



TC03263

Appeal number: TC/2013/06026

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BRIAN SCOTT

Appellant

- and -

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

TRIBUNAL : JUDGE ADRIAN SHIPWRIGHT

The Tribunal determined the appeal on 22 November 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 having first read the Notice of Appeal dated 21 August 2013 and all the other documentation provided.

This is a full decision following a request from the Appellant for a full decision.

Introduction

1. This is a full decision in this appeal following a request made by the Appellant for a full decision.

5 2. The Tribunal decided that as the tax was paid late and no reasonable excuse within the meaning of the statute had been shown, the onus being on the taxpayer, the appeal was therefore dismissed.

3. The decision is essentially a fact based one. The Appellant did not show a reasonable excuse within the meaning of the legislation. The burden of proof was not discharged by the Appellant. Accordingly, the Appellant could not succeed in
10 his appeal. There was no significant point of law involved.

Appeal

4. This decision concerns the appeal by Brian Scott (“the Taxpayer”) against a penalty imposed for late payment of tax for 2011-12. There was no dispute that the tax was paid late.

15 5. The penalty was imposed under paragraph 3 Schedule 56 Finance Act 2009. The amount of the penalty was £379.00. This was five per cent of the tax outstanding on 19 March, 2013, the date of the penalty notice.

6. It may be that the appeal was made out of time. However, HMRC did not want to take any point on this. Accordingly, I gave such permissions as may be necessary to
20 allow this appeal to proceed.

The Law

7. The relevant law here is found in paragraph 3 schedule 56 FA 2009. This provides:

“(1) This paragraph applies in the case of—

25 (a) a payment of tax falling within any of items 1, 3 and 7 to 24 in the Table,
(b) a payment of tax falling within item 2 or 4 which relates to a period of 6 months or more, and

(c) a payment of tax falling within item 2 which is payable under regulations under section 688A of ITEPA 2003 (recovery from other persons of amounts due from
30 managed service companies).

(2) P 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, P is liable to a penalty of 5% of that amount.

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

8. Paragraph 16 deals with reasonable excuse. It provides:

“(1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a payment if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.

40 (2) For the purposes of sub-paragraph (1)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

45 (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased”.

Factual Matters

9. I make the following findings of fact which is a matter of fact that the tax is paid
50 late and there was no reasonable excuse.

10. A notice to file a tax return for the year of assessment 2011-2012 was sent to the Taxpayer on 5 April, 2012. The filing date for a paper return was 31 October, 2012 and for an electronic return was 31 January, 2013.
11. The tax return was filed electronically before 31 January, 2013. As he filed electronically the Taxpayer knew the amount of tax due.
12. The tax was payable on or before 31 January, 2013. The tax was not paid in full until 18 March, 2013. Accordingly, the tax was not paid on time was paid late.
13. The penalty was the subject of a review. The imposition of the penalty was upheld on review.
14. The Taxpayer did not dispute that the tax had been paid late. I find that the tax was paid late.
15. Accordingly, the penalty stands unless a reasonable excuse within the statutory meaning can be shown by the Taxpayer.
16. I could find nothing in the papers before me till I need to make any helpful findings as far as reasonable excuse was concerned. Rather the papers confirmed that there was no reasonable excuse.
17. I find them to the fullest extent possible I find is a fact that there was no reasonable excuse throughout the relevant period and no evidence that could make the basis for such a claim. I note that the Taxpayer moved pounds but this does not explain why he was unable to pay his tax on time especially as the move was before the due date for payment.
- Taxpayer's Submissions in outline**
18. The Taxpayer argued that as he had calculated that a large sum of tax was due he was reluctant to make payment until HMRC had verified the amount due. He also said that he had moved house in December 2012.
19. Essentially, it was being said that it was not fair that penalty was being imposed on the Taxpayer.
- HMRC's Submissions in outline**
20. HMRC said as the payment was late the penalty must stand as no reasonable excuse has been shown by the Taxpayer.
21. I have considered the Taxpayer's argument about waiting for confirmation of the amount due carefully. I reject it as it flies completely in the face of self-assessment. The duty and obligation is on the Taxpayer to calculate the amount of tax due and to file and pay before the due date. The Taxpayer failed to do this.
22. I have carefully considered all the information before me to see if it shows any other grounds for finding that there was a reasonable excuse. I have found nothing to show that there was a reasonable excuse within the statutory meaning on the documentation before me.
- Discussion**
23. The Taxpayer has to comply with his legal obligations. If not parliament is enacted that a penalty falls due.
24. The UK tax system is a self-assessment system. It is a file and pay system followed by a period in which HMRC may review the filing and payment.
25. There is a clue in the description i.e. it is a self-assessment system which indicates what is to be done. Penalties flow if it is not complied with.
26. Reasonable excuse needs to be something outside the individual's power and control. Waiting to check the figure with HMRC does not amount to a reasonable excuse in this context.
27. No reason excuses been shown.
28. The Tribunal is only concerned with matters of law and does not have any inherent fairness jurisdiction (see *Hok* and *Total*). The Tribunal can only proceed on the basis as set out in the statutory provisions.

29. I have found that:

(1) the payment was late: and

(2) no reasonable excuse has been shown (the onus being on the Taxpayer).

Accordingly, the appeal is dismissed.

5 30. I have carefully considered reviewed a position to see if any changes should be made to them decision. There is no reason to making changes to make any changes to the decision. There is no error of law or of fact. The appeal is dismissed essentially on the facts. The payment was late and there was no reasonable excuse shown.

10 31. 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)”
15 which accompanies and forms part of this decision notice.

**ADRIAN SHIPWRIGHT
TRIBUNAL JUDGE**

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RELEASE DATE: 20 January 2014

