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TC07148

Appeal number: TC/2018/03719

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***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**

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SCIENCE EDUCATION SOFTWARE LIMITED Appellant

- and -

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

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TRIBUNAL: JUDGE CHRISTOPHER MCNALL

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**The Tribunal determined the appeal on 17 May 2019, without a hearing, and
under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)
(Tax Chamber) Rules 2009 (default paper cases) having first read:**

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**The Notice of Appeal dated 12 June 2018 and the attachments to it
HMRC's Statement of Case and the attachments to it
The hearing bundle**

DECISION

1. This is my decision in relation to the Appellant's appeal against penalties imposed in relation to the late filing of a Corporation Tax return for the period ended 31 July 2016.

2. The penalties are:

(1) A flat-rate penalty of £100 imposed on 16 August 2017 pursuant to Schedule 18 Paragraph 17 of the Finance Act 1998, on the footing that the return was not filed on time.

(2) A further flat-rate penalty of £100 (thereby increasing the total liability to £200) imposed on 30 November 2017 pursuant to Schedule 18 Paragraph 17 of the Finance Act 1998, on the footing that the return had not been filed within three months of the filing date.

3. Of the £200, £100 has been paid. I have treated this appeal as one (i) seeking return of the £100 already paid; and (ii) seeking to quash the liability of £100 imposed in August 2017, and the further £100 imposed in November 2017.

4. The first matter that I must deal with is the application for an extension of time. This is opposed by HMRC. I apply the approach set out by the Upper Tribunal in *William Martland v HMRC* [2018] UKUT 0178 (TCC). The delay is put by HMRC at 33 days. In my view, this is neither serious nor significant. It has not affected (for example) the ability of HMRC to respond to the substantive appeal, nor does it seem to have occasioned any identified prejudice. Even if the delay were properly to be regarded as serious or significant, I am nonetheless satisfied that there is a good reason for it - in this instance, the difficulties which can be encountered in online services in rural north Wales.

5. Having dealt with that, I now move onto the substance of the appeal.

6. I remind myself that this is a penalty appeal, and, accordingly, HMRC bears the burden of proving (albeit only to the civil standard, namely the balance of probabilities) that the penalties were lawfully imposed. Amongst other matters, this entitles the Tribunal to scrutinise whether the penalties were imposed in accordance with the legislation, and following the giving of notice.

7. I am satisfied that HMRC gave the Appellant company the requisite notice that the corporation tax return in issue was to be filed by no later than 31 July 2017. That notice was issued on 21 August 2016. There is reference to this date on the Notice of Penalty Determination dated 16 August 2017, and in HMRC's COTAX system print-out at page 66 of the hearing bundle. Although the latter is weak hearsay evidence, in the absence of dispute, and given that it is consistent with the Notice of Penalty Determination, I accept it, and so find.

8. The return should have been filed by no later than 31 July 2017.

9. The return was not filed until 14 November 2017.

10. I am therefore satisfied that the return was filed late; the delay being about 3 and a half months.

11. Accordingly, and subject to any consideration of reasonable excuse, I am
5 satisfied that the penalties were lawfully imposed, are due, and have been calculated correctly.

12. Although there is no express provision for reasonable excuse in Schedule 18 of
the Finance Act 1998, both parties have nonetheless approached this appeal on the
10 footing that a defence of reasonable excuse is potentially available. Thus, and in
deference to that position, so shall I.

13. In summary, the Appellant's arguments are as follows:

(1) When preparing the accounts, at the end of June 2017, Mr Kay, the
Appellant's director, wrote to HMRC to seek advice (30 June 2017). He did not
15 receive an answer (dated 28 July 2017) until early August 2017. He completed
draft accounts in August 2017;

(2) He had engaged an external agent to do the filing. She could not do so
before July 2017, when she took a 4-5 week summer holiday. She told the
Appellant that she would not be able to file until mid-October 2017, but then
20 there was further delay, until mid November 2017, since she suffered a family
bereavement, her part-time office assessment had to take time off, and Mr Kay
had to take time off between 23 October and 3 November to look after his
sister's house and pet cat.

14. HMRC's 'cotax' printouts contain information, which is not disputed, that
HMRC left a phone message for Mr Kay on 19 July 2017, when he was advised that
25 he would not be given a filing extension for this return, and could file and amend if
required in relation to 'depreciating values'.

