



TC03630

Appeal number: TC/2013/06822

INCOME TAX – Individual Tax Return – Self Assessment – late filing penalty – reasonable excuse – alleged confusion over amount of tax due – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

COLONEL H R EATON OBE

Appellant

- and -

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

TRIBUNAL: JUDGE RICHARD J MANUELL

The Tribunal determined the appeal on 24 January 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 29 September 2013 and HMRC's Statement of Case dated 13 November 2013 (with enclosures).

DECISION

1. This determination has been prepared following the Appellant's request for full findings following the promulgation of the standard short form determination usual in default paper appeals. In reality having heard no live evidence from either side there is little which the Tribunal can usefully add, nevertheless a full decision is required to enable an application for permission to appeal to the Upper Tribunal to be considered.

2. The Tribunal decided that the Appellant had not shown a reasonable excuse for his failure to pay by the prescribed date his income tax for the year ending 5 April 2012. The Appellant's outstanding tax liability was £42,714.50 as at 31 January 2013, the last date for payment. That sum remained unpaid as at the penalty date of 3 March 2013. The full amount of tax due has not yet been paid. The Appellant incurred a first late payment penalty of £2,091.00, i.e., 5% of the tax unpaid at the penalty date (issued on 19 March 2013 and adjusted on 7 August 2013). A second late payment penalty was issued on 14 August 2013, of £2,070.00, i.e., 5% of the tax unpaid at the second penalty date. The total of the penalties under appeal is £4,161.00.

3. The Appellant contended in summary that he had been unable to pay because he wanted to identify the correct sum due to HMRC. He had sent letters and telephoned explaining that he was happy and willing to pay if terms could be agreed. He was unhappy about the fines and surcharges applied, despite assurances that these would cease once a payment plan had been agreed. He had paid contributions when possible. He had suffered serious ill health in the previous two and half years. There had been no proper consideration of his position.

4. HMRC's response was that the Appellant had been issued with a statement of account on 16 September 2013. When the Appellant filed his 2011/2012 tax return on 31 January 2013 he was informed of the tax due from him and the due date for payment, also 31 January 2013. It was for the Appellant to secure an agreement acceptable to HMRC before the first penalty date of 3 March 2013 if he wished to avoid a penalty for 2011/2012. His proposals would not have cleared his debt with sufficient rapidity: his offer would have required 33 years to collect. The payments since sent made little impact on the outstanding debt. HMRC admitted no errors in tax coding nor harsh treatment. The Appellant had not been prevented from working or receiving an income. No special circumstances existed which might have entitled him to a reduced penalty.

5. The relevant legislation, in particular schedule 56 of the Finance Act 2009, was copied to the Appellant by HMRC as part of their bundle. It will not assist the Appellant to recite those materials at any length here. In brief, the Appellant was under an obligation to file an accurate self assessment return for the relevant tax year and to pay any tax he owed by the due date. The penalties for failure to pay tax owed by the due date are prescribed in schedule 56. Late payment is subject to the reasonable excuse provisions set out at paragraph 6 of schedule 56, which if satisfied may avoid a penalty or reduce the period for which a penalty is payable.

6. The explanations provided by the Appellant are not a reasonable excuse. In simple terms, he might have shown a reasonable excuse if he had produced evidence to show that the exercise of reasonable foresight, due diligence and proper regard for his obligations as a taxpayer would not have avoided the failure to pay by the due

date. An example might be a situation beyond his control, such as illness, but that would have to have been proved to the ordinary civil standard: see paragraph 9, below.

5 7. The Appellant failed to discharge the burden of proof which was on him. The Appellant was in a position to calculate his likely tax position from the date he received his P60 for the tax year 2001/2012, a document which his employer was required to issue promptly. Normally P60s are sent to employees in late April or early May after the end of the tax year in question, so that the Appellant would have had his P60 by the end of May 2013. The Appellant produced no evidence that this was not
10 received by him at the usual time. In any event, the Tribunal considers that the Appellant could hardly have been unaware of his salary entitlements (and bonus if applicable), which were governed by his employment contract. That would have been a matter of considerable personal interest to him. His income from employment would have been updated each month by his payslip. The Appellant was the source of
15 the figures in his self assessment tax return filed on 31 January 2013, not HMRC. As the Appellant left that filing until the final date, he must have realised that he was required to make payment of any tax liability then and there, absent an agreement for time to pay terms agreed with HMRC. If the Appellant had an overpayment claim for a past tax year, that was a separate issue and until that dispute was settled with
20 HMRC, he was not entitled to withhold payment of his current liability on the basis of an unresolved claim for repayment.

8. The Appellant did not explain why he had not made other arrangements to meet his current tax liability, for example, a bank loan, which would have been one effective means of avoiding exposure to late payment penalties. There was no
25 suggestion that the Appellant was other than a man of standing and substance, able to seek professional advice if necessary. Although it is not a matter for the Tribunal as such, the Appellant's proposal to settle his tax liability over a period of 33 years can scarcely be regarded as an attractive one in commercial terms. On the evidence provided to the Tribunal, such as it was, the Tribunal finds that the Appellant has
30 failed to show that HMRC have failed to provide him with essential information promptly when requested, nor treated him any differently from other taxpayers owing substantial sums.

9. There was no medical evidence of any kind produced by the Appellant to the Tribunal. There was no evidence that he had not been in receipt of sick pay or similar
35 if temporarily unable to work, nor evidence that he was currently unemployed. There was no evidence that he was not in receipt of other regular income, e.g., his military pension. There was no evidence produced by him to show how any illness he had claimed that he had recently suffered made him incapable of attending to his tax affairs, and if so, for what period. The Tribunal noted that the Appellant claimed that
40 illness had caused "further drain" on his finances but he produced nothing to support his assertion, nor any explanation of other problems to which he alluded. The Tribunal is not entitled to reach conclusions based on speculation. The Tribunal can only draw inferences which are based on factual evidence placed before it by the parties.

45 10. The Tribunal has no power to reduce penalties of this type in the absence of a reasonable excuse. No special circumstances were shown. The appeal is dismissed.

11. 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.

10

**RICHARD J MANUELL
TRIBUNAL JUDGE**

15

RELEASE DATE: 21 May 2014

