



TC03886

Appeal number: TC/2014/02643

Income Tax – time to pay agreement – two late payments – Bank holidays alleged to be at one time to pay date - change of address by taxpayer not a reasonable excuse – penalty calculated correctly

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DARREN BURY

Appellant

- and -

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

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The Tribunal determined the appeal on 1 August 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 12 May 2014 (with enclosures) and HMRC's Statement of Case submitted on 3 June 2014 (with enclosures).

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DECISION

5 1. This is an appeal by Mr Darren Bury against the imposition of a late payment penalty of £295.00 for the tax year 2011/12.

2. Mr Bury submitted his tax return for the tax year 2011/12 electronically on 29 May 2012. The total tax due for payment by Mr Bury was £10,300.47 which should have been paid by him by 31 January 2013.

10 3. Mr Bury entered into a time to pay arrangement with HMRC on 31 January 2013 whereby he would pay £500.00 on 31 January, £1,000.00 by 28 February, £2,000.00 by 31 March and the balance of £3,942.27 by 28 April 2013.

4. The first two payments were received on time. However the 31 March payment was not made until 2 April due to the Easter Bank holidays and the 28 April payment was not made until 25 June 2013.

15 5. As a result HMRC around 30 April 2013 issued a 30 days late payment penalty calculated at 5% of the balance outstanding 30 days after the due date of 31 January 2013. It cancelled the time to pay arrangement on 13 June 2013

20 6. In his Notice of Appeal Mr Bury maintained that the penalty is excessive considering there was no option from HMRC to pay at the given time and that considering the errors made by HMRC in sending correspondence to his old address the penalty should be reduced if not cancelled.

25 7. Mr Bury changed his address and claims to have informed HMRC for the second time during a telephone conversation on 2 April 2013 although HMRC records show the change was not notified by Mr Bury until a telephone conversation on 21 June 2013. Due to his post being sent to his old address Mr Bury claims that he was unable to pay the amount owed.

The Law

30 8. Paragraph 1(1) of Schedule 56 Finance Act 2009 states that a penalty is payable by a person where he fails to pay an amount of tax 30 days after the due date. Paragraph 3(2) states that the penalty is 5% of the unpaid tax.

35 9. Paragraph 10 of Schedule 56 Finance Act 2009 states that if a taxpayer makes a request to HMRC that payment of the amount of tax be deferred and HMRC agrees then the taxpayer is not liable to a penalty unless the taxpayer breaks the agreement. If the taxpayer breaks the agreement then HMRC may serve a notice specifying the penalty to which the taxpayer would have been liable but for the time to pay agreement.

10. Paragraph 16(1) of Schedule 56 Finance Act 2009 provides that an appeal against a penalty will be successful where the taxpayer shows that there is a reasonable excuse.

The Decision

5 11. There is no statutory definition of reasonable excuse which according to Rowland v HMRC [2006] STC (SCD) 536 is a matter to be considered in the light of all the circumstances of the particular case. HMRC consider that a reasonable excuse normally is an unexpected or unusual event that is either unforeseeable or beyond the taxpayer's control.

10 12. Mr Bury cannot excuse the late payment due by 28 March until 2 April 2013 because of the bank holiday. This was an event that was well known and foreseeable. Indeed it seems the time to pay agreement may have deliberately stated 28 March being the last working day of March rather than 31 March.

15 13. The Tribunal rejects Mr Bury's claim that he was unable to make the final payment due to correspondence from HMRC being sent to his old address. Even if he did inform HMRC of his change of address during telephone conversations with HMRC during March and April 2013 he knew that under his time to pay agreement he was due to pay the final amount by 28 April 2013. He did not need correspondence from HMRC to enable him to make this payment.

20 14. As Mr Bury broke the time to pay agreement on 28 April, even if it had not already been broken on 31 March, the penalty of £295.00 has been correctly calculated by HMRC in accordance with the legislation as the amount of tax unpaid 30 days after the due date, 31 January 2013 was £5,902.27.

25 15. As Mr Bury has no reasonable excuse and the penalty has been correctly calculated and imposed in accordance with the legislation, the appeal is dismissed.

16. The penalty of £295.00 remains due for payment by Mr Bury.

30 17. 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.

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Alastair J Rankin
TRIBUNAL JUDGE

RELEASE DATE: 06 August 2014

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