[2017] UKFTT 762 (TC)

TC06170

Appeal number: TC/2016/00186

ONLINE FILING – corporation tax returns – no jurisdiction on liability to interest or determinations - dispute over facts on penalties for late filing – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

ADDITIONAL AIDS (MOBILITY) LIMITED	**Appellant**
- and -	
THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS	**Respondents**

TRIBUNAL: JUDGE BARBARA MOSEDALE

Sitting in public at Taylor House, Rosebery Avenue, London on 26 September 2017

There was no appearance by or for the Appellant

Ms S Saddiqui and Mr N Nagle, HMRC officers, for the Respondents

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DECISION

1. This appeal has already been the subject of a decision by this Tribunal: see *Additional Aids (Mobility) Ltd* [2017] UKFTT 176 (TC). In that decision, I struck out a great deal of what was in dispute on the basis that it had no reasonable prospect of success, but some matters were not struck out for various reasons, and this hearing was called so that those outstanding matters could be determined.

2. The matters left in dispute for this hearing to determine were set out at §65 'conclusion' of that decision. In summary, they were:

(a) The appeal against interest;

(b) The appeal against the determination for £7,000;

(c) The appeal against the penalties on two factual grounds.

Absence of appellant

3. As with the earlier hearing, no one attended the hearing on the appellant's behalf. I was satisfied that the appellant was aware of the date, time and location of the hearing as this was notified by the Tribunal ('the FTT') direct to the appellant and, separately, to the appellant's representative, Mr Bland. Mr Bland was clearly aware of the hearing as he wrote to the Tribunal notifying it that he would not attend and that he wished the Tribunal to consider his written submissions.

4. Nevertheless, the hearing could only proceed if I considered it was in the interests of justice to proceed in the absence of the appellant.

5. I find the appellant (via its representative) clearly knew of the hearing; it had not applied for postponement; it had made written submissions. The appellant had been warned in advance by letters (dated 30 March 2017 and 23 June 2017) that the evidence of its director contained in his witness statement was likely to be of less weight than if the director attended the hearing to give oral evidence on which he could be cross-examined. Despite this, the directors of the appellant had chosen not to attend. The explanation given by Mr Bland for his own non-attendance was reduced mobility due to his age: no explanation was given for the directors' failure to attend.

6. In these circumstances, it seemed to me to be in the interests of justice to proceed. The appellant, who must be presumed to know that Mr Bland would not attend on its behalf, nevertheless chose not to appoint a new representative, nor attend itself.

7. As I said in my previous decision, it is a matter of choice whether or not to attend a hearing, but litigants must abide by that choice. Fairness and justice means that parties, including HMRC, are entitled to have a hearing without unnecessary delays. It was in the interests of justice to proceed without the appellant: it had chosen to rely on the written representations of an agent who would not attend the hearing.

The appellant's written submissions

8. The appellant's written submissions were received by the Tribunal on 25 September 2017, the day before the hearing. The submission was a repeat of its case, struck out at the original hearing, that HMRC ought to be obliged to accept paper filing of corporation tax returns by this appellant, because (said Mr Bland) they had done so in the case of another taxpayer. The submission included some 9 enclosures providing evidence (said Mr Bland) that HMRC had accepted paper returns for this other taxpayer, whom I shall refer to as S Ltd (anonymity seems justified as its name is quite irrelevant and Mr Bland referred to that taxpayer as a 'former' client suggesting that it might well not know that its papers were being used in this appeal).

9. In any event, as I have said, this ground of appeal had already been struck out. I explained at §§48-53 of my original decision that the case put forward (in respect of a different company, SFC Ltd) was without prospect of success on both the law and the facts and struck it out at (1)(C) in the Conclusion (§65).

10. The new submissions concern a different taxpayer, S Ltd. But that is irrelevant. The legal point set out at §51-52 of the original decision is unchanged: the FTT is bound to dismiss the appeal as it has no jurisdiction to allow appeals on the basis that HMRC (allegedly) acted inconsistently between different taxpayers in the same position.

