



**TC06662**

**Appeal number: TC/2018/00914**

*INCOME TAX – partnership return – submitted late – late filing penalty and daily penalty – problems with agent authorisation – no UTR – whether reasonable excuse – no – no submissions from HMRC on daily penalty – appeal upheld in part*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**RPM (a partnership)**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ANNE FAIRPO**

**The Tribunal determined the appeal on 27 June 2018 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 10 January 2018 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 16 March 2018.**

## DECISION

### Introduction

5 1. This is an appeal against late filing penalties in respect of a partnership return for the tax year 2015/16, being a late filing penalty of £100 and a daily penalty of £170. These penalties are payable by each of the relevant partners in the partnership (para 25, Schedule 55 Finance Act (FA) 2009). An appeal by the nominated partner against the penalties is treated as a composite appeal on behalf of all of the relevant  
10 partners in respect of each of their liabilities to penalties (para 20, Schedule 55 FA 2009).

2. The appeal document refers to the amount under appeal being £440, made up of the £100 late filing penalty and two amounts of daily penalties of £170, one for each partner. As noted above, an appeal by the nominated partner is treated as a composite  
15 appeal by all of the partners against the penalties issued to them and so this decision will refer to the late filing penalty and the daily penalty in the singular rather than in respect of each separate partner.

### Background

3. The SA400 (registration of partnership form) for the RPM partnership was received by HMRC on 16 March 2017. The partnership was stated to have a  
20 commencement date of 1 August 2015.

4. HMRC issued the partnership with a UTR number and a notice to file a return for the tax year 2015/16 on 30 March 2017. The deadline for filing the return was set as 6 July 2017, whether filed as a paper or electronic return, as the notice to file was  
25 given after 31 October 2016 (s8(1G) Tax Management Act (TMA) 1970).

5. The return for the 2015/16 tax year was received electronically by HMRC on 23 October 2017.

6. A late filing penalty of £100 was issued to each partner on 11 July 2017. A late filing daily penalty of £170 was issued on 24 October 2017.

### 30 Appellant's submissions

7. The appellant's submissions in respect of the late filing can be summarised as follows:

(1) The accountant for the partnership was unable to file a return on behalf of the partnership as HMRC had failed to act on the form 64-8 which had been  
35 submitted four times between September 2015 and September 2017. There was no way to call the Agents Maintainer team to check the progress of the 64-8 forms.

- (2) The accounts had been prepared and had been ready to be submitted since September 2016;
- (3) The partnership's UTR had only been issued earlier in 2017;
- 5 (4) The partnership did not receive a return said to have been issued by HMRC on 30 March 2017 and the partnership's accountant had not been notified that such a return had been issued. The appellant asked "has the whole business arisen in the absence of this alleged return?";
- (5) The accountant had had IT problems which delayed the installation of commercial software required to submit the partnership return online.
- 10 8. For these reasons, it was submitted that the partnership had a reasonable excuse for the late filing of the partnership return for the 2015/16 tax year.

### **HMRC's submissions**

9. HMRC's submissions can be summarised as follows:
- 15 (1) HMRC records show that a form 64-8 authorising the accountant was first received on 16 May 2017. HMRC were unable to trace the accountant from the 64-8 and therefore requested further information. The accountant was added to the partnership record on 31 August 2017 when the further information was received;
- 20 (2) The partnership bears the ultimate responsibility for ensuring that its tax obligations are met and that obligation cannot be transferred to a third party acting on behalf of the partnership (s7, Part 2, TMA 1970);
- (3) A notice to file was issued to the partnership on 30 March 2017 and HMRC have no record of post being returned undelivered from the partnership address;
- 25 (4) Partnership returns have always required the installation of commercial software for online filing;
- (5) The penalty notices issued to the partners on 11 July 2017 should have made it clear to the partners that their 2015/16 return had not been filed; HMRC have no record of these notices being returned undelivered.
- 30 10. HMRC have considered whether special circumstances apply, including the appellant's submission that the delay in issuing a partnership UTR delayed the submission of the return, and submit that there are no special circumstances which would merit a reduction of the penalty.
- 35 11. HMRC submitted that there was no reasonable excuse for the late filing of the penalty and that the £100 late filing penalty should be confirmed.

