



TC03165

Appeal number: TC/2013/01824

Capital gains tax - penalty for late payment - Appellant ill - whether a reasonable excuse - on the facts yes - Appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOANNA WOOLF

Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL S CONNELL
JANET WILKINS**

Sitting in public at 45 Bedford Square London WC1B 3DN on 23 August 2013

Malcolm Mildren, accountant, for the Appellant

Paul Reeve, Officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

5 1. This is an appeal against a penalty assessment of £1,424.89 imposed under section 59C (2) (a) TMA 1970 in respect of the late payment by the Appellant of tax for the year ending 5 April 2010.

2. The amount of the tax paid late was not in dispute. The appeal was based on whether the Appellant had a "reasonable excuse".

Background

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3. The tax was due to be paid on 31 January 2011. A summary of the charge and payments is as follows:

Balancing Payment due £58,600.42 (due date 31/01/11)

	Paid on 15/01/10	£ 51.02
15	16/07/10	£ 51.03
	29/01/11	£30,000.00

Interest supplement (15/01/10 to 31/01/11) £ 0.27

Interest supplement (16/07/10 to 31/01/11) £ 0.14

Outstanding on 28/02/11 £28,497.96 x 5% = £1,424.89

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The balance due was paid on 7 March 2011.

4. The issue before the Tribunal is whether the Appellant had a reasonable excuse for making late payment, and if so whether the reasonable excuse continued throughout the entire period of default (Section 59C (12) TMA 1970).

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The Legislation

5. Section 59C (2) TMA 1970 makes a taxpayer liable to a 5% surcharge where any tax remains unpaid on the day following the expiry of 28 days from the due date.

30 6. Section 59C (9) TMA 1970 sets out the Tribunal's powers on appeals made against surcharges and states that Section 50 (6) TMA 1970 will not apply and the Tribunal may:

(a) If it appears to them that, throughout the period of default, the taxpayer had a reasonable excuse for not paying the tax, set aside the imposition of the surcharge; or

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(b) If it does not so appear to them, confirm the imposition of the surcharge.

7. Section 59C (10) TMA 1970 states that an inability to pay the tax shall not be regarded as a reasonable excuse for the purposes of subsection (9).

5 8. Section 59C (12) TMA1970 sets out the period of default as beginning on the due date of the tax and ending the day before the tax was paid.

9. Section 118 (2) TMA 1970 provides that a person shall not be deemed to have failed to do anything required to be done within a limited time if they did it within such further time, if any, as allowed or, where a person had reasonable excuse they did so without unreasonable delay after the excuse had ceased.

10 10. The Appellant submitted her tax return for the year ended 5 April 2010 on 27 January 2011, and her self-assessment declared her tax liability to be £62,155.42. The balance of the tax due (£58,600.42) was due to be paid on 31 January 2011. The final balance was paid on 7 March 2011.

11. HMRC issued a Surcharge Notice on 1 April 2011, in the amount of £1,424.89.

15 12. On 9 November 2012 the Appellant's agent submitted an appeal to HMRC on behalf of the Appellant. The appeal was late, but HMRC made no objection. The agent explained that the Appellant had major surgery in September 2010 followed by chemotherapy and radiation treatment in April 2011. This hindered her ability to deal with her January 2011 payment as expeditiously as she would have wished.

20 13. On 28 November 2012 HMRC rejected the grounds of appeal, saying that it did not consider that there was a reasonable excuse for the late payment.

14. On 24 December 2012 the Appellant's agent requested a review of HMRC's decision.

25 15. On 6 February 2013 HMRC's review concluded that the original decision to refuse the grounds of appeal were correct, and confirmed that the surcharge remained payable.

16. On 8 March 2013 the Appellant's agent submitted an appeal to the Tribunal.

The Appellant's Contentions

30 17. The Appellant contends that she has a reasonable excuse for not making payment of her tax liability on time.

35 18. The Appellant submits that as a result of being hospitalised, major surgery and cancer treatment, she was not well enough to deal with her affairs properly. Her illness, the treatment she received and subsequent complications had a severely debilitating effect which hindered her ability to deal with her January 2011 tax payments.

19. The Appellant says that she was also precluded from paying in full by 31 January 2011 because she had unwisely placed £40,000 on deposit with Lloyds/TSB on 24 February 2010. The deposit did not mature until 24 February 2011. She had no other available funds and was not able to pay her tax by 31 January 2011. It was not
5 however the fact that she had put the £40,000 on long term deposit that caused the problem in January 2011, it was the fact that she was ill.

The Respondent's Contentions

20. HMRC contend that because the Appellant made an investment decision to put
10 £40,000 into a deposit bond which would not mature until 24 February 2011, the insufficiency of funds was problem which she brought on herself. The Appellant invested money for a year, rather than only investing it until it was needed to pay HMRC. She may have received a lower rate of interest for a shorter investment period, but it could have been done had she shown sufficient foresight.