Discussion

15. The meaning of reasonable excuse in the context of tax law is well-established.
30 In *The Clean Car Co Ltd v Customs and Excise Commissioners* [1991] VATTR 234,
HHJ Medd QC stated (in the analogous context of VAT penalties):

35 “ It has been said before in cases arising from default surcharges that
the test of whether or not there is a reasonable excuse is an objective
one. In my judgment it is an objective test in this sense. One must ask
oneself: was what the taxpayer did a reasonable thing for a responsible
trader conscious of and intending to comply with his obligations
regarding tax, but having the experience and other relevant attributes of
the taxpayer and placed in the situation that the taxpayer found himself
at the relevant time, a reasonable thing to do?”

40 16. I apply that test here.

17. There is no suggestion of dishonesty or bad faith on the Company's part here. But I have concluded, applying the above test, that the Company did not have a reasonable excuse for the late filing.

5 18. Put shortly, my overall view is that the Appellant's engagement, when it came to the filing of its annual return, was simply too leisurely.

19. The filing date was 31 July 2017. The Appellant had been informed of this date, by HMRC, almost a year earlier. This was not the Appellant's first year in the Corporation Tax regime.

10 20. Nonetheless, the Appellant did not file in time. On 30 June 2017, it wrote to HMRC seeking its advice in relation to a deduction in relation to some computer equipment. It was open to the Appellant to file a return with estimated figures. It could, and should, have done so. Indeed, the Appellant was advised by HMRC to do this, on 19 July 2017.

15 21. In my view, it was not reasonable for the Appellant to wait until hearing from HMRC, especially when, as it knew, the deadline was fast approaching and it also knew that (unlike in previous years) it had not been given any extension of time. There is no reasonable excuse in relation to the first penalty, which therefore stands.

20 22. There is then a long gap until 14 November. The delay is more than trivial. I am not satisfied that the Appellant has put forward any reasonable excuse for this. I bear in mind that, as of 31 July 2017, the return - as the Appellant knew or must have known - was already late. Time was passing. Liability to pay one penalty had already been incurred. The Appellant was notified of this on 16 August 2017 (and, indeed, paid that £100 penalty in September 2017).

25 23. There is no evidence from the Appellant's adviser, but, even taking what is said at face value, it does not, in my view, amount to a reasonable excuse on the part of the Appellant. The Appellant had put checking and filing into the hands of someone who, given its work pattern and resources (as the Appellant knew, and even without a family bereavement) was not going to file on time anyway. The July deadline had already been missed. This should have injected a sense of urgency. It did not.

30 24. The staffing difficulties and the family bereavement simply made filing which was already going to be very late even later.

35 25. I am aware that the Appellant's turnover in previous years was modest, with zero tax payable. I do not know whether any tax was due for this year, but, even if it was not, the penalties are imposed in relation to late filing, and are not tax-g geared. In this context, penalties can indeed appear harsh and disproportionate.

40 26. Although I have not been referred to it by either party, I have considered the decision of the Upper Tribunal (Rose J, as she then was, and Judge Berner) in *The Commissioners for HMRC v Trinity Mirror plc* [2015] UKUT 0421 (TCC). There, it was held that a wide discretion was conferred on Parliament in devising a suitable scheme for penalties and therefore a high degree of deference is due by courts and

tribunals when determining the legality of penalties. Given the State's wide margin of appreciation, the Tribunal must be astute not to substitute its own view of what is fair for the penalty which Parliament has imposed.

5 27. In the course of a careful and thorough review, the Upper Tribunal held that it was possible, at least in theory, for an individual case to result in a penalty that might be considered disproportionate. However, this was *'likely to occur only in a wholly exceptional case, dependent upon its own particular circumstances'*: see Paragraph 66 of the judgment.

28. I do not consider the present case to be wholly exceptional.

10 29. Therefore, for the above reasons, there is no reasonable excuse in relation to the second penalty either.

Decision

15 30. The appeal is dismissed and the penalties are upheld. The Appellant's liability is £200. It does not get back the £100 which it has already paid, and is liable to pay the difference - £100.

31. I am aware that the Appellant has suggested that it be given time to pay (it suggested until the end of March 2019, which is now already past). I have no jurisdiction to make such an order.

20 32. 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
25 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

30 **DR CHRISTOPHER MCNALL**
TRIBUNAL JUDGE

RELEASE DATE: 21 MAY 2019