



TC03658

Appeal number: TC/2014/00189

INCOME TAX - penalty for late payment of income tax due upon self assessment - whether there was a "reasonable excuse" - no - whether there were "special circumstances" - no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MAYOOR PATEL

Appellant

- and -

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

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 29 April 2014 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 24 December 2013, HMRC's Statement of Case acknowledged by the Tribunal on 12 February 2014 (with enclosures) and the appellant's response dated 14 March 2014.

The appeal

5 1. This is an appeal against two income tax late payment penalties amounting to £204 for the tax year 2011-12. The penalties were imposed in accordance with paragraphs 3(2) & (3) Finance Act 2009.

Permission extend time

10 2. Both penalties were imposed on 14 August 2013 and the appeal was due to be filed within 30 days. Mr Patel lodged his appeal on 08 October 2013 and was therefore out of time. Mr Patel states that the delay arose from personal family circumstances outside his control. HMRC do not oppose the late appeal.

15 3. I am satisfied that it is in the interests of justice to extend the time limit as there is a good reason for the short delay in filing this appeal. Accordingly I give permission to extend the time for lodging this appeal in accordance with Rule 5(3)(a) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber Rules) 2009 (“the Rules”).

The issue

20 4. Mr Patel submits that he has a reasonable excuse for the late payment. This is opposed by HMRC.

The Law

5. In so far as it is relevant to this appeal the relevant law is summarised below.

Liability for the penalty

25 6. Section 59B(3) Taxes Management Act 1970 (“TMA”) provides that the payment of income tax and capital gains tax “shall be payable ..on or before 31 January next following the year of assessment”.

30 7. Paragraph 1 (1) and (4) Schedule 56 Finance Act 2009 (“FA”) provides that “a penalty is payable by a person where he fails to pay an amount of tax payable 30 days after the [due] date.” (“the penalty date”). The applicable penalty is 5% of the tax outstanding on the penalty date. Paragraph 3(2) Schedule 56 FA.

8. Paragraph 3(3) Schedule 56 FA provides that a second penalty is payable if any amount of tax is remains unpaid five months after the penalty date. The applicable penalty is 5% of the outstanding tax.

Reasonable excuse

35 9. Paragraph 16 (1) Schedule 56 FA provides that “Liability to a penalty does not arise ... if the person satisfies the Tribunal that there is a reasonable excuse for the failure”.

40 10. Paragraph 16(2)(c) provides “Where a person had a reasonable excuse for the failure but the excuse ceased he is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased”

11. There is no statutory definition of the term “reasonable excuse”. Case law has established that a reasonable excuse “is a matter to be considered in the light of all the circumstances of the particular case”. *Rowland v HMRC [2006] STC (SCD) 536*.

5 *Special circumstances*

12. Paragraph 9 Schedule 56 FA provides “If HMRC think it right because of special circumstances they may reduce the penalty” In the case of *Crabtree V Hinchcliffe (inspector of Taxes) [1971] 3 All ER 967* established that the word “special ..must mean unusual or uncommon”.

10 13. The Tribunal may reduce or cancel the penalty due to special circumstances only “if the tribunal thinks that HMRC’s decision in respect of the application of paragraph 9 was flawed”, Paragraph 15 (3) (b) Schedule 56 FA. The word “flawed” is defined as a decision which is either unlawful or wholly unreasonable such that it would be open to “judicial review”. Paragraph 15(3).

15 **The facts**

The agreed facts

14. Mr Patel incurred a late payment penalty for the tax year 2010-11. However a payment arrangement was made and the payment was cancelled.

20 15. Mr Patel filed a self-assessment tax return for the year 2011-12. The return was filed on 27 January 2013, before the due date.

25 16. Mr Patel’s tax liability for the year amounted to £2,154.97. The tax was due to be paid on or before 31 January 2013. The tax remained unpaid on 03 March 2013, 31 days after the due date. On 14 August 2013 HMRC issued a first late payment penalty. The penalty amounted to £107 being 5 % of the tax outstanding on the penalty date.

