



[2019] UKFTT 0351 (TC)

TC07179

COMPANY TAX – Schedule 18 of Finance Act 1998 ('FA') – flat-rate and tax-relate penalties for failure to file a CT return on time – reliance on agent - whether taxpayer had a reasonable excuse for his default – appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/01471

BETWEEN

J HAYES PROPERTIES LIMITED

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE ABIGAIL HUDSON

The Tribunal determined the appeal on 20 May 2019 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 March 2019 (with enclosures), and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 26 March 2019.

DECISION

INTRDOUCTION

1. This is an appeal by J Hayes Properties Limited ('the Appellant') against flat-rate and tax-related penalties totalling £492.28 imposed by the Respondents ('HMRC') under Schedule 18 of the Finance Act 1998 ('FA'), for the late filing of Company Tax returns for the accounting period ending ('APE') 31 March 2016.

BACKGROUND

2. The Appellant's return for the APE 31 March 2016, was due no later than 31 March 2017.

3. The penalties for late filing of a return can be summarised as follows:

(i) A flat-rate penalty of £100 is imposed (under Paragraph 17 Schedule 18 FA 1998) for the late filing of the CT Return. If, after a period of 3 months beginning with the penalty date, the return remains outstanding, the penalty is £200.

ii) if the company fails to file the return within 18 months after the end of the accounting period or if the filing date is later than that, by the filing date, they are liable for a tax-related penalty (under paragraph 18, Sched 18 FA 1998). The penalty is 10% of the unpaid tax if the return is delivered within two years after the end of the accounting period or 20% in any other case.

4. The Appellant's returns for the APE March 2016 were not filed on time and penalties of £200 and £292.28 were imposed, under (i), and (ii) above. It is agreed that in fact the return was not submitted until 31 March 2018.

5. The Appellant argues that there was a "reasonable excuse" for any failure to submit the return on time, on the basis that he relied upon his previous agent, who failed to submit the return as required.

Filing date

6. Under Paragraph 14 Sched 18 Finance Act 1998 a return must be filed by not later than 12 months following the end of the accounting period.

Reasonable excuse

7. Section 118(2) Taxes Management Act 1970, provides that a penalty does not arise in relation to a failure to make a return if the person satisfies HMRC (or on appeal, a Tribunal) that they had a reasonable excuse for the failure and they put right the failure without unreasonable delay after the excuse ceased.

8. The law under paragraph 16(2) of Sch 56 of the Finance Act 2009 specifies three situations that are not reasonable excuse:

(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

(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.

9. There is no statutory definition of “reasonable excuse”. Whether or not a 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).

10. 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. 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.

The background facts

11. The Company was incorporated on 22 March 2010.

12. The Appellant company is required by Paragraph 3 and 14 Sched 18 FA1998 to submit a return by, at the latest, 12 months after the end of the accounting period. The return was therefore due to be returned online by 31 March 2017.

13. Notices to file the return were sent to the registered offices on 22 March 2016.

14. The return was submitted online on 31 March 2018 and was therefore 12 months late, and submitted two years after the end of the APE.

15. HMRC imposed a flat-rate penalty of £200 when the return was not submitted by three months after the filing date. Penalty notices were sent to the appellant on 19 April 2017 and then on 18 July 2017. A revenue determination was sent on 8 January 2018 estimating that a tax-related penalty of £500 would be imposed for the failure to file by the filing date. Upon receiving the return on 31 March 2018 that penalty was recalculated at £292.28. The penalty notices were sent to the address on file for the Appellant company.

16. The Appellant appealed to the Tribunal on 4 March 2019.

The Appellant’s case

17. The Appellant’s grounds of appeal are that he signed his accounts and paid his previous agent to submit the relevant returns. The agent failed in that obligation. Accordingly, he had a reasonable excuse for the delay in filing a return.

HMRC’s Case

18. Under Para. 3 Sch. 18 FA 1998 a company is required to file with HMRC a complete company tax 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 obligations met.

19. HMRC would expect J Hayes Properties Ltd to be aware of their responsibilities when a notice to file is issued and ensure a complete and valid CT return is submitted for the specified period a notice has been delivered for. 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 J Hayes Properties Ltd has not demonstrated the due level of prudence and diligence necessary to adhere to its filing obligation.

20. 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. The company

cannot transfer this obligation 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.

21. Failure of an agent to meet his or her obligations to the company might entitle the company to some recourse against the agent, but in the Respondent's view reliance on a third party such as an accountant cannot relieve a company of its own obligations to file a CT return and pay any tax due on time. HMRC's customer is J Hayes Properties Ltd and not the previous accountant. If a company decides to appoint an agent to deal with its tax affairs it is still the responsibility of the company, and its directors, to ensure that the agent carries out the task. A company cannot claim grounds for a reasonable excuse because the agent failed to complete that task.

22. A late filing penalty is raised solely because the Appellant failed to deliver the CT return by the statutory due date.

