



TC06885

Appeal number: TC/2018/03072

Corporation tax - penalties for late filing of Corporation Tax returns - Appellant delegated preparation and submission of return to accountants who failed to submit the accounts on time – paragraph 23 Schedule 55 FA 2009 - whether reasonable excuse - no - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

THE SHEARER ARMS LTD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE MICHAEL CONNELL

The Tribunal determined the appeal on 29 August 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 8 May 2018, and HMRC's Statement of Case received by the Tribunal on 12 June 2018. The Tribunal wrote to the Appellant on 20 June 2018 stating that if the Appellant wished to reply to HMRC's Statement of Case it should do so within 30 days. No reply was received.

DECISION

Appeal

5 1. This is an appeal by The Shearer Arms Limited ('the Appellant') against both
the flat-rate and tax-related penalties, totalling £2,088.92 imposed by the Respondents
(‘HMRC’) for the late filing of the Appellant’s Company Tax (‘CT’) return for the
accounting period ending (‘APE’) 30 September 2015 and against a flat-rate penalty
10 determination of £1,000 for the late filing of the CT return for the APE 30 September
2016.

Background

2. The Company was incorporated on 22 September 2004.

3. The legislation at Paragraph 3 Schedule 18 Finance Act (‘FA’) 1998 requires a
Company to deliver a return. Paragraph 14 Schedule 18 FA 1998 stipulates ‘the filing
15 date’.

4. Where a 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.

5. 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 for further
20 failures.

6. 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.

7. The penalty is 10% of the unpaid tax, if the return is delivered within 2 years
25 after the end of the period for which the return is required, or 20% of the unpaid tax in
any other case.

8. “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.

30 *Reasonable excuse*

9. 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.

10. There is no statutory definition of “reasonable excuse”. Whether or not a
35 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). The law specifies that reliance upon another person

to do anything is not a reasonable excuse, unless the taxpayer took reasonable care to avoid the failure.

11. HMRC's view is that 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.

12. 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.

13. 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 defaults

APE-30 September 2015

14. The Appellant was required to file a CT return for the APE 30 September 2015.

15. HMRC sent the Appellant a Notice to File for the APE 30 September 2015 on 18 October 2015. The CT return was due not later than 30 September 2016.

16. The CT return was filed online on 9 October 2017. This is 374 days late.

17. An initial notice of penalty determination in the amount of £500 was issued on 18 October 2016, with a notice of further penalty determination increasing the penalty to £1,000 issued on 19 January 2017.

18. HMRC sent the Appellant a revenue determination on 16 June 2017 estimating the Corporation Tax charge at £2,000 and a 20% tax related penalty of £200 was issued at the same time.

19. A Company does not have a right of appeal against a revenue determination but can supersede it with a self-assessment by making a return.

20. When the return was received on 9 October 2017, a charge of £600 replaced the original estimated amount. As the Corporation Tax liability was less than the revenue determination the tax-related penalty was revised accordingly, the amended penalty notice, issued on 25 October 2017, reduced the penalty to £120.

21. HMRC sent the Appellant a further revised tax-related penalty determination on 11 May 2018 showing a revised tax charge of £444.60 and a penalty charge of £88.92 in accordance with Paragraph 18(2)(a) Schedule 18 FA 1998 or Paragraph 18(2)(b) Schedule 18 FA 1998.

