



TC03837

Appeal number: TC/2014/02554

Income tax – partnership tax return – penalty for late submission – whether reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SUE'S NO 2 STALL

Appellant

- and -

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

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 18.07.2014 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 07.05.2014 (with enclosures), HMRC's Statement of Case submitted on 02.06.2014 (with enclosures) and the Appellant's Reply dated 11.06.2014 (with enclosures) [anything else.

DECISION

1. The Tribunal decided that the Partnership Tax Return Late Filing Penalties
5 dated 18.02.2014 in respect of the year 2012-2013 in the total sum of £200 were properly issued by the Respondents.
2. The appeal is dismissed.
3. The Tribunal found that the filing date for the Partnership Return was
31.10.2013 for a non-electronic return. A paper Partnership Return was received by
10 the Respondents on 22.01.2014 i.e. over two months late.
4. The Tribunal further found that there was no reasonable excuse for the late filing of the 2012-2013 Partnership Return.
5. The Appellant or its agent had first attempted to file the Return on 02.12.2013
(over one month late) but it was unsatisfactory and was sent back. As a concession the
15 Respondents extended the paper filing date to 27.12.2013.
6. On 24.12.2013 the Respondents received another unsatisfactory Return and sent it back. It was only on 22.01.2014 that a satisfactory Return was received by the Respondents.
7. It is the responsibility of the Appellant, and in particular the representative
20 partner, to file the Return on time. That responsibility cannot be transferred to another person acting on the Appellant's behalf: delegation to a third party who fails to complete the Return in a satisfactory manner does not amount to reasonable excuse.
8. An unsatisfactory Return is a Return that fails to satisfy the filing requirement of Section 12AA of the Taxes Management Act 1970. The Respondents properly treat
25 such Returns as if they had not been received.
9. The inability of an agent to make an online submission of the Return does not amount to a reasonable excuse.
10. Any concession made to another taxpayer has no relevance to the present case.
11. The fact that the Respondents addressed correspondence to the Appellant rather
30 than to their agent does not affect the imposition of the penalties. Ultimate responsibility for filing the Return rested with the Appellant.
12. There are no special circumstances that would entitle the Appellant to a reduction of the penalty pursuant to Paragraph 16 of Schedule 55 of the Finance Act 2009.
13. The penalties have correctly been imposed on each partner in accordance with
35 Paragraph 3 of Schedule 55 of the Finance Act 2009.

14. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and of due diligence and a proper regard for the fact that the Return would become due on a particular date would not have avoided the default. The facts and chronology of events, set out in the Notice of Appeal and the Respondents' Statement of Case, disclose that such foresight and diligence by the Appellant would have avoided the default.

15. In so far as the Appellant may suggest that the imposition of the penalty is disproportionate, unjust or unfair, those arguments have already been disposed of by the Upper Tribunal in *HMRC v Hok* UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Limited* UKUT 418 (TCC). In the former it was made clear that the First-tier Tribunal has no jurisdiction to determine the fairness of a penalty imposed by statute. It is plain from a perusal of the latter that a penalty of the magnitude of that imposed in this case could not be described as disproportionate even if the Tribunal had jurisdiction to deal with the issue.

16. 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.

**WDF COVERDALE
TRIBUNAL JUDGE**

RELEASE DATE: 23 July 2014