



TC03092

Appeal number: TC/2013/03178

Penalty against late payment of Capital Gains Tax – Schedule 56 Finance Act 2009 – reasonable excuse – appeal refused.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ANNA TURPIN

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE P M PETHERBRIDGE

The Tribunal determined the appeal on the 18 September 2013 without a Hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 having first read the Notice of Appeal dated the 26 June 2013, (with enclosures) and HMRC's Statement of Case submitted on the 06 June 2013 (with enclosures).

This document contains a full summary of the findings of fact and reasons for the decision.

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DECISIONS

Facts

- 5 1. For the tax year 2010-2011 the Appellant made a capital gain, the capital gains tax liability arising therefrom was £26,479.56. This sum is not in dispute by the Appellant.
2. That capital gain needed to be notified by the Appellant during the tax year 2010-2011 and the Appellant was obliged to have notified the Respondent of that on or before the 05 October 2011.
- 10 3. The Respondent issued the Appellant with a Notice to File for the year ending the 05 April 2011 on the 22 March 2012 and the filing date was the 29 June 2012 regardless of whether a paper or electronic tax return was filed.
4. The Appellant's electronic return for the tax year 2010-2011 was received by the Respondent on the 22 March 2012.
- 15 5. The Appellant was required to pay the capital gains tax liability of £26,479.56 on or before the 31 January 2012 in accordance with Section 59B (4) of the Tax Management Act 1970.
6. The Appellant paid the full tax liability on the 21 June 2012.
7. The Respondent issued a Notice of Penalty assessment on the 10 April 2012 for £1,323 being 5% of the capital gains tax unpaid at the penalty date.
- 20 8. The Appellant appealed against that decision through her accountants, Wilkins Kennedy, on the grounds that:
 - (1) The Appellant was able to settle the self-assessment liability as she had no reference number; and
 - (2) Payment was made by cheque on the 20 March 2012.
- 25 9. On the 07 March 2013, the Appellant, through her accountants, appealed against the late payment penalty and on the 29 April 2013 the Appellant notified her appeal to the Tribunal.
10. A copy of the Appellant's appeal to the Tribunal is attached at folio 8 of the bundle.
11. In the Appellant's appeal it is said on behalf of the Appellant that it was not possible for her to pay the 2010-2011 tax liability without first obtaining a national insurance number and then registering for self-assessment. It was also said that a self-assessment reference number (a Unique Taxpayer Reference – UTR) had finally been received but not before the 20 March 30 2012.
12. The Appellant argues that she had reasonable excuse for the late payment of the penalty and that the penalty itself was not proportionate.

The Tribunal's findings of fact and decision

13. The Appellant failed to pay the capital gains tax liability in the tax year 2010-2011 until the 21 June 2012. The liability was required to have been paid in full on or before the 31 January 2012 in accordance with Section 59B (4) TMA 1970.

14. The tax liability for the year was £26,479.56.

15. The Appellant was required to disclose details of the capital gain during the tax year 2010-2011 on or before the 05 October 2011, which she failed to do.

16. The late payment penalty was imposed under paragraph 3 (2) of Schedule 56 Finance Act 2009 on account of the Appellant's failure to pay the capital gain tax liability on time for the year ending the 05 April 2011. The due date for payment was the 31 January 2012. The late payment penalty is calculated at 5% of all tax remaining unpaid after the expiry of 30 days from the due date in accordance with paragraph 3 (2) of Schedule 56 Finance Act 2009.

17. The Appellant includes in her grounds of appeal that she had reasonable excuse. This is based on the Appellant stating that she was unable to settle the self-assessment liability as she had no reference number and that the payment had been made by cheque on the 20 March 2012.

18. The Tribunal find that, in fact, the payment was not made until the 21 June 2012, the payment having been made on behalf of the Appellant by an automatic bank transfer on that date.

19. The Appellant had said that the payment had been made around the 20 March 2012 but that, in fact, was not correct and there was no evidence that the payment had been made on that date. The evidence was conclusive that it had been paid on the 21 June 2012.

20. The Appellant has also argued that she had no reference number in which to settle the self-assessment liability, but the Respondent's records show that the Appellant's self-assessment account had originally been set up on the 13 October 1996. Details of the Appellant's national insurance number would have been available from HMRC and it is clear from folio 9 of the submission that the Appellant's self-assessment account had been set up and a national insurance number and UTR number had been allocated on the 13 October 1996.

21. The Tribunal having considered the Appellant's grounds of appeal with regard to "*reasonable excuse*" was satisfied that although there was no statutory definition of "*reasonable excuse*", the issue of "*reasonable excuse*" was a matter that has to be considered in the light of all the circumstances of the particular case. The Tribunal agree that a "*reasonable excuse*" is normally an unexpected or unusual event that is either unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their obligations to pay on time. A combination of unexpected and unforeseeable events may, when viewed together be a "*reasonable excuse*". The actions of the taxpayer have to be considered from the prospective of a prudent person, exercising reasonable foresight and due

diligence and having proper regard for their responsibilities under the Tax Act. The Tribunal concluded that there were no grounds upon which it could find that the Appellant had a “*reasonable excuse*” for the late payment of the capital gains tax liability.

5 22. Insofar as the Appellant’s appeal is based upon the proportionality of the amount of the
penalty, the Tribunal would refer to the decision in *HMRC v Hok Limited [2012] UKUT 363*
(*TCC*), which determined that this Tribunal does not have jurisdiction to supervise the
conduct of HMRC and, thus, has no power to determine whether the imposition of a penalty
was unfair (see paragraphs 56 – 58 of *Hok*). The *Hok* decision is binding on this Tribunal. If
10 insofar as it is necessary, the Tribunal Procedure Rule 8 (2) is clear that I must strike out that
part of the proceedings if the Tribunal does not have jurisdiction in relation to them. Since
the *Hok* decision is binding on the Tribunal I must strike out that part of the Appellant’s
appeal for lack of jurisdiction insofar as it seeks to convene an argument that the HMRC have
acted unfairly in deciding whether the imposition of a penalty was unfair.

23. The appeal is dismissed.

15 24. 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-
20 Tier Tribunal (Tax Chamber)”, which accompanies and forms part of this decision notice.

P M PETHERBRIDGE
TRIBUNAL JUDGE

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RELEASE DATE: 28 November 2013

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