APE- 30 September 2016

22. The Appellant was required to file a CT return for APE 30 September 2016. The filing date for the return was 30 September 2017.
23. HMRC sent the Appellant a Notice to File on 23 October 2016.
- 5 24. The CT return was filed online on 9 April 2018.
25. The CT return for APE 30 September 2016 was due not later than 30 September 2017 but was not filed until 9 April 2018. This is 160 days late.
26. An initial notice of penalty determination in the amount of £500 was issued on 17 October 2017, with a notice of further penalty determination increasing the penalty
10 to £1,000 issued on 17 January 2018.
27. On 7 February 2018 the Appellant’s accountant, CMB Accountancy Services, appealed against the penalties charged for the late filing of the CT return for the APE 30 September 2016, on the grounds that the return was late due to the failure in duties by the previous accountant who is under investigation by HMRC.
- 15 28. HMRC sent the Appellant a decision letter on 26 February 2018 rejecting their appeal and offering a review.
29. On 7 March 2018 CMB Accountancy Services requested a review of HMRC’s decision, saying that the former accountant was the person responsible for the filing of the CT return and “is currently being investigated by the VAT department of HMRC
20 due to gross negligence”.
30. The agent said that it was not until the former accountant “disappeared without a trace” that all of this came to light. In those circumstances the penalties should be cancelled.
31. HMRC carried out a review and issued their review conclusion on 13 April
25 2018. The outcome of the review was that HMRC’s decision should be upheld.
32. On 8 May 2018 the Appellant’s accountant, CMB Accountancy Services, appealed to HMRC against the penalties charged for the late filing of the CT return for the APE 30 September 2015, on the same grounds as previously.
33. HMRC sent the Appellant a decision letter on 31 May 2018 rejecting their
30 appeal.
34. On 8 May 2018 CMB Accountancy Services notified an appeal to the Tribunal, giving their grounds as failure of the previous accountant to submit returns to HMRC. In correspondence with HMRC the accountants elaborated on the grounds of appeal :
- 35 “Mr Martin Young of Masons Accounting Services was the man responsible for the late filing of the return. Mr Young and his business, Masons Accounting Services is currently being investigated by the VAT department of HMRC on behalf of many

individuals due to gross negligence. Mr Flood of the Shearer Arms was assured by Mr Young that all accounts had been filed. Mr Flood had paid for the services provided, but Mr Young was just pocketing the money.”

HMRC’s view

5 35. 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.

10 36. A Company’s obligation to file a CT 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.

15 37. Under Paragraph 3 Schedule 18 FA 1998 a Company is required to file with HMRC a complete CT 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. Under Paragraph 4 Schedule 18 FA 1998, a CT return is not deemed to have been delivered if any component is missing, incomplete or in an incorrect format.

20 38. 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).

25 39. 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 HMRC Online Services Helpdesk.

30 40. 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.

35 41. 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 obligations.

40 42. 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.

5 43. A Company does not discharge the responsibility to submit a return merely by seeking in good faith to submit a return online, if the return is not received by the HMRC computer system.

10 44. Company accounts for the APE 30 September 2015 were submitted to Companies House on 25 June 2016 and the Company accounts for the APE 30 September 2016 were filed on 14 September 2017, yet returns were not submitted to HMRC until 9 October 2017 and 9 April 2018 respectively.

15 45. As the CT return for the APE 30 September 2015 was not received by the filing date of 30 September 2016, HMRC issued a determination of tax payable of £2,000 on 16 June 2017. There is no avenue to appeal against such a determination, but it can be superseded with self- assessment by making a return within the time limits under Paragraph 40 Schedule 18 Finance Act 1998.

20 46. On 25 October 2017 a reduction of the revenue determination was made reducing the tax due from £2,000 to £600 in accordance with the CT return and accounts submitted, and a revised penalty determination was issued showing a tax related penalty of £120 being 20% of the amount of Corporation Tax then due of £600.

47. The flat rate penalty of £1,000 for the APE 30 September 2015 was paid on 3 February 2017 and on 11 May 2018 a revised penalty determination was issued for the tax still unpaid of £444.60 at 20% amounting to £88.92.

25 48. Failure to submit a CT return on time gives rise to an initial penalty of £100, increasing to a further £100 after three months. For a third successive failure the penalty is £500, increasing by a further £500 after three months. After six months a further penalty equal to 10% of the estimated tax is raised and after 12 months a further 10%. Interest is charged from the date the tax should have been paid until the date it is settled.

30 49. The notice to file a CT return for the APE 30 September 2015 was issued to the Appellant at the registered office address of The Shearer Arms, 72 Shearer Road, Portsmouth, Hampshire P01 5LP on 18 October 2015. Therefore the Company would have been aware that a CT return was required.

