



TC01704

Appeal number: TC/2011/03733

PENALTY for late filing of partnership return – whether reasonable excuse shown – no - appeal dismissed

FIRST-TIER TRIBUNAL

TAX

ANNE BRAGANZA trading as THE QUEEN CHARLOTTE

Appellant

- and -

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

Respondents

TRIBUNAL: JOHN WALTERS QC (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 6 September 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 April 2011, HMRC's Statement of Case submitted on 15 June 2011 and the Appellant's Reply dated 28 June 2011.

DECISION

1. The Tribunal's decision was to dismiss the appeal on the basis that the Appellant had shown no reasonable excuse for the late filing of the partnership income tax return for the year ended 5 April 2009, which was required to be filed by the partnership of Mrs. Anne Branganza (the Appellant) and Miss Samantha Branganza.

2. Following the release of the Tribunal's decision the Appellant, wishing to appeal against it, applied in time to the Tribunal for full written findings and reasons. This Decision Notice is issued in response to that application.

3. The relevant legislation is section 93A Taxes Management Act 1970 ("TMA"), which provides, so far as relevant, as follows:

"(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 fails to comply with the notice.

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

(3) ...

(4) If-

(a) the failure by the representative partner or a successor of his to comply with the notice continues after the end of the period of six months beginning with the filing date ...

each relevant partner shall be liable to a further penalty which shall be £100.

(5) ...

(6) Where, in respect of the same failure to comply, penalties under subsection (2) ... or (4) above are determined under section 100 of this Act as regards two or more relevant partners-

(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;

(b) any appeal by that partner or successor shall be a composite appeal against the determination of each of those penalties; and

(c) section 100B(3) of this Act shall apply as if that partner or successor were the person liable to each of those penalties.

(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

(b) if it does not so appear, confirm the determination.

(7A) For the purposes of this section the filing date for a year of assessment (Year 1) in the case of a partnership which includes one or more individuals is-

(a) 31st January of Year 2, or

(b) ...

(7B) ...

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(8) In this section-

“the filing date” means the day specified in the notice under section 12AA(2) or (3) of this Act;

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“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;

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

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4. From the material before the Tribunal we find the relevant facts as follows:

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5. The partnership of Anne and Samantha Braganza, possibly together with other members of the Braganza family, applied to Enterprise Inns or Admiral Taverns for a tenancy of a public house known as “The Queen Charlotte”.

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6. It was a condition to be fulfilled before the tenancy was granted that the premises would be fully refurbished.

7. It appears that no partnership agreement was to be signed until that condition was satisfied.

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8. However, pending fulfilment of that condition the partnership traded from the premises between February (or possible March) 2008 and October 2008.

9. The partnership suffered a trading loss of £10,000 during this period of trading.

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10. The premises were not fully refurbished and, in October 2008, ‘the keys were eventually handed back’ to quote the Appellant’s Statement of 28 June 2011.

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11. Admiral Taverns instituted proceedings against Anne and Samantha Braganza. These proceedings were stayed by an order of District Judge Burgess in the Thanet County Court on 20 May 2011 (a ‘Tomlin’ Order), whereby Anne and Samantha Braganza were ordered to pay or cause to be paid to Admiral Taverns (780) Limited the sum of £4,500 in full and final settlement of all claims.

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12. A Partnership Tax Return for the year ended 5 April 2009 was issued to the Appellant on 6 April 2009. In the body of the return it was stated as follows:

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“Make sure your Tax Return, and any documents asked for, reach us by:

31 October 2009 if you complete a paper Tax Return; or
31 January 2010 if you file online”

5 13. Penalties of £100 were imposed on each partner on 16 February 2010, the return not having been filed by then. Penalty notices were issued on or around that date.

10 14. Further penalties of £100 were imposed on each partner on 3 August 2010, the return not having been filed by then. Penalty notices were issued on or around that date.

15 15. A paper Tax Return was eventually filed on 15 April 2011.

16 16. The Appellant appealed to the Tribunal against the penalties on 28 April 2011.

20 17. It appears that the self-assessment returns for the individual partners in the partnership were completed correctly and submitted in time. The dispute relates to the additional partnership tax return which is required by the legislation.

25 18. The Tribunal concluded that the Appellant, as representative partner of the partnership between herself and Samantha Braganza, had been required by a notice issued on 6 April 2009 to submit a partnership tax return for the year ended 5 April 2009. That notice required compliance by 31 October 2009 or 31 January 2010, depending on the nature of the return filed. The Appellant failed to comply with the notice for the purposes of section 93A(1) TMA.

30 19. Each relevant partner, namely the Appellant and Samantha Braganza, was therefore liable to a penalty of £100 under section 93A(2) TMA and a further £100 under section 93A(4) TMA, because the return was not filed by 31 January 2010 (section 93A(2) TMA) or by 31 July 2010 (section 93A(4) TMA).

35 20. For the purposes of the appeal, the Appellant is treated as being the person liable to all the penalties involved – i.e. to penalties of £400 in total – see: section 93A(6) TMA.

40 21. The task of the Tribunal is to determine whether the Appellant had a reasonable excuse for not delivering the return before 15 April 2011 – or, at least, before 1 August 2010 (section 93A(7) TMA).

45 22. The excuse put forward by the Appellant is that because the condition for the granting of the tenancy agreement that the premises should be fully refurbished was never fulfilled, the partnership was not trading as such, or on its own account, but as ‘managers on behalf of Enterprise Inns until Tenancy Agreement was entered into’ – to quote from the Appellant’s request for permission to appeal from the Tribunal’s Decision.

23. This excuse had been formulated in the Notice of Appeal as follows: the partnership 'was not fulfilled as Tenancy Agreement was not signed or entered into'.

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24. When the Tribunal determined the appeal it formulated the Appellant's case on reasonable excuse as a submission that *because* the partnership had not signed or entered into a tenancy agreement, *therefore* no partnership tax return was required to be submitted. The Tribunal went on to hold that this submission was incorrect and that the assumption underlying it (that in the circumstances no partnership tax return was required to be submitted) could not afford the Appellant a reasonable excuse for having filed the return late.

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25. The Tribunal finds that plainly the partnership was trading in the relevant period (April to October 2008) on its own account, and not on behalf of Enterprise Inns or any other entity. That was why it (and not Enterprise Inns or any other entity) incurred the trading loss and that was why the partners filed self-assessment returns in respect of the trade.

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26. Even if no formal partnership agreement had been signed, the conduct of the Appellant and Samantha Braganza in trading in the relevant period evidences that they were trading in partnership.

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27. The partnership tax return therefore was correctly required to be filed and it was filed late and the penalties were properly imposed. The Tribunal has found that the Appellant has not shown that she or the partnership had a reasonable excuse for the late filing. The appeal was therefore dismissed.

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28. 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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JOHN WALTERS QC
TRIBUNAL JUDGE
RELEASE DATE: 4/1/2012

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