



**TC02133**

**Appeal number: TC/2011/05777**

*Income tax - default paper case - failure to lodge Partnership Return  
timeously - reasonable excuse - penalty*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**CARNICE THOMAS t/a GLOBE TRAVELLERS                      Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S                      Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP**

**The Tribunal determined the Appeal on 7 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 20 July 2011(with enclosures), HMRC's Statement of Case submitted on 12 September 2011 and the Appellant's Reply dated 17 October 2011.**

## DECISION

5 1. This Appeal relates to the penalty imposed following the late submission of the self-assessment (“SA”) partnership tax return for Globe Travellers for the tax year ended 5 April 2010. Ms Carnice Thomas is the representative partner and therefore has the right of appeal.

2. The issues in the case are:

- (1) whether Ms Thomas submitted the SA partnership return late; and if so
- 10 (2) whether she had a reasonable excuse for not submitting the return by the due date.

3. The Tribunal rejected the Appeal and confirmed the penalty.

4. Ms Thomas has been filing personal SA returns for a number of years and the UTR for her, as an individual, is 7645875774. Her personal SA record was  
15 established on 4 January 2005. She has filed her personal SA return online for a number of years but the return for 2006-07 was the last return submitted on paper. In that return, on page SA104 she indicated that she had commenced in partnership on 1 April 2006, that the basis period was 6 April 2006 to 5 April 2007 and that her share of the loss for that year was £3,655. There was no information about the name of the  
20 business, the nature of the business or details of other partners.

5. HMRC rejected that personal SA return on 6 March 2008, as the form SA104 did not include the UTR for the partnership. In that letter, she was advised to register the partnership or to complete the form CWF1 and register as a sole trader. Thereafter in the papers there is mention by both parties only of a partnership and  
25 never of Ms Thomas operating as a sole trader. In her letter to HMRC dated 24 April 2008 (see paragraph 9 below), which encloses a “tax form” requesting a partnership number, she repeatedly refers to the need for a partnership reference number. In that letter she argues that a charge for late filing should not apply. That letter appears to have been treated as an appeal against a late filing penalty relating to her personal SA  
30 return. On 12 May 2008, HMRC replied to her stating that the return was noted as filed on 2 May 2008 (The Online Services printout confirms lodgement of the return on 02 May 2008.) and the penalty was cancelled.

6. The Tribunal did consider whether or not there was a possibility that the business was not a partnership and that she was a sole trader. Apart from the fact that  
35 even the Appellant makes no averment to that effect, for the reasons set out in the previous paragraph, it seemed to the Tribunal that, on the balance of probabilities, it was a partnership. Further the letter dated 1 June 2011, from HMRC referred to in paragraph 17 below, stated that the return had been rejected, amongst other things because “the partners split of losses...”. That suggests clearly that it is a partnership  
40 and the Tribunal found nothing of substance in the papers to rebut that presumption.

7. When Ms Thomas wrote to HMRC on 24 April 2008, it was in relation to the late filing of her personal SA return, albeit in that letter she requested that a partnership UTR be set up. The response to that letter from HMRC dealt only with the logging of the personal SA return and the cancellation of the penalty. There was  
5 no reference to the partnership. It did say that Ms Thomas should use the UTR quoted which was her personal UTR but that is wholly logical since the letter was dealing only with her personal tax matters.

8. Ms Thomas stated that Globe Travellers filed a paper SA partnership return for the 2006-07 year but did not indicate when. She lodged with the Tribunal an undated  
10 copy of the first page of Form SA800 (TP) which was a partnership tax return for the year to 5 April 2007 and that stated that the business was called Globe Travellers, was a travel agency, gave details of income and expenditure and quantified the loss at the same figure of £3,655 which had been included in the personal SA return. HMRC confirm that a Partnership Self Assessment record was set up on 30 April 2008,  
15 presumably as a result of the correspondence dated 24 April 2008 referred to in the preceding paragraph. The partnership has a UTR of 7847954592.

9. Ms Thomas produced Online Services printouts and all carried the personal UTR. Those printouts show that in the 2007-08 year Ms Thomas submitted her personal SA return online on 30 January 2009, and in the following year, again online  
20 on 20 January 2010. The 2009-10 personal SA return was submitted online on 27 January 2011 and amended on 21 July 2011 with a receipt confirming successful submission issued electronically at 13.29 on that date.

10. There was nothing in the papers demonstrating any contact between the parties relating to the partnership between 2008 and 2010. Ms Thomas produced a copy of a  
25 Late Partnership Tax Return: Penalty Notice for the tax year ended 5 April 2009 issued on 16 February 2010 and which she states she received on 25 February 2010. That penalty notice is absolutely clear that it relates to the late filing of the partnership return for 2008-09 but the Tribunal does note that it was issued under Ms Thomas' personal UTR, not the one for the partnership.

