

[2019] UKFTT 486 (TC)



TC07289

Appeal number: TC-2019/01545

CORPORATION TAX – Late Filing Flat-Rate Penalties - Schedule 18 Finance Act 1998 - Were the penalties correctly imposed? - Yes - Was there a reasonable excuse? - No - Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

B HUMPHREYS BUILDING CONSTRUCTION LTD Appellant

- and -

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

TRIBUNAL: DR KAMEEL KHAN

The Tribunal determined the appeal on 5 June 2018 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 13 August 2018 (with enclosures), HMRC's Statement of Case dated March 2018 (with enclosures)

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DECISION

1. This is an appeal by B Humphreys Building Construction Limited ('the appellant') against flat-rate penalties, totalling £1,246.88, imposed by the Respondents ('HMRC') for the late filing of the appellant Company's corporation tax return for the accounting periods ending ('APE') 30 June 2017.

BACKGROUND

2. The Company was incorporated on 23 June 1997. Its main business activities are described at Companies House as building construction.
3. 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.
4. 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. 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.
6. 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.
7. 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.
8. 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.
9. "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

10. 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.

11. 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*).

12. 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.

13. 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.

14. 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.

FINDING OF FACTS

15. The appellant was required to file a CT return for APE 30 June 2017, the filing date was 30 June 2018.

16. HMRC sent a notice to file for the specified period 1 July 2016 to 30 June 2017 on 23 July 2017 at the appellant's registered office in Merthyr Tydfil.

17. The CT return was filed online on 12 March 2019.

18. The CT return for APE 30 June 2017 was due no later than 30 June 2018 but was not filed until 12 March 2019. This is 254 days late. The CT returns for APE's 30 June 2015, 30 June 2016 and 30 June 2017 were not successfully submitted until 12 March 2019.

19. An initial notice of penalty determination in the amount of £500 was issued on 17 July 2018 with a notice of further penalty determination increasing the penalty to £1000 issued on 11 February 2019.

20. A tax related penalty was levied at 10 % of the unpaid tax, where the return is delivered within 2 years of the end of the period covered by the return.

21. A revenue determination on 11 February 2019 estimated corporation tax at £2468.88 and a 10% tax related penalty of £246.88 was issued at the same time.

22. When the return was received on 12 March 2019 the charge of zero replaced the original tax related penalty.

23. On 13 August 2018 the appellant appealed against the late filing penalty on grounds that the information had been submitted before the due date.

24. On 12 September 2018 HMRC rejected the appeal as the APE return of 30 June 2017 was outstanding.

25. HMRC sent a decision letter to the appellant on 29 November 2018 again rejecting the appeal as the return was still outstanding.

26. HMRC received a request for a review of their decision on 7 January 2019. The appellant said they tried to file but failed to deliver the accounts in the format required as they had problems with the software and their accountant became seriously ill. The accounts for two years were submitted in the old form but this was rejected, though all the required information was presented. The accountant has retired now due to ill health.

27. The review upheld HMRC's decision.

28. On March 2019 the appellant notified the tribunal of their appeal.

HMRC's VIEW

29 This appeal is not concerned with specialist or unclear 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.

30. 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.

31. 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.

32 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
5 widely available via the internet including HMRC's website and the Online Services
Helpdesk.

33. 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
10 Corporation Tax must pay that tax (and any related payments, such as interest on tax
paid late) electronically.

34. 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
15 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.

35. HMRC consider the actions of the company from the perspective of a prudent
20 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.

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

37. Failure of an agent to meet his or her obligations to the company might entitle
30 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.

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APPELLANT'S VIEW

38. The appellant say that they tried to deliver the returns but there were difficulties
40 with the software in "overwriting the format of iXBRL" and further their accountant
became seriously ill and was hospitalised. He was unable to instruct another party to
take the matter over due to illness.

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Discussion

39. The company has an obligation to file its returns. It received a notice to file for the relevant period which corresponded with the company's accounting period.
- 5
40. The primary responsibility for the company's filing obligations is with the company. It cannot be transferred to another person, even if that person is engaged to assist with that obligation.
- 10
41. The company 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 obligations.
42. The Company must submit returns online for any accounting period ending after 31 March 2010. The accounts must be prepared under the Companies Act 2006, they must submit the accounts and computations in a set format-it is called iXBRL. It must be submitted in this way unless some other form is agreed beforehand.
- 15
43. The Companies House records show that the company accounts for all APE's 30 June 2015, 30 June 2016 and 30 June 2017 were submitted within the time limit allowed of up to 9 months after the Company's financial year end. There is no reason why the CT 600's accounts and computation could not have been submitted to HMRC at the same time as the company accounts had been prepared.
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44. It is the responsibility for the directors of the company to ensure all deadlines are met, returns submitted or there is an automatic penalty.
- 25
45. The appellant had been advised that although an accountant may have been tasked by the company to complete the return, the successful submission remains the responsibility of the company and directors. Where the company has asked an agent to do something on the company's behalf, the company, as here, cannot claim it has a reasonable excuse merely because it delegated the task to an agent and the agent failed to complete the task. Reliance on a third party does not constitute a reasonable excuse.
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46. A reasonable excuse is considered in the light of circumstances. The excuse must be for the whole of the default period. It must be what a reasonable person would do in the circumstances.
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47. The appellant is appealing on grounds of the accountant's ill health and the fact that the director was stopped from meeting a tax obligation as he could not obtain all the necessary information required to submit a CT return as the accountant had all the documentation.
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48. While one may sympathise with the situation, the company is expected to arrange its affairs to ensure that all tax returns are delivered by the due date. If the agent has failed, the company will still be liable for the penalties.
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49. This is the third successive failure to submit a CT return on time by the appellant. This shows that the company should have alternative and back up arrangements in place and suggests that there was not the care and foresight expected of a company adhering to its responsibilities under the Companies Act. The fact that the accounts were submitted to Companies House on time shows that the accountant was in a position to complete and submit the returns and accounts to HMRC within the required deadline at the same time.
50. There is no reasonable excuse based on the evidence and the penalties were correctly charged.

Conclusion

51. Any excuse the appellant may have had did not subsist throughout the entire period of delay and therefore does not amount to a reasonable excuse.
52. The late filing penalties have been charged in accordance with legislation and there is no reasonable excuse for the appellant's failure to file his tax return on time, nor by the date the penalties arose.

Application for Permission to Appeal

1. This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties and may publish them on its website and either party will have 56 days in which to appeal. 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.

APPENDIX – RELEVANT STATUTORY PROVISIONS

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.

5 (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.

10 (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

15 (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-

20 (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.

25 (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.

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

35 (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

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

45 (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.

5 (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.

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

Paragraph 14 - Filing date

15 (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;
- 20 (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.

25 (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

30 (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.

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Taxes Management Act 1970 Section 118(2)

40 (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.

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DR KAMEEL KHAN

RELEASE DATE: 27 July 2019