23. Where a return is filed after the relevant deadline a penalty is charged. The later a return is received, the more penalties are charged.

24. The onus lies with HMRC to show that the penalties were issued correctly and within legislation. If the Tribunal find that HMRC have issued the penalties correctly the onus then reverts to the Appellant to show that he has a reasonable excuse for the late filing of his CT return.

Reasonable Excuse

25. Under section 118(2) Taxes Management Act 1970 liability to a penalty does not arise in relation to failure to make a return if the taxpayer has a reasonable excuse for failure.

26. 'Reasonable excuse' was considered in the case of *The Clean Car Company Ltd v The Commissioners of Customs & Excise* by Judge Medd who said:

"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?" [Page 142 3rd line et seq.].

27. HMRC considers a reasonable excuse to be something that stops a person from meeting a tax obligation on time despite them having taken reasonable care to meet that obligation. HMRC's view is that the test is to consider what a reasonable person, who wanted to comply with their tax obligations, would have done in the same circumstances and decide if the actions of that person met that standard.

28. If there is a reasonable excuse it must exist throughout the failure period.

29. The Appellant has not provided a reasonable excuse for its failure to file a CT return for the APE 31 March 2016 on time and accordingly the penalties have been correctly charged in accordance with the legislation.

30. The amount of the penalties charged is set within the legislation. HMRC has no discretion over the amount charged and must act in accordance with the legislation. By not applying legislation and as such not to have imposed the penalty would mean that HMRC was not adhering to its own legal obligations.

Special Reduction

31. Paragraph 9(1) of Schedule 56 FA 2009 allows HMRC to reduce a penalty if they think it is right because of special circumstances. “Special circumstances” is undefined save that, under paragraph 9(2), it does not include ability to pay, or the fact that a potential loss of revenue from one taxpayer is balanced by a potential overpayment by another.

32. In other contexts “special” has been held to mean ‘exceptional, abnormal or unusual’ (*Crabtree v Hinchcliffe* [1971] 3 All ER 967), or ‘something out of the ordinary run of events’ (*Clarks of Hove Ltd v Bakers’ Union* [1979] 1 All ER 152). The special circumstances must also apply to the particular individual and not be general circumstances that apply to many taxpayers by virtue of the penalty legislation (*David Collis* [2011] UKFTT 588 (TC), paragraph 40).

33. Where a person appeals against the amount of a penalty, paragraph 15(2) and (3) of Schedule 56, FA 2009 provide the Tribunal with the power to substitute HMRC’s decision with another decision that HMRC had the power to make. The Tribunal may rely on paragraph 9 (Special Reduction) but only if they think HMRC’s decision was ‘flawed when considered in the light of the principles applicable in proceedings for judicial review’.

34. HMRC have considered the Appellant’s grounds of appeal but the circumstances do not amount to special circumstances which would merit a reduction of the penalties.

35. Accordingly, HMRC’s decision not to reduce the penalties under paragraph 9 was not flawed. There are no special circumstances which would require the Tribunal to reduce the penalties.

FINDINGS OF FACT

36. It is agreed that the return was due on 31 March 2017 and was not filed until 31 March 2018. It was therefore 12 months late.

37. A notice to file was sent to the registered office address of the Appellant on 22 May 2016. Penalty notices were sent to the registered office of the Appellant on or around 19 April 2017 and 18 July 2017, and a revenue determination on or around 8 January 2018. No evidence has been put before me that there were any difficulties with the postal service at the relevant time, and the Appellant has not suggested that those notices were not received. I therefore conclude that it is likely that the Appellant received those notices.

38. A person is liable to a penalty if (and only if) HMRC give notice to the person specifying the date from which the penalty is payable. I am satisfied that the penalty notices were sent to the registered office postal address of the Appellant (*Donaldson v The Commissioners for HM Revenue & Customs* [2016] EWCA Civ 761).

DISCUSSION

39. Relevant statutory provisions are included as an Appendix to this decision.

40. I have concluded that the tax return for the APE 31 March 2016 was submitted on 31 March 2018. It should have been submitted by 31 March 2017. Subject to considerations of “reasonable excuse” and “special circumstances” set out below, the penalties imposed are due and have been calculated correctly.

41. 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. A reasonable excuse is normally an unexpected or unusual event, which prevents him or her from complying with an obligation which otherwise they would have complied with.

42. Reliance upon a third party can only be a reasonable excuse if the Appellant took reasonable care to avoid his agent's error. The Appellant was aware that the return would need to be filed, it having been filed in the previous six years, and indeed there is a suggestion that he had in fact signed the return. His case is that the Appellant did not realise that the return had not been formally filed. However, in April 2017 an initial penalty notice was delivered to the Appellant directly, followed by another in July 2017. Each should have triggered action, as indeed should the subsequent penalty notice in January 2018, yet it was not until March 2018 that the return was filed. The first notice should have prompted further action on the part of the Appellant or his agent which would have avoided the second set of penalties.

