



TC01679

Appeal number: TC/2011/05647

Automatic penalty for late submission of partnership return – reasonable excuse – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

**MISS HELEN WILSON
T/A BEAUTY AU-SOLEIL PARTNERSHIP**

Appellant

- and -

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

Respondents

TRIBUNAL: J. BLEWITT (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 17 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 15 July 2011 and HMRC's Statement of Case submitted on 1 September 2011.

DECISION

1. This is an appeal against late filing penalties imposed on the partners of the Appellant Company for the late filing of the partnership income tax return for the year ending 5 April 2010.

Legislation

2. The Taxes Management Act 1970 (“TMA”) at section 12AA (2) states that where a partnership is sent a notice to file, the nominated partner is required to file a correctly completed return by the filing date.
3. Section 93A (2) TMA provides for penalties to be imposed where the nominated partner fails to comply with the notice to file.
4. An appeal against a penalty notice will succeed where it is shown by the Appellant that there was a reasonable excuse throughout the period of default (s 93A (6)).
5. The powers of the Tribunal are to set aside the penalty where it appears that there was a reasonable excuse, otherwise to confirm the penalty (s 93A (7)).

Facts

6. A notice to file a partnership return for the year ended 5 April 2010 was issued to the Appellant on 4 June 2010. The filing date for a paper return was 31 October 2010 and 31 January 2011 for a return filed online.
7. On 8 February 2011 an incomplete paper return received on 25 January 2011 was rejected due to being unsigned.
8. A second paper return was rejected on 11 February 2011 again due to being unsigned.
9. Initial late filing penalty notices were issued to the partners on or about 15 February 2011.
10. A paper return was received on 24 February 2011.

Submissions of the parties

11. By Notice of Appeal dated 15 July 2011, the Appellant’s agent appealed against the penalty. The grounds relied upon were stated as:
- (a) The decision of HMRC is wrong for the reasons outlined in our letter of 11 May 2011;
 - (b) Due to technical problems with HMRC’s website which have been well documented in the press, we have found it impossible to lodge

partnership returns via the internet without the UTR which we were not in possession of by the filing date;

(c) A return was hand delivered on 31 January 2011;

5 (d) In a follow up appeal letter of 1 June 2011 it was explained why the decision of HMRC was wrong.

12. There was no letter dated 11 May 2011 exhibited by the Appellant. There was a letter dated 4 April 2011 addressed to HMRC which stated that the Appellant's agent had not been issued with a partnership UTR by the filing date and so was unable to successfully submit the return by the due date. The UTR has since been received and the return submitted.

13. A letter dated 1 June 2011 from the Appellant's agent to the Tribunals Service reiterated the grounds of appeal and the fact that the UTR was not received by the agent.

14. HMRC's Statement of Case dated 1 September 2011 can be summarised as follows: HMRC's records confirm that the partnerships SA record was set up on 12 March 2010 when its UTR was issued to the representative partner. The representative partner's individual SA record was set up on 31 October 2000 and her filing history shows her to be experienced with Self Assessment. A notice to file was issued to the representative partner on 4 June 2010. The Appellant's agent was not authorised by the representative partner to file the partnership returns online. Any lack of communication between the representative partner and the agent regarding the UTR cannot amount to a reasonable excuse. There is no record of contact with HMRC by either the representative partner or the agent requesting the UTR or advising of website difficulties in filing the return. There is no record of disruption to HMRC's online SA system between 4 June 2010 and 24 February 2011 which would have prevented the online filing of the return. Two unsigned and therefore incomplete returns were hand delivered to HMRC on 25 January 2011 and 11 February 2011. Legislation requires the representative partner to ensure a return is completed correctly and filed before the deadline. The filing of unsigned returns after the due date for a paper return does not amount to a reasonable excuse.

Decision

15. The Tribunal must determine questions of fact on the evidence before it on the basis of the balance of probability.

16. The Tribunal finds as a fact that the two hand delivered returns were submitted after the due date for filing paper returns and were incomplete due to being unsigned. The Tribunal does not consider that this provides the Appellant with a reasonable excuse.

17. The Tribunal accepts HMRC's evidence that there were no reported difficulties with its online SA system between 4 June 2010 and 24 February 2011 and that there is no record of contact with HMRC by either the representative partner or the agent requesting the UTR or advising of difficulties in filing the return online. In the

absence of any such evidence in support of the Appellant's case and specifying the nature and dates of the difficulties, the Tribunal finds as a fact that there was no reasonable excuse.

5 18. The Tribunal accepts HMRC's evidence that its records confirm that the partnerships SA record was set up on 12 March 2010 when its UTR was issued to the representative partner and that the Appellant's agent was not authorised by the representative partner to file the partnership returns online. The Tribunal finds as a fact that the lack of communication between the representative partner and the agent regarding the UTR does not amount to a reasonable excuse.

10 19. The Tribunal does not accept that the fact that the UTR has since been received and the return submitted can provide the Appellant with a reasonable excuse.

20. The Tribunal finds that the Appellant has advanced no other circumstances that would amount to a "reasonable excuse".

15 21. The Tribunal finds that the Appellant does not have a reasonable excuse that existed throughout the period of default.

22. The Tribunal finds that the amount of the penalties imposed is in accordance with legislation. The Appellant has not sought to dispute the amount of the penalty, in the event that there is no reasonable excuse.

23. The appeal is dismissed and penalty confirmed.

20 24. 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
25 "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: 20 December 2011

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