17. Mr Patel made monthly payments on account between November 2012 and July 2013. These payments related to income tax owed for the previous tax year 2010-11. However there was an excess sum of £241.03 which was credited towards his tax liability for the year 2011-12.

30 18. Five months after the first penalty date, £1,913.94 of the tax remained unpaid. On 14 August 2013 HMRC issued a second late penalty in the sum of £97 being 5% of the outstanding tax.

19. The tax was paid in full on 01 November 2013.

The Contested facts

35 *a) The appellant’s case*

40 20. Mr Patel states that when filing his return he elected to pay the outstanding tax via his tax code. He did not pay the tax on the due date because he assumed that payments were being made via his tax code. On 15 May 2013 he telephoned HMRC and was advised that he could pay the outstanding tax by instalments which he duly did.

b) The Respondent's case

21. HMRC state that Mr Patel elected not to pay the tax via his tax code. In support of their case they have provided a copy of the return.

22. They accept that Mr Patel telephoned HMRC on 15 May 2013. Their record of the telephone call reads as follows:

“advised as return received near the end of Jan too late to code any u/p [underpayment] tax payer then said had assumed would be collected by instalments. Advised can but will be charged interest and surcharges t/p said can't pay lump sum out of salary of £168,674.”

23. HMRC have also provided statements of account dated 18 June and 03 September 2013 showing balances of £2,179.41 and £2,027.86 respectively.

The Arguments

The appellant's case

24. Mr Patel submits that he had reasonable grounds to believe that he was not required to pay the outstanding tax as this would be collected via his tax code. He states that when he telephoned HMRC on 15 May he was advised that he could pay the tax by instalments which he duly did. Mr Patel maintains that the penalty has been unfairly applied in view of his genuine mistake.

The Respondent's case

25. HMRC submit that Mr Patel elected not to pay the via his tax code. They do not accept that he was misled during the telephone call of 15 May as he was specifically advised regarding the imposition of interest and penalties. They do not accept that there are any special circumstances in which the penalties can be reduced or cancelled.

Reasons for decision

Findings of fact

26. I am satisfied on the balance of probabilities that Mr Patel did not elect to pay via his tax code as the record supplied by HMRC clearly shows that he elected not to do so.

27. In relation to the telephone call of 15 May. I find that Mr Patel was informed on that instalment payments would attract penalties and interest because HMRC have provided a contemporaneous note of the telephone call and Mr Patel is merely relying upon his own recollection. I am further satisfied that Mr Patel was notified of his outstanding tax liability in the statements of account issued on 18 June and 03 September 2013.

Reasonable excuse

28. I accept that Mr Patel genuinely believed that he had elected to pay the tax via his tax code. However it would have been reasonable for Mr Patel to have taken care when making this election particularly in view of the late payment penalty imposed for the previous tax year. If in doubt it was open to him to make enquiries of HMRC

regarding the arrangements made for deducting the tax via his tax code. There is no evidence to suggest that he made these enquiries.

29. I accept that Mr Patel agreed to pay the outstanding tax by instalments during the telephone call of 15 May 2013. However this does not provide a reason for the late payment because :

- (1) The arrangement was made after the first penalty date,
- (2) the majority of the payments related to the previous tax year,
- (3) he ceased making payments on 19 July and
- (4) he was advised that the late payment would attract penalties,

30. For these reasons I do not find that there was a reasonable excuse for the late payment of income tax throughout the default period.

Special circumstances

31. HMRC have decided not to exercise their discretion to cancel or reduce this penalty. If find are no unusual or uncommon features of the case which would lead me to the conclusion that this decision was flawed. In making this decision I take into account the reasons given in paragraphs 28 and 29 above.

32. For these reasons there are no grounds to reduce or cancel the penalties due to special circumstances in accordance with paragraph 15(2)(b) Schedule 56 FA.

Decision

33. There was no reasonable excuse for the late payment of income tax throughout the period of the default.

34. There are no grounds to cancel or reduce the penalties due to special circumstances.

35. The appeal against the late payment penalties of £204, is dismissed.

Right of appeal

36. 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.

35

JOANNA LYONS

TRIBUNAL JUDGE

RELEASE DATE: 30 May 2014