



TC01815

Appeal number: TC/2011/06906

Partnership tax return—Penalty for late return (Taxes Management Act 1970 s.93A)—Reasonable excuse—Appeal dismissed

FIRST-TIER TRIBUNAL

TAX

**MESSRS MG LLOYD, PJ LLOYD and DR LLOYD
t/a TALBOT PHARMACY**

Appellant

- and -

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

Respondents

TRIBUNAL: Dr Christopher Staker (Tribunal Judge)

The Tribunal determined the appeal on 26 January 2012 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 11 August 2011, HMRC's Statement of Case dated 13 October 2011, the Appellant's reply dated 31 October 2011, and other papers in the case.

DECISION

Introduction

1. The Appellant appeals pursuant to s.93A of the Taxes Management Act 1970 (the “TMA”) against £300 in penalties imposed in respect of the late filing of the partnership tax return for the tax year 2009/10.

The relevant legislation

2. Section 12AA of the Taxes Management Act 1970 (the “Act”) provides in relevant part as follows:

- 10 (1) Where a trade, profession or business is carried on by two or more persons in partnership, for the purpose of facilitating the establishment of the following amounts, namely—
- (a) the amount in which each partner chargeable to income tax for any year of assessment is so chargeable and the amount payable by way of income tax by each such partner, and
- 15 (b) the amount in which each partner chargeable to corporation tax for any period is so chargeable,
- an officer of the Board may act under subsection (2) or (3) below (or both).
- 20 ...
- (2) An officer of the Board may by a notice given to the partners require such person as is identified in accordance with rules given with the notice or a successor of his—
- (a) to make and deliver to the officer in respect of such period as may be specified in the notice, on or before such day as may be so specified, a return containing such information as may reasonably be required in pursuance of the notice, and
- 25 (b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.
- 30 (3) An officer of the Board may by notice given to any partner require the partner or a successor of his—
- (a) to make and deliver to the officer in respect of such period as may be specified in the notice, on or before such day as may be so specified, a return containing such information as may reasonably be required in pursuance of the notice, and
- 35 (b) to deliver with the return such accounts and statements as may reasonably be so required;
- and a notice may be given to any one partner or separate notices may be given to each partner or to such partners as the officer thinks fit.
- 40

- (4) In the case of a partnership which includes one or more individuals, a notice under subsection (2) or (3) above may specify different days depending on whether a return in respect of a year of assessment (Year 1) is electronic or non-electronic.
- 5 (4A) The day specified for a non-electronic return must not be earlier than 31st October of Year 2.
- (4B) The day specified for an electronic return must not be earlier than 31st January of Year 2.

3. Section 93A of the Act provides in relevant part as follows:

- 10 (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
 - 15 (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.
- ...
- 20 (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
 - 25 (b) if it does not so appear, confirm the determination.
- ...
- (8) In this section—
 - 30 “the filing date” means the day specified in the notice under section 12AA(2) or (3) of this Act;
 - “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;
 - 35 “relevant partner” means a person who was a partner at any time during the period in respect of which the return was required.

The arguments of the parties

4. The Appellant’s case as stated in the notice of appeal is in essence as follows. The partnership tax return was submitted in paper format to HMRC on 18 December 40 2010. It was accompanied by a letter explaining that the return was being submitted after 31 October 2010 and before 31 January 2011 in paper format because HMRC’s

own Gateway system does not provide a service to file partnership tax returns online. The individual partners' personal tax returns had been filed online using the Gateway system, however this was not possible for the partnership return. Because HMRC provides an online filing system for individual tax returns but not for partnership tax returns, that latter are being marginalised and disadvantaged, if not victimised. There has been no loss of revenue to HMRC as the partnership profits were included in the individual returns of each of the three partners. This case has a wider significance affecting all partnerships.

5. HMRC submits that it was the agent's choice to submit a paper return after the due date of 31 October 2010 rather than to purchase commercial software to enable him to file the 2009/10 return online by the 31 January 2011 deadline. HMRC is not obliged to provide free software to enable taxpayers to file their returns online. Free HMRC software only covers the personal tax return and certain supplementary pages. Taxpayers who need to complete other supplementary pages or file other tax returns online need to use commercial software. The front of the paper tax return indicates this. HMRC publishes information about the various methods of filing.

6. A reply was filed on behalf of the Appellant dated 31 October 2011, making many of the same points as in the notice of appeal, and also taking issue with HMRC's reference to a "dilatatory agent".

The Tribunal's findings

7. The arguments advanced by the Appellant have previously been considered and rejected in cases such as *Balgobin t/a Sunny Lodge v Revenue & Customs* [2010] UKFTT 537 (TC); *Rolton t/a Collier Row Glass v Revenue & Customs* [2010] UKFTT 539 (TC); *Farrow and Cartwright t/a Kitchen and Bathroom Installations v Revenue & Customs* [2010] UKFTT 534 (TC); *Lam t/a Ron's Plaice v Revenue & Customs* [2010] UKFTT 535 (TC); *Fairburn & Ors (t/a Mr Cobbler) v Revenue & Customs* [2010] UKFTT 536; *McAlpin & Ors (t/a Newtons Home Improvements) v Revenue & Customs* [2010] UKFTT 538 (TC); *Peck & Anor (Partnership) v Revenue & Customs* [2011] UKFTT 859 (TC); and *Astrid Koyeni-Efreeitems (Partnership) v Revenue & Customs* [2012] UKFTT 13 (TC).

8. The Appellant has not established that HMRC was required to make the necessary software available free of charge to enable online filing of partnership returns. Taxpayers had the choice of filing a paper return before the relevant deadline for paper returns, or of using commercial software to file online by the later deadline for online returns. The choice of method was a free choice for the taxpayer or its agent. If unwilling to pay for commercial software to file online, there is nothing in the evidence to suggest that a paper return could not have been filed within the deadline for paper returns.

9. The Tribunal has considered the material as a whole, and is not satisfied that the Appellant has otherwise established a reasonable excuse for the late filing.

10. The Appellant has not disputed the amount of the penalties in the event that there is no reasonable excuse for the late filing.

Conclusion

5 11. Thus, under s.93A(7) of the TMA, the Tribunal confirms the penalty and dismisses the appeal.

10 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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DR CHRISTOPHER STAKER

TRIBUNAL JUDGE

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RELEASE DATE: 8 February 2012

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