



TC07008

Appeal number: TC/2017/04740

Corporation tax - penalties for late filing of Corporation Tax returns - returns filed on time but without supplemental information - returned by HMRC - agent error - whether reasonable excuse - no - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

FARID & FARID LIMITED

Appellant

- and -

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

TRIBUNAL: JUDGE MICHAEL CONNELL

The Tribunal determined the appeal on 8 February 2019 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 23 September 2015 and HMRC's Statement of Case received by the Tribunal on 31 August 2017. The Tribunal wrote to the Appellant on 4 September 2017 stating that if it wished to reply to HMRC's Statement of Case it should do so within 30 days. The Appellant did not reply.

DECISION

Appeal

1. This is an appeal by Farid and Farid Limited ('the appellant') against flat-rate penalties, totalling £400, imposed by the Respondents ('HMRC') for the late filing of the appellant Company's corporation tax return for the accounting periods ending ('APE') 3 March 2014 and 31 March 2014.
2. The appeal includes an application by the appellant to appeal out of time. HMRC do not oppose the application.

Background

3. The Company was incorporated on 4 March 2013. Its main business activities are described at Companies House as 'Dental Practice Activities'. Its directors are Mr Farid Farid, Anahita Monibi and Dr Farid Monibi.
4. The legislation at Paragraph 3 Schedule 18 Finance Act ('FA') 1998 requires a Company to deliver a Corporation Tax ('CT') return. Paragraph 14 Schedule 18 FA 1998 stipulates 'the filing date' by which the return should be filed.
5. 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)
6. Where the CT return is not filed by the filing date, the Company will be charged a flat-rate penalty in accordance with Paragraph 17 Schedule 18 FA 1998.
7. The penalty is £100 if the return is filed within 3 months after the filing date or £200 in any other case; however the amounts are increased to £500 and £1,000 respectively for successive further failures.
8. If the Company fails to file a return within 18 months after the end of the accounting period, or the filing date if later than that, they are liable to a tax-related penalty in accordance with Paragraph 18 Schedule 18 FA 1998.
9. The penalty is 10% of the unpaid tax, if the return is delivered within 2 years after the end of the period for which the return is required, or 20% of the unpaid tax in any other case.
10. "Unpaid tax" is defined at Paragraph 18(3) Schedule 18 FA 1998 and means the amount of tax payable by the Company for the accounting period for which the return was required which remains unpaid on the date when the liability to the penalty arises.

Reasonable excuse

11. Section 118(2) Taxes Management Act ('TMA') 1970 provides statutory protection from a penalty if the Company had a reasonable excuse for failing to file their return on time.

12. There is no statutory definition of "reasonable excuse". Whether or not a person had a reasonable excuse is an objective test and "is a matter to be considered in the light of all the circumstances of the particular case" (*Rowland V HMRC* (2006) STC (SCD) 536 at paragraph 18).

13. The actions of the taxpayer should be considered from the perspective of a prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts. The decision depends upon the particular circumstances in which the failure occurred and the particular circumstances and abilities of the person who failed to file their return on time.

14. The test is to determine what a reasonable taxpayer, in the position of the taxpayer, would have done in those circumstances and by reference to that test to determine whether the conduct of the taxpayer can be regarded as conforming to that standard. If there is a reasonable excuse it must exist throughout the failure period.

15. The onus of proof is for HMRC to show that the penalties have been correctly calculated. The burden then shifts to the appellant to demonstrate that a reasonable excuse exists for the default.

Background

16. The appellant was required to file CT returns for APE's 3 March 2014 and 31 March 2014. The filing date for both returns was 31 March 2015.

17. HMRC sent the appellant notices to file for both periods on 21 December 2014.

18. The CT return for the APE 3 March 2014 was originally submitted online on 27 March 2015. The return stated that the accounts and computations were attached but they were for the APE 31 March 2014. The return had been logged on HMRC's computer system, but because it was received in unsatisfactory form was unlogged and returned to the appellant with a covering letter on 8 May 2015.

19. Despite the appellant and the agent being told that submission of the CT return for APE 3 March 2014 was not complete and valid, and penalties being issued on 21 May 2015 and 2 July 2015, a satisfactory return with accompanying documentation was not submitted until 13 July 2017, 104 days late.

20. A satisfactory CT return for APE 31 March 2014 was filed online on 14 July 2015, 105 days late.

21. An initial notice of penalty determination in the amount of £100 was issued for the APE 3 March 2014 on 21 May 2015 with a notice of further penalty determination increasing the penalty to £200, issued on or shortly after 2 July 2015.
22. An initial notice of penalty determination in the amount of £100 was issued for the APE 31 March 2014 on 16 April 2015 with a notice of further penalty determination increasing the penalty to £200 issued on or shortly after 31 July 2015.
23. On 29 April 2015 the appellant's agent, Arthur G Mead Ltd, queried the penalties.
24. On 21 May 2015, HMRC advised that the penalties had been charged as a return for APE 3 March 2014 had been filed without accounts and computations attached.
25. On 14 July 2015 HMRC reminded the appellant and the agent that the returns were still outstanding.
26. On 14 July 2015 the agent appealed the penalties, on the grounds that the returns had "now" been "refiled".
27. HMRC sent the agent a decision letter on 20 August 2015 rejecting the appeal, but offering a review.
28. On 20 August 2015 the agent requested a review of HMRC's decision saying that both returns had been filed on time and the submission receipts were provided with the letter of 29 April 2015.
29. HMRC carried out a review and issued their review conclusion on 17 September 2015, which was that their decision should be upheld.
30. On 23 September 2015 the agent notified an appeal to the Tribunal, giving their grounds that the CT returns for both accounting periods had been filed on time, on 27 March 2015.

