



TC01445

Appeal number: TC/2011/03645

Partnership tax return—Penalty for late return (Taxes Management Act 1970 s.93A)—Reasonable excuse—Appeal dismissed

FIRST-TIER TRIBUNAL

TAX

THE ASCOT TAVERN

Appellant

- and -

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

Respondents

TRIBUNAL: Dr Christopher Staker (Tribunal Judge)

The Tribunal determined the appeal on 17 August 2011 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 undated Notice of Appeal, and HMRC's Statement of Case dated 13 June 2011, and other papers in the case.

DECISION

1. The Appellant appeals pursuant to s.93A of the Taxes Management Act 1970 (the “TMA”) against £200 in penalties imposed in respect of the late filing of its partnership tax return for the tax year 2009/10.

2. The following matters stated by HMRC have not been disputed by the Appellant. The tax return was required to be submitted by 31 October 2010 if submitted on paper, or by 31 January 2011 if filed online. The return in this case was received in paper form on 31 January 2011.

3. On the basis of the material before it, the Tribunal is satisfied that the return was filed late, because it was submitted in paper form after 31 October 2010. In the circumstances, the issue is whether the Appellant has a reasonable excuse for the late filing.

4. Both parties agree that in order to file the return on line, commercial third-party software is required.

5. The Appellant’s ground of appeal, as expressed by the Appellant’s representatives, is that “I am only a small agent with two partnerships (now none) and it is not economically viable to purchase software in order to submit partnership returns online”.

6. The HMRC position is that the Appellant cannot transfer or remove its responsibility to file a return on time by engaging a representative, that if the Appellant’s representative has failed in its responsibilities the Appellant should seek redress from its agent, and that if the Appellant’s agent did not wish to purchase commercial software the return could have been submitted on paper prior to 31 October 2010.

7. The Tribunal considers that it was the Appellant’s responsibility to file its partnership return on time. If it was not possible to file it online, the possibility existed of filing a paper return by 31 October 2010. The Tribunal is not persuaded that the fact that a particular tax agent did not consider it economically viable to purchase the necessary software did not constitute a reasonable excuse for filing a paper return on 31 January 2011.

8. The Tribunal has considered the material as a whole, and is not satisfied that the Appellant has otherwise established a reasonable excuse for the late filing.

9. The Appellant has not disputed the amount of the penalties (£100 each imposed on two partners of the Appellant) in the event that there is no reasonable excuse for the late filing.

Conclusion

10. Thus, under s.93A(7) of the TMA, the Tribunal confirms the penalty and dismisses the appeal.

11. 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.

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DR CHRISTOPHER STAKER

TRIBUNAL JUDGE

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RELEASE DATE: 15 SEPTEMBER 2011