



**TC06279**

**Appeal number: TC/2017/03207**

*Income tax - Schedule 55 Finance Act 2009 - penalties for late filing of partnership tax return - Appellant had difficulties accessing UTR number - whether reasonable excuse - on the facts no - appeal dismissed*

**FIRST-TIER TRIBUNAL**

**TAX**

**ANTHONY MARTIN T/A THE SANDWICH BAR**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MICHAEL CONNELL  
MEMBER ANN CHRISTIAN**

**Sitting in public at City Exchange, Albion Street, Leeds on 2 October 2017**

**The Appellant in person**

**Mr Paul Hunter, Officer of HMRC, for the Respondents**

## DECISION

- 5           1. This is an appeal by Mr Anthony Martin ('the Appellant') against decisions by the Respondents ("HMRC") to impose late filing penalties under Schedule 55 of the Finance Act 2009 ("FA") for the tax years ending 5 April 2015, and 5 April 2016.
- 10           2. The total value of the penalties imposed in respect of the failures is £1,980, representing £1,600 late filing penalties for the failure to file, on time, partnership returns for 2014-15 and £380 for 2015-16.
3. Mr. Martin is the representative partner in 'The Sandwich Shop' partnership.
- 15           4. For the tax year 2014-15 under s 12AA Taxes Management Act ("TMA") 1970 the representative partner was required to deliver for the year ended 5 April 2015 a non-electronic return by 31 October 2015 or an electronic return by 31 January 2016. The paper return submitted, which was due by 31 October 2015, was received on 28 February 2017. Therefore it was late and penalties were chargeable. The partnership return for 2015-16 was received on 8 June 2017. Therefore it was also late and penalties were chargeable.
- 20           5. If a return is received late, a penalty is chargeable to each partner for late filing unless the representative partner has a reasonable excuse for not filing the return on time.
6. The penalties for late filing of a return can be summarised as follows:
- 25           i. A penalty of £100 is imposed under Paragraph 3 of Schedule 55 FA for the late filing of the Individual Tax Return.
- ii. If after a period of 3 months beginning with the penalty date the return remains outstanding, daily penalties up to a total of £900 are imposed under Paragraph 4 of Schedule 55 FA.
- 30           iii. If after a period of 6 months beginning with the penalty date the return remains outstanding, a penalty of £300 is imposed under Paragraph 5 of Schedule 55 FA.
- iv. If after a period of 12 months beginning with the penalty date the return remains outstanding, a penalty £300 is imposed under Paragraph 6 of Schedule 55 FA.
- 35           The above penalty regime for the late filing of income tax self-assessment returns was introduced in FA with effect from 6 April 2011 in respect of returns for 2010-11 and later years.

7. Penalties were imposed, as set out in the table below.

| <b>Date</b>       | <b>Year</b>  | <b>Description</b>   | <b>Amount</b> |
|-------------------|--------------|--|---------------|
| 25 March 2016     | 2014 to 2015 | Late Filing Penalty under Schedule 55 FA 2009              | £100          |
| 18 September 2016 | 2014 to 2015 | Daily Penalty under Schedule 55 FA 2009                    | £900          |
| 18 September 2016 | 2014 to 2015 | 6 Month Late Filing Penalty under Schedule 55 FA 2009      | £300          |
| 30 March 2017     | 2014 to 2015 | 12 Month Late Filing Penalty for under Schedule 55 FA 2009 | £300          |
| 24 March 2017     | 2015 to 2016 | Late Filing Penalty under Schedule 55 FA 2009              | £100          |
| 8 June 2017       | 2015 to 2016 | Daily filing Penalty under Schedule 55 FA 2009             | £280          |

*Points at issue*

- 5            8. Whether the Appellant had a “reasonable excuse” for the late filing of each of the partnership tax returns for the tax years ending 5 April 2015 and 2016.
9. Whether there are any “special circumstances”, by virtue of which the penalties ought to be reduced.

*Legislation*

- 10           10. The main legislation is detailed below
- Section 12AA Taxes Management Act (TMA) - Return of partnership income
- Paragraph 3 of Schedule 55 to the Finance Act (FA) 2009 - Late filing penalty
- Paragraph 4 of Schedule 55 to the FA 2009 - Daily penalties
- 15           Paragraph 5 and 5(a) of Schedule 55 to the FA 2009 - 6 Months late filing penalty
- Paragraph 6 and 6(a) of Schedule 55 to the FA 2009 - 12 Months late filing penalty

*Background*

- 20           11. The Appellant has been in self-employment since at least the 2005-06 tax year.

12. Every taxpayer who registers for self-assessment is automatically sent a Unique Taxpayer Reference (“UTR”). It is a 10-digit number. It can be found on tax returns and other documents from HMRC, for example, notices to file a return and payment reminders. The UTR can also be found from the taxpayer’s HMRC online account. The UTR is sometimes referred to as a ‘tax reference’.

13. The Appellant’s partnership was first given a UTR on formation of the partnership in 2005-06. The UTR was on each of the partnership returns sent to the partnership for filing. The Appellant appears to have unaware of this.

14. The Appellant also received statements from HMRC, each of which bore the partnership’s UTR. Penalties had been issued to the partnership in 2010-11 for the late delivery of a partnership return. Those statements bore the partnership UTR.

15. The Appellant says that he had previously been using an agent to file the partnership’s tax returns. Business started to deteriorate and so he ceased using the agent after 2013-14. He says that he had paid the agent up to date but did not ask the agent for his file or for the partnership UTR. He knew his own individual UTR but not the partnership UTR and that was the reason the partnership return was late.

