



TC01693

Appeal number:TC/2011/05673

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

FIRST-TIER TRIBUNAL

TAX

**BRIAN PECK AND JENNIFER WILSON
(PARTNERSHIP)**

Appellant

- and -

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

Respondents

TRIBUNAL: J. BLEWITT (TRIBUNAL JUDGE)

The Tribunal determined the appeal on [] 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 10 July 2011 and HMRC’s Statement of Case submitted on 10 September 2011.

DECISION

1. This is an appeal against the first fixed automatic penalty in the sum of £200 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. The Return for the year ended 5 April 2010 was issued to the Appellant on 6 April 2010. The filing date for a paper Return was 31 October 2010 or 31 January 2011 if filed online. The paper Return was received by HMRC on 24 January 2011. The penalty notice was issued on 15 February 2011.

Submissions of the parties

7. The Appellants’ agent appealed to HMRC against the penalties on 4 March 2011 on the grounds that online submission was unavailable using HMRC’s software and that the paper Return was submitted before 31 January 2011.
8. HMRC rejected the appeal on 18 April 2011 on the basis that the Partnership tax return clearly stated that commercial software is required to submit the return online and that the deadline for the Appellant’s paper return was 31 October 2010.
9. The Appellants’ agent requested a review of the decision on 13 May 2011, relying on the same grounds as stated in the appeal letter dated 4 March 2011. The agent also indicated that an appeal on the same grounds had been allowed in 2009 for the 2007/2008 period and that there should be continuity in HMRC’s decision making.
10. Following review, HMRC upheld the decision to impose penalties on 24 June 2011. HMRC reiterated that the Partnership tax return stated on the front page that 3rd party software is required to submit the return online.

11. By Notice of Appeal dated 10 July 2011 the Appellants appealed against the penalties. The grounds relied upon are as follows:

- 5 (a) HMRC's review letter states that "HMRC does provide a service to file partnership returns online but you must use 3rd party service." This is contradictory as HMRC do not offer this facility online;
- (b) The firm only has a few cases which require submission of a partnership return, therefore the cost of 3rd party software is not warranted;
- (c) It is not possible to complete the return by 31 October 2010;
- 10 (d) The same situation arose in the preceding year but the appeal was allowed. We have evidence of other cases where HMRC have allowed an appeal on these grounds and argue that HMRC should be consistent in its decision making.

12. In HMRC's Statement of Case dated 10 September 2011 it is submitted that there is no reasonable excuse in this case. The front of the return issued for completion clearly stated that if the partnership return is filed online, commercial software is required which must be purchased. HMRC provides the service of filing the return online but not a free product with which to do so. The paper return was received on 24 January 2011, well passed the filing deadline for paper returns. HMRC does not require partnership returns to be filed online, however if a paper return is submitted, then it must be filed by the deadline of 31 October 2010. HMRC accepts that the Appellants had filed their 07/08 return late on 20 January 2009 but leniency was shown for the 2007/2008 period as it was the first year that returns had to be submitted by 31 October. The following year (08/09) the Appellants' return was filed on time on 12 October 2010. As regards the other cases referred to by the Appellants' agent, HMRC submit that the letter produced in support of the argument relates to a different customer and the full facts are not known. Each case is reviewed on its own facts.

Decision

13. The Tribunal must determine questions of fact on the evidence before it on the basis of the balance of probability. The issue for the Tribunal to decide is whether or not there was a reasonable excuse for the late filing of the 2009/2010 Partnership Return.

14. The fact that 3rd party commercial software is required, and must be purchased is widely publicised by HMRC, not least on the front of the Partnership Return itself. There is no obligation to file the return online and the Tribunal finds as a fact that where the choice is made to file online, the lack of the necessary software cannot amount to a reasonable excuse.

15. The issue of cost for the Appellants' agent in purchasing the software is a matter for the agent and there is no obligation on the agent to file online. The Tribunal finds as a fact that this does not amount to a reasonable excuse.

16. The fact that the Appellants filed their 2007/2008 paper Return prior to the deadline of 31 October confirms that it is possible to complete the return within the deadline set by statute. The Tribunal does not accept that this provides the Appellants with a reasonable excuse.

5 17. The Tribunal accepts that leniency was shown by HMRC in the first year. The fact that other appeals have succeeded does not assist the Tribunal in determining whether or not there was a reasonable excuse in this particular case. Each case must be decided on its own facts and without knowing the full details of other cases, this Tribunal does not take account of other cases which may be wholly distinguishable on the facts. The Tribunal finds as a fact that there is no evidence before it upon which it can be satisfied that there has been inconsistency in decision making in the period with which this appeal is concerned. The Tribunal finds that there is no reasonable excuse in this case.

15 18. The Tribunal finds that the Appellant has advanced no other circumstances that would amount to a “reasonable excuse”.

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

20. The appeal is dismissed and penalties confirmed.

20 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: 20 December 2011

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