



**TC03195**

**Appeal number: TC/2013/06452**

*INCOME TAX – whether late payment of income tax, Yes. Whether reasonable excuse for late payment - Yes.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MARIAN CHRISTIE ARMITAGE**

**Appellant**

**- and -**

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

**TRIBUNAL: PRESIDING MEMBER  
PETER R. SHEPPARD FCIS FCIB CTA  
AIIT**

The Tribunal determined the appeal on 2 December 2013 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 12 September 2013, and HMRC's Statement of Case submitted on 22 October 2013 with enclosures. The Tribunal wrote to the Appellant on 25 October 2013 indicating that if they wished to reply to HMRC's Statement of Case they should do so within 30 days. A reply erroneously dated 11 December 2013 was received by the Tribunal on 12 November 2013 and considered by the Tribunal.

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## DECISION

### 1. Introduction

5 This considers an appeal against a penalty of £120 levied by HMRC for the late payment of income tax of £2,404.40 due to be paid by 31 January 2013.

### 2. Legislation

Finance Act 2009 Schedule 56

Taxes Management Act 1970, in particular Sections 7, 8, 9, and 59B

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### 3. Case law

Rowland v HMRC [2006] STC (SCD) 536

Anthony Wood trading as Propaye v HMRC [2011] UKFTT 136 TC 001010

### 4. Facts

15 The appellant was a secondary school teacher for almost thirty five years and during this period paid tax through PAYE only. She never had contact with HMRC during this period. In 2011/12 her circumstances changed and she commenced receiving property rental income. Somewhat belatedly in February 2013 she contacted HMRC to advise them of her change of circumstances. The appellant was new to self  
20 assessment of income tax. Self assessment of tax is based on voluntary compliance. Taxpayers who are within the self assessment system must file their returns by the due date and pay the tax they owe by the date specified in law.

5. The Tribunal has set out in detail below the law applicable in this case because the appellant has stated that she cannot find in the Taxes Management Act 1970 firstly the  
25 legislation by which she has to notify HMRC of her chargeability to tax within 6 months of the end of the tax year and secondly the legislation by which HMRC are allowed to charge her a penalty of £120 for late payment of the tax . (see paragraph 11 below)

### 6. Law concerning the provision of returns

30 Section 7 of the Taxes Management Act 1970 states

- 1) Every person who-
  - (a) is chargeable to income tax or capital gains tax for any year of assessment, and
  - (b) has not received a notice under section 8 of this Act requiring a  
35 return for that year of his total income and chargeable gains, shall, subject to subsection (3) below, within six months from the end of that year, give notice to an officer of the board that he is so chargeable.

Subsection 3 covers matters which do not seem to apply in this case.

Section 8 of the Act is a lengthy section and is not set out in full in this decision. It forms the law concerning the provision of personal tax returns.

5 Sub section 1(a) of Section 8 states “to make and deliver to the officer, on or before the day mentioned in subsection (1A) below, a return containing such information as may reasonably be required in pursuance of the notice, and.....”

Subsection 1A states

“The day referred to in subsection (1) above is-

(a) the 31<sup>st</sup> January next following the year of assessment, or

10 (b) where the notice under this section is given after the 31<sup>st</sup> October next following the year, the last day of the period of three months beginning with the day on which the notice is given.

Section (1D) and (1E) states

“(1D) A return under this section for a year of assessment (Year 1) must be delivered-

(a) in the case of a non-electronic tax return, on or before 31 October in Year 2.

15 (b) in the case of an electronic tax return, on or before 31 January in Year 2.

(1E) But subsection (1D) is subject to the following two exceptions.”

Subsection (1F) describes the first of these exceptions and is not applicable to this case. Subsection 1G states:

20 “(1G) Exception 2 is that if a notice in respect of Year 1 is given after 31 October in Year 2, a return (whether electronic or not ) must be delivered during the period of 3 months beginning with the date of the notice.”

7. The Tribunal observes that Section 7 (8) of the Taxes Management Act 1970 states;

25 “If any person, for any year of assessment, fails to comply with subsection (1) above, he shall be liable to a penalty not exceeding the amount of the tax-

(a) in which he is assessed under Section 9 or 29 of this Act in respect of that year, and  
(b) which is not paid on or before the 31<sup>st</sup> January next following that year.

30 HMRC issued a notice to the appellant to file a return for the year 2011/12 on 7 March 2013. Therefore, applying the above rules, the return was due to be submitted by 7 June 2013.

