



TC02345

Appeal number: TC/2012/05154

Partnership return – late filing – reasonable excuse – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BEVERLEY WHITEHALL/DENISE CHILTERN Appellant

- and -

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

TRIBUNAL: JUDGE J. BLEWITT

The Tribunal determined the appeal on 20 August 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 April 2012 (with enclosures) and HMRC’s Statement of Case submitted on 31 May 2012 (with enclosures).

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DECISION

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1. By Notice of Appeal dated 20 April 2012 the Appellant appeals against penalties imposed under section 93A TMA 1970 for the late filing of the Partnership's Tax Return for the year ending 5 April 2010.

Facts

10 2. Miss Denise Chiltern is the representative partner of "Jezebel". Miss Beverly Jayne Whitehall is also a partner.

3. On 16 September 2010 a Notice to File was issued to the Appellant for the tax year 2009/2010.

15 4. The filing date for a paper return was 23 December 2010 or 31 January 2011 if filed online.

5. The first penalty notices in the sum of £100 per partner were issued on or about 15 February 2011. The second penalty notices in the same amounts were issued on or about 2 August 2011.

20 6. On 4 March 2011 the Appellant's agent, Jan Young Consultancy, appealed against the first penalties to HMRC. The agent explained that it did not hold details of Ms Whitehall's UTR and therefore a return could not be submitted electronically. A paper return was submitted instead on the basis that "*we felt in the circumstances that it was better to send a paper Self Assessment tax return than nothing at all.*"

25 7. By letter to the agent dated 20 April 2011 HMRC advised that the Tax Return had been returned as "unsatisfactory" as it was not signed and therefore a valid return remained outstanding.

30 8. On 15 July 2011 the Appellant's agent appealed to HMRC, which was accepted as a request for a formal review. The Appellant's agent reiterated that the UTR number for Miss Whitehall had not been received and therefore the return could not be submitted online.

9. By letter dated 31 August 2011 HMRC notified the Appellant that the penalties had been upheld following a review. It was noted that Miss Whitehall's UTR number would have been contained on the Notice to File issued on 6 April 2010 and that a valid return remained outstanding.

35 10. On 23 February 2012 the Appellant's agent wrote to HMRC indicating their disappointment that the penalties had not been negated and that agent's letters relating to the appeal against the penalties were not opened by HMRC due to the delay caused

by a backlog of correspondence. The Appellant's agent submitted that the maximum penalty should have been £100 per partner.

Appeal

11. By Notice of Appeal the Appellant's agent appealed to the Tribunal Service on
5 20 April 2012. The grounds relied upon can be summarised as follows:

- After October 2010 Miss Whitehall had difficulty finding her UTR number;
- As the UTR number would not be received until after the deadline of 31 January 2011 the agent sent hard copies to HMRC prior to the deadline for electronic submission;
- 10 • It was felt that this was a logical and professional outcome;
- The same was done for other clients and accepted by HMRC.

Discussions and Decision

12. There was no dispute as to the legislation applicable in this case, nor did the
15 Appellant dispute that a paper return was submitted after the deadline for submission of a paper return.

13. The Notice of Appeal refers to penalties in the sum of "£300 x 3". HMRC
clarified in its Statement of Case, which has not been challenged by the Appellant,
that the amount of the penalties is £400; comprised of a first and second penalty in the
sum of £100 each imposed on each of the two partners. I therefore address this case
20 on the basis that the penalties appealed against are in the sum of £400.

14. The issue for the Tribunal is whether a reasonable excuse existed for the late
submission of the return.

15. Provided to me was a letter from HMRC to the Appellant's agent which refers
to the lack of a UTR number in respect of their client. The letter is annotated in
25 handwriting, I inferred by the Appellant's agent, indicating that "*we have applied
online.*" The letter is dated 13 October 2010, prior to the deadline for submission of a
paper return. I found as a fact that at that point the Appellant's agent was aware of the
need for a UTR number and was in the process of obtaining it.

16. HMRC submitted that both partners have been in the Self Assessment system
30 since 2003. Furthermore, the Appellant's UTR would have been included on a variety
of documents issued, for example the Notice to File, the Tax Return itself and
statement of account and therefore could have been obtained with relative ease given
that Miss Whitehall submitted Personal Tax returns from 2002/2003 up to 2008/2009.
There is no suggestion that the Notice to File was not received by Miss Whitehall on
35 or about 6 April 2010 and four statements of account were sent to her during 2011, all
of which would have contained the UTR number.

17. The paper return submitted on behalf of the Appellants was received by HMRC on 31 January 2011. The return was deemed invalid as it had not been signed. It would appear that a valid Partnership Return was not received by HMRC until 30 May 2012.

5 18. The only explanation provided for the late submission of the Appellant's Partnership Return was the absence of a UTR number for Miss Whitehall. This was first apparent to the Appellant's agent prior to the deadline for submitting a paper return. Even accepting that it took until after that deadline date to obtain the UTR
10 number, no evidence or explanation has been provided as to why a return was not submitted until 31 January 2011. Even then, the return was invalid and therefore was correctly deemed to be outstanding by HMRC. Despite the issue of two penalties to each partner, and letters advising that the return remained outstanding, there was then a further, significant delay before a valid return was received by HMRC.

15 19. There is no evidence before me as to the efforts made by the Appellant and their agent to avoid such delay. I accepted HMRC's unchallenged submission that Miss Whitehall's UTR number would have been found on numerous documents sent to her both prior to and during the period of default. In those circumstances I cannot accept that there was a reasonable excuse lasting throughout the period of default for the late submission of the return.

20 20. I noted the agent's submission that they had taken similar action in respect of other clients without incurring penalties, however no specific details of those cases were provided to me. Furthermore, each case must be decided on its own merits and on the facts of this case, I found that there was no reasonable excuse.

21. The appeal is dismissed.

25 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
30 "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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JUDGE J. BLEWITT
TRIBUNAL JUDGE

RELEASE DATE: 8 October 2012