



**TC06066**

**Appeal number: TC/2017/00694**

*CONSTRUCTION INDUSTRY SCHEME – late returns – reasonable  
excuse – yes – appeal allowed – Schedule 55, Finance Act 2009*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SCOTT BUILDING CONTRACTS LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE NICHOLAS ALEKSANDER**

**The Tribunal determined the appeal on 30 July 2017 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 4 January 2017 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 10 March 2017.**

## DECISION

5 1. This is an appeal against penalties for late filing of contractor's monthly returns CIS 300 required under the Construction Industry Scheme.

2. The appeals relate to nine returns for periods between May 2014 and January 2015. The penalties were levied under Schedule 55, Finance Act 2009 ("Schedule 55").

10 3. Alison Beck, a director of the Appellant, acknowledges that the returns were filed late. However she states that she had a reasonable excuse for the defaults for the following reasons (amongst others):

(1) she had just moved home, having just had a baby. The baby was not sleeping (day or night), and she also had an older child to take care of.

15 (2) She and her partner had suffered a burglary, and her car, and Ms Beck's partner's van (together with all of his tools) were stolen. In consequence, her partner could not work for months thereafter, and he became depressed.

(3) The business had recently started on a large new contract.

20 (4) They had problems with their accountant, who was difficult to contact and who did not respond promptly to them (they have since engaged a new accountant).

4. Paragraph 23 of Schedule 55 provides that a penalty under the Schedule will not arise if the person penalised has a reasonable excuse for their failure. Sub-paragraph (2) provides that an insufficiency of funds is not a reasonable excuse, nor is reliance on another person (unless the taxpayer took reasonable care to avoid the failure).  
25 Sub-paragraph (2)(c) provides that where a person had a reasonable excuse, but the excuse has ceased, the person must remedy their default without unreasonable delay.

5. HMRC submit that a reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond a person's control and which prevents a person from complying with an obligation when they would otherwise have done so.  
30 Whilst HMRC sympathise with the circumstances Ms Beck found herself in, the circumstances of her pregnancy and her need to look after her child did not amount to a reasonable excuse. For illness to amount to a reasonable excuse, HMRC submit that it must be so serious as to prevent the taxpayer from controlling his business and private affairs immediately before the deadline – such as a coma, major heart attack,  
35 stroke, or any other serious mental or life threatening illness. Where the illness is an ongoing condition the taxpayer would be expected to make arrangements for completing and filing tax returns on time. HMRC submit that the circumstances of this case do not amount to a reasonable excuse. Reliance on the business's accountant cannot be a reasonable excuse, as reliance on a third party cannot be a reasonable  
40 excuse by virtue of paragraph 23 of Schedule 55.

6. The Tribunals have on many occasions held that HMRC's statement of what amounts to a reasonable excuse is not a correct statement of the law. What is a reasonable excuse will depend upon all the facts and circumstances. While an unexpected or unusual event that is unforeseeable or beyond a person's control may well constitute a reasonable excuse, this is not an exhaustive definition.

7. Looking at all the factors in the round, I am satisfied that the Appellant had a reasonable excuse for the failure to file the CIS returns on time. While any one of the circumstances taken in isolation may not have amounted to a reasonable excuse, I am satisfied that the cumulative effect of all of the circumstances overwhelmed the Ms Beck, and amounted to a reasonable excuse.

8. I would note that reliance on an accountant cannot be a reasonable excuse, unless the taxpayer has taken reasonable care to avoid the failure. In this case I note that Ms Beck's evidence is that she followed-up with the accountant, but that he was difficult to contact and tardy in responding – and in the end she appointed a new accountant. I am therefore satisfied that the Appellant took reasonable care to avoid the failure as far as her dealings with the accountant were concerned. For this reason, the exclusion in paragraph 23(2)(b) of Schedule 55 does not apply.

9. I therefore allow the appeal.

10. 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.

**NICHOLAS ALEKSANDER  
TRIBUNAL JUDGE**

**RELEASE DATE: 15 AUGUST 2017**