



TC08301

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/04260

CONSTRUCTION INDUSTRY SCHEME – late filing penalty – whether appeal late – no – internet connection failure – whether reasonable excuse – no – whether special circumstances – no – appeal dismissed

BETWEEN

GLENTHORNE PROPERTY SERVICES LIMITED

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The Tribunal determined the appeal on 18 June 2021 without a hearing with the consent of both parties under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. A hearing was not held due to restrictions arising from the coronavirus pandemic. The documents to which I was referred are a document bundle of 32 pages, a generic CIS legislation and authorities bundle of 213 pages, and HMRC's Statement of Case dated 20 January 2021. The Appellants did not provide a reply to the Statement of Case.

DECISION

Introduction

1. The appellant (Glenthorne) submitted an appeal to this Tribunal on 7 November 2020. The appeal was in respect of a decision by HMRC to impose a penalty of £100 for failing to file a contractor monthly return for the return period ended 5 January 2017 on time.

Whether late appeal

2. HMRC objected to the appeal on the grounds that it had been made late. The penalty notification was stated to have been issued to Glenthorne on 28 January 2017, and this was confirmed in the HMRC records provided.

3. However, in a letter dated 28 October 2020 in response to an appeal to them, HMRC state that the penalty notice was sent to Glenthorne on 19 September 2020. The letter does refer to the appeal to HMRC being late (although the precise date of the appeal to HMRC is not given) and, given that the response is dated more than a month after the penalty notice, it is possible that the appeal to HMRC could have been made more than 30 days after 19 September 2020.

4. No representations were made by HMRC to explain why their letter states that the penalty notice was issued on 19 September 2020. No copy of the penalty notice was provided in the Tribunal bundle. No copy of the appeal to HMRC was provided to the Tribunal.

5. HMRC made representations that the appeal was made out of time and that permission should be refused on the basis that no good reason for the delay had been provided. They also provided a substantive response to the appeal.

6. The appeal to the Tribunal states that it was made in time. Given that HMRC's letter states that the penalty notice was sent on 19 September 2020, and the review letter is dated 28 October 2020, it is not clear that the appeal to HMRC (for which no date is given by HMRC, and there is no copy of the appeal to HMRC in the bundle) was in fact significantly late if it was, indeed, late at all. Allowing for time taken for the postal service and for HMRC to draft a response, I consider that it is more likely than not that the appeal to HMRC could have been posted within 30 days of 19 September 2020. The appeal to this Tribunal was made within 30 days of the date on HMRC's letter.

7. Given the inconsistent information as to the date on which the penalty notice was issued, I find that the appeal was made in time.

8. I note that there are references in HMRC records, and the statement of case, to the appeal having been received by HMRC on 19 September 2020. As noted above, no copy of the appeal, or the penalty notice itself, were included in the bundle provided by HMRC to the Tribunal. If the date of 19 September 2020 in HMRC's letter of 28 October 2020 was an otherwise unexplained typographical error, HMRC will have to live with the consequences of their inaccuracy.

Evidence and submissions

9. Glenthorne explained that the return was filed late because the person making the return thought that it had been submitted online. Glenthorne stated that the internet connection may have been lost, as the information was not received by HMRC. The business did not have the funds available to pay the penalty as they were a small builder and do not have spare funds.

10. HMRC provided in the Tribunal bundle an extract from the appeal to them in which Glenthorne also stated that the person who filed the return had been on holiday and had not

been able to connect to the internet on the day the return was due. The person who would usually assist with technical problems was not available at the time.

11. HMRC contended, and it was not disputed, that the return was filed late. The filing deadline was 19 January 2017. HMRC records showed that the return was filed on 25 January 2017. HMRC stated that the penalty had been issued on or around 28 January 2017 and provided a computer record to that effect. As noted above, there is an inconsistency in HMRC's communications as to the exact date on which the penalty was notified to Glenthorne.

12. HMRC submitted that, as set out in *Perrin* [2018] UKUT 156 (TCC), whether a person has a reasonable excuse will depend on the particular circumstances in which the failure occurred and the abilities of the person who has failed. Further, if there is a reasonable excuse, it must exist throughout the failure period.