16. The Appellant says that he asked HMRC for the UTR and was given an extension to the filing deadline. he filed his individual return before the deadline, but HMRC did not send him the partnership UTR as they had promised. He says he tried to contact HMRC several times during 2016 to obtain the partnership UTR before finally speaking to an adviser who sent him the partnership UTR. He then had problems with the activation code, which further delayed submission.

17. HMRC have checked their records and say that they sent the Appellant the partnership UTR in 2006. It was the Appellant’s responsibility to keep a record of the UTR, but HMRC will always re-send the number if requested.

18. HMRC say that there is no note on record of the Appellant contacting HMRC, after arranging an extension to the filing deadline, to say that he had not received the partnership UTR. He did send form SA400 on 15 February 2016 but this is a form to register a new partnership. As the partnership was already registered, there was no action HMRC could take in response.

19. HMRC send penalty notices in February when returns are not received by 31 January. They also sent letters on 31 May 2016 and 5 July 2016 warning that they were charging daily penalties as the partnership return was over three months late. As all these penalty notices related to the partnership return for The Sandwich Bar, they all showed the partnership UTR.

20. When the Appellant spoke to HMRC’s adviser on 29 November 2016 the advisor re-sent the Appellant the partnership UTR the following day. There is no reason why a similar phone call made before the filing deadline of 31 January 2016 would have produced a different result.

21. There was an unpaid penalty shown on every statement sent to the Appellant from 27 February 2011 to 4 December 2014 (when the statement showed that HMRC remitted the penalty on 27 November 2014). As this was for the 2009-10 partnership return, the statements all showed the partnership UTR.

5 22. Furthermore the Appellant's individual Self-Assessment return filed online on 14 February 2016 shows the correct partnership UTR on the partnership page.

23. Following an exchange of correspondence between the parties from December 2016 to March 2017, the Appellant requested a review of the decisions which led to the imposition of the penalties for 2014-15.

10 24. The review was undertaken on 24 March 2017 but upheld.

25. Further penalties were issued against the Appellant on 24 March and 8 June 2017, in respect of the late filing of the partnership return for 2015-16.

The Tribunal received the Appellant's appeal on 28 April 2017

### *Conclusion*

15 26. It is clear from the appeal that a misunderstanding developed between the Appellant and HMRC. However he does not appear to have conveyed to HMRC that he simply needed his existing UTR number and also (if necessary for an current UTR), an activation code which his former agent could have given him. HMRC seem to have interpreted his request for a UTR as a new request which  
20 would have taken longer to send and involved another activation code. Unfortunately the blame for that, albeit arising from a simple misunderstanding, can only be attributed to the Appellant. He already had a UTR number and from what he told HMRC, it is inherently unlikely that they would have known that.

25 27. We also accept that initially, the Appellant made strenuous efforts to file the partnership returns and that he either mistakenly thought he did not already have a UTR or had not been notified of it. We accept that the Appellant made numerous telephone calls to HMRC in an attempt to resolve his problem and it is therefore difficult to understand why the difficulties went on for so long. At the hearing the Appellant accepted that his UTR was plainly evident on statements  
30 and other documentation sent to him by HMRC.

28. Self-assessment places a greater degree of responsibility on customers for their own tax affairs. This includes ensuring that in the case of a partnership, HMRC receive the partnership return no later than the due date. The tax guidance provided by HMRC and on HMRC's website give plenty of warning about filing  
35 deadlines. It is the customer's responsibility to make sure they meet the deadlines.

29. The Appellant has been making Self-Assessment tax returns both individually and on behalf of the partnership for many years. Therefore, it is

reasonable for HMRC to consider him experienced with the Self-Assessment system including the due dates for paper and online returns.

5 30. HMRC issued a notice to file a tax return for 2014-15 on 6 April 2015, which advised that the deadline for filing online was 31 January 2016. Therefore the Appellant had nine months to complete and submit the tax return.

31. HMRC issued the Appellant a paper tax return for the 2015-16 tax year on 6 April 2016. The return advised that the due date for filing the paper return was 31 October 2017. Therefore he had six months to complete and file a return.

10 32. When a person appeals against a penalty they are required to have a reasonable excuse which existed for the whole period of the default. There is no definition in law of reasonable excuse, which is a matter to be considered in the light of all the circumstances of the particular case.

15 33. In considering whether the Appellant has a reasonable excuse for the default it is necessary to consider his actions from the perspective of a prudent tax-payer exercising reasonable foresight and due diligence and having proper regard for their responsibilities provided by legislation. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond the person's control, which prevents him or her from complying with an obligation which otherwise would have been complied with.

20 34. Where a return is filed after the relevant deadline, a penalty is charged. The later a return is received, the more penalties are charged. This information was clearly shown on the notices to file issued to the Appellant in each year.

25 35. This appeal is not concerned with specialist or obscure areas of tax law. It is concerned with the ordinary every day responsibilities of the Appellant to ensure his tax returns are filed by the legislative date and payment made on time. The Appellant had been successfully filing tax returns since 2005-06 and would have been aware of the filing deadlines. Whilst we accept that the late submissions were not deliberate the obligation is on each tax payer to ensure that their tax affairs are dealt with properly and that they comply with their obligations laid  
30 down in legislation and regulations to file returns on time.

36. We concur with HMRC's submissions and agree that the late filing penalties have been charged in accordance with legislation and that the Appellant has not shown a reasonable excuse for the late filing of his returns for each of the years in question.

35 37. The appeal is therefore dismissed and the late filing penalties confirmed

40 38. 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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**MICHAEL CONNELL  
TRIBUNAL JUDGE**

**RELEASE DATE: 20 DECEMBER 2017**