The appellant submitted her return successfully online on 13 May 2013.

It is agreed by the appellant that she failed to give notice to HMRC of her liability to pay tax within the time limits set out in the legislation above. However HMRC have not levied a penalty under Section 7(8) in respect of this late notice.

5 It appears that during a telephone conversation with HMRC which is variously described as taking place on either 22 or 23 February 2013 that HMRC indicated that they would not be charging a penalty for the late filing of the return.

8. Law concerning the payment of tax.

The Taxes Management Act 1970 Section 59B (3) states :-

(3)In a case where the person-

10 (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 31<sup>st</sup> October next following that year, .....

15 These provisions do not fit with the facts relating to the appellant. The legislation continues:-

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

Therefore in accordance with Section 59B(4) Taxes Management Act 1970 in the case of the appellant the due date for payment was 31 January 2013.

20 9. The appellant’s return submitted on 13 May 2013 showed a tax liability of £2,404.25. Payment of this tax was made on 24 May 2013.

25 A late payment penalty is chargeable where a taxpayer is late in paying tax due. The first penalty is calculated at 5% of all remaining tax unpaid after the expiry of 30 days from the due date in accordance with paragraphs 1(1),1(4) and 3 (2) of Schedule 56 of the Finance Act 2009.

Thus in the case of the appellant a penalty of 5% of £2,404.25 is due. That is £120.21 which HMRC have rounded down to £120.

30 I respect of levying a penalty for late payment HMRC allow 30 days grace during which the penalty can be avoided by making payment. Thus if the appellant had made payment before 3 March 2013 no late payment penalty would have been levied.

**10. Appellant’s submissions**

The appellant wrote to HMRC on 27 May 2013. The letter included the following:

“I was sent a tax return dated 7 March 2013 which stated that it should be returned by 07/06/13- 3 months after the date on the form (SA100-5) This tax return did not mention penalties, provided that it was received by 07/06/13, nor was there any mention of late payment penalties.

- 5 I filed the return using Taxcalc and HMRC responded that it had been received on 13 May 2013. I was expecting to have to pay my tax on receipt of a request for payment from you by the 07/06/13 deadline. I have not received any request for payment.

The next communication I received from you was the Self Assessment penalty notice dated 14/05/13 asking me to pay a penalty of £120!

- 10 As a result of two telephone conversations with the tax office I have paid £3606.60. This is the Taxcalc assessment of my current liability

I have acted honestly and properly in this matter and am appealing against tis penalty for paying late , money which I have not yet been asked for.”

- 15 11. On 1 July 2013 the Appellant requested a review of the decision (form SA634) and attached a letter which included the following;

I have acted in good faith. I suspected that I was due to pay tax as my circumstances had changed and contacted HMRC asking for this to be assessed. I paid the tax as soon as I was asked for it.

- 20 HMRC has not acted in good faith. According to you I contacted you too late and the act of contacting you too late was the issue that incurred a penalty. I was not made aware of this at the time but other penalties were explained. The penalty notice was issued with no warning after I had submitted my return and before the request to pay tax had been made.

- 25 In your letter you state Section 7 Taxes Management Act 1970 requires me to give notice ‘within 6 months of the end of the tax year...’ This is not my reading of the Act. This Act definitely does not allow you to charge a £120 penalty.

I do not think I am ignorant of basic law, that is why I originally contacted HMRC. I have scanned the 1970 Act and the 2009 Finance Act and cannot find the trail that allows you to fine me £120.”

- 30 12. In the Notice of Appeal dated 12 September 2013 the appellant writes:

- 35 “I contacted the Inland Revenue to advise them that I should pay tax. Although I did this late, more than 6 months after the end of the tax year, in all other respects I did exactly as asked by them. They are automatically seeking to apply a penalty for late payment, the legality of which I do not understand. Even if it is legal I could and would have avoided the penalty if they had given me appropriate and timely advice, which I asked for.”

13. In a lengthy letter to the Tribunal dated 11 November 2013 the appellant makes a number of points most of which are a response to HMRC statement of case. Some of the points repeat those made earlier. The Tribunal notes the following:

5 In discussing the telephone call of 22 February 2013 the appellant writes “He told me that I would have three months to complete the (form) and return the information. He did not tell me that in approximately a week’s time on 3<sup>rd</sup> March a deadline for paying any tax I owed would pass. If he had told me, I would have asked him to e-mail me the papers and tax number (UTR), so that I could file and pay before the deadline.....The telephone call assured me there was no problem and when the self  
10 assessment papers which were posted on 7<sup>th</sup> March arrived, they confirmed that I had until 6 June to respond. Without the UTR on the 7<sup>th</sup> March papers I could not file a return or pay tax. I was not aware of the 3<sup>rd</sup> March deadline until retrospectively told about it in HMRC’s letter of 15 August 2013.....

