



TC03086

Appeal number: TC/2013/00597

Penalties for late payment of income tax - time to pay arrangement not adhered to - Appellant made redundant - whether reasonable excuse - no - Appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BEN BURGESS

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE MICHAEL S CONNELL
MICHAEL ATKINSON**

Sitting in public at 4th Floor City Exchange 11 Albion Street Leeds LS1 5ES on 31 July 2013

Mr S Pickering of Messrs Cox Jerome for the Appellant

Mr T Eyre Officer of HM Revenue and Customs for the Respondents

DECISION

1. This is an appeal by Mr Ben Burgess (“the Appellant”) against late payment penalties imposed under Paragraph 3(2) of Schedule 56 Finance Act (“FA”) 2009 for the failure to pay tax on time for the year ending 5 April 2011.

2. Having given our decision to dismiss this appeal at the conclusion of the hearing, the following are full written findings of fact and reasons for the decision.

Background facts

3. In October 2010 the Appellant left BT after eighteen years of employment. He received a leaver payment, which was paid between October and December 2010. The Appellant paid the leaver monies into his pension fund.

4. A notice to file for the year ending 5 April 2011 was issued to the Appellant on 6 April 2011. The filing date for a non-electronic return was 31 October 2011 or 31 January 2012 for an electronic return. The Appellant filed his tax return online in July 2011 and noticed that he had not been taxed at the correct rate of 40% in respect of the leaver payment, which resulted in an underpayment of £27,094.00.

5. The Appellant’s tax liability for the year was due to be paid on or before 31 January 2012 in accordance with s 59B (4) TMA 1970.

6. The Appellant contacted HMRC on 2 December 2011 and agreed a time to pay arrangement of £1,000.00 per calendar month commencing 30 January 2012 for seven months on the basis that at 31 August 2012 he would discharge the final balance out of bonus monies he was expecting to receive from his employer, Misys.

7. In May 2012 the Appellant became aware that the bonus he was expecting to receive from Misys might be at risk. He contacted HMRC to say that he might not be able to clear the balance in August as agreed under the TTP. The Appellant said that he would revert to HMRC when he found out what his bonus was likely to be.

8. In June 2012 Misys was acquired by another company which issued a year end profits warning, and reviewed all corporate remuneration packages. The employees were informed that there was likely to be a significant number of redundancies and a substantially reduced August bonus for the company employees.

9. Shortly afterwards the Appellant contacted HMRC asking for the TTP to be revised so that he could continue paying £1,000.00 per month rather than discharging the balance owed to HMRC in August. By that stage he had made six payments of £1,000, reducing the amount outstanding to £23,094.60 (plus interest). HMRC asked the Appellant to contact them when his bonus payment was known, but on the information provided would not agree to a change in the TTP arrangement.

10. The Appellant was made redundant on 1 September 2012. He signed on for employment benefit on 13 September 2012.

11. The Appellant continued to make monthly £1,000 payments to HMRC but did not discharge the balance due at the end of August 2012 as agreed under the TTP.

12. At the penalty date of 4 September 2012 the tax liability remained unpaid and HMRC issued a notice of penalty assessment of £2,258.00. The penalty related to the amount outstanding and payments due under an earlier separate TTP which were to be discharged in August 2012 as part of the TTP.

13. On 12 October 2012 the Appellant requested a review of the penalty, on the grounds that :

- (a) It was an error by BT that caused the original underpayment.
- 10 (b) He had proactively contacted HMRC and kept them informed throughout. A late payment penalty should not be imposed when there has been contact and dialogue.
- (c) Exceptional circumstances existed because he had been made redundant.
- 15 (d) He was continuing with monthly £1,000 payments despite significant hardship.

14. On 20 December 2012 HMRC reviewed but upheld the penalty on the basis that the Appellant did not have a reasonable excuse for the late payment and had defaulted on a time to pay arrangement. HMRC said that the Appellant's redundancy on 1 September 2012 could not be regarded as significant because it had occurred after the balance was due to be discharged under the TTP on 31 August 2012. It had also transpired that the Appellant had used other funds at his disposal amounting to approximately £25,000 to pay to a builder for extension works to his house.

15. On 18 January 2013 the Appellant notified his appeal to the Tribunal Service.

25 **Appellant's contentions**

16. At the hearing Mr Pickering represented the Appellant and reiterated much of what the Appellant had said in his correspondence with HMRC. He said it was unfair that the Appellant's redundancy was dismissed as irrelevant HMRC's in review (because it occurred after the agreed time to pay arrangement was due to conclude). The review appeared to overlook the fact that HMRC had been made aware of the redundancy prior to the end of August 2012.

