



TC06764

Appeal number: TC/2017/08169

INCOME TAX – late filing penalties – individual returns – whether reasonable excuse – no – partnership returns – whether in partnership – no – appeal partly dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KENROY COKE

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE ANNE FAIRPO
MR TONY HENNESSEY**

Sitting in public at Manchester on 23 January 2018

The Appellant appeared in person

Mr McKinley, presenting officer for the Respondents

DECISION

Introduction

- 5 1. The appellant is appealing against penalties that HMRC have imposed under Schedule 55 of the Finance Act 2009 (“Schedule 55”) for a failure to submit annual self-assessment returns for the tax years 2011/12, 2012/13 and 2013/14 and partnership tax returns for the tax years 2012/13 and 2013/14 on time.
2. The penalties that have been charged can be summarised as follows:
- 10 (1) 2011/12 (self-assessment return)
- (a) a £100 late filing penalty under paragraph 3 of Schedule 55 imposed on 12 February 2013
 - (b) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on 14 August 2013
- 15 (2) 2012/13 (self-assessment return)
- (a) a £100 late filing penalty under paragraph 3 of Schedule 55 imposed on 18 February 2014
 - (b) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on 18 August 2014
 - (c) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on 18 August 2014
 - (d) a £300 “twelve month” penalty under paragraph 6 of Schedule 55 imposed on 24 February 2015
- 20 (3) 2012/13 (partnership return)
- (a) a £100 late filing penalty under paragraph 3 of Schedule 55 imposed on 18 February 2014
 - (b) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on 18 August 2014
 - (c) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on 18 August 2014
 - (d) a £300 “twelve month” penalty under paragraph 6 of Schedule 55 imposed on 24 February 2015
- 25 (4) 2013/14 (self-assessment return)
- (a) a £100 late filing penalty under paragraph 3 of Schedule 55 imposed on 18 February 2015
 - (b) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on 22 September 2015
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(c) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on 22 September 2015

(5) 2013/14 (partnership return)

(a) a £100 late filing penalty under paragraph 3 of Schedule 55 imposed on 18 February 2015

(b) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on 22 September 2015

(c) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on 22 September 2015

10 **Appellant’s case**

3. Mr Coke explained that he believed his accountant was dealing with his tax compliance, as he had been appointed to prepare and submit tax returns and Mr Coke had paid him in full. It was not until over a year later that he was informed that returns had not been submitted and that he was liable for penalties. He was unable to contact the accountant and felt badly let down by people he trusted.

4. In the hearing, Mr Coke explained that he was a cook. In 2011/12, he had been working in his girlfriend’s shop, as a chef, until the relationship ended. He had been paid weekly, getting a wage slip from which tax was deducted. When he left that job, one of the customers, Mr Patel, asked him to join a new café that he was starting and cook there.

5. Although the arrangement with Mr Patel was informal, Mr Coke did not believe that he was in a partnership. He had put no money into the new café; he had not seen any accounts for the business; he had not signed any agreement. Mr Patel looked after all of the paperwork for the new business, dealing with purchases, and Mr Coke worked in the kitchen. Mr Coke had expected to be paid regularly, as in his previous job, although he found that he was paid by Mr Patel “as and when”, not consistently.

6. Mr Coke signed the tenancy agreement for the premises, but the rent was to be paid by Mr Patel. Mr Coke did not know why he was asked to sign the tenancy agreement but agreed to do so because he thought it would help. He later found out that Mr Patel had not paid the rent; the landlord closed down the café and Mr Coke was being pursued by the landlord for the unpaid rent. Mr Coke had no access to the premises after the café closed and does not know where Mr Patel is.

7. Mr Coke did not understand why he needed to complete a partnership return, and did not have any accounts from which to prepare the return. He had done his best to submit all outstanding returns, based on the information available to him from his bank account.

HMRC’s case

8. HMRC submitted that the following were the issues to be decided:

- (1) Whether the personal and partnership returns were correctly issued;
- (2) Whether the returns were received late;
- (3) Whether the penalties were correctly charged;
- (4) Whether the appellant had a reasonable excuse in effect throughout the default period.

Self-assessment returns

9. HMRC explained that Mr Coke had registered for self-assessment online on 26 September 2011. A notice to file and a return for 2011/12 were issued to the appellant and he had not denied receiving them. Late filing penalties, including warnings of daily penalties, were issued on the dates set out in the summary. Mr Coke had contacted HMRC about the penalties in June 2013 and early July 2013 and had been advised to complete the return online. The return for 2011/12 was eventually filed online on 31 July 2013.

10. Notices to file and returns were also issued for 2012/13 and 2013/14. The return was not received on time and late filing penalties were issued on the dates set out in the summary. The returns were eventually received on 28 July 2015 and 29 July 2015.

Partnership returns

11. The partnership was registered in November 2012. A partnership return for 2012/13 was issued to the business address on file. As it was the first year of trading, no nominated partner was on file. The return was not received on time and penalty notices were issued on the dates set out in the summary. A return was filed on 21 September 2015, although Mr Patel also subsequently filed a return in July 2017.

12. The 2013/14 partnership return was also filed late, on 24 September 2015, following the issue of late filing penalties as set out in the summary.

Discussion

13. It was not disputed that the returns were filed late and we consider that HMRC established that the penalties were properly issued and properly calculated. The question therefore is whether the appellant has a reasonable excuse for the failure to file the returns on time.

14. 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.

Self-assessment returns

15. With regard to Mr Coke's self-assessment returns, his grounds of appeal are that he believed that his accountant was dealing with these. There is also some question as to whether he was in fact self-employed but, on balance, we consider that the returns were properly issued and should have been filed accordingly.

16. Unfortunately, we consider that it is well-established that reliance on a third party in these circumstances does not amount to a reasonable excuse for a late filing of the returns. It may be a mistake to have done so but, as set out in *Gammoss [2012] UKFTT 315 (TC)*, "the Act does not provide shelter for mistakes, only for reasonable excuses."

17. With regard to the self-assessment returns, therefore, the appeal is dismissed and the related penalties upheld.

Partnership returns

18. With regard to the partnership returns, we concluded from the evidence before us that Mr Coke was not in fact a partner in a partnership, notwithstanding the fact that he had been registered as such at HMRC. In order to be in a partnership, a person must fulfil the requirements of s1 Partnership Act 1890: that is, they must be in business with at least one other person with a view to profit.

19. We considered that Mr Coke was a credible witness and that, from his evidence, he believed that he was engaged as a cook and was expecting to be paid a fixed amount on a regular basis. He did not expect to receive a share of profits. He had signed the tenancy agreement as a favour to the person engaging him but did not expect to have to make any payments in relation to the tenancy. From subsequent events, signing the tenancy agreement was clearly a mistake and indicated a misplaced trust but we do not consider that it made him a partner in a partnership. Neither does the fact that he was registered with HMRC as a partner in a partnership.

20. Accordingly, as we have concluded that Mr Coke was not a partner in a partnership, we consider that he cannot have been required to submit a partnership return for 2012/13 and 2013/14.

21. With regard to the partnership returns, therefore, the appeal is upheld and the related penalties are dismissed.

Decision

22. The appeal is dismissed as to the self-assessment returns and upheld as to the partnership returns.

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23. 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: 12 October 2018

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