My appeal to this tribunal is based on the following argument:

15 I am a prudent and responsible person actively seeking to pay tax due. Accordingly I contacted HMRC. By failing to warn me and by failing to give me the necessary UTR etc., HMRC caused me to miss the deadline of 3<sup>rd</sup> March for paying my 2011/12 tax. HMRC state that the law requires them to charge a penalty unless I have a reasonable excuse for missing the deadline. My reasonable excuse is that instead of helping me to  
20 meet the deadline they prevented me from doing so.

Later the appellant says “My reasonable excuse is that on 22<sup>nd</sup> February 2013 HMRC told me to wait until I received the tax return which they sent on 7<sup>th</sup> March before taking any action. Thus they prevented me from avoiding breaching their 3<sup>rd</sup> March deadline”

25 The appellant also points to the following statement in the tax return guide page TRG 22 which states

30 “If you file your paper tax return after 31 October, we may not have time to calculate the tax due, and tell you the amount of tax you need to pay before the payment due date (31 January 2013, or three months after the date the return was issued if this was after 31 October).”

14. The appellant also states “Becoming involved with tax for the first time is confusing and intimidating. HMRC should behave with more empathy and consideration to those new to the processes.”

#### 15. HMRC’s Submissions

35 HMRC submit that the appellant failed to notify them of her chargeability within the 6 months time limit imposed by the Taxes Management Act 1970 Section 7. They say this failure shows that the appellant’s claim that she acted properly cannot be substantiated.

16. HMRC say that the onus of responsibility to both contact HMRC within the prescribed time limit and calculate and pay her own tax on time rested solely with the appellant and while self assessment of tax may be new to the appellant, HMRC contends that she was adequately and correctly advised about her filing and payment responsibilities.

17. In response to the appellant's appeal HMRC wrote to the appellant on 11 June 2013 and decided that the appellant had no reasonable excuse for the late payment.

18. In a response to the appellant's request for a review dated 15 August 2013 HMRC upheld the assessment. They say the appellant has no reasonable excuse. HMRC also say

"The front page of the return issued to you on 7 March 2013 advised that interest and penalties will be applied if you pay late. The liability for the year is not finalised until the self assessment tax return for the year is processed. The Customer Advisor would not have been aware at the time of your telephone call if a Late Payment Penalty would be due as the return had not been filed at that time.

19. HMRC confirmed that the appellant successfully submitted her return on line on 13 May 2013. The penalty notice was issued the following day because the amount outstanding for 2011/12 had been finalised.

## 20. The Tribunals Observations

This appeal concerns a penalty for late payment of tax, The Tribunal notes that HMRC advised the appellant that they would not be charging a penalty for the late submission of her tax return. The level of the penalties has been laid down by parliament and the legislation relating to penalties has been properly and accurately applied by HMRC. The only other consideration that falls within the jurisdiction of the First-tier Tribunal is whether or not the appellant has reasonable excuse for the late payment.

21. The Tribunal notes that the first document that the appellant received in connection with completing a tax return for the year 6 April 2011 to 5 April 2012 was a Notice headed "Self Assessment, Notice to complete a tax return". The second paragraph on the front page ( Page 1) of this document is headed "Deadlines for sending your tax return" It states as follows

You must make sure we receive your tax return by

- 31 October 2012 if you use paper (or three months after the date of this letter if that's later)
- 31 January 2013 if you file online (or three months after the date of this letter if that's later). If you owe less than £3,000 tax for 2011-12 we will try to collect it through your 2013-14 PAYE tax code if you have one. If you want us to do this you must file online by 30 December 2012.

22. It is clear that HMRC knew that the appellant was new to self-assessment and was seeking guidance from them. In her telephone conversation with HMRC she was advised that she would be sent a return for completion. However crucially HMRC omitted to advise the appellant that if tax was due she needed to make a payment  
5 within 10 days in order to avoid a penalty. The advice given clearly determined the appellant's actions from then on. Being oblivious to the penalty she awaited and duly received the return for completion. She completed and submitted the return using Taxcalc and this was received by HMRC within the 3 month time limit on 13 May 2013. The next day HMRC issued the penalty notice.

