



**TC03140**

**Appeal number: TC/2013/04403**

*Self Assessment – penalty – late payment – whether reasonable excuse due to illness – yes – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**IAN BOND**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE DR K KHAN  
JANET WILKINS CTA TEP**

**Sitting in Ashford, Kent, on 8 October 2013.**

**The Appellant represented himself.**

**Karen Weare, Senior Officer, instructed by the General Counsel and Solicitor to  
HM Revenue and Customs, for the Respondents.**

## DECISION

### The Appeal

1. The matter concerns a penalty for the late payment of a Self Assessment liability for the year ending 5 April 2012.

2. There is no dispute that the payment has been made late, the question is whether the Appellant can demonstrate he had a reasonable excuse for the late payment and that reasonable excuse continues for the whole period when the payment was overdue.

### Background

3. The Appellant is the sole principal of Bond Joseph Criminal Defence Solicitors and Advocate. He has been in self assessments since October 1996.

4. The accounts for the sole trade for the year ended 31 January 2011 show a turnover of £689,250 with trade debtors of £13,441. The account for the sole trade for the year ended 31 January 2012 shows turnover of £916,214, trade debtors of £22,036 and drawings of £102,722.

5. Returns were filed on 31 January 2012 with self assessment calculation of tax due at £139,830.79. There is a balancing payment due on 31 January 2012 of £91,651 with £50,000 paid on 18 January 2013. He requested time to pay arrangements on 7 March 2013.

6. A penalty assessment was issued on 19 March 2013. The Appellant paid a further £30,000 on 29 March 2013 and the balance of £11,651 on 10 April 2013.

7. A statutory review was offered and the review concluded on 18 June 2013 that the decision to impose a penalty should be upheld. The late penalties for the year ending 5 April 2012 totalled £2,082. The Appellant appealed on 28 March 2013.

### The Law

8. The penalty provisions are contained largely in Schedule 56 Finance Act 2009. They provide as follows:

- “(a) Paragraph 1(1) states that a penalty is payable where the amount of tax is not paid by a specified date.
- (b) Paragraph 1(4) gives the penalty date as the date after the date specified in a Table. The Table shows in item 1 a penalty date being 30 days from 31 January.
- (c) Paragraph 3 applies to self assessment and provides for a penalty of 5% of the unpaid tax.
- (d) Paragraph 9 states that HMRC may consider reducing a penalty under special circumstances which does not include ability to pay.

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- (e) Paragraph 10 provides for suspension of penalties during the currency of an agreement for deferred payment known as Time to Pay. This applies when the amount is unpaid and the Appellant asks, and HMRC agrees, to defer the payment before the penalty trigger date.
  - (f) Paragraph 16 deals with the issue of a reasonable excuse.

### **The Appellant's Contention**

9. The Appellant contends as follows:

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- (1) He agrees that the amount was due and he applied for a Time to Pay arrangement on 7 March 2013.
  - (2) He could not meet his liabilities as he was awaiting outstanding payments from the Legal Services Commission which contributes roughly 97% of his income.
  - (3) He had various family and personal problems which resulted in him being very ill for a long period. He provided medical certification which confirmed that position and is not in dispute.
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### **The Respondents' Submissions**

10. The Respondents say that the Appellant does not have a reasonable excuse since an insufficiency of funds is not a reasonable excuse unless attributable to the events outside the Appellant's control and the Appellant may only have a defence if he relied on a third party to the extent that he took reasonable steps before the failures by the third party.

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11. They say that if there is a reasonable excuse which subsequently ceases then the Appellant must remedy the failure without unreasonable delay after the excuse ceases.

25 12. They say that the Appellant did not have a reasonable excuse at the time. The reason for his non-payment seems to arise from cash flow difficulties which HMRC say is part of the normal hazard of business and not outside the Appellant's control. Further they say that even though he was undergoing a difficult time in his life he continued to practice and was able to pay a large part of his tax liability in advance and to file his tax return on time.

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13. In the circumstances they feel that there is no reasonable excuse.

### **Discussion and Conclusion**

- (1) The Appellant does have a reasonable excuse based on illness. This decision was communicated to the parties at the end of the hearing.
  - (2) The Appellant provided significant medical and other evidence to show that he had a prolonged illness during the period when completing
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5 payments on his self assessment return. His accountant would have calculated the tax liability and informed him of that liability. It was his responsibility to make the payment. His illness prevented him from dealing with his personal and business affairs. His mental state was such that he was unable to deal with simple tasks, had poor concentration and lacked the capacity to attend to detail. This resulted in a late payment of tax.

10 (3) Some of the medical evidence which was presented to the Tribunal was not available to HMRC until the day of the hearing. The evidence allowed the Tribunal to make a more informed decision on the state of the Appellant's health.

15 (4) An illness will be treated as a reasonable excuse if it is serious and prevented the taxpayer from dealing with their tax affairs. The Appellant was a sole trader, took responsibility for dealing with all of his tax affairs, communicating with his accountant and agreeing the tax returns and payments. His primary task was to actually make the payment to the Revenue. It is quite clear to the Tribunal, based on the medical evidence, that the Appellant was unable to deal with his affairs on a daily basis. The illness was lengthy and the Appellant is yet to recover.

20 (5) In the circumstances the Appellant has a reasonable excuse and the appeal is dismissed.

25 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.

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**DR K KHAN**  
**TRIBUNAL JUDGE**

35 **RELEASE DATE: 12 December 2013**