunal on 2 March 2015.

Legislation and case law

25 20. Para 17 Schedule 18 Finance Act 1998 - Failure to deliver return: flat-rate penalty.

“(1) 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 under this paragraph. It may also be liable to a tax-related penalty under paragraph 18.

30 (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.

(3) The amounts are increased to £500 and £1000 for a third successive failure, that is, where—

35 (a) the company is within the charge to corporation tax for three consecutive accounting periods (and at no time between the beginning of the first of those periods and the end of the last is it outside the charge to corporation tax),

(b) a company tax return is required for each of those accounting periods,

(c) the company was liable to a penalty under this paragraph in respect of each of the first two of those periods, and

40 (d) the company is again liable to a penalty under this paragraph in respect of the third period.

(4) The first or second period mentioned in sub-paragraph (3) may be a period ending before the self-assessment appointed day, in relation to which—

45 (a) the reference in paragraph (b) to a company tax return shall be construed as a reference to a return under section 11 of the Taxes Management Act 1970, and

(b) the references in paragraphs (c) and (d) to a penalty under this paragraph shall be construed as a reference to a penalty under section 94 of that Act.”

5 21. Section 118(2) Taxes Management Act 1970 states that: “where a person had a reasonable excuse for not doing anything required to be done, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse ceased.”

22. Under s 16(1F) Finance Act 1994, an appeal may be made after the end of the 30 day period if the appeal Tribunal gives permission to do so.

10 23. Rule 20(4) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 provides:

15 “20(4) If the Notice of Appeal is provided after the end of any period specified in an enactment referred to in paragraph (1) but the enactment provides that an appeal may be made or notified after that period with the Permission of the Tribunal –

(a) the Notice of Appeal must include a request for such permission and the reason why the Notice of Appeal was not provided in time; and

(b) unless the Tribunal gives permission, the Tribunal must not admit the appeal.”

20 **Appellant’s case**

24. The Appellant’s grounds of appeal as stated in its Notice of Appeal are :

25 “As you know HMRC changed their system and no paper filing was allowed. We did file the paper return which was rejected. We applied numerous times during that year for code to file on line CT600 but was unsuccessful in receiving them, we asked for tracking number in order to track number for codes. These have never been sent. We have asked the post office (Chingford Sorting Office) if they have any mail for the address which had not been delivered and they had not. We asked if we could collect codes, have them emailed or sent to a third party all options were refused. When codes were not received we immediately notified the tax office.

30 As we were not sent codes to do online filing we tried again with the paper version but again it was rejected due to the online filing policy. When the online system came into operation we tried about 5 or 6 times before we got the codes to be able to do the filing by that time we were already late.

35 Since then we haven’t been late and have had issues with accessing codes we were stuck and we tried everything in our power to get this resolve but no receipt of codes were unsuccessful.

40 On a final note as a small organisation teaching young children the arts any fine imposed would force the organisation to close, as we only operate between £50-£200 within our account.”

HMRC's case

Substantive issues

25. HMRC contend that the Appellant has neither provided a reasonable excuse for the late appeal, nor grounds for appealing the penalties.
- 5 26. Since 1 April 2011, companies have had to file their company tax returns electronically for all accounting periods ending on or after 1 April 2010 using HMRC CT Online Services.
27. The statutory filing date for the return is twelve months after the end of the accounting period. HMRC records indicate that a Notice to File was issued to the
10 Appellant on 22 November 2010.
28. A company or agent must register with CT Online Services before they can file a return.
29. The HMRC website provides detailed guidance on how to file online and what to expect if the submission is not completed correctly. In addition to this the Online
15 Services Helpdesk can provide detailed guidance.
30. In the grounds for appeal it is claimed that the Appellant applied numerous times during 2011 for a code to file the CT600 online. HMRC have checked the position with the Online Services team and contend that:
- There is no online CT enrolment for the company.
 - 20 • The agent acting, Shipkolye Accounting & Financial Services, enrolled on 30 June 2011 at 12:48 and activated the system on 13 July 2011 at 09:25.
 - The only log in data held is for 27 January 2012 at 08:58, 09:02 and 09:45; 28 January 2012 at 08:56; 2 February 2012 at 07:26 and 4 February 2012 at 10:25.
- 25 31. It is apparent from the information available to HMRC that the agent acting for the Appellant had enrolled for CT online and had activated the system prior to the return becoming due. What they had failed to do was to add their client to their client list in a timely manner to enable them to file the return online on their behalf.
- 30 32. HMRC online guidance clearly states the actions to take and confirms that the authorisation code can take up to 7 days to arrive and will be sent to the client's registered office address. This code is required before the client will appear on the client list. The code must be entered within 30 days of the date on the letter.
33. Two previous company tax returns were late and a £100 penalty charged on each occasion.

