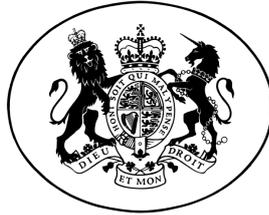


[2012] UKFTT 598 (TC)



TC02274

Appeal number: TC/2011/04689

Late filing of online partnership return; penalties; s.93A (2) and (118(2) TMA; requirement to purchase third party software not possible due to financial circumstances: whether “reasonable excuse” – no.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ALFA BIURO PARTNERSHIP

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE CHRISTOPHER HACKING

Determined 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 21 June 2011 and HMRC’s Statement of Case submitted on 22 July 2011.

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DECISION

1. This was an appeal against a decision confirmed on review imposing a fixed penalty of £200 under section 93A(2) Taxes Management Act 1970 (TMA) following the late submission of the Appellant's 2009-10 partnership return.
2. The return was due to have been filed either on paper by 31 October 2010 or on-line by 31 January 2011. A paper return was submitted on 31 January 2011.
3. The Appellant is a two-person partnership which filed its first partnership return for the year 2008-09. This was a paper return. The return was not received by the Revenue on or before the due date (31 October 2009), a matter which the Revenue seeks to rely on to an extent in relation to the default in the filing of the following year's return.
4. The law relating to the duty to file a partnership return and the power to impose a penalty when the filing is late is set out in the Revenue's Statement of Case. These provisions are not in issue between the parties and will not therefore be rehearsed here.
5. Section 93A(7) TMA read in conjunction with section 118(2)TMA provides that if the taxpayer can establish a reasonable excuse for the whole of the default period the penalty may be set aside. The law does not make clear what is and what is not a "reasonable excuse" for this purpose. The Revenue in its submission states its view that each case is to be considered on its merits but that the excuse must have been an exceptional event outside a person's control which prevented them from sending back their return by the filing date.
6. The Tribunal does not accept that this approach is definitive. The words "reasonable excuse" are ordinary words to be construed accordingly. However the criteria proposed by the Revenue whilst neither definitive or exhaustive, do in the view of the tribunal, represent a reasonable starting position for considering what is and what is not a "reasonable excuse". It seems unlikely that it was Parliament's intention that a taxpayer could avoid his duty to file a return on time by reason only of some "ordinary" excuse nor does it seem likely that matters within the taxpayers control would generally found such an excuse.
7. The Appellant's nominated partner is Ms K A Zieleninska who in her partnership's Notice of Appeal raises a number of matters. Ms Zieleninska states that the paper filing effected for the year 2008-09 was in fact mailed to the Revenue on time as can be established by proof of posting (although this was not attached to the appeal papers and has not been seen by the tribunal). A further copy was sent to the Revenue but this was, by that time, late. No mention is made in the papers of a penalty having been imposed and this seems consistent with an acceptance by the Revenue of real doubt as to exactly what had happened to the paper return on that occasion.
8. In relation to the 2009-10 filing Ms Zieleninska says that in light of the trouble experienced on the last occasion she decided to file online. This had the benefit, she states, of allowing more time to file. What Ms Zieleninska did not appreciate was that in

the case of a partnership return the third party software necessary to effect the online filing has to be provided by the taxpayer and not the Revenue. The cost of the software would have been, £100, a sum which Ms Zielensinska says she could not afford to pay. She therefore completed and filed a paper return received by the Revenue on 31 January 2011, some 3 months after the due date for a paper filing.

9. The Revenue in its Statement of Case points out that the requirement on the part of a nominated partner filing a partnership tax return online to provide its own software is published on its website together with details of accredited software suppliers within different price ranges. That the purchase by the taxpayer of such third party software is a necessary step in filing a partnership return online is made quite clear.

10. A copy of the form of notice sent to the Appellant on 6 April 2009 together with a full return is exhibited to the Revenue's submission. On page 1 the following appears:

“You can file the tax return using:

- *this form and any supplementary pages you need; or*
- *the internet (you will need to use commercial software which you may have to buy).To register and enrol for self assessment online for Partnerships go to **www.hmrc.gov.uk** and from the “do it online” menu select “self assessment”*

11. The facts in this matter are not substantially disputed. The circumstances concerning the 2008-10 filing are not entirely clear but for the purpose of this decision the tribunal assumes that the Appellant did in fact file its return on time.

12. The substance of the Appellant's appeal lies in its view that the requirement for a partnership seeking to file online to purchase third party software is unreasonable. The tribunal finds that this requirement is however made known clearly by the Revenue both on its website and in its notice sent out with the full paper return. There is some argument that the latter does not perhaps make the position quite as clear as it might be. The above wording concerning online filing “*which you may have to buy*” admits of the possibility that there may be circumstances in which a purchase is not needed but this is dealt with much more comprehensively in the website to which those intending to file online are directed (see paragraph 9 above).

13. The tribunal finds that the Appellant's failure to adequately assess the requirements for online filing and to purchase the necessary software to achieve this cannot in law amount to a “reasonable excuse” for the late delivery of its paper filing and accordingly this appeal must be refused and the penalty of £100 for each partner (total £200) imposed under section 93A (2) TMA is confirmed.

14. 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.

**CHRISTOPHER HACKING
TRIBUNAL JUDGE**

RELEASE DATE: 28 March 2012