



TC01712

Appeal number: TC/2011/05160

Section 93A (2) Taxes Management Act 1970 – late filing of partnership return – paper return 94 days late – Appellant says unable to file partnership return online as requisite software unavailable unless commercial software purchased – no reasonable excuse – appeal disallowed

FIRST-TIER TRIBUNAL

TAX

ASTRID KOYENI – EFREITEMS (PARTNERSHIP)

Appellant

- and -

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

Respondents

TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 9 November 2011 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 5 May 2011 and HMRC's Statement of Case submitted on 26 August 2011.

© CROWN COPYRIGHT 2011

DECISION

- 5 1. This is an appeal by Astrid Koyeni t/a Efreeitems (partnership) against a £100 penalty imposed on each partner in respect of the late filing of the partnership income tax return for the year ended 5 April 2010.
2. 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.
- 10 3. 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.

Facts of the Appeal

- 15 4.(i) The return for the year ending 5 April 2010 was issued to the partnership on 6 April 2010.
- 4.(ii) The filing date was 31 October 2010 for a paper return or 31 January 2011 if filed online.
- 4.(iii) A paper partnership tax return for the year ended 5 April 2010 was filed on 2 February 2011.
- 20 4.(iv) Penalties in the amount of £100 were imposed on each partner for failure to file the 2009/10 partnership tax return by the filing deadline.

HMRC's submissions

- 25 5. The filing date for the partnership was 31 October 2010 for a paper return but the return was not filed until 2 February 2011. The Appellant had the option to file a return online by 31 January 2011.
6. The filing dates and the consequences of missing them are shown on the front of the partnership return. This information is also available on HMRC's website. In this instance the partnership return was issued on 6 April 2010, substantially in advance of both paper and online filing dates.
- 30 7. HMRC submit that the period of default is from 31 October 2010 until 1 February 2011, that is 94 days.

Appellant's Grounds of Appeal

- 8.(i) The Appellant's agent states that the return was submitted to HMRC on 31 January 2011.

8.(ii) The Appellant's agent also states that online filing was not available for partnership returns for the year ended 5 April 2010.

5 8.(iii) The Appellant's agent submits that the partnership did not incur any taxation liabilities for the year, and in fact made a loss in 2009/10. The agent contends that the penalties should be reduced to the figure of any unpaid liability, with the result that the penalties should be nil.

HMRC's response

10 9. Following the introduction of online filing for self-assessment third party commercial software has been required in order to file partnership returns. This is not a new requirement. HMRC is not obliged to provide free software to enable tax-payers to file their returns online. Free HMRC software is available, but only covers personal tax returns and some supplementary pages. Tax-payers who need to complete other returns online, and in this case a partnership tax return, must use commercial software. HMRC's website advises that commercial software is required and provides a list of commercial software compatible with HMRC's self-assessment online.

20 10. HMRC therefore contend that it was the responsibility of the nominated partner to ensure the return was filed on time. The return guidance contains details of the deadlines and consequences of missing the deadlines, and consequently the Appellant has not shown a reasonable excuse for failing to file the 2009/10 partnership tax return by the filing deadline, which was entirely within the control of the nominated partner.

Conclusion

25 11. It is reasonable to expect a business person or its agent to exercise due diligence and a proper regard for compliance with their tax obligations. A notice to file a return was correctly issued and it was the responsibility of the partnership to ensure that the return was filed on time.

30 12. Clearly the tax return was not submitted to HMRC online on 31 January 2011 as contended by the Appellant. A paper return was received on 2 February 2011, 94 days after the paper filing deadline of 31 October 2010. It is incorrect for the Appellant to say that online filing was not available for partnership returns for the year ended 5 April 2010. Online filing for partnership returns was available using appropriate commercial software. Although the partnership made a loss during 2009/10 the penalty cannot be reduced to nil (because any unpaid liability to tax is less than the penalty payable) as this does not apply to partnership late filing penalties.

13. In all the circumstances the Appellant has not provided a reasonable excuse for failing to file the partnership's 2009/10 tax return by the filing deadline and penalties have been correctly charged on each partner.

40 14. 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.



10

MICHAEL S CONNELL

TRIBUNAL JUDGE

RELEASE DATE: 4 January 2012

15

20