## Discussion

### *Daily penalty*

12. Although HMRC note at the start of their statement of case that the appeal is against both a late filing penalty of £100 and a late filing daily penalty of £170, their statement of case contains no further reference or any submissions as to the late filing daily penalty of £170. Indeed, in the section on page 7 of the statement of case titled “Submission:” HMRC only “ask that the appeal is dismissed and the £100 late filing penalties are confirmed”.

13. As HMRC have made no submissions with regard to the late filing daily penalty of £170 and have not asked for that penalty to be confirmed I find that HMRC are no longer pursuing that penalty and so the appellant’s appeal in respect of the partnership return daily penalty of £170 is upheld.

### *Late filing penalty*

14. The relevant law in this area is:

(1) Under s 12AA (2) TMA 1970 where a partnership is sent a return the representative partner is required to complete it and send it back by the filing date;

(2) Section 93A (2) TMA 1970 stipulates that where the representative partner fails to comply with the notice all partners are liable to a penalty of £100 each. The penalty applies to each partner who was a member of the partnership during the return period.

15. It is not disputed that the partnership was registered with HMRC in March 2017 and it is not disputed that a UTR number for the partnership was issued on 30 March 2017.

16. In a review conclusion letter of 15 December 2017 HMRC stated that “the partnership return was issued on 30 March 2017”. The appellant denies having received that return. However, in a decision letter dated 17 October 2017, HMRC state that a “notice to file for 2015/16 was issued on 30 March 2017 [informing the partnership] that you had until the 6 July 2017 to file [the return]” and the appellant does not deny having received that notice to file. Indeed, the response to that decision letter refers only to difficulties with registration of the agent authorisation.

17. Accordingly, I find that the appellant received the notice to file sent on 30 March 2017 and was therefore aware of the need to file a return for the 2015/16 tax year by 6 July 2017. It is unnecessary to establish whether or not a physical return for completion was also sent at the relevant time.

18. There is no statutory definition of “reasonable excuse”; it is an objective test to be considered in the circumstances of the particular case. The test is what a reasonable and prudent taxpayer intending to comply with their tax obligations, in the position of the appellant, would have done in the same circumstances.

19. The appellant submits that it has a reasonable excuse because the delay in filing was caused by the accountant being unable to access the online filing system as his authorisation had not been processed by HMRC and, once authorised, by problems in installing commercial software required to file the return online.

5 20. The notice to file set the same filing deadline, 6 July 2017, for both paper and online filing. There was no requirement, therefore, to file the return online. There was also no requirement that the accountant submit the return – the appellant does not give any reason why the return could not have been prepared on paper by the accountant and then signed and submitted by the partnership directly.

10 21. I note that the grounds of appeal include the information that the partnership’s accountant had downloaded a paper return for the 2016/17 year and had submitted that to HMRC on 6 October 2017. No reason is given as to why a paper return was not similarly downloaded and completed for the 2015/16 tax year.

15 22. Although the correspondence notes that the return could not be filed until the UTR was issued, it is not disputed that the UTR was issued in March 2017 and was therefore available well before the filing deadline in July 2017.

23. I consider that a reasonable prudent taxpayer, in these circumstances, would have submitted a paper return directly by the filing deadline. The appellant has therefore not established that it has a reasonable excuse for the delay in filing the partnership return for the 2015/16 tax year and so each relevant partner is liable to the late filing penalty of £100.

### **Decision**

24. The appeal is upheld in respect of the daily penalty of £170 but dismissed in respect of the late filing penalty of £100, such that the £100 late filing penalty is confirmed.

25. 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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**ANNE FAIRPO**

**TRIBUNAL JUDGE  
RELEASE DATE:**

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