HMRC's view

31. This appeal is not concerned with specialist or obscure areas of tax law. It is concerned with the ordinary every day responsibilities of the appellant to ensure that their CT returns were filed by the legislative due date.
32. A Company's obligation to file a Company tax return is not automatic; it has to be imposed by a notice to file specifying a period for which the Company must make a return. Usually this specified period corresponds with the Company's accounting period and it must send in a Company tax return for that return period.
33. Under Para 3 Sch 18 FA 1998 a Company is required to file with HMRC a complete Company tax return on or before its filing date. A complete return needs to be correctly submitted and received by HMRC before it is deemed to have been validly delivered and the Company's filing obligation met. A CT return is not deemed

to have been delivered if any component is missing, incomplete or in an incorrect format.

34. Although an acknowledgement is issued once a return has been submitted online, this only shows that a return has been received. The returns originally filed by the agent will have been acknowledged in this manner. However, it was not confirmation that the return was complete and satisfactory. The return was reviewed and found to be incomplete, and therefore rejected.

35. Information about Corporation Tax, the requirement to file an electronic return, the completion of electronic returns, what is required to accompany the return, enrolling for CT online filing, penalties etc., is well within the public domain and widely available via the internet including HMRC's website and the Online Services Helpdesk.

36. All entities that are sent a notice to deliver a Corporation Tax return are required to file that return online. Also, any organisation that is within the charge to Corporation Tax must pay that tax (and any related payments, such as interest on tax paid late) electronically.

37. It is not enough to have a willingness to file a return, a Company must ensure that it has in place the necessary systems and processes to ensure its filing obligation is met. To that end it must exercise due diligence and foresight. In this case it is evident that the Company has not demonstrated the due level of prudence and diligence necessary to adhere to its filing obligation.

38. HMRC consider the actions of the Company from the perspective of a prudent Company exercising reasonable foresight and due diligence, having proper regard for its responsibilities under the Tax Acts. If there is a reasonable excuse it must exist throughout the period of default. HMRC also take into consideration the time period between the events occurrence and if that time period was sufficient to allow alternative steps to be taken or arrangements to be made.

39. Arthur G Mead Ltd advised the Tribunal Service that they had originally submitted a notice to appeal to the Tribunal dated 23 September 2015 in October 2015 via email.

40. The Tribunal Service confirmed that there was no record of an appeal being received in October 2015. The copy emailed to the Tribunal Service on 15 June 2017 was incomplete.

41. HMRC expect a Company to take reasonable care to explain to a third party what they require them to do, to set deadlines for the work, to make regular checks on progress and to obtain evidence that the task has been successfully completed.

42. It would appear that neither the appellant nor the agent, Arthur G Mead Ltd, took reasonable care to ensure complete and valid CT returns were submitted for the APE's 3 March 2014 and 31 March 2014 within the deadline.

43. Under Schedule, 56 Paragraph 16 FA 2009, reliance on another person cannot be considered as a reasonable excuse.

44. Failure of an agent to meet his or her obligations to the Company might entitle the Company to some recourse against the agent, but in the Tribunal's view reliance on a third party such as an accountant cannot relieve a Company of its own obligations to file a CT return and pay any tax due on time. The fact that responsibility may have been entrusted by the Company to a third party does not amount to a reasonable excuse.

Relevant statutory provisions

Finance Act 1998, Parts I & II

Schedule 18

Paragraph 2 - Duty to give notice of chargeability

(1) A Company which-

- (A) is chargeable to tax for an accounting period, and
- (B) has not received a notice requiring a Company tax return, must give notice to [an officer of Revenue and Customs] that it is so chargeable.

(2) The notice must be given within twelve months from the end of the accounting period.

(3) A Company which fails to comply with this paragraph is liable to a penalty not exceeding the amount of tax payable for the accounting period in question that remains unpaid twelve months after the end of the period.

(4) In computing the amount of unpaid tax for this purpose, no account shall be taken of any relief under [section 458 of the Corporation Tax Act 2010] (relief in respect of repayment, etc. of loan) which is deferred under [subsection (5)] of that section.

Paragraph 3 - Company tax return

(1) An officer of Revenue and Customs may by notice require a Company to deliver a return (a "Company tax return") of such information, accounts, statements and reports-

- (A) relevant to the tax liability of the Company, or
- (B) Otherwise relevant to the application of the Corporation Tax Acts to the Company, as may reasonably be required by the notice.