34. The Appellant had shown no reasonable excuse throughout the periods of default. Delays in registering for online services, including a lack of understanding of the online systems, are not treated as a reasonable excuse for non-submission of an online return by the due date. The penalties have been correctly charged in accordance with the legislation at Para 17 Schedule 18 of the Finance Act 1998. This was the third consecutive year in which the company tax returns were submitted late.

Appeal out of time

35. With regard to the application for permission to appeal out of time, HMRC refer the Tribunal to the decision of the Upper Tier Tribunal in *Data Select Ltd v HMRC* [2012] UKUT 187 (TCC), which discusses the relevant considerations for allowing an extension of time. In paragraph 34 Mr Justice Morgan says:

“As a general rule, when a court or tribunal is asked to extend a relevant time limit, it asks itself the following questions: (1) what is the purpose of the time limit? (2) how long was the delay? (3) is there a good explanation for the delay? (4) what will be the consequences for the parties for an extension of time? and (5) what will be the consequences for the parties of a refusal to extend time? The court or tribunal then makes its decision in the light of the answers to those questions.”

36. To address each of the above factors:

(1) The purpose of the time limit is to bring finality to a case. In accordance with Rule 20(1) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009.

“A person making or notifying an appeal to the Tribunal under any enactment must start proceedings by sending or delivering a notice of appeal to the Tribunal.”

(2) The notice of appeal was received by the Tribunal Service on 2 March 2015; the delay beyond the thirty day time limit exceeds 22 months.

(3) The Appellant has not provided a good explanation for the delay.

(4) The lack of merit in the appeal, exacerbated by the Appellant’s inordinate delay in appealing is such that it would not serve the interests of justice to extend the time limit in which to appeal.

Conclusion

37. The company has been incorporated since 26 October 2006 and the officers of the company will have been fully aware of the requirement to file a company return by its due date.

38. The Notice to File was issued almost 12 months prior to the deadline.

39. Communications were issued advising the Appellant and their agent of the need to file returns online and the action required.

40. The return was not received until 9 March 2012; over 4 months late.

41. The Appellant would have been aware at 6 November 2011 that the return was outstanding on receipt of the penalty yet it was not submitted for a further four months.

5 42. The Appellant and/or their representative has provided no evidence to support their claims that they applied for or requested codes.

10 43. The Appellant has shown no reasonable excuse throughout the period of default, for its failure to deliver the company tax return for the accounting period to 31 October 2010 by the due date of 31 October 2011. Delays in registering for online services including a lack of understanding of the online systems are not treated as a reasonable excuse for non-submission of an online return by the due date.

44. Generally the purpose of adherence to time limits is finality and certainty, which is necessary for HMRC to efficiently operate the taxation system. Time limits are also necessary for the efficient organisation of the Tribunal appeals system. Generally, an extension of time is the exception rather than the rule.

15 45. We do not accept the Appellant's explanation for the delay, and in any event the merits of the appeal would appear questionable.

46. Taking all these factors into account, this is not in our view a case in which in the interests of justice we should exercise the Tribunal's discretion to permit the appeal to be made after the expiry of the normal time limit.

20 47. The application for permission to appeal out of time is therefore refused.

25 48. 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.

30 **MICHAEL CONNELL**
TRIBUNAL JUDGE

RELEASE DATE: 24 MAY 2016