



TC03812

Appeal number: TC/2014/02383

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**MRS M A BURNAND
MR P M BURNAND**

Appellants

- and -

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

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 17.07.2014 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 28.04.2014 (with enclosures) and HMRC's Statement of Case submitted on 20.05.2014 (with enclosures).

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 sum of £100 for each of the Appellants were properly issued by the Respondents.

2. The appeal is dismissed.

3. The Tribunal found that the filing date for the Partnership Return was
10 31.10.2012 for a non-electronic return or 31.01.2014 for an electronic return. An electronic return was filed on 25.04.2014 i.e. nearly three months late.

4. The Tribunal further found that there was no reasonable excuse for the late filing of the 2012-2013 Partnership Return.

5. While it is noted that the Appellant Mr PM Burnand had unfortunately suffered
15 from health problems since February 2012 and had previously undertaken the partnership's responsibilities with regard to tax returns nevertheless Mrs MA Burnand is shown as the representative partner on the 2012-2013 Partnership Return. She may not have been wholly familiar with the legal requirements for filing the Partnership Return but it is noted that she enlisted the assistance of her daughter who had some knowledge of tax returns, albeit perhaps limited to personal returns.

20 6. On 06.04.2013 the Respondents issued to the representative partner a notice to file a 2012-2013 partnership return under the partnership unique reference of 2432543628. This should have alerted Mrs Burnand to the need to file the Return.

7. The partnership of Mr and Mrs Burnand did not cease in 2012: it continued
25 throughout the period 06.04.2012 to 05.04.2013. A Partnership Return was therefore, required.

8. Inclusion of shares of the partnership profits on the Appellants' individual Returns will have put the Appellants on notice that a 2012-2013 Partnership Return was required.

9. It has not been demonstrated that the Appellant Mr Burnand was incapable of
30 controlling his affairs in the period 31.01.2014 to 24.04.2014: his individual return was filed online on 10.11.2013. Furthermore Mr Burnand was recorded as the representative partner when the 2011-2012 partnership return was filed online before the 31.01.2013 deadline.

10. Ignorance of the law and of the requirement to submit a Partnership Annual
35 Return is not a reasonable excuse.

11. It is noted that the Penalty Notice was issued in 18.02.2014; the representative partner will thereafter have been aware of the legal requirement to file a Partnership Return. The Return was not, however, filed until 25.04.2014.

12. The Tribunal is unable to identify any Special Circumstances that would entitle the Appellants to a mitigation of the penalties in this case. This appeal is not concerned with specialist or obscure areas of tax law: it is concerned with the ordinary everyday responsibilities of a partnership to ensure that a 2012-2013 partnership tax return was filed by the legislative due date.

13. 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 Appellants would have avoided the default.

14. In so far as the Appellants may suggest that the imposition of the penalties 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 case.

15. 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: 18 July 2014