



TC03968

Appeal number: TC/2014/03026

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**MR DYLAN DAVIES
(as representative partner of
ABLE CLEANING SOLUTIONS LLP)**

Appellant

- and -

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

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 21.08.2014 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 29.05.2014 (with enclosures) and HMRC's Statement of Case submitted on 24.06.2014 (with enclosures).

DECISION

1. The Tribunal decided that the Partnership Tax Return Late Filing Penalty Notices dated 18.01.2014 in respect of the year 2012-2013 in the sum of £100 each were properly issued by the Respondents.
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2. The appeal is dismissed.
3. The Tribunal found that the filing date for the Partnership Return was 31.01.2014 for an electronic return. The return was filed electronically on 28.02.2014
10 i.e. four weeks late.
4. The Tribunal further found that there was no reasonable excuse for the late filing of the 2012-2013 Partnership Return.
5. Mr Dylan Davies was the representative partner of the Appellant. This is not in dispute. As the nominated representative it was his responsibility to ensure that the
15 partnership tax return for the year 20-12-2013 was submitted on time.
6. The Tribunal notes that Mr Davies left the partnership on 27.12.2012 but he remained the representative partner. The partnership was obliged to file a partnership tax return for the year 2012-2013 and this also does not appear to be in dispute. Mr Davies was a partner for at least part of the relevant tax year i.e. from April to
20 December 2012 and he had the ongoing obligation to file the partnership tax return.
7. As the Respondents have pointed out to the Appellant, if he did not have access to the actual figures he could have used estimates and amended them at a later date.
8. The Respondents have also observed that their website provides advice about leaving a partnership: "If the partnership itself has been wound up, the nominated
25 partner will need to complete the partnership return to cover the final period of trading." (Folio 9 enclosed with the Respondents' Statement of Case).
9. The Tribunal has considered whether any Special Reduction, pursuant to Paragraph 16 of Schedule 55 of the Finance Act 2009, can be applied to the Appellant. While the departure of Mr Davies from the partnership may have been an
30 unhappy event nevertheless the Tribunal can identify no special circumstances which would enable the penalties to be reduced below the statutory minimum figure of £100.
10. Mr Davies is the representative partner who has initiated this appeal but the Respondents have properly treated this appeal as an appeal against the determination of penalties imposed on all of the partners in respect of the failure to file the Return
35 on time. The Tribunal's decision is likewise applicable to all of the partners at the relevant time i.e. during the tax year 2012-2013.
11. 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.

5 12. 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* [2012] UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Limited* [2012] 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.

10 13. 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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**WDF COVERDALE
TRIBUNAL JUDGE**

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RELEASE DATE: 28 August 2014