



**TC05914**

**Appeal number: TC/2013/07060**

*INCOME TAX – penalty for failure to make returns – return submitted on time with individual returns – appeal allowed - Yes*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**JAMIE C, PARROTT T/as K J Creations**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: PRESIDING MEMBER**

**PETER R.SHEPPARD FCIS FCIB CTA AIIT**

The Tribunal determined the appeal on 19 May 2017 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 4 October 2013 (with enclosures), and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 24 February 2017. The Tribunal wrote to the appellant on 24 February 2017 indicating that if he wished to reply to HMRC's Statement of Case he should do so within 30 days. No reply was received.

## DECISION

1. The appellant is appealing against penalties totalling £1,300 that HMRC have  
5 imposed under Schedule 55 of the Finance Act 2009 (“Schedule 55”) for a failure to  
submit an annual self-assessment partnership return on time.

2. The penalties that have been charged to each partner can be summarised as  
follows:

10 (1) a £100 late filing penalty under paragraph 3 of Schedule 55 imposed on or  
around 12 February 2013.

(2) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on  
or around 14 August 2013.

15 (3) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55  
imposed on or around 25 June 2013. The daily penalty has been calculated as a  
daily penalty of £10 for the maximum of 90 days. The 90 days are calculated  
from 3 months after the return was due. The non-electronic return was due on  
31 October 2012 so the daily penalties commenced on 1 February 2013. It is 90  
days from 1 February 2013 to 1 May 2013.

20 3. The appellant’s grounds for appealing against the penalties can be summarised  
as follows:

(1) He argues that all returns sent to them by HMRC were submitted on time.

(2) He argues that he had requested paper returns for the year 2011-12 to be  
sent for both individuals and the partnership.

25 (3) He argues that there was a “reasonable excuse” for any failure to submit  
the return on time.

### 4. Findings of fact

During the tax year ended 5 April 2012 the partners in KJ Creations were Jamie C.  
Parrott and Kimberley Jane Guest. Jamie Parrott was the representative partner.

30 5. HMRC say that a notice to file a partnership tax return for the tax year ended 5  
April 2012 was issued to KJ Creations on 6 April 2012.

6. HMRC say that the filing date for a non-electronic return was 31 October 2012  
or for an electronic return was 31 January 2013.

7. HMRC say they received the appellant’s non-electronic return on 12 June 2013.

### 8. Appellants submissions.

35 The Appellant says that in the past the partners have had problems completing  
tax returns online so they telephoned HMRC requesting all relevant forms for

completion be sent in paper format. The appellant says “we received the forms and had them completed and sent recorded in the post before the due date had expired.

5 HMRC’s Self-assessment Notes for Mr. J.C. Parrot confirm that the call was made on 7 June 2012. On those same notes appears the following entry

“01/08/2012 DOR 20/7/2012 T/P adv recently req paper ITR but rec foreign pages. Ltr asks for 12/13 form but earlier note states 11/12. 11/12 ITR issd with short s/e page, short p/ship page and tax calc sum. Ltr to a dv 12/13 forms issd next year. 581/p/1/post /18/13.”

10 9. This confirms the appellant’s contention that they had complained that they had been sent “foreign forms”. It also appears that the forms sent were for the tax year 2012-2013.

15 10. It appears to the Tribunal that the words “short p/ship page” refers to a ‘page’ rather than a ‘return’ and therefore refers to a page of the appellant’s individual return and does not indicate the issue of a separate partnership self-assessment return. The Tribunal wonders why a partnership return was not sent at that time.

20 11. The appellant says that all the forms sent were completed and submitted by recorded delivery before the deadline. They then received a letter from HMRC saying they had not received a completed partnership return. Both partners consider they completed all the returns they were sent.

#### 12. **HMRC’s submissions**

25 HMRC say that in accordance with Paragraph 25(4) Schedule 55 Finance Act 2009 an appeal under paragraph 20 in connection with a penalty payable by virtue of this paragraph may be brought only by the representative partner or a successor to the representative partner.

13. Mr J. Parrott is the representative partner therefore in accordance with paragraph 25 (5) Schedule 55 Finance Act 2009 HMRC have treated this as an appeal against the determination of the penalties on all of the partners in respect of the failure.