11. I note in passing that in any event the appellant has failed to make out its case on the facts that HMRC accepted paper returns from S Ltd any more than it had a case that HMRC had accepted them from SFC Ltd: the evidence for S Ltd comprised a copy of S Ltd's paper tax return, a letter dated 23/2/16 by HMRC rejecting it, followed by an acknowledgement of receipt of filing on 11 May 2016. However, there is a complete absence of evidence to establish that S Ltd did not in fact submit its return electronically in between February and May 2016: indeed, the natural inference is that, having received HMRC's letter of 23/2/16 rejecting the paper return, S Ltd then chose to submit its return online in accordance with the law (even though Mr Bland himself may not have known that his former client had done so.)

12. No more needs to be said about these submissions.

Appellant's applications

13. Under directions issued by me to bring the outstanding matters in the appeal on for hearing, HMRC were directed to provide the hearing bundle to the appellant no later than 24th May 2017. The bundle was not provided until 9 June 2017, although an application for an extension of time was filed on 31 May 2017.

14. It seems that application was not received by the appellant until July: HMRC had sent the application by TNT, but failed to pay full postage. It was delivered back to HMRC on 26 June and returned to the officer on 5 July: it was resent to Mr Bland recorded delivery on 6 July.

15. Mr Bland opposed the application and made an application for the Tribunal to 'refuse any request for HMRC to be represented at the Tribunal Hearing'.

16. The explanation provided by HMRC for its late compliance was that there was an internal changeover from the previous officer with responsibility for this appeal (Mr Nagle) to the new officer (Ms Saddiqui), and, in the handover, the deadline was overlooked. They also said that they had not received Mr Organ's witness statement but that was a poor excuse because, even if correct, the bundle could have been produced without it.

17. Refusing HMRC's application for an extension of time would amount, as Mr Bland recognised, to barring HMRC and the Tribunal from using the bundle in the hearing. In reality, the bundle comprised the documents on which Mr Bland relied (the documents relating to S Ltd, which I referred to above, which Mr Bland sent in a second time with his skeleton argument); inter -partes correspondence and the original decision. So I did not even need to refer to the bundle to read any of the documents contained within it: the documentation on S Ltd was (a) irrelevant for the reasons given above and (b) re-sent by Mr Bland in any event immediately before the hearing; all the other documents were copied on the Tribunal file and available to me anyway.

18. Extending or refusing to extend time for delivery of the bundle is therefore a pointless exercise; if it mattered, I would extend time as the breach, albeit without a good excuse, was fairly trivial and the appellant had identified no prejudice to itself by the late delivery of the bundle. Indeed, had the evidence on S Ltd been relevant, the appellant would actually be harming its own case by having the bundle excluded.

19. The second application is refused. The Tribunal has no power to prevent either party being represented at a hearing: even if it had the power to do so, I can see no reason why it would be in accordance with justice to do so and none has been presented to me. If the application should have been understood as an application to bar HMRC from the proceedings entirely, then again it is dismissed. I could only strike-our/bar a party for non-compliance where either that party was in breach of an unless order or that party had failed to cooperate with the Tribunal to such an extent that the Tribunal could not deal with the proceedings fairly and justly. There was no unless order here and a one-off breach which caused no apparent prejudice did not put HMRC into the second category.

HMRC's application for late admission of evidence

20. HMRC has been less then timely in its compliance with all the directions in this appeal, as noted above. It also applied in the hearing to admit in evidence an email written by an officer who was not present to be asked questions about his evidence.

21. This application was very late. The first the appellant could have known of the evidence was when it received HMRC's skeleton argument: I was told that was posted on 20 September by first class recorded delivery. The appellant should have received it before the hearing, but would have had very little time in which to respond to it.

22. It was very difficult to understand why HMRC had left matters so late. Both parties had been reminded months before the hearing that the question of fact of who submitted the electronic returns for the appellant was a crucial issue in this appeal: the appellant had filed its witness evidence on this back in April 2017 and HMRC were aware of it. The need to file rebuttal evidence should have been obvious to HMRC long before it seems it was. I was told that the failure to appreciate the need for evidence was again due to the change in presenting officers. That is not a good excuse.

23. On the other hand, the evidence was clearly relevant (I explain that below). And the presumption is in favour of admitting relevant evidence unless there is good reason to exclude it.

24. The reason to exclude it would be because the appellant had had very little time to respond to it. Weighed against that was the appellant's choice (via its director, Mr Organ) not to attend the hearing nor to appoint a representative who would attend the hearing. It had been warned that it might harm its case if it did not attend the hearing; it had been warned that it was likely less weight would be attached to Mr Organ's statement if he did not attend. Moreover, it ought to have received HMRC's skeleton in time to object to admission of the email but had not made an objection.