43. In *Perrin v HMRC* [2018] UKUT 156, the Upper Tribunal explained that the experience and knowledge of the particular taxpayer should be taken into account. The Upper Tribunal had concluded that for an honestly held belief to constitute a reasonable excuse it must also be objectively reasonable for that belief to be held. It is not suggested that J Hayes Properties Limited honestly believed that the return had been filed, but simply that the Appellant had divested itself of the obligation to file by relying on an agent.

44. I have also borne in mind the recent comments of the Tribunal in *Hesketh v HMRC* [2017] UKFTT 871 about whether ignorance of an obligation to file could excuse late filing. Judge Mosedale held that Parliament intended all of its laws to be complied with, and that ignorance of the law was not an excuse. The fact that the Appellant was not aware of the responsibility to file, would not constitute a reasonable excuse. The onus is upon an appellant to ensure that he or she properly understands their obligations under the law. However, in this case the Appellant was fully aware of the requirement. The argument before me is simply that it did not realise that the requirement had not been complied with. However, notification was given within a few days of the filing date that the return had not been received and the Appellant has not suggested that it took any action to rectify that situation until almost one year later. I conclude that J Hayes Properties Limited does not have a reasonable excuse for the late filing of returns for the APE 31 March 2016.

45. Even when a taxpayer is unable to establish that he has a reasonable excuse and he remains liable for one or more penalties, HMRC have the discretion to reduce those penalties if they consider that the circumstances are such that reduction would be appropriate. In this case HMRC have declined to exercise that discretion.

46. Paragraph 15 of Schedule 56 FA 2009 provides that I am only able to interfere with HMRC's decision on special reduction if I consider that their decision was flawed (in the sense understood in a claim for judicial review). That is a high test and I do not consider that HMRC's decision in this case (set out in their Statement of Case) is flawed. Therefore, I have no power to interfere with HMRC's decision not to reduce the penalties imposed upon J Hayes Properties Limited.

47. I should add, that even if I did have the power to make my own decision in respect of special reduction, the only special circumstance which the Appellant's representative has relied upon was a mistaken belief that his agent had filed the return. I have explained above why I do not consider that erroneous belief for failing to comply with the law can provide J Hayes Properties Limited with a reasonable excuse for late filing. Similarly, I conclude that ignorance of the severity of the Schedule 18 FA 1998 penalty regime does not constitute a special circumstance which would make it right for me to reduce the penalty which has been imposed.

CONCLUSION

48. I therefore confirm the flat-rate and tax-related penalties of £200 and £292.28, in total £492.28.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

49. 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.

**ABIGAIL HUDSON
TRIBUNAL JUDGE**

Release date: 1 June 2019

APPENDIX RELEVANT STATUTORY PROVISIONS

50. The penalties at issue in this appeal are imposed by Paragraph 17(2) and 18(2), Sched 18 FA 1998.

Finance Act 1998

51. Sched 18 provides as follows:

2 -

(1) A company which—

(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.

3 -

(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—

(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.

(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.]

4 - provides that 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.

5 –

(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.

(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.

52. Paragraph 14 –

(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;
- (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.

(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.

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.

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.

(3) The amounts are increased to £500 and £1000 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),
- (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.

(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 [M3](#) Taxes Management Act 1970, and
- (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.

18 – Failure to deliver return – tax-related penalty –

(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.

(2) The penalty is—

(a) 10 per cent. 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 per cent. of the unpaid tax, in any other case.

(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).

[(4) In determining that amount no account is to be taken of—

(a) 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, or

(b) any relief under section 464B of that Act (relief in respect of return payment) which is deferred under subsection (5) of that section.]

Taxes Management Act 1970:

53. Section 118(2) provides that 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 Commissioners 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 if he did it without unreasonable delay after the excuse had ceased.

Schedule 56 Finance Act 2009:

54. Paragraph 9 of Schedule 56 gives HMRC power to reduce penalties owing to the presence of “special circumstances” as follows:

(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of the Schedule.

(2) In sub-paragraph (1) “special circumstances” does not include-

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to-

- (a) staying a penalty, and
- (b) agreeing a compromise in relation to proceedings for a penalty.

55. Paragraph 13 of Schedule 56 gives a taxpayer a right of appeal to the Tribunal and paragraph 15 of Schedule 56 sets out the scope of the Tribunal's jurisdiction on such an appeal. In particular, the Tribunal has only a limited jurisdiction on the question of "special circumstances" as set out below:

- (1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.
- (2) On an appeal under paragraph 20(2) that is notified to the tribunal, the tribunal may-
 - (a) affirm HMRC's decision, or
 - (b) substitute for HMRC's decision another decision that HMRC had power to make.
- (3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 16
 - (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or
 - (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 16 was flawed.
- (4) In sub-paragraph (3)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

56. Paragraph 16 of Schedule 56 of the FA 2009 provides –

- (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—
 - (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)—
 - (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
 - (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.