30 14. HMRC say that the appeal is not concerned with specialist or obscure areas of tax law. It is concerned with ordinary every day responsibilities of the nominated partner to ensure the partnership’s 2011-2012 tax returns was filed by the legislative date.

35 15. HMRC say that in the event that the Notice to file had not been received and a duplicate or replacement partnership return was required the onus would fall on Mr. Parrott as the representative partner to ensure that it had had in fact been received with any other document requested and take the necessary steps to obtain same if not.

16. HMRC contend that the absence of a partnership tax return should have been noticed by the appellant when completing his individual return as figures from the

partnership return are transferred to the partnership page of each partner's individual tax returns.

17. In respect of reasonable excuse HMRC say that they consider the actions of a taxpayer should be considered from the perspective of a prudent person exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts. The decision depends on the particular circumstances in which the failure occurred and the particular circumstances and abilities of the person who failed to file their return on time. The test is to determine what a reasonable taxpayer, in the position of the taxpayer, would have done in those circumstances and by reference to that test to determine whether the conduct of the taxpayer can be regarded as conforming to that standard".

HMRC refer to the case of *Rowland* and say the matter is to be considered in the light of all the circumstances of the particular case.

18. HMRC have considered special reduction under (paragraph 16 Schedule 55 of the Finance Act 2009. They say special circumstances must be "exceptional, abnormal or unusual" (*Crabtree v Hinchcliffe*) or "something out of the ordinary run of events" (*Clarks of Hove Ltd. v Bakers' Union*). HMRC consider that there are no special circumstances which would allow them to reduce the penalty.

#### 19. Discussion

20. Relevant statutory provisions are included as an Appendix to this decision.

20. The appellant has argued that the penalties charged are ridiculous. Following *HMRC v Anthony Boshier* [2013] UKUT 579 (TCC) I do not consider I have power to consider the proportionality of fixed penalties such as those charged in this appeal.

21. The Tribunal has considered the documents and submissions thereon and has had difficulty in determining with certainty when the appellants were first sent a partnership return for completion.

22. HMRC say they sent the partnership return with the individual partners tax returns on 6 April 2012. If that was the case it seems highly unlikely that the partners would fill in all the forms including the short partnership page on their individual returns and send them all off by recorded delivery and not at the same time send the completed partnership return but leave that uncompleted and unsubmitted.

23. The SA Note of 1 August 2012 refers to a short partnership page. It is difficult to accept that those words refer to the issue of a self-assessment partnership return. The Tribunal has not been provided with SA notes for either Kimberley Guest or for KJ Creations.

24. It therefore follows that either the appellant was sent a self-assessment partnership return which was completed and returned by recorded delivery before the

deadline of 31 October 2012 or was not sent a self-assessment partnership return until much later.

25. In the former case the return must have been lost and not processed by HMRC and so provides a reasonable excuse for the appellant. In the latter case the Tribunal  
5 needs to consider whether the absence of a form for completion provides the appellant with a reasonable excuse.

26. The Tribunal has considered Sections 8 and 9 of the Taxes Management Act 1970 together with Schedule 55. These indicate that the penalties apply where a  
10 Notice to file a return has been notified and the deadline for filing stated thereon has not been met.

27. The absence of a form means that the appellant has not received a Notice to file a return and has been given no deadline to meet. HMRC have not provided a copy of the Notice to file a partnership return which they say they sent to the appellant.

28. In a letter dated 5 September 2013 the appellant say since their last appeal dated  
15 5 March 2013 they had obtained a partnership return from HMRC and submitted it. As the return was submitted on 12 June 2013 The Tribunal finds that that return was received sometime between 5 March 2013 and 12 June 2013. The Tribunal has no means of knowing what the deadline date for submission of that return was. It would be unrealistic for it to be 31 October 2012.

20 29. HMRC contend that the absence of a partnership tax return should have been noticed by the appellant when completing his individual return as figures from the partnership return are transferred to the partnership page of each partner's individual tax returns. If that contention is considered in another way it supports the contention of both partners that the partnership return was included with their individual returns.

25 30. In the light of the above the Tribunal considers that on the balance of probabilities the appellants did not notice the absence of a partnership return because it was not absent. They both say they submitted their partnership return together with their individual returns by recorded delivery and the Tribunal concludes that the  
30 partnership return must have become separated from the individual returns and lost within HMRC. The Tribunal considers that this establishes that the return was in fact submitted on time and the penalties should not have been applied, therefore the appeal is allowed.

