



TC05361

Appeal number: TC/2016/02823

VALUE ADDED TAX – Default Surcharge – late payment – mistaken belief that a Direct Debit was in place – whether reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Adrian Harrington Ltd.

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 25 July 2016 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 19 May 2016 and HMRC's Statement of Case dated 13 June 2016 and the Appellant's reply 13 July 2016.

DECISION

Preliminary

- 5 1. The appeal includes an application by the Appellant to appeal out of time. HMRC considered the late appeal under Section 49 Taxes Management Act 1970 and found that the Appellant did not have a reasonable excuse for the delay in appealing and therefore refused the late appeal. HMRC do not oppose the Appellant's application to the Tribunal out of time.
- 10 2. As a general rule, when the Tribunal is asked to extend the relevant time limit, the court or the Tribunal will ask itself the following questions: (1) What is the purpose of the time delay? (2) How long was the delay? (3) Is there a good explanation for the delay? (4) What will be the consequences for the parties of an extension of time? (5) What will be the consequences for the parties of a refusal to extend time?
- 15 3. The purpose of the time limit is to allow for the efficient and timely administration of justice. This must be weighed in the balance against the consequences for the parties.
4. In this case, it is clear that the Appellant has new advisors and one of the advisors dealing with the Appellant as a client had become seriously ill and resigned from the
20 accounting partnership. It is only fair in the circumstances that the Appellant be given an opportunity to present their case. The Tribunal is happy to allow the appeal to proceed.

Nature of the appeal

- 25 5. This is an appeal against the penalties of £1,200 imposed under Regulation 81(2) (a) of the Social Security (Contributions) Regulations 2001 (SI 2001/1004) for the late filing of the P11D (b) form for the year 2008-2009.

Legislation

- 30 6. Regulation 80 of the Social Security (Contributions) Regulations 2001 provides for a P11D (b) to be submitted no later than 6 July following the end of the tax year. Regulation 81(2)(a) provides that:

Any person who fails to make a Return referred to in paragraph (1) by the date which applies to him under Regulation 71(1), 72(2) or 73(2), may be liable –

- 35 (a) Within six years after the date of the failure, to a penalty of the relevant monthly amount for each month (or part of a month) during which the failure continues but excluding any month after the twelfth, or for which a penalty under this paragraph has already been imposed;

7. The amount of the penalty is set by Regulation 81(4)(a):

For the purposes of paragraph (2), “the relevant monthly amount” in the case of a failure to make a return is –

(a) where the number of earners in respect of whom particulars of the amount of any Class 1A contribution payable should be included in the Return is 50 or less, £100 or

- 5 (b) where the number is greater than 50, £100 for each such earners and an additional £100 where that number is not a multiple of 50

The total penalty payable must not exceed a total amount of Class 1A due for that year.

8. Reasonable excuses found at Regulation 81(9):

- 10 For the purposes of this Regulation a person shall be deemed not to have failed to have done anything required to be done within a limited time if he –

(a) Did it within such further time as the Board allowed or

(b) Had a reasonable excuse for the failure and if that excuse ceased, did it without unreasonable delay after the excuse ceased.

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9. The Tribunal can set the Penalty aside or confirm the amount of the Penalty or if the amount determined appears to be incorrect, increase or reduce it to the correct amount.

20 Relevant facts

10. The Appellant was required to file a form P11D (b) as Class 1A National Insurance Contributions were payable for the year 2008-09. The filing date for the P11D (b) form was 6 July 2009.

25 11. HMRC sent the Appellant a Late Filing Penalty Notice on 9 November 2009 for £400 for the period 07 July 2009 to 6 November 2009. A second Late Filing Penalty Notice was sent on 15 March 2010 for £400 for the period November 2009 to 6 March 2010. A third Late Filing Penalty Notice was sent on 12 July 2010 for £400 for the period 07 March 2010 to 6 July 2010. A P11D (b) form was filed online on 16 August 2013.