35 50. The notice to file a CT return for the APE 30 September 2016 was issued to the Appellant at the registered office address of The Shearer Arms, 72 Shearer Road, Portsmouth, Hampshire P01 5LP on 23 October 2016. Therefore the Company would have been aware that a CT return was required.

40 51. 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. This obligation cannot be transferred to another person/body. Even if the

Company engages someone to assist with that obligation, the responsibility for submitting and ensuring the returns are filed on time rests squarely on the shoulders of the Company.

5 52. Although an accountant may have been tasked by the Appellant to complete the return, successful submission of the return remains the responsibility of the Appellant at all times. It is also the responsibility of that Company to ensure their tax affairs are up to date, returns submitted and tax paid over by the due date.

10 53. It is a well-established principle that the Company bears the ultimate responsibility to ensure that all tax obligations are met. Reliance on another person cannot be considered as grounds to support a reasonable excuse.

15 54. If the Appellant feels the previous agent has failed in their professional capacity or not followed specific instructions, then the Company should seek redress directly from that agent or appropriate regulatory authority. The existence of different cases which may have been settled in another manner does not have any impact on this case. The fact that other clients may have had an appeal settled with a favourable outcome does not alter the fact that in this case the penalties were correctly imposed.

20 55. Section 103A TMA 1970 provides that a penalty charged under Schedule 18 to FA 1998, shall carry interest at the rate applicable under s 178 FA 1998 from the date on which it becomes due and payable until payment. Legislation does not provide an avenue of appeal against interest.

56. There is no mechanism in the Taxes Acts that would allow the Appellant to appeal against such interest. Interest objections are the subject of internal checks by HMRC and may be lodged by the Company giving reasons for disagreeing but cannot be considered as part of this appeal.

25 57. HMRC contend that the Appellant would have been aware of their own responsibility and of the requirement to submit CT returns and pay any Corporation Tax liability within the time limits as they have been submitting CT returns since the accounting period ending 30 September 2005.

Relevant statutory provisions

30 **Taxes Management Act 1970** Section 118(2)

35 (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.

Finance Act 1998, Parts I & II

Schedule 18

Paragraph 2 - Duty to give notice of chargeability

(1) A company which-

- 5 (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.

10 (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

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.

(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.

25 (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

30 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

35 (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.

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.

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

Paragraph 14 - Filing date

10 (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 not longer than 18 months, twelve months from the end of that period;

15 (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.

20 (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.

25 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.

30 (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), -

35 (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.

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(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
- 5 (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.

10 (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.

15 (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.

20 (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).

25 (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 55

Paragraph 23 Reasonable excuse [returns]

30 (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,
- 35 (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.

5 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-

10 (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)-

15 (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

20 (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.

Conclusion

25 58. 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.

30 59. 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.

35 60. HMRC say, as is the case, that 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 a return is filed on time rests squarely on the shoulders of the Company.

61. HMRC also say that 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.

40 62. However Paragraph 23 of Schedule 55 FA 2009 [Reasonable excuse - returns] provides that liability to a penalty 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 and 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 where P had a reasonable excuse for the failure but the excuse has ceased,
5 P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

63. Similarly Paragraph 16 of Schedule 56 FA 2009 [Reasonable excuse - payment] provides that 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 liability to a
10 penalty does not arise 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.

64. HMRC do not dispute that the Appellant's previous accountant acted negligently and possibly culpably. If, as the Appellant says, the accountant informed the Appellant that the returns had been filed, when in fact they had not, the Appellant
15 having relied on that assurance would have a reasonable excuse for the late filing of the returns.

65. However, HMRC argue that although the Company had employed the previous accountants, Masons Accounting Services, Masons had stopped acting for the Company in October 2015. The late filing penalty is for the accounting period starting
20 1 October 2015, finishing 30 September 2016. Therefore, the previous accountant would not have been involved with the Company's accounts for that period.

66. In those circumstances although the Tribunal has some sympathy with the Appellant the appeal must be refused and the penalties confirmed.

67. This document contains full findings of fact and reasons for the decision. Any
25 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)"
30 which accompanies and forms part of this decision notice.

**MICHAEL CONNELL
TRIBUNAL JUDGE**

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RELEASE DATE: 19 DECEMBER 2018