25. There was the possibility of admitting the evidence but adjourning the hearing to give the appellant the opportunity to call rebuttal, but I was very reluctant to do so in view of the appellant's half-hearted pursuit of its appeal as outlined in the previous paragraph.

26. While I was very conscious that the evidence was produced very late, and HMRC had no good reason for doing so, on balance, taking into account that the evidence was very short and therefore should have been easy to deal with at little notice but that the appellant had itself chosen not to attend the hearing of its own appeal to put its case on it, and because the evidence was highly relevant, I decided to admit it.

27. The failure of the officer to attend would mean less weight might be attached to it than otherwise.

28. I went on to consider the grounds of appeal which had not been struck out at the previous hearing.

The appeal against interest

29. At §34-36 of the original decision, I had decided not to strike out the appeal against interest on the basis HMRC had not made clear to the appellant that the application was on the basis of the Tribunal's alleged lack of jurisdiction, and so the appellant had not been able to respond to that case. I now have to determine whether the appeal against interest should be struck out, and if not, to determine the matter.

30. In an appendix to my first decision, I issued directions requiring the parties to make submissions on the question of jurisdiction no later than 10 March 2017. HMRC complied with this direction on 21 February 2017 by letter giving their reasons for saying that there was no jurisdiction for this Tribunal to hear an appeal against interest on a direct tax assessment, and in particular relying on the Upper Tribunal case of *Gretton and Gretton* [2012] UKUT 261 where it was said:

> There is no discretion on the part of the [FTT] to determine that interest should not be payable.'

31. The appellant also complied with the direction, on 26 February 2017. Mr Bland's case was that he considered that the Tribunal did have jurisdiction because §48 of Sch 18 Finance Act 1988 provides that an appeal may be brought against an assessment which is not a self-assessment.

32. The appellant is wrong because interest is not assessed: so §48 is not applicable. Interest is payable on unpaid corporation tax by virtue of s 87A Taxes Management Act 1970 ('TMA'). The liability to interest on unpaid corporation tax is automatic and is not triggered by an assessment: this is explained in §12 of *Gretton and Gretton* in respect of s 86 TMA which relates to personal taxes but applies with equal force to s 87A TMA which deals with corporation tax.

33. I strike out the appeal against interest as the Tribunal lacks jurisdiction to hear it.

The appeal against the determination for £7,000

34. At §34-36 of my original decision, I decided not to strike out the appeal against the determination of £7,000 in corporation tax for tax year ending 30/4/14 on the basis HMRC had not made clear to the appellant that the application to strike out the appeal against the determination was made on the basis of the Tribunal's alleged lack of jurisdiction, and so the appellant had not really had the opportunity to respond. I now have to determine whether the appeal against interest should be struck out, and if not, to determine the matter.

35. As I have said, in an appendix to that first decision, I issued directions requiring the parties to make submissions on the question of jurisdiction no later than 10 March 2017. HMRC complied with this direction on 21 February 2017 by letter giving their reasons for saying that there was no jurisdiction for this Tribunal to hear an appeal against the determination to tax of £7,000 and, as I have said, the appellant also complied with the direction, on 26 February 2017. Its case was that the Tribunal did have jurisdiction because §48 of Sch 18 Finance Act 1988 provides that an appeal may be brought against an assessment which is not a self-assessment.

36. I agree with HMRC. As Mr Bland points out, paragraph 48 of Sch 18 provides:

> An appeal may be brought against any assessment to tax on a company which is not a self-assessment.

However, no right of appeal is given against a 'determination'. Sch 18, like the TMA, makes a clear distinction between determinations (made where there is no self-

assessment) and assessments (made following an enquiry into a self-assessment or after a discovery). That it is correct to distinguish between, on the one hand, assessments, and on the other, determinations, is reinforced by paragraph 97 of Sch 18 which states as follows:

> **97** any reference in the Tax Acts (however expressed) to a person being assessed to tax, or being charged to tax by an assessment, include a reference to his being so assessed, or being so charged –
>
> (a)by a self assessment under this Schedule, or an amendment of such a self-assessment, or
>
> (b)by a determination under paragraph 36 or 37 of this Schedule (which, until superseded by a self-assessment, has effect as if it were one)

37. (Note: Tax Acts must include Sch 18 itself as the Tax Acts are defined in the Interpretation Act 1978 as including the Corporation Tax Acts. The 'Corporation Tax Acts' are defined in that Act as 'enactments relating to the taxation of the income and chargeable gains of companies....' and it seems clear that FA 1998 and specifically Sch 18 of it is an enactment relating to the taxation of companies. Therefore, by §97, a determination under paragraph 36 or 37 is to be treated as a self-assessment.)