30 12. On 31 May 2013 the Appellant’s Agent, Sherwoods, Accountants appealed against the Penalties on the grounds that all the Returns had been made on time. This appeal was rejected by HMRC on 11 June as it had been made late.

13. On 4 March 2016, Sherwoods again wrote to HMRC explaining that as part of a Corporation Tax enquiry to the Company the question of Penalties arose. The

advisors explained that the matter was not appealed since the officer in question had requested further information before making a decision. HMRC explained that they were unable to review the appeal again as they had already advised that a Penalty was due and payable on the late submission of the form P11D (b).

5 14. On 19 May 2016 an appeal was made to the Tribunal and the grounds were listed as follows:

15 15. The 2008-09 P11D (b) was submitted on 8 July 2009. The Accountants did not receive an Agent's copy of the Penalty. They contacted HMRC in April 2012 concerning the Penalties and their request for a review was refused on the ground that
10 the appeal was late. The late appeal arising from a Corporation Tax enquiry had been accepted for review by HMRC. The Accountants explained that due to the adverse medical conditions of one of their partners dealing with the client the matter had sustained delays.

HMRC's submissions

15 16. HMRC say that the outstanding 2008-09 form was not filed until 16 August 2013 and no evidence had been produced to support the claim that the Return was submitted on 8 July 2009.

17. They explained that Sherwoods had become the Agents of the Appellant only from 11 July 2013 and as such the three Penalty Notices issued on 9 November 2009,
20 15 March 2010 and 12 July 2010 would not have been issued to Sherwoods. This meant that Agent copies of the Penalty Notice would not have been issued to Sherwoods but rather to the previous Agents, Twinemanda Ltd.

18. HMRC explained that no correspondence delivered to the Agents had been returned under the Returned Mail Service Royal Mail. There is no record of any mail
25 being returned or undelivered from Sherwoods or Twinemanda Ltd's address, both companies sharing the same address.

19. HMRC explained that by April 2012 the Return was more than two years overdue and all the disputed Penalties had been issued. They said that the appeal was correctly refused as being late and that the late appeal against Corporation Tax Penalties is not
30 relevant to the issue of late filing of the 2008-09 P11D(b).

20. HMRC also said that the partner responsible for the account of the Appellant who had become ill had a medical problem between 2012 and June 2013 resulting in him leaving the partnership in October 2013. This was more than three and a half years after the due date for the filing of the 2008-09 forms and two years after the issue of
35 the Penalty Notices and therefore not relevant.

21. HMRC therefore requested that the Late Filing Penalties be upheld and that there is no reasonable excuse.

Conclusion

22. The issue for the Tribunal is to determine whether there is a reasonable excuse lasting the period of the default. The Tribunal is sympathetic to the difficulties experienced by the Appellant's advisors but the primary responsibility for the submission of the forms rests with the Taxpayer to ensure that their tax obligations are met.

23. In this case there was a significant delay by the advisors in dealing with this matter. It is understandable that the advisors, Sherwoods, only came on board after the Penalties arose. Sherwoods had been dealing with a Corporation Tax enquiry on behalf of the Appellants during which enquiry the question of Penalties arose. However at that time, the Penalties had already crystallised and been chargeable on the Appellant and the Corporation Tax enquiry was not relevant to the issue of the P11D (b) Penalty.

24. The Tribunal accepts that the Appellant had always tried to file their Returns on time over many years of business, however this does not provide the Appellant with a reasonable excuse for the late submission of the P11D(b) form for the period 2008-09.

25. The Penalties are imposed in accordance with legislation and are in two parts. First, there is a Fixed Penalty and the secondly the total penalty is capped at the amount of the unpaid Class1A NICs. In this case, the Penalties need to be reduced to £1,059.97 from £1,200, as this is the total amount of the unpaid tax.

26. 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.

DR K KHAN
TRIBUNAL JUDGE

RELEASE DATE: 8 SEPTEMBER 2016