



TC02009

Appeal number: TC/2010/02168

Income tax – failure to submit a partnership return – whether the return posted in time – timely submission of duplicate return when supplied – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

EAMAS CONSULTING LLP

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE MALCOLM GAMMIE CBE QC

The Tribunal determined the appeal on 3 February 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 3 March 2010, HMRC's Statement of Case submitted on 7 April 2010, the Appellant's Reply dated 15 April 2010 and the further correspondence stemming from the Appellant's appeal to the Upper Tribunal.

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DECISION

1. This is an appeal by Eamas Consulting LLP (“Eamas”) against the first and second fixed penalties imposed for the late filing of the partnership tax return for the year ending 5 April 2008.
2. In a decision released on 6 July 2010, the First-tier Tribunal (Tax Chamber) dismissed Eamas’ appeal on the grounds that Eamas had no reasonable excuse for its default (see [2010] UKFTT 308 (TC)). Eamas appealed to the Upper Tribunal (Tax and Chancery) and, by consent on 26 May 2011, the Upper Tribunal remitted the appeal to the First-tier Tribunal to be decided afresh, as a default paper case, by a differently constituted tribunal panel. The parties were at liberty to serve further written submissions if they wished by 30 June 2011.
3. Having considered the papers, the Tribunal allows the appeal for the reasons set out below.

The Facts

4. Eamas is a partnership, the representative being Mr Robert Nigel Eames and the other partner being his son, Mr Robert Andrew Eames. The correspondence has been conducted by Mr R N Eames (“Mr Eames”) on behalf of Eamas.
5. HMRC say that a short form partnership return was issued to Eamas on 6 April 2008. Mr Eames admits that Eamas received the return.
6. The filing date for that return was 31 October 2008 for a paper return, or 31 January 2009 if the return was to be filed on-line. Eamas does not claim that it filed its return on line and the due date for filing the return was therefore 31 October 2008.
7. HMRC say that they have no record of receiving any partnership return before 28 August 2009 (see paragraph 12 below). Mr Eames says that the partnership return was returned “as soon as” it was received in 2008.
8. Having no record of its receipt, HMRC issued penalty notices to the partners in February 2009. The penalty notice addressed to Mr Eames was apparently issued by an HMRC office in Leicester. On its receipt Mr Eames telephoned what he thought was the Leicester office but the number turned out to be a general HMRC enquiry line. He explained that the return had been returned and he was told that HMRC would look into the matter. The penalty notice addressed to Mr R A Eames was dated 17 February 2009 and was issued from an HMRC office in Maidstone. On 23 March 2009, Mr Eames wrote to HMRC at Maidstone stating that he was the lead partner for Eamas and that he had completed the partnership return "last year showing NIL income for the tax year to the 5 April 2008 and returned it to HM Revenue & Customs Suffolk N Essex Area, St Clare House, Princes Street, Ipswich, Suffolk IP1 1LW". He wrote in this instance (rather than called) because he anticipated that HMRC would not accept a call from him on behalf of his son.
9. HMRC (Maidstone) acknowledged Mr Eames’ letter of 23 March 2009 on 3 July 2009, noting that the return had not been received. HMRC’s letter asked Mr Eames to forward a copy of the return or to request a duplicate for completion.

10. Mr Eames apparently telephoned HMRC (Maidstone) on 17 July 2009 and again on 11 August 2009 to request a duplicate return. HMRC (Maidstone) sent this to Mr Eames under cover of a letter of 11 August 2009.

11. Meanwhile, a second penalty notice was issued on 4 August 2009.

12. Mr Eames returned the duplicate return on 26 August 2009 and HMRC (Maidstone) received it on 28 August 2009. In its letter of 26 August 2009 Mr Eames noted that he had been unable to find a copy of the original return that Eamas had submitted to HMRC (Ipswich). He also noted that he had contacted HMRC (Leicester) “some weeks ago” in an endeavour to sort out the problem. HMRC (Leicester) had apparently contacted Mr Eames sometime before 23 March 2009 to notify him that he should deal with them. Mr Eames says that HMRC (Leicester) had told him that they would sort matters out but his next contact appears to have been with HMRC (Maidstone). (It is unclear whether this was a result of any action by HMRC (Leicester).)

13. On 13 January 2010 HMRC rejected Eamas’ appeal against the penalties on the ground that it had no reasonable excuse for failing to submit its return on time. This conclusion was upheld on review on 11 February 2010.

14. In a letter of 3 March 2010, Mr Eames acknowledged that a partnership return was required even if it was a nil return. In that letter he said that he had Post Office special delivery receipts. These have not, however, been produced but Mr Eames also said that HMRC (Leicester) had told him that proof of posting was not proof of content.

