



TC02639

Appeal number: TC/2012/06785

*Income Tax - online filing – partnership return - whether reasonable excuse
if third party software not purchased – Appeal Allowed.*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**PAUL & ANNETTE GALBRAITH
t/a GALBRAITH CERAMICS**

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined the Appeal of 30 November 2012 without a hearing and under the provisions of Rule 26 of the Tribunal Procedure First-tier Tribunal (Tax Chamber) Rules 2009 (default paper cases) after having read the Notice of Appeal of 20 June 2012 and the HMRC Statement of Case of 2 August 2012

DECISION

Appeal

1. This is an appeal by Mr P Galbraith against the late filing penalty imposed under paragraph 3 of Schedule 55 Finance Act 2009 for the late filing of the partnership tax return for the year ending 5 April 2011.
2. Under paragraph 25(2) Schedule 55 Finance Act 2009 a penalty is payable by every relevant partner. Mr P Galbraith is the representative partner and therefore in accordance with paragraph 25 (4) of Schedule 55 Finance Act 2009, HMRC have treated this as a composite appeal against the determination of the penalties.
3. The paper partnership return for the year ending 5 April 2011 was issued on 6 April 2011. The filing date was 31 October 2011 for paper return and 31 January 2012 if filed online.
4. The paper return was received on 31 January 2012. A Notice of Penalty Assessment was issued on or after 15 February 2012.

Correspondence

5. On 29 February 2012 the Appellant's agent, Derek Dobson & Co submitted an appeal on behalf of the Appellant's late filing fixed penalty. The Notice of Appeal stated that the 31 October 2011 deadline was missed because it was not possible to submit 2011 Partnership tax return online as HMRC's software does not cater for Partnership tax returns. Also, the agent is a representative member of "Working Together" Group and understood that this is a reasonable excuse for late filing.
6. The Appellant requested a review. They made submissions to the review officer that the lack of software was an exceptional event beyond their control which prevented them from sending their clients return on time. On 8 June 2012, HMRC advised that they would uphold the decision of the assessment. They said that partnerships have a choice to file a paper return by 31 October or an online return by 31 January. The HMRC website and other literature gave adequate information on the commercial software required for partnership filings. The 2010/11 partnership return, which was received on 31 January, was late.
7. On 20 June 2012 the Appellant's agents submitted an appeal to the Tribunal. HMRC's submissions
8. Section 12 (AA) TMA 1970 provides that the representative partner is required by a Notice given to them by an Officer of the Board to make and deliver to the Officer, a return containing such information as may reasonably be required in pursuant of the notice. The return is to be in the form prescribed by the Board (Section 113 (1) TMA 1970) and has to include a declaration to the effect that the return is to the best of their knowledge correct. The penalty regime is well known.

9. In reply to the particular submissions by the Appellant who stated that the deadline was missed because it was not possible to submit the 2011 partnership tax return online as HMRC software does not cater for partnership tax returns, HMRC stated that at the front of the tax return and on their website it is stated that appropriate commercial software must be purchased in order to submit the return.

10. The actions of the Agents in not purchasing the software did not relieve the partners of their legal obligation to ensure that the partnership return was filed on time. Each taxpayer is responsible for dealing with and adhering to the obligations to ensure that they file their returns by the due date.

11. HMRC did not agree that there was bias in the filing system if the partnership had to purchase commercial software. They said that they had a choice between submitting a paper return and an online return. An online return required the purchase of commercial software and as the partnership filed on 31 January 2012, it was filed late. Therefore the penalties had been correctly charged in accordance with paragraph 3, Schedule 55 Finance Act 2009.

Conclusions

12. The important question is whether a partnership which does not have the relevant third party software required for filing online their tax returns, has a reasonable excuse for late filing.

13. A partnership is given an option to file a paper or an electronic return. Section 12AA (2) (3) states that the Commissioners may give notice requiring a partner to “make and deliver” to the relevant officer a return. The return made by the partnership on behalf of one or more individuals can be in electronic or non electronic form. The electronic form is required to be filed by 31 January. This is referred to as an online return. The paper return must be filed by 31 October. The Appellant filed a paper return on 31 January 2012.

14. The tax return itself states that the person filing must purchase appropriate commercial third party software required for filing online

15. The HMRC website states that the Commissioners does not provide a free online product for filing of a partnership return but a commercial product has to be purchased to undertake this task. This means that if there are several partners they must each purchase the software required if they are to have it on their computer. The software costs about £100 plus VAT.

16. There is no obligation in law which requires a taxpayer to purchase any particular software. The taxpayer only receives guidance from the return forms and other communications from the Commissioners that they require the software for filing.

17. A taxpayer who fails to purchase the software and who seeks to make an electronic filing of the partnership return will find that the returns are not accepted by

the Commissioners online service. Failure to file on time would render the taxpayer liable to a late penalty charge. This would arise even if there is no tax to pay.

18. The requirement to purchase of software to file a return would mean that the taxpayer has to incur additional expenditure, when compared with individuals who can file online, without having to purchase any software. In other words, an individual would not have to incur a cost in purchasing software before filing their returns but partnerships would incur a cost.

19. This raises an interesting question. Is it unfair, unreasonable or discriminatory to impose an expenditure requirement before the taxpayer is able to satisfy a statutory obligation? The short answer is yes. While partners are not prevented from filing their returns; the requirement to buy software does discriminate between taxpayers. However, in taking a balanced view of matters, the Chancellor has limited resources. . The cost of offering software to partnership to make returns filing is obviously quite high. A decision has been taken by the Treasury not to incur this cost. That is understandable. What is not acceptable is for accountants to be charging their clients to do returns and to claim a reasonable excuse because they have not been provided with free software. It is understandable if taxpayers cannot afford the software or indeed if a small practice of accountants, with few partnership clients, make a commercial decision not to purchase the software. In such a case, the decision is more acceptable. In an ideal world free software should be available to all.

20. The online filing option may be the better option for some taxpayers. They may need more time , for example if a new partner, not previously under self-assessment, has to certify their tax reference number or the software provider may have poor customer service and the taxpayer is unable to obtain advice on operating the software. These are understandable delays. The simple solution is for HMRC to accept paper filings filed by 31 January, even though out of time, if a reasonable excuse is provided. This would address the point about a discriminatory practice and claims to be disadvantaged by having to purchase software.

Conclusion

21. In the circumstances the Appeal is allowed. The taxpayer filed by 31 January, which was late but were unable to purchase the software. Taxpayers who make a commercial decision not to purchase the software or those who cannot afford the software, should not be penalised where they file paper returns by the 31 January,

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.

**DR K KHAN
TRIBUNAL JUDGE**

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RELEASE DATE: 5 March 2013