



TC02193

Appeal number: TC/2012/04197

Self assessment – late paper return – timely electronic return for same period – question whether penalty due – yes – reasonable excuse for late return - no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

COX PARTNERSHIP

Appellant

- and -

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

TRIBUNAL: JUDGE ALISON MCKENNA

The Tribunal determined the appeal on 7 August 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 15 March 2012 (with enclosures), HMRC's Statement of Case submitted on 30 April 2012 (with enclosures)[and the Appellant's Reply dated 29 May 2012.

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DECISION

5 1. This appeal concerns the late submission of a paper return for the Cox Partnership for the tax year ended 5 April 2011.

2. It is accepted by the Appellant that the paper return was made late, however, the partnership's agent also made a timely electronic return for the same year which HMRC initially accepted, then rejected in favour of the late paper return, in respect of which it issued a penalty of £300.

10 3. The question for the Tribunal is therefore whether a penalty is due for the late paper return in view of the subsequent on-line return being submitted on time. If a penalty is lawfully due, then the question for the Tribunal is whether there was a reasonable excuse for the late return justifying the cancellation of the penalty.

The Facts

15 4. The notice to file a partnership return for the year ended 5 April 2011 was issued on 6 April 2011. The filing date was 31 October 2011 for a paper return and 31 January 2012 for an on-line return.

20 5. A paper return was received by HMRC on 17 November 2011, but a second return was filed on line on 1 December 2011. A penalty notice was issued by HMRC on 6 December 2011.

The Law

25 6. Section 12AA (2) of the Taxes Management Act 1970 provides that a nominated partner is required by notice to make and deliver the return, which is to be in the form prescribed by HMRC. It includes a declaration that the return is correct and complete.

7. Paragraph 1(3) of Schedule 55 to the Finance Act 2009 prescribes the relevant filing date and penalty date for partnership returns. Paragraph 1(4) defines the filing date as the date on which the return is required to be delivered to HMRC.

30 8. Paragraph 23 of Schedule 55 to the 2009 Act provides that the Tribunal may set aside a penalty where there is a reasonable excuse for late filing. A reasonable excuse is generally interpreted as one that involves circumstances outside the tax payer's control.

The Grounds of Appeal

35 9. The partnership's agent submitted that the paper return had been submitted due to an error. When the error was uncovered, an on line return was submitted and accepted by HMRC on 1 December 2011 (there is documentary proof of this). It is submitted that the acceptance of the on-line filing pre-dated the formal acceptance of

the paper return, which was not entered onto HMRC's computer until 12 January 2012. HMRC guidance suggests that the on-line return should therefore be treated as the valid and timely return so that no penalty is lawfully due.

5 10. The agent requested copies of HMRC's computer records which show that whilst the date of receipt of the paper return is logged as 17 November 2011, the date of capture (i.e. the date that the paper return was entered onto the system) was 12 January 2012. The agent submits that HMRC Guidance SAM 12050 states that "the first return registered on the SA computer system will be treated as the original return".

10 11. In his Reply to the Statement of Case, the agent submits that as the paper return was made in error, the subsequent electronic filing should not be viewed by HMRC merely as an attempt to avoid the penalty. The agent does not accept that HMRC's records prove that 17 November was the date the partnership return was received. The agent believes that HMRC must have removed the on-line return in order to
15 impose the penalty and that this was inappropriate.

HMRC's Statement of Case

12. It is not disputed that the on-line return was made on 1 December, however HMRC submits that it may not treat this as the valid return for the year because it was already in possession of the late-filed paper return. It says this is proven by the date-
20 stamp of 17 November 2011 and this date is the relevant date, unaffected by the delay before up-dating the computer. HMRC thus argues that it is the date of receipt that is the relevant date rather than the date of the computer processing of the return.

13. HMRC further submits that the legislative framework requires a tax payer to opt for a paper or electronic return for the relevant year and that it is not permissible to
25 submit a second on-line return in order to avoid a penalty for the late filing of a paper return. The second return did not differ from the first so should not be regarded as an amendment.

14. HMRC further submits that the paper return was filed late and that there is no reasonable excuse for this so that the penalty should be upheld.

30 Conclusion

15. I have considered the issues in this appeal very carefully. I accept HMRC's evidence from its records that the paper return was received on 17 November 2011. It is not disputed that HMRC's computer nevertheless accepted an on-line return on 1 December 2011.

35 16. The legislative framework is unhelpful as to the concept of a valid receipt date for a paper return, although it is abundantly clear from HMRC guidance (for example, SAM 12051) that HMRC works on a "date of delivery" basis for recording receipt of paper returns, rather than operating from the date on which the paper return is entered onto the computer. This is of course the approach least likely to involve a taxpayer

incurring a penalty. The Appellant cites HMRC guidance 12050, and I note that HMRC has not responded to this particular submission in its Statement of Case. This guidance states:

5 If a paper tax return is filed late, it is not possible to avoid a penalty by filing a further tax return online before 31 January. The first return to be registered on the SA computer system will be treated as the original return. Only in exceptional circumstances where the online return reaches our systems before the paper return will a penalty not be charged.

10 17. Although I accept that the sentence about the “original return” may seem helpful to the Appellant, the guidance, taken in context, makes clear that only in exceptional circumstances would a penalty not be due where an on line return is entered onto the system before a completed paper return has reached it, as here. The Appellant has not pointed to exceptional circumstances but only to an error within the
15 agent’s firm.

18. In all the circumstances I find that the paper return was validly made and received by HMRC on 17 November 2011, which meant that a penalty was due. I do not accept the Appellant’s argument that the on-line return should take priority over the paper return, which had already (as I find) been validly made before the on-line
20 return. I do not accept that it was wrong for HMRC to remove an on-line return from the system when it was invalid due to the earlier receipt of a valid paper return.

19. The Appellant has not advanced any argument as to reasonable excuse for late filing of the return other than that it was made by the agent in error as against the intention of the tax payer to file on-line. I am not satisfied that this is a reasonable
25 excuse.

20. In all the circumstances I dismiss the appeal and uphold the penalty of £300.

21. 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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**ALISON MCKENNA
TRIBUNAL JUDGE**

40 **RELEASE DATE: 13 August 2012**