15. Eamas then appealed to the Tribunal (as to which see paragraph 2 above).

The Law

16. Under section 12AA Taxes Management Act 1970 an officer of the Board may give notice requiring the making and delivery of a partnership return and in the case of a non-electronic return the filing date shall not be earlier than 31 October following the end of the relevant year, provided the notice is given before 1 August following the year end.

17. Section 93A(2) TMA 1970 provides that if the representative partner fails to comply with the notice all partners are liable to a penalty of £100 each. Section 93A(4) provides that if a return remains outstanding after a further 6 months, the partners are liable to a further penalty of £100 each. If the Tribunal is satisfied that throughout the period of default the person concerned had a reasonable excuse for the default, the penalty may be set aside.

18. Section 115 TMA 1970 provides that any notice or other document to be given, sent, served or delivered under the Taxes Acts may be served by post. Section 7 Interpretation Act 1978 provides that where an Act authorises any document to be served by post then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

Findings and conclusions

19. The principal question for this Tribunal’s decision is whether it believes Mr Eames’ statement that he posted the partnership return “as soon as I received it in 2008”. On the basis that HMRC say that they sent the partnership return on 6 April 2008 and given that the

filing date was 31 October 2008, the Tribunal considers that the return would have been posted in time if it accepts Mr Eames' statement. If the Tribunal does not accept Mr Eames' statement of posting, Eamas advances no reasonable excuse as such for the delay in submitting the return. Its 'excuse', however, is that it posted the return on time and that it cannot be held responsible if the return went undelivered or was mislaid by HMRC once received. The passage of time from the first penalty notice (which would be the first point at which Eamas would have known that its return might have gone astray) to the time when Eamas submitted the duplicate return appears largely to be accounted for by the time it took HMRC to respond and to supply the duplicate when requested. Once that has been supplied on 11 August 2009 Mr Eames returned it without any undue delay.

20. Although Mr Eames has produced no certificates of posting for the return the Tribunal accepts his statement that the return was properly posted as he claims. It does so for the following reasons—

(1) Mr Eames's evidence is that the return was a NIL return. This was reflected in the duplicate return and HMRC has not suggested that the return is inaccurate. Given that fact, it is reasonable to assume that Mr Eames was able to deal with it expeditiously as he claims and may well have seen no point in retaining a copy of the return.

(2) Mr Eames' evidence is that the NIL return was reflected in both his and his son's personal self-assessment returns that were submitted around the same time or shortly after the partnership return was posted. HMRC admit that these returns were received in good time before the deadline for paper returns.

(3) Mr Eames says, with some force, that it does not make sense that he would complete and return a complicated personal tax return (well before the deadline) but would not return an easy nil return. The contrary point might be made that Mr Eames would understand the absolute need to return his personal self-assessment return but might think it unnecessary to submit a nil return. On the other hand, Mr Eames states that he was well aware of the need to send back a nil return. Furthermore, in 2009 when he evidently did not receive a partnership return in the ordinary course he requested one even though the 2009 return was also a nil return.

(4) Contrary to what may appear from the first decision of the First-tier Tribunal in this matter, Mr Eames disputed the penalty notice from the outset and the delay (if any) in submitting a duplicate return appears to be due to some combination of HMRC's response time and the number of different HMRC offices dealing with the tax affairs of Eamas and Mr Eames. Apart from Maidstone, Ipswich and Leicester, Mr Eames also appears to have had some involvement with HMRC in Bradford, Salford, Londonderry and London NW1. This is not as extraordinary as at first sight may appear and Mr Eames (while quite reasonably expressing the hope that his tax affairs might be dealt with by a single HMRC office) fairly recognised that HMRC is a large organisation and that more than one office might inevitably have to be involved in these matters. Nevertheless, despite the plethora of HMRC offices, Mr Eames was able immediately to identify the office to which he had posted the partnership return. HMRC have not suggested that it was the wrong office or that the address that Mr Eames supplied was incorrect. Throughout he recognised and acknowledged the need to comply with his tax obligations and dealt with this issue diligently and expeditiously. There is no suggestion in the papers that he might not have dealt with the partnership return precisely as he says he did.

21. Properly stamped and addressed the return would be treated as delivered in the ordinary course of post. Even without that presumption, having accepted that Mr Eames posted the return as he claimed, the Tribunal considers that he has a reasonable excuse for any period of default and that the appeal should be allowed.

22. 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.

**MALCOLM GAMMIE
TRIBUNAL JUDGE**

RELEASE DATE: 4 April 2012