

Penalty for late filing of EC Sales List

Corriform Limited [2010] UKFTT 52 (TC)

The First Tier Tribunal has dismissed an appeal against the imposition of a £500 penalty for failure to file an ECSL by the due date.

The Appellant had filed two late ECSLs (both 84 days late) and, despite having received a 'help letter' from HMRC followed by a penalty warning letter, subsequently filed a third ECSL 100 days late. This third default triggered a default penalty of £500 (£5 for each day the return was outstanding).

The Tribunal accepted that the loss of a member of accounting staff might have given the Appellant a 'reasonable excuse' for the first default if the return had been submitted within a reasonable timescale. However, in the event, it was submitted 84 days late - and then only after the 'help letter' had been issued. For a reasonable excuse to be effective, action must be taken 'as soon as reasonably possible'.

There was no reasonable excuse for the other two defaults incurred by the Appellant, therefore the appeal was dismissed and the £500 penalty upheld.

The Tribunal decision is available on the BAILII website via this [LINK](#).

Implications

The defaults in this case arose at a time when the ECSL filing deadline was 42 days from period end. From 1 January 2010, as part of the VAT Package changes, ECSL declarations are now due within 14 days of period end for paper declarations, and 21 days if filed electronically. In addition, the ECSL system has been extended to include taxable intra-EU supplies of services, and the reporting period for most large businesses making intra-EU supplies of goods has been changed from calendar quarterly to monthly.

In addition to a late filing penalty of the type imposed in this case, businesses may also be liable to a £100 penalty if an ECSL declaration contains a 'material inaccuracy' and that inaccuracy is not disclosed to HMRC. 'Material inaccuracies' fall into 3 main categories:

- data is missing from the ECSL;
- there are factually incorrect lines on the ECSL; or

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- an invalid VAT number is used.

However, a penalty will not be imposed if a business has a 'reasonable excuse' for the error.

Comment

This case is a timely reminder of the need to have systems and processes in place in order to be able to submit declarations to HMRC within the required timescales - especially in light of the requirement for businesses to submit ECSLs in respect of supplies of services and the new filing regime in place from 1 January 2010, under which ECSLs must be submitted within 14 days of period end for paper declarations, and 21 days if filed electronically.

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