38. So the effect of §97 is that a determination is not an assessment, although it has effect as if it were a self-assessment. But that does not help the appellant as the right of appeal is only against assessments which are not self-assessments.

39. So a literal interpretation of the statute is that there is no appeal against determinations. A purposive interpretation would come to the same conclusion.

40. And that is because the lack of a right of appeal against a determination makes sense in the general scheme of the legislation. The logic of the self-assessment system is that the taxpayer is obligated to file a return of its tax liability each year including a self-assessment. If HMRC do not consider the return to be correct, they can open an enquiry and revise the assessment; or if they discover it to be wrong, they can make a further assessment. Such assessments can be appealed. But if the taxpayer does not even file a return, HMRC have the right to determine the tax due. It makes sense that the only way to challenge such a determination is by the taxpayer filing a tax return: it means the taxpayer cannot avoid the obligation to file a self-assessment by waiting for HMRC to make a determination and then appealing it. It would make no sense to give the taxpayer a right of appeal against a determination where Parliament's objective was to compel taxpayers to file self-assessments.

41. So a determination is a self-assessment and although a reference to an assessment is a reference to a self-assessment, the right of appeal under Para 48 of Sch 18 is limited to those assessments which are not self-assessments. There is therefore no right of appeal against a determination.

42. I am aware of the decision of the Upper Tribunal in *Bertram* [2012] UKUT 184 (TCC) which decided that there was no right of appeal against a determination issued to a natural person who should have made a self-assessment under the Taxes Management Act 1970. This is not strictly binding on me as I am considering the position of a company which should have made a corporation tax return under Sch 18, and in any event the statutory provisions are somewhat different. But I note that my conclusion is consistent with that decision. There is no right of appeal against a determination.

43. I strike out the appeal against the determination of £7,000 because the Tribunal has no jurisdiction to consider it. It is payable by the appellant (unless and until validly superseded by a self-assessment filed by electronic means).

44. I expressed concern at the hearing that the appellant was fast running out of time to file a self-assessment to displace the determination. Mr Nagle (assisting Ms Saddiqui) said HMR had written to the taxpayer on a number of occasions trying to explain the dangers of its position to it, but so far to no avail. It's clear that the self-assessment has been prepared: it has been sent to HMRC in paper format (see §23 of the original decision). But it has never been filed electronically and it is only properly filed if filed electronically for the reasons given at §§29-33 of my original decision. It is its refusal to file its return electronically that makes the appellant liable to the £7,000 determination.

The penalties

45. The penalties under appeal were set out at §13 of my original decision. Correcting a date error, the appeal related to the following penalties:

		Tax period	Date of issue	
Penalty	£200	Y/E 23/4/13	5/11/15	
Penalty	£200	Y/E 30/4/13	5/11/15	
Penalty	£100	Y/E 30/4/14	uncertain	
Penalty	£1000	Y/E 30/4/14	25/12/15	
Penalty	£700	Y/E 30/4/14	7/1/16	

46. HMRC did not accept at the previous hearing that there was an extant £100 penalty: see §§68-70. At the second hearing before me, they accepted that a £100 penalty had been levied and then shortly afterwards withdrawn. The appellant has never produced any evidence of the £100 penalty at all, let alone that it is still extant. In these circumstance, I consider that there is nothing left in dispute with respect to the £100 penalty and nothing therefore over which the Tribunal has jurisdiction and the appeal in respect of it is struck out.

47. With respect to the other penalties (total of £2,100) all bar two grounds of appeal were struck out in the first hearing on the basis that they did not have a reasonable prospect of success. Two factual grounds were left to be determined and they were:

> (a) Are HMRC are bound to treat the two paper 2013 Y/E returns as filed on time as ultimately (the appellant alleges) HMRC accepted them in paper form; and, similarly, HMRC are bound to treat the 2014 Y/E return as timeous because HMRC accepted the paper 2013 Y/E returns?
>
> (b) Reasonable excuse.

