



TC03913

Appeal number: TC/2014/02557

INCOME TAX – late submission of partnership tax return – Whether reasonable excuse for late submission of return - Yes.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PETER HAIGH PARTNERSHIP

Appellant

- and -

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

**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA AIT**

The Tribunal determined the appeal on 7 August 2014 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 7 May 2014, and HMRC's Statement of Case dated 9 June 2014 with enclosures. The Tribunal wrote to the Appellant on 12 June 2014 indicating that if he wished to reply to HMRC's Statement of Case they should do so within 30 days. Further papers were received and considered by the Tribunal.

DECISION

1. Introduction

5 This considers an appeal against a penalty of £100 levied by the Respondents (HMRC) on each partner for the late filing by the Appellant of its Partnership Tax Return for the tax year 2012 – 2013.

2. Legislation

Finance Act 2009 Schedule 55

10 Taxes Management Act 1970, in particular Section 12AA(4)

3. Case law

Crabtree v Hinchcliffe (Inspector of Taxes) [1971] 3 ALL ER 967

Clarks of Hove Ltd v Bakers' Union [1979] All ER 152

Rowland v HMRC [2006] STC (SCD) 536

15 Anthony Wood t/as Propave v HMRC [2011] UK FTT 136 (TC)

4. Facts

20 The filing date for a Partnership Tax Return is determined by Section 12AA (4) of the Taxes Management Act 1970. For the period ended 5 April 2013 a non electronic return must be filed by 31 October 2013 alternatively an electronic return must be filed by 31 January 2014.

5. During the tax year 2012-2013 the partners of the Appellant were Peter Haigh and Mrs P M Roberts.

25 6. The Appellant had appointed Bradshaw, Johnson & Blackwell, Accountants of Barnsley as its agent.

7. The representative partner of the Appellant suffers from the effects of L1/L2 Decompression and microdiscectomy. Because of this the agents consider that they do more than is normal for a client.

30 8. In respect of the year 2012-2013 the Appellant's agent submitted the Partnership tax return on 9 October 2013. It was received by HMRC on 14 October 2013. The return contained an arithmetical error in box 3.64 and could not be accepted by HMRC. On 5 November 2013 HMRC returned the Tax return to the Appellant but did not inform the agent of their action. HMRC extended the deadline for submission of a paper return to 29 November 2013 but as HMRC had not accepted the return that was
35 forwarded to them it was not considered as being submitted so as an alternative an electronic return could be submitted by 31 January 2014.

40 9. As a valid paper return had not been submitted by the extended deadline of 29 November 2013 nor had an electronic return been submitted by 31 January 2014 HMRC issued a notice of penalty assessment on each partner on 18 February 2014 each in the amount of £100. HMRC say the penalty was imposed in accordance with Paragraph 25(2) of Schedule 55 of the Finance Act 2009. It is disappointing that a copy of the penalty notices was not provided to the Tribunal.

10. Appellant's submissions

5 In a letter dated 27 February 2014 the Appellant's agent lodged an appeal against late filing penalties form SA371 which argued that the Partnership Tax Return had been submitted on 9 October 2013 and included a copy of the covering letter forwarding the return in support of that statement.

11. In a letter to the Appellant dated 24 March 2014 HMRC rejected the appeal and offered a review. The letter was copied to the Appellant's agent.

12. In a letter dated 26 March 2014 the Appellant's agent requested a review. The letter included the following points

10 The Partnership Tax Return had been submitted by the agent with a covering letter which clearly showed their name address and telephone number.

HMRC are aware that the appellant's had appointed the agent.

15 It asked the question "As the appellant's agent, if you can send us a copy of a letter sent to our client on 24 March 2014 why couldn't you send us a copy of the letter that was returning the very important partnership Return"

Our client, even though he is working full time, suffers from L1/L2 Decompression and microdiscectomy and as agents we do more than is normal for this client. We therefore feel as a civil service you have not looked after the client's best interests by failing to inform us that the partnership return had been sent to him."

20 If you had done this we would have followed this up immediately, made the necessary adjustments and returned it back to you within your deadline of 29th November 2013."

They also commented "We have received direct from HMRC original Partnership Returns for some clients to be amended by ourselves.

25 Why therefore send the original Partnership Return to the Partnership when we as agents submitted the Partnership Return to you.

We can understand if the client had sent the Partnership return direct to you, that you would then send it back from where it came from."

30 13. HMRC issued their review conclusion on 24 April 2014 to Mr. P Haigh and sent a copy to his agent. The conclusion was that the decision to charge the penalties was correct and no reasonable excuse had been provided.

They said that as the return had been sent back to the appellant it was his responsibility to ensure the completed return was sent back by the due date. They pointed out that the appellant had failed to do this.

35 They also said that as the return is still outstanding both the appellant and agent have not acted in a timely manner.

14. On 7 May 2014 the agent replied to HMRC. The letter included the following:

“The basis of our appeal to the Tribunal is that all taxpayers are treated equally.