15 21. HMRC say that the Appellant should have paid more attention to her taxation responsibilities before making the investment decision than she did. Her failure to pay on time arose because of her own inability to manage her finances in an appropriate manner. This did not amount to a reasonable excuse for late payment.

22. A lack of funds (self-generated or not) is specifically barred from being a
20 reasonable excuse for late payment of tax by the legislation (S59C (10) TMA 1970) and so HMRC cannot accept it as being a reasonable excuse for the Appellant's failure to pay on time.

23. HMRC contend that the Appellant's lack of funds on the due date of 31 January
25 2011 was solely because of the investment choices she made. It was not because she was ill. HMRC say this because the Appellant put the £40,000 on deposit in February 2010 prior to her cancer treatment. She knew that the deposit would not mature until 24 February 2011 and as a result she would not have sufficient monies to pay HMRC. The fact that £30,000 was paid before the due date strongly suggests that had the
30 £40,000 not been put on long term deposit the full liability could have been paid on time - thus suggesting that the health issue, worrying though it undoubtedly was for the Appellant, was not the reason for the payment failure

24. Notwithstanding the fact that the Appellant voluntarily put £40,000 on long
term deposit she should in any event have had sufficient money to pay HMRC in full, because the tax that was due to be paid on 31 January 2011 was in respect of the
35 realisation of a capital gain that amounted to £492,818 (from a property sale). HMRC contend that more than sufficient funds should have been available to her from the sale proceeds (£720,720 less expenses) to pay the balance of her tax liability on the due date of 31 January 2011. She should not have had to rely on the £40,000.

25. HMRC also contend that in addition to making a capital gain on the property
40 disposal the Appellant also made capital gains on the sale of shares, and whilst the net

gains were limited to £1,686 the sale proceeds amounted to £15,582. That money could have been used to pay HMRC.

26. HMRC do not accept the Appellant's contention that her health problems had a direct impact on the late payment of her tax. The Appellant managed to pay £30,000 on 29 January 2011 and her tax return was successfully filed on 27 January 2011. Even if the return was filed by giving instructions to her agent, the Appellant was able to deal with aspects of her tax affairs.

27. HMRC contend that the Appellant could have obtained a loan (if not from any provider, then surely from Lloyds/TSB) to pay HMRC the balancing £28,497.96, using the £40,000 investment as security against that loan. The Appellant does not appear to have explored that possibility, or indeed any other way to obtain sufficient funds to pay HMRC.

The Appellant's contentions

28. The Appellant says that when she put the £40,000 on deposit her judgement was clouded. She expected that other monies she had available would cover the capital gains tax liability but this was eventually calculated at some £58,600. She endured a traumatic period from the start of her illness and throughout her treatment until she finally went into remission late in 2011. She was referred for surgery in October 2010 and shortly afterwards commenced intensive chemotherapy treatment. She then developed a life-threatening infective condition as a direct complication of the chemotherapy treatment and was eventually hospitalised in December 2010/January 2011. She was critically ill. Another factor secondary to her illness that prevented her from attending properly to her affairs was that she was in hospital in London and not at her usual residence in Somerset, where she would have had access to her tax papers.

29. Had she not been so ill it may have been possible for her to raise monies to pay the balance of the capital gains tax bill. However, she was not physically and mentally able to do that. It was her accountant who had filed her tax return. During her hospitalisation she was treated with high-dose intravenous antibiotics and made a good recovery but was still not well enough to give priority to her tax affairs. Radiation treatment continued until May 2011. She could recall very little of events at the time the tax was due for payment. She could not remember paying the £30,000 and at one stage thought that her husband may have made the payment for her.

30. The Appellant said that she had always paid her tax on time. She accepts that she had unwisely tied up the £40,000 and that had clearly been a mistake. Had she not been ill however she would have found some way of raising the monies due to HMRC. It was unfair for HMRC to suggest that her illness was not the main reason for the late payment.

31. The Appellant said that at the time the tax was due she had not actually received any of the monies from the property sale. There had been delays in payment for a number of reasons.

Conclusion

5 32. Taking all the circumstances into account the Tribunal determined that the Appellant's illness on the facts constituted a reasonable excuse for making late payment and that the reasonable excuse had continued throughout the period of default. The investment of the £40,000 in January 2010 was a contributory factor, but was not the main reason for the delay in the Appellant settling her capital gains tax liability.

33. The Tribunal allowed the appeal and discharged the penalty of £1,424.89

10 34. 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
15 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

20 **MICHAEL S CONNELL**
TRIBUNAL JUDGE

RELEASE DATE: 19 December 2013