17. Mr Pickering said that the Appellant had received notice of his redundancy whilst on holiday in early August 2012 and took steps immediately to return to the UK to notify HMRC that he was to be made redundant at the end of that month. That would have given HMRC an opportunity to consider an extension of the time to pay arrangement and in particular the exceptional circumstances that had occurred which could not have been foreseen by Appellant at the time he entered into the time to pay arrangement. It was surely not unreasonable to accept the Appellant's offer to continue to pay £1,000 a month out of his limited funds and extend the period over which the final balancing payment could be made.

18. The Appellant said that he had moved house in April 2007. Building work on an extension started in August 2009. The work was due to be finished in April 2013 at a total cost of £250,000. He was under contract and committed to pay the builder by instalments. These arrangements were in place long before his indebtedness to HMRC arose. The builder would have ceased work on the extension had he not maintained agreed instalments. The builder refused to accept late payments because he had already incurred costs materials and then spent time on the job. He finished paying the builder and made the final instalments in August and November 2012, using money he had saved from earlier bonuses. At that stage he was still unemployed and was not re-employed until December 2012.

19. The bonus received from his employer was only £6,500 whereas he had been expecting £35,000 or thereabouts. He had even tried withdrawing monies from his pension fund into which his BT leavers payment had been paid in October 2010. His financial difficulties had arisen from an unfortunate sequence of events. He agreed that he had used monies to pay the builder which could have been used to discharge his indebtedness to HMRC, but he had expected HMRC to be flexible as they had been in the past. He had continued to make payments of £1,000 a month and the total indebtedness was down to £7,000.

20. He had been unable to obtain loan or overdraft facilities from his bank, which was perhaps not expected given that in July/August 2012 when he needed to raise the funds, there was a significant prospect that he might be made redundant.

HMRC's contentions

21. Mr Eyre for HMRC said that the Appellant had conceded that he had monies at his disposal which could have been used to enable him to adhere to the time to pay arrangement. His obligations to the builder was not a relevant consideration.

22. An extension of the time to pay arrangement could have only been agreed if HMRC were satisfied that the Appellant could not pay his liability on the actual due date. Unless there were exceptional circumstances, HMRC will not agree a time to pay arrangement lasting more than a year.

23. HMRC had to make enquiries whether the Appellant would be able to adhere to a TTP extension and during the course of doing so the Appellant had divulged that he had utilised approximately £20,000 of money at his disposal to complete his house extension.

Relevant Legislation

24. Section 59 B (3) & (4) Taxes Management Act (TMA) 1970 - Payment of income tax and capital gains tax

(3) In a case where the person-

(a) gave the notice required by section 7 of this Act within six months from the end of the year of assessment, but

(b) was not given notice under section 8 or 8A of this Act until after the 31st October next following that year,

the difference shall be payable or repayable at the end of the period of three months beginning with the day on which the notice under section 8 or 8A was given.

(4) In any other case, the difference shall be payable or repayable on or before the 31st January next following the year of assessment.

25. Schedule 56 Finance Act 2009

Paragraph 1(1) & 1(4)

(1) A penalty is payable by a person where he/she fails to pay an amount of tax payable 30 days after the date specified in section 598(3) or (4) TMA 1970 as the date by which the amount must be paid.

(4) The penalty date in relation to an amount of tax, means the date on which a penalty is first payable for failing to pay the amount (that is to say, the day after 30 days from the date specified in section 598(3) or (4).

Paragraph 3(2), 3(3) & 3(4)

(2) A person is liable to a penalty of 5% of the unpaid tax.

(3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, a person is liable to a penalty of 5% of that amount.

(4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, a person is liable to a penalty of 5% of that amount.

25 **Decision**

26. A taxpayer's inability to pay tax owing cannot be regarded as a reasonable excuse for late payment. The taxpayer is expected to have kept aside monies to pay their tax bill when it becomes due and maintain a payment arrangement acceptable to HMRC.

27. Although the Appellant may have been contractually bound to pay his instalments to the builder as and when they fell due, his first priority should have been to adhere to the time to pay arrangement, particularly given that he had funds at his disposal which he could have used to clear the balance due.

28. The late payment penalty charged by HMRC is in accordance with legislation and there is no reasonable excuse for the Appellant's failure to adhere to the time to pay arrangement and pay his tax on time.

29. For the above reasons we dismiss the appeal and the £2,258.00 late payment penalty is confirmed.

30. 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 S CONNELL
TRIBUNAL JUDGE**

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RELEASE DATE: 27 November 2013