



TC03916

Appeal number: TC/2014/01316

INCOME TAX – late submission of partnership tax return – Whether reasonable excuse for late submission of return – No.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CASTLE FARM PARTNERSHIP

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 12 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 6 March 2014, and HMRC's Statement of Case dated 25 March 2014 with enclosures. The Tribunal wrote to the Appellant on 1 April 2014 indicating that if he wished to reply to HMRC's Statement of Case they should do so within 30 days. The appellants' agent sent a letter dated 8 April 2014 in response. A small correction to the appeal details on page 1 of their statement of case was advised by HMRC to both the Tribunal and the Appellant on 28 May 2014.

DECISION

1. Introduction

This considers an appeal against a penalties totalling £600 levied by the Respondents (HMRC) on each of the six partners 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

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

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

4. Facts

During the tax year 2012-2013 the partners of the Appellant were Mr. Adam B. Camp, Mr. M. Babb, Mr. Christopher F. Camp, Mr. J.K. Camp, Mrs. L.E. Williams and Mr. Richard Wiseman. Mr. Adam B. Camp is the representative partner.

5. The Appellant had appointed Sealy Shaw, Accountants Ltd. of Derby as its agent.

6. 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.

7. In respect of the year 2012-2013 a non-electronic Partnership tax return was received by HMRC on 11 November 2013. It was processed by them on 29 November 2013.

8. As the non-electronic return had not been submitted by the deadline of 31 October 2013 HMRC issued a notice of penalty assessment on each partner on 3 December 2013 each in the amount of £100.

9. Appellant's submissions

In a letter dated 10 December 2013 the Appellant's agent appealed against the late filing penalties. They wrote "We would like to appeal against this penalty as the partnership return was submitted by paper on 11 November 2013. This was submitted by paper because a UTR (Unique Taxpayer Reference) number was not issued for one of the partners and so we were unable to submit this online."

10. In a letter to the Appellant dated 24 December 2013 HMRC rejected the appeal and offered a review. HMRC commented ".....I note that you were able to submit the 2011-2012 Partnership tax return on time with all of the partners UTR's. It appears that the partnership had the same partners in 2011-2012 and 2012-2013 therefore I do

not agree you have reasonable excuse for the late submission of the 2012-2013 partnership tax return. The letter was copied to the Appellant's agent.

11. In a letter dated 2 January 2014 the Appellant's agent requested a review. The letter included the following points:

5 "We are not able to file the partnership tax return online as one of the partners, Mr. R. Wiseman, is not able to be issued with a unique tax reference. As a special case Mr. Wiseman is granted an extension to the normal paper deadline to 31 January 2014 for filing his own self-assessment return and we argue that the same circumstances should be extended to the filing of the partnership return. We enclose a copy of the letter that
10 was sent to Mr. Wiseman by HMRC for your perusal.

Mr. Wiseman actually ceased being a partner in the business on 5 April 2013 so the 2012/13 partnership return will be the last one that is affected by this."

The attached letter included the following:

15 "Unfortunately your circumstances fall into the category where we are only able to receive your return on paper and because of this the deadline for filing your return has been extended to 31 January 2014. You need to file your return by this date to avoid any penalty."

12. HMRC issued their review conclusion on 11 February 2014 to Mr. A B Camp 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. The letter included the following:

20 Under Section 12AA TMA 1070 the representative partner was required to deliver for the year ended 5 April 2013 a non-electronic return by 31 October 2013 or an
25 electronic return by 31 January 2014. The paper return submitted, which was due by 31 October 2013, was received on 6 November 2013*. Therefore it was late and a penalty was chargeable.

*The Tribunal has taken the date of 6 November 2013 as a typographical error as other papers from both the appellant and HMRC show a date of 11 November 2013.

30 The letter also included:

"From the correspondence your agent has sent I can see that the main reason for the appeal is that one partner, Mr. R. Wiseman, was not able to file his return online and the paper deadline was extended to 31 January 2014. You believe that this should also
35 be extended to the partnership return.

While one partner may have been given an extension to the filing date in relation to his own individual tax return, I cannot agree that this would extend to the partnership return. In the previous year, 2011-2012, you were able to send in the partnership return before the paper filing date of 31 October. Therefore, I believe that the 2012-
40 2013 return could have been sent in before 31 October 2013."

13. On 6th March 2014 the Appellant's agent forwarded by email a Notice of Appeal dated 6 March 2014 to the First-tier Tax Tribunal. The Grounds of Appeal were:

45 The partnership tax return was filed in paper format because HMRC would not allow us to file it online. This is because one of the partners is not able to be issued with a unique tax reference.

The paper return was filed at the beginning of November which is after the deadline of 31st October 2013. However the partner in question was granted an extension to file his paper self-assessment return until 31 January 2014 and so we believed the same would apply to the partnership return.

5 HMRC argue that in the previous year, the paper return was filed by 31 October but we would argue that because of our client's unique circumstances, our client's choice of filing a paper return or online return has been withdrawn by HMRC.

14. HMRC Submissions

10 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.

15 15.HMRC say the representative partner of the Appellant had the option to file the 2012-2013 Partnership Tax Return online and was not prevented from doing so by HMRC. The representative partner was aware of Mr. Wiseman's UTR from at least 31 August 2012. Therefore the representative partner was aware of Mr. Wiseman's UTR well in advance of the 2012-2013 filing dates.

20 16. HMRC acknowledge that the filing date for Mr. Wiseman's 2012-2103 personal tax return was extended to 31 January 2014. However that concession did not extend to the Partnership tax return nor did it negate the responsibility of the representative partner to ensure it was filed by the due date. In the absence of any notification from HMRC it was unreasonable for the representative partner to believe that a similar concession had been granted in respect of the 2012-2013 Partnership Tax return.

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

30 18. HMRC say the penalty was imposed in accordance with Paragraph 3 of Schedule 55 of the Finance Act 2009. The penalty is also imposed in accordance with Paragraph 25(2) of Schedule 55 which provides for a penalty to be levied on each partner. These penalty notices are the subject of this appeal and it is therefore most disappointing that a copy of the penalty notices was not provided to the Tribunal.

35 19. 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.

20. Tribunal's Observations

The Tribunal has considered these submissions and comments as follows:

40 It is the Appellant's responsibility to submit returns on time and so ought to have been aware of the deadlines for submitting tax returns. 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.

21. 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.

5 22. It is clear to the Tribunal that the Appellant's return for 2011-2012 included Mr. Wiseman's UTR. This was known to the representative partner Mr. A.B. Camp from at the latest 31 August 2012. If there has been a failure in communication between the representative partner of the Appellant and the Appellant's agent this cannot be considered as a reasonable excuse for the late return.

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

15 24. There has been no evidence produced by the Appellant to show that HMRC had granted an extension to the deadline for submitting a non-electronic Partnership Tax return. There was no evidence to show that either the Appellant or his agent had made any enquiries of HMRC to confirm the position. They seem to have assumed that the extension given by HMRC to Mr. Wiseman in respect of his personal tax return also applied to the Partnership Tax return. In the Tribunal's view this does not constitute a reasonable excuse for the late return.

20 25. Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none. The Tribunal sees no reason to disagree.

25 26. HMRC has applied the six late filing penalties of £100 in accordance with legislation. The appellant has not established a reasonable excuse for the late submission of his Partnership tax return for the period 2012-2013. There are no special circumstances to allow reduction of the penalty. Therefore the appeal is dismissed.

30 27. 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.

40 **PETER R. SHEPPARD**
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 12 August 2014