5 Our firm submitted the Partnership Return on our letter-headed paper direct to the Inland Revenue. Despite this, the Inland Revenue returned the tax return direct to the client. We were not informed that this action had been taken by the Inland Revenue and we feel that as we submitted the Return the Inland Revenue should have either sent the Return back to us as they did for another client (copy attached) or have informed us that they had forwarded it direct to the client.

It would appear that this client has not been treated the same way as the other client.

10 15. On 16 May 2014 HMRC replied to the appellant thanking them for the agent’s letter of 7th May and saying that they could not undertake a second review. They copied this response to the Appellant’s agent.

15 16. The agent lodged a Notice of Appeal dated 7 May 2014 with the First-tier Tax Tribunal. The Grounds of Appeal attaches the letter of 7 May 2014 and points out that the a letter to the agent re another client says “Thank you for sending the enclosed Partnership Tax Return. Unfortunately I am unable to accept it.”

17. HMRC Submissions

20 HMRC say the Appellant has been making Partnership Tax Returns since 1996-97 and they therefore consider them to be experienced with the self-assessment system and fully aware of their tax obligations.

HMRC say the legislation (Taxes Management Act 1970 Section 12AA(2) provides that the representative member of the partnership is required to correctly complete and file a return by the legislative deadlines. The appellant’s failure to do this has resulted in penalties.

25 HMRC say that there is no evidence that the health issues of the appellant had any direct effect on his ability to file the Partnership Tax Return on time or throughout the failure period.

HMRC say that there is no evidence to show that any of their letters to the appellant were undelivered.

30 HMRC say that the Appellant has no reasonable excuse for the failure to submit a Partnership Tax return on time.

35 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*). In their view there are no special circumstances which would allow them to reduce the penalty.

19. HMRC say that at the date of submission of their statement of case (12 June 2014) a valid return still had not been received from either the appellant or his agent.

20. HMRC make no explanation of why they failed to send a copy of their letter to the appellant dated 5 November 2013 to his agent who had sent the return to them.

5 **21. Tribunal's Observations**

The Tribunal has considered these submissions and comments as follows:

It is the Appellant's responsibility to submit returns on time. The appellant has been making partnership Tax Returns since 1996/97 and ought to have been aware of the deadlines for submitting tax returns.

10 The penalty is therefore due unless the appellant can establish a reasonable excuse for the delay as referred to in Paragraph 23(1) Schedule 55 Finance Act 2009.

A reasonable excuse is normally an unexpected or unusual event that is unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their obligation to file on time.

15 18. When someone makes an error it is normal practice to give that person an opportunity to correct it. It must have been clear to HMRC from the agent's letter of 9 October 2013 that the agent had completed the Partnership Tax Return on behalf of their client. It appears that the agent only discovered there was a problem after the penalty notices were issued on 18 February 2014. At that point their argument against
20 the penalty was that they had sent the return on 9 October 2013 obviously still unaware it had been returned to their client because of an arithmetical error. It was only when HMRC sent the agent a copy of the letter of 24 March 2014 that they learned what had happened. The Tribunal accepts the agent's submission that it would have been a simple matter for them to correct the arithmetical error and send in the
25 corrected return by the revised deadline date of 29 November 2013. HMRC have offered no explanation as to why they did not send a copy of the letter returning the tax return for correction to the agent who had submitted the return to them.

19. Paragraph 23(2)(b) of Schedule 55 Finance Act 2009 states:

30 "where the appellant relies on any other person to do anything, that is not a reasonable excuse unless the appellant took reasonable care to avoid the failure."

In this case the other person that the appellant is relying on is HMRC in that he is relying on them to be consistent in the way they correspond with taxpayers and their agents. The appellant would have reasonably expected HMRC to have sent the agent who had sent them the tax return a copy of the letter dated 5 November 2013 sending
35 the return to the appellant for correction. He would have considered the correction of a simple arithmetical error was an easy matter to resolve. It is difficult to understand how the appellant could have prevented the failure by HMRC.

40 20. In the Tribunal's view HMRC's failure to send to the agent a copy of their response to the appellant constitutes an unexpected event that was beyond the taxpayer's control and constitutes a reasonable excuse for the appellant. The appellant

would have expected the opposite to what happened. He would have expected HMRC to have copied in the agent who would then have promptly attended to the correction of a simple arithmetical error on his behalf. HMRC had copied the agent on other correspondence.

5 21. Paragraph 23 (2) (c) of Schedule 55 Finance Act 2009 states:

“where the appellant had a reasonable excuse for the failure but the excuse has ceased, the appellant is to be treated as having continued to have the excuse if the failure is remedied without reasonable delay after the excuse has ceased.”

10 As in their letter of 5 November 2013 HMRC thought it fair to give the appellant 24 days until 29 November in which to reply the Tribunal considers that the reasonable excuse ceased 24 days after the Appellant’s agent became aware of the problem. It is clear from the correspondence that the agent had received the letter of 24 March 2014 by the 26 March 2014 so in the Tribunal’s view the reasonable excuse for not submitting a Partnership Tax Return ceased on 19 April 2014. Therefore the penalty notices issued on 18 February 2014 should be set aside and the appeal against them is
15 allowed.

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
20 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 PRESIDING MEMBER

RELEASE DATE: 13 August 2014

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