Did HMRC accept paper returns from this taxpayer for YE 2013?

48. HMRC accept that electronic returns for the two YEs in 2013 were filed late: this is explained in the original decision at §27. As explained in that paragraph, and discussed at §59 and §66 later in the same decision, there was a factual dispute between the parties on which I had no evidence, and that was the question of <u>who</u> filed the two returns electronically. Both parties were given the opportunity to file evidence.

49. The appellant filed a letter signed its director, Mr Organ, on 4 March 2017 which stated that

> No director(s) ever electronically filed its two YE 2013 returns....

As I have already said, Mr Organ did not attend the hearing even though the appellant had been warned the likely outcome was that less weight would be attached to his evidence in Mr Organ's absence.

50. Moreover, Mr Organ's evidence had serious shortcomings, even if it was accepted as the truth so far as Mr Organ knew it: his evidence did not explain if he had asked any other directors whether they had filed the returns online before stating categorically that they had not done so. Most significantly, it did not deal with the question whether there was someone else who had been connected with or employed by the company, who, while not a director of the company, might have been aware of the issue with the tax returns and had the desire to avoid unnecessary tax liability, and therefore who might have taken it upon themselves to file the returns electronically. If Mr Organ had attended the hearing, these questions could have been put to him.

51. As I have also said, HMRC filed an email by an HMRC officer, Mr Attwell, who dealt with electronic returns at HMRC. In summary, it was his evidence was that the appellant company had used its unique taxpayer reference number ('UTR') and its email address in order to apply for and receive an online registration with HMRC on 3 May 2016. On 22 June 2016, someone had used that online registration to electronically log the company's two 2013 YE returns with HMRC.

52. Mr Attwell did not attend the hearing. As with Mr Organ's evidence, less weight could be attached to it in the absence of the person giving it. Unlike Mr Organ's evidence, there were no obvious lacuna in the evidence on which I would have liked an explanation: Mr Attwell explained he did not know the identity of the person who made the application.

53. So how much weight should I attach to each party's evidence and what are my findings? In the absence of both witnesses, it seemed fair to attach equal weight to both statements – in so far as they went.

54. The appellant's case was that HMRC (acting via the officer who held the paper returns, Mr Dundas, or someone else) had used the paper returns originally filed by Mr Bland to create an electronic return on behalf of the company, thereby accepting the appellant's paper returns as valid.

55. Mr Attwell's evidence ruled out that possibility. This is because the evidence was that the online registration had been created by someone using the company's own email address.

56. HMRC's case was that someone had on behalf of the company filed the returns electronically. Mr Organ's evidence was, as I have said, not inconsistent with the possibility that HMRC's case was right because someone employed by the company, but not Mr Organ, could have filed the returns electronically.

57. Accepting both witness statements as true, therefore, leaves me with that possibility: someone other than Mr Organ, but nevertheless acting on behalf of the company, and with the ability to use the company's email address, obtained the company's electronic registration with HMRC and then subsequently filed the returns electronically.

58. That conclusion is consistent with probability and human nature: HMRC (acting via its officer Mr Dundas) had been in dispute with the appellant over its refusal to file its returns online for some years. It was accepted by the appellant that it was Officer Dundas within HMRC who had possession of the appellant's two 2013 paper returns and imposed the late filing penalties in respect of them in 2015: see §§21-25 of the original decision. In December 2016, he reversed another officer's acceptance of paper returns from Mr Bland in respect of a different taxpayer: see §28 of the original decision. It was therefore inherently implausible that in June 2016 Mr Dundas would have chosen to go against HMRC's public position, against the law, and against the position he had adopted in this case and others, and accepted the appellant's paper returns.

59. It seems considerably more likely that someone connected with the company, understandably concerned that it should avoid unnecessary tax liability, had obtained the necessary electronic login and filed the returns electronically. This was consistent with Mr Attwell's evidence and not inconsistent with Mr Organ's. It was also consistent with the fact that the appellant clearly did make use of electronic communications: it had its email address and website address on its letterhead.

60. In conclusion, I attach equal weight to both witness statements in the absence of both witnesses. However, accepting both witness statements as true in so far as they went, the only possibility consistent with both statements is that someone, other than Mr Organ, connected with or employed by the company, with access to its emails, electronically filed the returns. That conclusion is consistent with inherent probability and with the appellant's clear use of electronic communications. The person who made the electronic filing would appear to have done so without Mr Organ's knowledge, but that is not relevant to the question before the tribunal.

