

**Company E -v- Comptroller of Taxes**  
**Late Filing Penalty and PDF Return**  
**April 2022**

*For the purpose of anonymisation, the true name of any individual or company mentioned below has been fictionalised.*

During late January 2021, Company E's agents (the Agent) had been unable to add Company E to the electronic portal used by Revenue Jersey (RJ) and thus been unable to file the corporate tax return of Company E for the year of assessment 2019 by the required date of the 31<sup>st</sup> January 2021. To mitigate this the Agent had however prepared the return in a paper format and had send it to RJ in PDF format by email prior to the due date.

The Commissioners were asked to opine on whether a PDF return could be in compliance with the Law and whether the penalties imposed should stand.

The Commissioners find in favour of the Appellant and strike out the penalties imposed.

**FACTS**

There were some initial concerns over the name of the appellant due to some of the documents submitted to the Commissioners having the name of a different company with a similar name. It was agreed that the case being heard was Company E.

There appears to have been a string of issues resulting in this case being put before the Commissioners, making it somewhat unusual.

The 2018 return for Company E was submitted electronically by the Agent. It was assumed that the Agent was still the agent for 2019, but it appeared that the administrators of the company had added it to their client list on the Revenue Portal, thus removing it from the Agent's portal. The return for 2019 was nil return. When it was discovered that Company E was no longer on their portal, they emailed RJ on the 27<sup>th</sup> January 2021 to have it added to their client list on the portal. A number of PDF attachments were included I that email including signed letters of authority. The email was sent by Ms Roberts, cc Mr Davidson of the Agent.

A further email dated 29<sup>th</sup> January was sent by Ms Roberts, cc Mr Lewis and Mr Davidson of the Agent to RJ which enclosed further documents including a further copy of the letter of authority, a PDF copy of the 2019 tax return for the Company End the accounts of the company.

Another email was sent on the 31<sup>st</sup> January 2021 by Ms Roberts, cc Mr Lewis and Mr Davidson of the Agent to RJ which enclosed the same documents once again, although with slightly different wording.

In both emails the Agent requested that RJ accept the PDF return as the tax return for 2019 on the basis that Company E had not yet been added to the Agent's portal.

We were handed a general notice issued by the Comptroller stating that all corporate tax returns had to be filled electronically via the RJ portal.

We were also shown an email issued by RJ to agents stating that it normally takes up to 5 days to add a client to their portal.

Mainly due to the problems associated with Covid, RJ had extended the final date for filings for 2019 from the 31<sup>st</sup> December 2020 to the 31<sup>st</sup> January 2021.

In January 2021 RJ were experiencing a massive increase in email traffic and telephone calls, this together with the problems of Covid had put extremely severe pressure on RJ staff. When asked if any further leeway was given to agents, it was said that RJ may have accepted a late electronic submission if only a few days late.

RJ replied to the email of the 31<sup>st</sup> January some 4 weeks later on the 1<sup>st</sup> March 2021 and stated that RJ had been unable to open the attached PDFs and requested these be sent in a different format. It is unclear as to why those PDFs could not be opened. Unfortunately, the reply was sent only to Ms Roberts and not to "all recipients". By that time Ms Roberts had left the Agent and the reply was not received by the Agent and thus no reply was made by the Agent.

On the 17<sup>th</sup> August Mr Davidson of the Agent wrote to the Comptroller regarding the late filing penalties and on the 24<sup>th</sup> August a member of RJ was able to open the original attachments and Company E was added to the Agent's portal.

A default notice was issued on the 30<sup>th</sup> September 2021 for tax of £550, a late filing penalty of £900 and a surcharge of £55.

An electronic return for 2019 was made on the 19<sup>th</sup> October 2021.

Under Article 17A (7) of the Income Tax (Jersey) Law 1961, as amended (the Law) the Comptroller may

- (a) Discharge a person's liability under paragraphs (1) or (2A) if satisfied that a return delivered by the person to the Comptroller, by the specified time, is true, complete and correct; or
- (b) Waive a person's liability under paragraph (1) or (2A) if satisfied that death, serious illness or other grave and exceptional circumstance prevented the person delivering the return to the Comptroller by the specified time.

In reaching their decision the Commissioners did not consider Article 17A (7) (b) of the Law.

The Commissioners asked if RJ would ever accept PDF returns as an alternative to electronic filing. It was stated that on rare occasions RJ did accept paper returns, particularly where the portal was not yet open for a particular year of assessment.

## **CONCLUSIONS**

The Commissioners' decision is that the appeal should be upheld in favour of the Appellant and all penalties cancelled.

Due to extreme pressures RJ were unable to reply to the email from the Agent dated 27<sup>th</sup> January 2021 within 5 days and it took until 1<sup>st</sup> March 2021, some 32 days later, for a reply to be made. Unfortunately, the reply was not sent to "all recipients" and thus due to staff departing it was never received by the Agent.

The matter was effectively in limbo until the Agent received penalty notices from RJ and correspondence from the Agent initiated a review of the file, at which stage the PD files were opened

and Company E added to the portal. No evidence was given as to why the PDF files could be opened in August 2021 but not in January 2021.

We noted that the Agent should have been more proactive in following up and confirming that the PDF returns had been accepted as valid returns. Conversely RJ should have also followed up on their email of the 1<sup>st</sup> March 2021.

The submission of PDF returns prior to the deadline filing date of the 31<sup>st</sup> January 2021 showed a desire on behalf of the Agent to comply with the deadline despite Company E's name not being added to their portal and was possibly the only course of action available to them.

Under normal circumstances and without the extreme pressures being suffered by RJ it was highly likely that Company E's name would have been added to the portal by the 31<sup>st</sup> January 2021 or very shortly thereafter.

In our opinion under Article 17A (7) (a) of the Law the Comptroller is entitled to accept a full and completed paper return in PDF or similar format for a particular year of assessment where it is not possible to make an electronic return.

This discretion should be used with caution and with a stipulation that an electronic return is filed as soon as possible.

We believe that the exceptional circumstances of this case where the Appellant took all reasonable steps to meet the filing requirements and where there was no evidence of any intent to deliberately mislead or delay filing, are such that the Comptroller should have exercised this discretion.

## **RECOMMENDATIONS**

It should be standard practise for "all recipients" to be included in every email reply.

Where a client is removed from the RJ portal an automated notification should be sent to the agent concerned.

## **EXHIBITS ATTACHED**

- Exhibit A – Notice for 2019 tax returns and statements (ie. the general notice)
- Exhibit B – copy of 12 November 2020 general email from RJ on behalf of Richard Summersgill (Comptroller) to undisclosed list of tax agents about extension of filing deadline to 31 January 2021
- Exhibit C – 2019 Income Tax Default Notice of assessment for Company E – this was the correct assessment for the case listed (we had been provided with a different one in our papers)
- Exhibit D – copy of Appellant's argument

*Attached exhibits have been omitted to retain anonymisation.*