10 23. In the Tribunal's view other than the late notification of her liability to pay tax the appellant has acted properly and in good faith. The late notification is not being penalised and was no doubt due to the appellant's newness to the self assessment system. Unfortunately the advice she received from HMRC whilst helpful was incomplete. She may have been adequately and correctly advised about her filing and  
15 payment responsibilities but crucially she was not advised that if tax was due she needed to make a payment of that tax urgently in order to avoid a penalty. The Tribunal accepts that if the appellant had been advised of the position re payment she would have taken the necessary steps to avoid a penalty. Instead she was advised that a return would be sent to her for completion and that she would not be penalised for  
20 notifying HMRC late of the need to complete a tax return. Whilst it is true that the Customer Advisor would not have been aware at the time of the Appellant's telephone call if a Late Payment Penalty would be due as the return had not been filed at that time. It is also true that the Customer Advisor knew that the appellant had contacted HMRC because she thought she was liable to pay tax. It therefore was  
25 highly likely that tax would have to be paid and one would have expected the advisor to give some sort of warning to the appellant in respect of the possibility of late payment penalties. Where the appellant could and should have been given advice to act quickly because of the possibility of an impending penalty she was given an entirely different message and acted accordingly. In addition the Tax Guide issued  
30 with the tax return led her to believe that the payment was due three months after the date the return was issued on 7<sup>th</sup> March 2013. Her response was that of a reasonable citizen trying to fulfil their tax obligations to the best of their ability in an unfamiliar and complex area. She complied with and followed the procedures as advised to her in the telephone conversation oblivious to the impending penalty. For these reasons in  
35 the tribunal's view the appellant had reasonable excuse for failing to pay the tax on time.

24. Paragraph 9 of Schedule 56 of the Finance Act 2009 (Special Reduction) provides HMRC with discretion to reduce any penalty if they think it right to do so because of special circumstances. On the information held in this case HMRC did not consider  
40 there were any special circumstances which would allow them to reduce the penalty. In the Tribunal's view had they not considered that the appellant had a reasonable excuse for the late payment then they would have overturned that decision. The Tribunal considers that once HMRC had decided the appellant had no reasonable excuse for the late payment they should have considered that there were special  
45 circumstances that applied. In a telephone call of 22 or 23 February 2013 HMRC did not advise the appellant that a penalty for late payment would be levied if she failed to



pay by 2 March 2013. The appellant relied on the advice given by HMRC which led her to believe that provided she completed the tax return form promptly there would be no penalties. It is clear that had she been advised that a penalty for late payment would be charged if she failed to pay by 2 March 2013 she would have taken steps to make a payment by that date. HMRC point to the guidance given in respect of deadline dates in The Tax Guide (SA150) that would have been issued with the appellant's 2011/12 tax return. However that tax return was not issued until 7 March 2013 which is after the payment deadline date and so the guidance in respect of deadline dates would not have assisted the appellant.in respect of the 31 January and 2 March deadlines. However as the appellant states the guidance appears to indicate that payment was due 3 months after the return form was issued i.e. it was due by 7 June 2013 and payment was made before that date. The forms gave a deadline for completion of 3 months with no mention that a penalty had already been incurred. The appellant completed the return and submitted it electronically on 13 May 2013 well within the 3 months. Payment was made in full on 24 May 2013. The appellant acted in good faith and in accordance with both the advice and procedures discussed with HMRC in the telephone call of 22 or 23 February and within the advice given on the tax form. Until she received the notice of penalty assessment dated 14 May 2013 HMRC had led the appellant to believe that providing she followed the procedure agreed in the telephone conversation of 22 or 23 February 2013 she would incur no penalties. She did follow those procedures. Therefore the Tribunal considers that there were special circumstances in this case.

25. HMRC applied the legislation correctly and calculated the amount of the penalties accurately as £120 (rounded down to the nearest pound) being 5% of the tax of £2,404.25 for the period 6 April 2011 to 5 April 2012 which remained unpaid at 31 January 2013. However in the Tribunal's view the appellant has established that she had reasonable excuse for the late payment of the tax due. Therefore the appeal is allowed.

26. 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.

**PETER R. SHEPPARD**  
**TRIBUNAL PRESIDING MEMBER**

**RELEASE DATE: 16 December 2013**