13. HMRC contended that Glenthorne had filed contractor monthly returns since at least June 2010, and that return submissions required that the user's ID and password be re-entered when making the submission. A receipt reference number is also provided when the return is successfully submitted.

14. HMRC therefore submitted that Glenthorne should have known that the return had not been fully submitted online, as they would not have received the receipt reference number and may not have been required to enter their ID and password. As such, they submitted that the internet failure did not provide a reasonable excuse for a delay of five days in filing the return.

15. HMRC further submitted that Glenthorne's lack of funds do not provide a reasonable excuse as the statute specifically stated that an insufficiency of funds, unless attributable to events outside the appellant's control, cannot be considered to be a reasonable excuse.

16. HMRC had consider whether there were any circumstances which would allow for a special reduction in the penalty; they had considered the information provided by Glenthorne, their familiarity with the process of filing returns. HMRC had also borne in mind that the purpose of the penalty system was to promote efficient operation of the tax system and to provide a measure of fairness so that those who file late are not given an advantage over those who file on time. As such, they had concluded that there were no circumstances which merited a special reduction in the penalty.

Discussion

17. The Upper Tribunal in *Perrin* [2018] UKUT 156 (TCC) held that "to be a reasonable excuse, the excuse must not only be genuine, but also objectively reasonable when the circumstances and attributes of the actual taxpayer are taken into account" (§75).

18. The reasons given for the delay in filing the return are, in summary, that there were technical difficulties with the internet connection on the day that Glenthorne attempted to file the return.

19. There was some inconsistency in the reason given to HMRC (that the person filing was unable to connect to the internet) and the reason given to the Tribunal (that Glenthorne believed that the return had been filed but that the internet connection must have been faulty). However, I note that Glenthorne filed the return on 25 January 2017, before the earliest date on which HMRC say they issued a penalty for the failure to file (28 January 2017) and as such it appears that Glenthorne filed the return without a prompt from HMRC.

20. I consider therefore that Glenthorne knew that the return had not been filed and that the reason was therefore an internet connection failure when they attempted to file the return. This may be capable of providing an objectively reasonable excuse if the failure occurred unexpectedly and late on the filing deadline date, for example.

21. However, for a reasonable excuse to mitigate a penalty, the reasonable excuse must persist throughout the period of the delay. There was no evidence from Glenthorne to explain why the delay persisted beyond the date on which they attempted to file the return, to explain why the return was five days late. The filing deadline, 5 January 2017, was a Thursday. I consider that a reasonable taxpayer in those circumstances, conscious of their tax obligations, would have filed the return the following day – they would either have found an alternative internet connection or resolved the technical issue with the connection. Glenthorne provided no reason to explain why they had not filed the return in the five days between the filing deadline and the date on which it was actually filed.

22. As such, I do not consider that Glenthorne have shown that they had a reason for the failure which persisted throughout the period of delay. I find, therefore, that they did not have a reasonable excuse for the failure to file the return on time.

Whether special circumstances apply

23. HMRC submitted that they had considered whether special circumstances applied to reduce the penalties. The Tribunal has limited jurisdiction with regard to the question of whether there are special circumstances meriting a reduction in a penalty. It is only if the Tribunal considers that HMRC’s decision is flawed in a judicial review sense that the Tribunal can substitute its own decision.

24. In this context the relevant principles are whether the decision maker has taken into account all relevant factors, and that they have not taken into account any irrelevant factors, and that the decision is one a reasonable decision maker having regard to the available evidence could make.

25. Having reviewed HMRC’s submissions with regard to special circumstances, I do not consider that there are any reasons to disturb their conclusion that there were no such circumstances.

Decision

26. As I have concluded that Glenthorne did not have a reasonable excuse, and do not disagree with HMRC’s decision as to special circumstances, the appeal is dismissed and the penalties upheld in full.

Right to apply for permission to appeal

27. 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.

**ANNE FAIRPO
TRIBUNAL JUDGE**

Release date: 18 OCTOBER 2021