(2) Different information, accounts, statements and reports may be required from different descriptions of Company.

(3) A Company tax return must include a declaration by the person making the return that the return is to the best of his knowledge correct and complete.

(4) The return must be delivered to the officer of the Board by whom the notice was issued not later than the filing date.

(5) Sub-paragraph (1)(b) has effect as if the reference to the Corporation Tax Acts included a reference to sections 911, 912, 914 and 915 of the Income Tax Act 2007.

Paragraph 4 - Meaning of delivery of return

References in this Schedule to the delivery of a Company tax return are to the delivery of all the information, accounts, statements and reports required to comply with the notice requiring the return.

Paragraph 5 - Period for which return required

(1) A notice requiring a Company tax return must specify the period to which the notice relates.

(2) If an accounting period of the Company ended during (or at the end of) the specified period, a return is required for that accounting period.

If there is more than one, a separate Company tax return is required for each of them.

(3) If sub-paragraph (2) does not apply but an accounting period of the Company began during the specified period, a Company tax return is required for the part of the specified period before the accounting period began.

(4) If the Company was outside the charge to corporation tax for the whole of the specified period, a Company tax return is required for the whole of the specified period.

(5) If none of the above provisions applies, no Company tax return is required in response to the notice.

Paragraph 14 - Filing date

(1) The filing date for a Company tax return is the last day of whichever of the following periods is the last to end-

- (a) twelve months from the end of the period for which the return is made;
- (b) if the Company's relevant period of account is no longer than 18 months, twelve months from the end of that period;
- (c) if the Company's relevant period of account is longer than 18 months, 30 months from the beginning of that period;
- (d) three months from the date on which the notice requiring the return was served.

(2) In sub-paragraph (1) "relevant period of account" means, in relation to a return for an accounting period, the period of account of the Company in which the last day of that accounting period falls.

Paragraph 17 -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.

(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 £1,000 for a third successive failure, that is, where-

- (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
- (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-

- (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.

Paragraph 18 - Failure to deliver return: tax-related penalty.

(1) A Company which is required to deliver a Company tax return for an accounting period and fails to do so-

- (a) within 18 months after the end of that period, or
 - (b) if the filing date is later than that, by the filing date,
- Is liable to a tax-related penalty under this paragraph.
This is in addition to any flat-rate penalty under paragraph 17.

(2) The penalty is-

- (a) 10% of the unpaid tax, if the return is delivered within two years after the end of the period for which the return is required, and
- (b) 20% of the unpaid tax, in any other case.

(3) The "unpaid tax" means the amount of tax payable by the Company for the accounting period for which the return was required which remains unpaid on the date when the liability to the penalty arises under sub-paragraph (1).

(4) In determining that amount no account shall be taken of any relief under section 419(4) of the Taxes Act 1988 (relief in respect of repayment, etc. of loan) which is deferred under subsection (4A) of that section.

Finance Act 2009

Schedule 56

Paragraph 16 Reasonable excuse [payment]

(1) If P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for a failure to make a payment-

- (a) liability to a penalty under any paragraph of this Schedule does not arise in relation to that failure, and
- (b) the failure does not count as a default for the purposes of paragraphs 6, 8B, 8C, 8G and 8H.

(2) For the purposes of sub-paragraph (1)-

- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,
- (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
- (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Schedule 55

Paragraph 23 Reasonable excuse [returns]

(1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of sub-paragraph (1)-

- (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,
- (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
- (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Taxes Management Act 1970 Section 118(2)

(2) For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and 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.

Conclusion

45. When a person appeals against a penalty they are required to have a reasonable excuse which existed for the whole period of the default. There is no definition in law of reasonable excuse, which is a matter to be considered in the light of all the circumstances of the particular case.

46. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond the person's control, which prevents him or her from complying with an obligation which otherwise they would have complied with.

47. CT legislation places the primary and sole responsibility of awareness of the Company's filing obligation and ensuring adherence to that obligation upon the Company. It cannot transfer this obligation to another. Even if it engages someone to assist with that obligation, the responsibility for submitting and ensuring the returns are filed on time rest squarely on the shoulders of the Company.

48. A Company must ensure that it has in place the necessary systems and processes to ensure its filing obligation is met. To that end, it must exercise due diligence and foresight.

49. It is clear that the appellant's agent filed a CT return for the APE 3 March 2014, but that the accounts and computations which were attached to that return were for the wrong period, that is APE 31 March 2014.

50. No return was received by HMRC for APE 31 March 2014 and the appellant and agent were notified of the failed submission for both periods on 21 May 2015 and 2 July 2015. Despite that, the two returns were not filed until 13 and 14 July 2015 respectively.

51. No reasonable excuse has been shown for the failure to file the returns on time.

52. I therefore find that the penalties totalling £400 have been validly raised by HMRC and are therefore confirmed.

53. 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 a Company a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**MICHAEL CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 28 FEBRUARY 2019