30 11. Ms Thomas produced for the Tribunal a copy of what she said was a "true and accurate copy of the appeal sent to HMRC". That appeal was on the basis that she did not recall receiving a partnership return the previous year and that she had filed the partnership details online as part of her personal return, as she had done in previous  
35 years. However, as it had been brought to her attention, she had downloaded a copy of the partnership return and she would submit it within days. She did so. She argues that it was submitted under her personal UTR (7645874774) but the copy letter, dated 16 March 2010, submitting it carries no reference. Further there is no copy of that return.

12. That return has been recorded as received by HMRC under the partnership UTR  
40 on 22 March 2010, which is only days after it was posted. On the balance of probabilities, which is the test, the Tribunal finds, as a fact, that it was filed under the partnership UTR, particularly, since there is a dispute about the partnership name (see paragraph 14 below). As she indicates at her Fact 3, she knew that she required a

separate partnership number (UTR) and indeed that was the objective of the “tax form” referred to in the letter of 24 April 2008.

13. Ms Thomas states, and it is not contested, that the penalty for the year 2008-09, which had been imposed for the late submission of the partnership return, was withdrawn. By that stage she should have been fully aware of the need to file a partnership return each year.

14. There was some dispute about the name of the partnership. It is clear that HMRC had recorded the partnership name as being Globe Travel and that that was only changed when the formal Appeal was submitted to the Tribunal. Ms Thomas is clear that it was always Globe Travellers. Ms Thomas' papers since 2008 consistently refer to Globe Travellers. HMRC state that the name is not material since all correspondence went to the representative partner's address. Does it matter? Ms Thomas argues it is material. It is obvious that HMRC's record keeping in this case has been less than optimal: examples include the fact that the penalty notice referred to in paragraph 9 above was issued with the wrong UTR and the details transcribed at Folio 6 are patently inaccurate, in part, although some details such as the filing date for the 2008-09 partnership return seem to be correct. However, it is quite clear that even although HMRC persisted in writing to Ms Thomas referring to Globe Travel, the correspondence reached her, she responded using the name Globe Travellers and indeed the copy partnership return for 2009-10, which she completed, carried the partnership UTR. For these reasons, the Tribunal finds that the error in nomenclature is unfortunate but is not material. On the balance of probabilities it is patently clear to the Tribunal that that is merely a clerical error.

15. The history in this case is important since it sheds some light on what happened in 2009-10, being the year with which this Appeal is concerned.

16. On 16 February 2011, a Late Partnership Tax Return: Penalty Notice for the tax year ended 5 April 2010 was issued and received by Ms Thomas on 26 February 2011. She appealed, on or about 14 March 2011, on the basis that the Tax Return that she had received gave the option of filing on paper or online and she had filed online. Accordingly, the Tribunal finds that a paper return for 2009-10 was issued. It is clear that the grounds of appeal are in all essentials the same as in the previous year.

17. On 18 April 2011, HMRC wrote to Ms Thomas confirming the penalty and the reference number used by HMRC was the personal UTR. There is no copy of the letter of Appeal and therefore the reference number utilised by Ms Thomas is not known, but it seems that, on the balance of probability, she would have used her own UTR, if any, not least because even as at the time of the Appeal she argued that she had been told to use the personal UTR. The point of that is that although HMRC used her UTR on that letter, presumably as it was a response, they highlighted in their letter that she had to submit the partnership return and that that had to be done under the partnership UTR. They also pointed out clearly that the whole problem was that the online submission was her personal tax return and that did not relate to the partnership. They supplied a duplicate return and Ms Thomas completed that paper

return on 7 May 2011. It carried the partnership UTR. That return was rejected by HMRC on 1 June 2011 because it was incomplete. She was asked to resubmit the return together with the additional pages, which were enclosed. She completed those pages, including the insertion of the partnership UTR. She states that she sent those  
5 pages to HMRC on or about 21 July 2011. In fact she has marked on the copy of the return that a copy was posted to HMRC on 22 July 2011. HMRC state that the completed return was received on 25 July 2011 and the Tribunal accepts that.

18. The Tribunal noted that in the previous year, on receipt of the Penalty Notice, Ms Thomas downloaded the relevant return and submitted it promptly. There appears  
10 to be no difference between the circumstances pertaining in 2008-09 and 2009-10. In both years, it is abundantly clear that Ms Thomas believed that when filing her personal SA return, which includes partnership pages, she was filing the details for the partnership return. That is explicit in her grounds of Appeal in relation to the imposition of the penalty for the partnership for the year 2008-09. It is implicit in the  
15 grounds of Appeal for the following year. She believed that she had complied with her obligations.