61. (I mention in passing that there is no suggestion that the person who filed the returns on behalf of the appellant was Mr Bland: he does not appear to use electornic communications and (from Mr Attwell's evidence) has no electronic registration with HMRC).

62. My finding of fact on this issue is that HMRC did not accept the appellant's paper tax returns as valid: it only accepted the electronically filed returns as valid, and those returns were filed electronically by someone acting on behalf of the company and not HMRC. The legal consequence of that finding of fact is that the 2013 returns were filed late on 22 June 2016 and the penalties were therefore properly imposed by HMRC. The 2014 return was also filed late and the penalties in respect of that return were properly imposed.

Reasonable Excuse

63. The appellant was given the opportunity to explain why it filed the returns for YE end 2013 and 2014 late. Mr Organ's letter of 4 March 2017 dealt with its case on this. He stated that Mr Bland (as an OAP) was entitled to file online, because elderly taxpayers are entitled to file online.

64. As a matter of law, this statement is wrong. I ruled in *Organ and Bryant t/a Additional Aids (Mobility) and others* [2015] UKFTT 0547 (TC) that agents of whatever age were not exempt from the obligation to file their clients' returns online. On 15 April 2016, the Upper Tribunal refused leave to appeal my decision on the basis there was no arguable error of law in my decision.

65. Nevertheless, this ground of appeal could be read as a claim that the appellant had a reasonable excuse because it (acting via its directors) believed that it was acting within the law by filing paper returns. However, I do not actually have any evidence that the appellant (acting via its directors) actually believed that: Mr Organ's statement in his letter could equally be read as a statement that he believed the law ought to permit it to file by paper, rather than a statement that he actually believed that the law did permit it to file online.

66. Indeed, Mr Organ does not explain in his letter of 4 March 2017 how he could still (as he does) maintain the view that the appellant was entitled to file online in the light of the above legal decisions released in 2015 and 2016. The implication of his evidence is that he is not concerned with what the law is, but what he considers the law should be. And as I have said, he did not attend the hearing so that he could answer questions about his evidence, so his evidence is weak.

67. I am therefore not satisfied that the cause of the appellant's failure to file electronically back in 2013/4 was a genuine belief it was entitled to file by paper, rather than merely a belief that the law ought to entitle it to file by paper. Its case on reasonable excuse must fail.

68. I note in any event, even assuming that the appellant genuinely and reasonably believed the law entitled it to file by paper (rather than merely believing that the law ought to entitle it to file by paper), ignorance of the law is not a reasonable excuse: as a matter of policy that penalises taxpayers who try to acquaint themselves with the law in order to obey it over those taxpayers who do not seek to understand the law.

69. Further, s 118 TMA which deals with reasonable excuse for penalties levied under Sch 18 FA 98, provides:

> ....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 unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased....

So even if the appellant had had a genuine belief that it was legally entitled to file by paper, and even if that misunderstanding of the law could amount to a reasonable excuse, the appellant would have needed to file online shortly after that reasonable excuse ceased. The reasonable excuse would have ceased no later than the Upper Tribunal decision on 15 April 2016 refusing permission to appeal my decision of 22 October 2015 because after that date no taxpayer could reasonably and genuinely believed it was entitled to file by paper merely because its agent was elderly.

70. The appellant has still not filed its return for YE 2014 electronically, well over a year after the Upper Tribunal's decision. It therefore has no reasonable excuse in respect of the £1000 penalty and the tax geared £700 penalty.

71. However, I have found that the appellant did file its YE 2013 returns electronically on 22 June 2016, slightly more than 2 months after the Upper Tribunal decision. Could that have been without unreasonable delay after the excuse had ceased? I do not think so. While a few weeks' grace might be reasonable, over two months cannot be described as 'without unreasonable delay'.

72. In conclusion, I find that the appellant does not have a reasonable excuse for any of its late filings and I uphold all the late filing penalties, and dismiss the appeal against them.

73. The appeal is dismissed in its entirety.

74. 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.

BARBARA MOSEDALE
TRIBUNAL JUDGE

RELEASE DATE: 16 OCTOBER 2017