



**TC01708**

**Appeal number: TC/2011/05157**

*Section 93A (2) Taxes Management Act 1970 – late filing of partnership return – Appellant’s agent said no paper return or UTR number issued therefore unable to submit paper or online return – reasonable excuse shown – appeal allowed*

**FIRST-TIER TRIBUNAL**

**TAX**

**CLARE NORTON t/a ORACLE FIELDWORK**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)**

**The Tribunal determined the appeal on 9 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 6 July 2011, HMRC’s Statement of Case submitted on 31 August 2011 and the Appellant’s Reply dated 16 September 2011.**

## DECISION

- 5 1. This is an appeal by the agent for Oracle Fieldwork (a partnership) against a first fixed penalty imposed under s 93A (2) Taxes Management Act (TMA) 1970 for the late filing of the partnership tax return for the year ending 5 April 2010.
2. Under s 12 AA (2) TMA 1970 where a partnership is sent a return the representative partner is required to complete it and send it back by the filing date.
- 10 3. Legislation at s 8 (1D) TMA 1970 et seq states that for 2009/10 a paper return must be filed by 31 October 2010 or online by 31 January 2011.
4. Under s 93 A (2) TMA 1970 where the representative partner fails to comply with the notice all partners are liable to a penalty of £100 each.

### HMRC facts

- 15 5. HMRC say :
- (i) a notice to file a partnership return for the year ending 5 April 2010 was issued on 6 April 2010
  - (ii) the filing date was 31 October 2010 for a paper return or 31 January 2011 if filed online
  - 20 (iii) a paper return was filed on 6 May 2011
  - (iv) a penalty notice was issued on or around 15 February 2011. A penalty notice of £100 was imposed on each partner.

### Partnership's appeal

- 25 6. The agent for the partnership states that no notice to submit a 2009/10 partnership return was received by the partners or the agent. The agent says that partnership tax returns have to be completed either on paper or online using commercial software. There is no option to use HMRC software as there is in the case of individual returns. The Appellant elected to submit paper returns which meant that the submission date for the 2009/10 return was 31 October 2010. The first accounting
- 30 year end of the partnership was 31 August 2010, of which the first eight months would form the basis of the 2009/10 assessment. With the knowledge that the time for completion of the paper return was limited, the agent says that they ensured that forms CWF1 (registering for self-assessment if self-employed) and 64-8 (tax-payers authority for HMRC to deal with agent) were submitted to HMRC soon after the
- 35 formation of the partnership. HMRC confirmed that they received the forms in September 2009. The partners were told to expect a letter from HMRC with a UTR number and to notify the agent when this was received. The agent says that contrary to what HMRC say no partnership return or UTR number was received by the

partnership. The agent submits that in their experience and as reported by other accountants delays in receiving a reply from HMRC are not unusual and a telephone call was made to HMRC. They were told that there was a backlog and paperwork would be dealt with as soon as possible. However because the partnership UTR was not issued to the partnership address or to the agents until after the paper filing deadline of 31 October 2010 it was impossible to submit the return on time. The agent says that when form 64-8 was submitted in September 2009 and acknowledged as received by HMRC the partnership was included in their 'online list of clients', whereas the form 64-8 that had been submitted covered both the individuals and partnership. The agent says that HMRC must have failed to properly register the partnership on receipt of form CWF1 and 64-8 and if the return had not been issued to the partners with a UTR the return could not be filed.

7. The agent contends that the individual tax returns were submitted in January 2011 online. These included partnership income details and tax was paid on the partnership profits on 31 January 2011. The agent says that the first written notification of the UTR number was in response to their appeal and that immediately this was received the partnership tax return was filed (2 May 2011) but by means of a copy printed from the internet as no paper return had ever been received.

8. The agents question why the UTR number was not shown on previous correspondence from HMRC until 21 April 2011, even though it had been requested on numerous occasions. The agent argues that no evidence has been produced that the partnership return has ever been issued to the partnership or to what address it had been sent and no reason has been given as to why the partnership did not appear on the agents 'online list of clients' until April 2011 when the UTR was notified.

9. The agent submits that form 64-8 must have been cross referenced from the individual partners details to the partnership file, or otherwise the penalty notices could not have been issued.

#### HMRC's response

10.(i) HMRC maintain that a notice to file a partnership return was issued on 6 April 2010. They have no record of any mail being returned undelivered.

10.(ii) A partnership record was created by HMRC on 6 October 2009 following receipt of form CWF1 and forms 64-8. However, HMRC says that these forms only contain details of the partners and their instructions on the back of form 64-8 advising of this should have been ticked.

10.(iii) HMRC further contend that a reasonable business person would exercise due diligence and a proper regard for their tax obligations and that if notification of the partnership UTR was not received following submission of the CWF1 in September 2009 it is reasonable to expect that contact to query this would be made within a reasonable time, rather than leaving matters until mid January 2011 only two weeks before the electronic filing deadline to submit a further CWF1 with the request for a partnership UTR number.

Conclusion

10. Legislation does not define a reasonable excuse. Each case has to be considered on its own merits. Taking all the circumstances into account the Tribunal takes the view that the Appellant's agent did everything possible to notify HMRC of the partnership formation and the partnership return could only be submitted on receipt of the UTR number. The Tribunal accepts that the partnership did not receive a notice to file a return, a paper partnership return or a UTR number. If the partners needed to sign a separate form 64-8 in respect of the partnership tax affairs as distinct from the individual partners affairs the Appellant should have been notified of this. In any event form 64-8 clearly indicated that the authority was in respect of both the individual and partnership tax affairs.

11. Although the records show that HMRC processed the CWF1 and form 64-8 submitted in September 2009 there is no evidence that a partnership return or UTR number was given to the partnership of its agent. The Tribunal therefore finds that the Appellant has shown as reasonable excuse and the appeal is accordingly allowed.

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 "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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**MICHAEL S CONNELL**

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**TRIBUNAL JUDGE**  
**RELEASE DATE: 4 January 2012**

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