



TC01654

Appeal number: TC/2011/04923

Penalty for failure to submit partnership return – Appellant not representative partner – reasonable excuse – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

ANDREW GORMAN

Appellant

- and -

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

Respondents

TRIBUNAL: J. BLEWITT (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 24 November 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 Notice of Appeal dated 28 June 2011, HMRC's Statement of Case submitted on 9 August 2011 and the Appellant's Reply dated 5 September 2011.

DECISION

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

2. 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 remains outstanding.

3. The first penalty notice in the sum of £100 was issued to the Appellant on 15 February 2011. The second penalty notice in the same amount was issued to the Appellant on or about 2 August 2011.

4. By Notice of Appeal dated 28 June 2011 the Appellant appealed to the Tribunal Service. The grounds of appeal can be summarised as follows:

(a) The penalty related to alleged late submission of a 2009/2010 tax return however the Appellant had not received a tax return;

(b) HMRC had advised the Appellant on 5 February 2010 that no further tax returns would be issued but that the Appellant should inform HMRC if circumstances changed; the Appellant informed HMRC of his change in employment status by letter dated 11 March 2010;

(c) HMRC informed the Appellant by letter dated 30 March 2011 that the sum of £100 was overdue; this did not acknowledge the Appellant’s correspondence dated 28 February 2011 or advise of a time limit for appealing;

(d) Further correspondence from HMRC dated 11 April 2011 and 26 April 2011 made no reference to the Appellant’s previous correspondence;

(e) Two letters were received from HMRC dated 26 May 2011. Both were in the same envelope. One stated that the deadline for appealing had passed, the other advised that HMRC had closed the Appellant’s self assessment record in error and that a tax return should be completed for 2009/2010 by 2 September 2011.

5. HMRC’s Statement of Case confirms that the Appellant ceased as a partner of Arvanti LLP on 31 August 2009. The Appellant is not the representative partner of Arvanti LLP and consequently the appeal is invalid in accordance with Section 93A (6) TMA 1970. In the alternative, HMRC contend that as the Appellant did not cease as a partner until 31 August 2009, the penalties relating to the partnership return are correct. HMRC clarifies that a personal tax return was issued to the Appellant on 26 May 2011 which is due to be filed by 2 September 2011; this has no bearing on the penalties subject of this appeal. There is no reasonable excuse advanced by the Appellant.

6. By letter dated 5 September 2011 the Appellant responded to HMRC's Statement of Case. In summary, the Appellant did not understand until in receipt of HMRC's Statement of Case that Arvanti LLP had failed to file a partnership return. The Appellant left employment at Arvanti LLP in August 2009; his position was a "junior employee with no director level responsibilities and no control over the actions of the representative partner." The Appellant was not employed at the time that the return was required to be filed. There has been no failure on the part of the Appellant who has complied with instructions received by other departments of HMRC who do not seem to be coordinated with the Review Officer. It is not fair or reasonable that the Appellant should have to pay a penalty for a failure that he was not responsible for, occurred after he ceased employment and was a matter over which he had no control.

7. There are two issues to consider in this case:

- (a) The validity of the appeal; and
- (b) Reasonable excuse.

8. As regards the first issue, the legislation is found at S93A(6) TMA 1970 which provides as follows:

(a) no appeal against the determination of any of those penalties shall be brought otherwise than by the representative partner [or a successor of his];

9. The legislation is clear that only the representative partner (or successor) can bring such an appeal. The Appellant confirms in his letter to the Tribunals Service dated 5 September 2011 that he is not the representative partner. The Tribunal is bound by the legislation and finds that the appeal is invalid.

10. In the interests of justice the Tribunal went on to consider the merits of the appeal.

11. The Tribunals powers are found at s93A (7) TMA 1970;

..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; if it does not so appear ..., confirm the determination

12. The Appellant submits that he had ceased employment at the time that the return was required to be filed and such cannot be held responsible. The Tribunal found as a fact that this cannot amount to a reasonable excuse; the legislation is clearly applicable to the Appellant who was a partner of Arvanti LLP until 31 August 2009 (s93A (1), (2) and (8) TMA 1970):

(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*

(b) *he [or a successor of his]² fails to comply with the notice.*

5 (2) *Each relevant partner shall be liable to a penalty which shall be £100.*

(8) *“relevant partner” means a person who was a partner at any time during the period in respect of which the return was required.*

10 13. The Appellant submits that he had not received a tax return; the Tribunal finds as a fact that the 2009/2010 partnership return was issued to the representative partner, not the Appellant and this cannot provide the Appellant with a reasonable excuse.

14. The fact that the Appellant was informed that no further tax returns would be issued to him relates to the Appellant’s personal tax return and therefore has no bearing on the penalties imposed for the representative partner’s failure to submit the partnership return.

15 15. The Appellant contends that he was not advised of the time limit for appealing the penalty; HMRC have not objected to the appeal made out of time and therefore there has been no prejudice to the Appellant. The Tribunal finds as a fact that this does not amount to a reasonable excuse.

20 16. HMRC’s lack of acknowledgement or reference to the Appellant’s correspondence following the imposition of the penalties does not provide the Appellant with a reasonable excuse for the failure of the representative partner to submit the partnership return.

25 17. The Appellant submits that he did not understand that the partnership return had not been filed until in receipt of HMRC’s Statement of Case. The Tribunal noted that the “Notice of Determination of penalty for a late partnership Tax Return” clearly states the reason for the imposition of a penalty. The Tribunal finds as a fact that ignorance cannot provide the Appellant with a reasonable excuse.

30 18. The Appellant described his role at Arvanti LLP as a “junior employee with no director level responsibilities and no control over the actions of the representative partner.” The fact remains that, irrespective of the amount of control or responsibility held by the Appellant, he was at the relevant time a partner of Arvanti LLP. The legislation is applicable to the Appellant and the Tribunal does not accept that his level of responsibility within the Company amounts to a reasonable excuse.

35 19. The penalties have been correctly charged in accordance with legislation. The Tribunal does not consider the penalties to be “plainly unfair” or unreasonable.

20. The appeal is dismissed and penalties confirmed.

21. 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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TRIBUNAL JUDGE
RELEASE DATE: 12 December 2011

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