



TC01511

Appeal number: TC/2011/04219

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

FIRST-TIER TRIBUNAL

TAX

MRS ISOBEL DODDS

Appellant

- and -

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

Respondents

TRIBUNAL: Dr Christopher Staker (Tribunal Judge)

The Tribunal determined the appeal on 3 October 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 July 2011, the Appellant's reply dated 21 July 2011, and other papers in the case.

DECISION

Introduction

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 her partnership tax return for the tax year 2009/10.

The relevant legislation

2. Section 12AA of the Taxes Management Act 1970 (the “Act”) provides in relevant part as follows:

- 10 (1) Where a trade, profession or business is carried on by two or more persons in partnership, for the purpose of facilitating the establishment of the following amounts, namely—
- (a) the amount in which each partner chargeable to income tax for any year of assessment is so chargeable and the amount payable by way of income tax by each such partner, and
- 15 (b) the amount in which each partner chargeable to corporation tax for any period is so chargeable,
- an officer of the Board may act under subsection (2) or (3) below (or both).
- 20 ...
- (2) An officer of the Board may by a notice given to the partners require such person as is identified in accordance with rules given with the notice or a successor of his—
- (a) to make and deliver to the officer in respect of such period as may be specified in the notice, on or before such day as may be so specified, a return containing such information as may reasonably be required in pursuance of the notice, and
- 25 (b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.
- 30 (3) An officer of the Board may by notice given to any partner require the partner or a successor of his—
- (a) to make and deliver to the officer in respect of such period as may be specified in the notice, on or before such day as may be so specified, a return containing such information as may reasonably be required in pursuance of the notice, and
- 35 (b) to deliver with the return such accounts and statements as may reasonably be so required;
- and a notice may be given to any one partner or separate notices may be given to each partner or to such partners as the officer thinks fit.
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- (4) In the case of a partnership which includes one or more individuals, a notice under subsection (2) or (3) above may specify different days depending on whether a return in respect of a year of assessment (Year 1) is electronic or non-electronic.
- 5 (4A) The day specified for a non-electronic return must not be earlier than 31st October of Year 2.
- (4B) The day specified for an electronic return must not be earlier than 31st January of Year 2.

3. Section 93A of the Act provides in relevant part as follows:

- 10 (1) This section applies where, in the case of a trade, profession or business carried on by two or more persons in partnership—
 - (a) a partner (the representative partner) has been required by a notice served under or for the purposes of section 12AA(2) or (3) of this Act to deliver any return, and
 - 15 (b) he or a successor of his fails to comply with the notice.
- (2) Each relevant partner shall be liable to a penalty which shall be £100.
- ...
- 20 (7) On an appeal against a determination under section 100 of this Act of a penalty under subsection (2) or (4) above that is notified to the tribunal, neither section 50(6) to (8) nor section 100B(2) of this Act shall apply but the tribunal may—
 - (a) if it appears that, throughout the period of default, the person for the time being required to deliver the return (whether the representative partner or a successor of his) had a reasonable excuse for not delivering it, set the determination aside; or
 - 25 (b) if it does not so appear, confirm the determination.
- ...
- (8) In this section—
 - 30 “the filing date” means the day specified in the notice under section 12AA(2) or (3) of this Act;
 - “the period of default”, in relation to any failure to deliver a return, means the period beginning with the filing date and ending with the day before that on which the return was delivered;
 - 35 “relevant partner” means a person who was a partner at any time during the period in respect of which the return was required.

The arguments of the parties

4. The Appellant’s case as stated in the notice of appeal is in essence as follows. The Appellant says that “My Tax Return, including the partnership income, was completed online on 15th August 2010”. After she received the penalty notice, she responded to HMRC “and enclosed a print out of my return with the partnership

income included". HMRC have confirmed to the Appellant that if she files a return online, she does not need to send in paper records unless HMRC asks for them. HMRC sent a paper form in April 2011, which the Appellant completed and returned on 14 April 2011. Unfortunately, it was not completed correctly, so that HMRC returned it and the paper return was then again sent to HMRC on 14 May 2011.

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5. HMRC do not dispute that the Appellant filed her individual tax return on 15 August 2011, which included her share of the income from the partnership. However, in addition to filing an individual tax return, the representative partner of a partnership is required to file a partnership tax return in accordance with TMA s.12AA. A partnership tax return was required to be filed by 31 October 2010 if a paper return, or by 31 January 2011 if filed online. The partnership tax return was not filed until May 2011. HMRC further submit that the partnership's self-assessment record was set up in December 1996, and that the partnership has been filing tax returns for at least the last 6 years, so that the partners are aware of their responsibility to file partnership tax returns.

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6. The Appellant filed a reply to the HMRC statement of case dated 21 July 2011. The reply continues to maintain that the Appellant filed a partnership return within the deadline. However, the reply is not clear as to whether the Appellant contends that she filed within the deadline two separate tax returns, namely her individual tax return, and her partnership tax return. The reply states "Partnership Tax Return completed ON LINE within the due dates confirmed by Attachment 1". However, attachment 1 to her reply relates to her individual tax return. She also refers to attachment 4 to the reply which is a printout from the HMRC computer system stating that her tax return is 100% complete. However, this also relates to her individual tax return, not a partnership tax return. The reply makes the point that the income from the partnership was included in her individual tax return, but this does not address the point that while her individual tax return was required to include her income from the partnership, there was still a separate and additional requirement to file a partnership tax return.

30 **The Tribunal's view**

7. On its consideration of the evidence in the case as a whole, the Tribunal considers on a balance of probabilities that while the Appellant filed her individual tax return within the time limit for so doing, she did not file a partnership tax return until May 2011.

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8. The Appellant has not advanced any circumstances by way of reasonable excuse for not filing the partnership return within the deadline, apart from the fact that her individual tax return included her income from the partnership. However, that cannot be a reasonable excuse, since her individual tax return was required to include her income from the partnership, in addition to her obligation to file a partnership tax return. Impliedly, the Appellant may be suggesting that she did not know that she had to file a separate partnership return. However, the Tribunal considers that even if she could establish that she was ignorant of this requirement, such ignorance would not

amount to a reasonable excuse. The obligation is on the partners to be aware of, and to comply with, their obligation to file a partnership tax return within the deadline.

9. 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.

5 10. The Appellant has not disputed the amount of the penalties in the event that there is no reasonable excuse for the late filing.

Conclusion

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

10 12. 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
15 “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

RELEASE DATE: 20 OCTOBER 2011

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