19. In 2009-10, she did not choose to download a return and submit it as soon as she received the penalty notice, as she had done the previous year, in what appears to be identical circumstances. She does not explain why she did not do so. She had  
20 experience of the penalty system.

20. The crux of the matter is that, as she says in her Appeal to the Tribunal, Ms Thomas did not appear to understand, until she received the letter from HMRC dated 18 April 2011, that although she had submitted a return as an individual, what she describes as a paper return was still required. It is clear from her Appeal to the  
25 Tribunal that she seems to believe that the Partnership return had to be on paper and that is the reason why her personal SA return did not suffice, although she argued that the information for both was the same. It is not the case that the partnership return had to be on paper. As she, herself, indicates, the partnership return, that she acknowledged that she received in 2009-10, makes it clear that an online submission  
30 of such a return is acceptable. The problem is that she was still conflating the personal and partnership return. She appeared to believe that, because the online personal SA return carried details of the partnership, she did not require a different online, or indeed paper, submission for the partnership. The partnership tax return and the notes issued with it make it very clear that if a return is issued then it must be  
35 submitted for the partnership. There is information about websites and helplines. Even in her request for a review of the decision, she made it explicit that she would in future complete a paper and an online return, even although she considered the information for both to be the same: she did not understand the need for two returns and nor that either, both or neither, could have been filed online.

40 21. The Tribunal finds that as a matter of fact, although she submitted her own SA return online on 27 January 2011 and that that included details of her partnership income, she did not submit the required, and complete, partnership return until it was received by HMRC on 25 July 2011.

22. The Tribunal also finds as a matter of fact that when Ms Thomas received communications from HMRC for Globe Travel, she recognised and dealt with them, in every instance, as being a communication about Globe Travellers: to all intents and purposes they were one and the same and as it was a clerical error.

5 23. The Tribunal has to consider how the law applies to this situation. In summary, the relevant legislation states that in terms of Section 12AA(2) Taxes Management Act 1970 (TMA) where a partnership is sent a notice to file then the nominated partner is required to file a return with HMRC by the filing date, which, in this case, is at latest 31 January 2011. Ms Thomas is the nominated partner. The return was filed  
10 on 25 July 2011 and therefore was late.

24. In the event of such a default, Section 93A provides that a penalty of £100 will be imposed on each partner but that if there is a reasonable excuse throughout the whole period from the filing date until the day before the return is received, then the penalty can be set aside.

15 25. The Tribunal accepts that Ms Thomas did not intend, at any stage, to mislead HMRC and that her belief that her own return sufficed was held in good faith. In effect, she did not know the law in this matter. She was wrong. She had been made aware of the problem in 2010; it was not a new problem the next year. Unfortunately for Ms Thomas, there is extensive case law to the effect that ignorance of the law  
20 cannot amount to a reasonable excuse in this context. The penalty regime was widely publicised both in the press and in trade journals. HMRC's website had clear information on the subject. She had been made aware of that on more than one occasion. She did not contact the helpline and although she acted very promptly in 2010 to file a return she did not in 2011 when she should have been even more aware  
25 of the issues.

26. The situation is that, at least from the point at which she received the penalty notice for 2008-09, she knew, or should have known, that a separate partnership return was required. She knew or should have known that there were two separate UTRs. She knew that she had to complete a personal SA return. She did not  
30 understand that the online submission of her own return did not mean that she was submitting a partnership return, but that does not change her legal responsibilities. From 25 February 2010, she knew, or should have known, that a partnership return was required. She received the partnership return for 2009-10 issued on 6 April 2010.

27. There is a possibly an argument around the fact that HMRC wrote to her in the instances described above, using her UTR, when the matter in hand related to the  
35 partnership, and that has been commented upon above. It is not good or desirable that matters were not made more transparent, but it has limited impact for the same reasons as the problems with nomenclature described in paragraph 14 above.

28. In any event, even if the fact that she believed that she had filed online were to  
40 be accepted as being a reasonable excuse, which it is not, she has a further problem. As is described in paragraph 18 above, when she received the penalty notice for 2009-10, she did not act promptly as she had done in the previous year. Therefore, to the

extent, if any, that there was a reasonable excuse then it did not exist throughout the period of default and therefore the penalty cannot be set aside.

29. For all these reasons the Appeal fails.

5 30. 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  
10 "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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**ANNE SCOTT, LLB, NP  
TRIBUNAL JUDGE**

**RELEASE DATE: 16 July 2012**

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