31. HMRC have considered whether Special Circumstances existed and found there were none. As the Tribunal has found the appellant submitted the partnership return  
35 on time and allowed the appeal against the penalties it has no need to consider whether special circumstances existed.

### **Conclusion**

32. The Tribunal considers that the appellants submitted the partnership tax return on time and a copy thereof on 12 June 2013. Therefore the appellants' appeal against  
40 the penalties totalling £1,300 is allowed.

**Application for permission to appeal**

33. 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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**PETER R. SHEPPARD  
TRIBUNAL JUDGE**

**RELEASE DATE: 25 MAY 2017**

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## APPENDIX – RELEVANT STATUTORY PROVISIONS

1. The penalties at issue in this appeal are imposed by Schedule 55. The starting point is paragraph 3 of Schedule 55 which imposes a fixed £100 penalty if a self-assessment return is submitted late.

2. Paragraph 4 of Schedule 55 provides for daily penalties to accrue where a return is more than three months late as follows:

4—

(1) P is liable to a penalty under this paragraph if (and only if)—

- 10 (a) P's failure continues after the end of the period of 3 months beginning with the penalty date,
- (b) HMRC decide that such a penalty should be payable, and
- (c) HMRC give notice to P specifying the date from which the penalty is payable.

15 (2) The penalty under this paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under sub-paragraph (1)(c).

(3) The date specified in the notice under sub-paragraph (1)(c)—

- 20 (a) may be earlier than the date on which the notice is given, but
- (b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).

3. Paragraph 5 of Schedule 55 provides for further penalties to accrue when a return is more than 6 months late as follows:

5—

25 (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this paragraph is the greater of—

- 30 (a) 5% of any liability to tax which would have been shown in the return in question, and
- (b) £300.

4. Paragraph 6 of Schedule 55 provides for further penalties to accrue when a return is more than 12 months late as follows:

6—

35 (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.

5 (2) Where, by failing to make the return, P deliberately withholds information which would enable or assist HMRC to assess P's liability to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).

(3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—

(a) the relevant percentage of any liability to tax which would have been shown in the return in question, and

10 (b) £300.

(3A) For the purposes of sub-paragraph (3)(a), the relevant percentage is—

(a) for the withholding of category 1 information, 100%,

(b) for the withholding of category 2 information, 150%, and

15 (c) for the withholding of category 3 information, 200%.

(4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—

(a) the relevant percentage of any liability to tax which would have been shown in the return in question, and

20 (b) £300.

(4A) For the purposes of sub-paragraph (4)(a), the relevant percentage is—

(a) for the withholding of category 1 information, 70%,

(b) for the withholding of category 2 information, 105%, and

25 (c) for the withholding of category 3 information, 140%.

(5) In any case not falling within sub-paragraph (2), the penalty under this paragraph is the greater of—

(a) 5% of any liability to tax which would have been shown in the return in question, and

30 (b) £300.

(6) Paragraph 6A explains the 3 categories of information.

5. Paragraph 23 of Schedule 55 contains a defence of “reasonable excuse” as follows:

23—

35 (1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of sub-paragraph (1)—

- (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,
- (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
- (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

6. Paragraph 16 of Schedule 55 gives HMRC power to reduce penalties owing to the presence of “special circumstances” as follows:

- 16—
- (1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.
  - (2) In sub-paragraph (1) “special circumstances” does not include—
    - (a) ability to pay, or
    - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
  - (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—
    - (a) staying a penalty, and
    - (b) agreeing a compromise in relation to proceedings for a penalty.

7. Paragraph 20 of Schedule 55 gives a taxpayer a right of appeal to the Tribunal and paragraph 22 of Schedule 55 sets out the scope of the Tribunal’s jurisdiction on such an appeal. In particular, the Tribunal has only a limited jurisdiction on the question of “special circumstances” as set out below:

- 22—
- (1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.
  - (2) On an appeal under paragraph 20(2) that is notified to the tribunal, the tribunal may—
    - (a) affirm HMRC's decision, or
    - (b) substitute for HMRC's decision another decision that HMRC had power to make.
  - (3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 16—
    - (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 16 was flawed.

5 (4) In sub-paragraph (3)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.