



TC04975

Appeal number: TC2014/04132

Income Tax-Penalties for failure to pay on time-whether reasonable excuse –
Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ALEXANDER AYERS

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE Dr Kameel Khan
David Batten (Solicitor)**

Sitting at Fox Court, Holborn London WC1X8 HN on 10 December 2014.

Decision

Having heard Alex Ayers, the Appellant in person and Neil Nagle (Presenting Officer) and Jeremy Taylor (Assistant Presenting Officer) for the HMRC.

DECISION

Introduction

- 5 1. This is an appeal against a late payment penalty under Paragraph 1(1) of
Schedule 56 Finance Act (FA) 2009 for the failure to pay tax on time for the year
ending 5th April 2012.
2. A penalty notice for the amount of £10,762 was issued to the Appellant on the
25th of February 2014. This penalty was imposed for the failure to pay a
10 self assessment tax liability for the year ending 5th April 2012 by the due date of
31st January 2013.

FACTS

- 15 3. On 3rd March 2012 the Appellant disposed of shares held in Varidion Limited
(Varidion), which led to a liability for capital gains tax on the proceeds of the
disposal.
4. HMRC should have been notified of the chargeability to Capital Gains Tax six
months after the end of the period in which the liability arose, this would have been
the 5th of October 2012 in accordance with Section 7(1) Taxes Management
Act 1970 (“TMA 1970”).
- 20 5. The Appellant failed to notify HMRC of his chargeability to Capital Gains Tax
and has acknowledged this oversight in his appeal and letter dated 31st of
October 2014.
6. The Appellant’s tax liability for the year ending 5th April 2012 was £107,628.15.
This was due to be paid on or before the 31st of January 2013 in accordance with
25 Section 59B (4) TMA 1970. Failure to do so would trigger a penalty.
7. The Appellant made full payment of his liability for the period ending
5th April 2012 on 30th January 2014, which was a year after the due dates. As a
result of the late payment of the tax for the period ending 5th April 2012, a penalty in
the amount of £5381, which was 5% of the tax unpaid at the penalty date, became
30 due.
8. The Appellant appealed against the decision to impose penalties on
27th March 2014. First, the Appellant asked for a review of the decision on 7th of
May 2014. The review upheld HMRC’s decision to charge a penalty for late payment
of the tax liability.
- 35 9. The Appellant appealed on the grounds that the liability arose as a result of the
sale of a small company he owned, the sale was almost exclusively an earn out
payment (to 2018) and from advice taken the tax due could be paid in line with the
deferred earn out which extended to 2016. Appellant further stated that he had
received communication from HMRC on the 7th of February 2012 which stated that

the last year in which he was required to complete a self-assessment return was the year ending 5th April 2011.

10. The Appellant relied on advice provided by a friend who had undertaken a similar transaction.

5 **The Respondents Contention**

11. The Respondent says the penalties imposed under Section 56 Finance Act 2009 were imposed correctly and in accordance with the existing legislation. The disposal of shares in the Varidion was completed on the 3rd of March 2012 and the Appellant was therefore required to inform HMRC of his chargeability to tax by the 5th of
10 October 2012. This was not done. Further, the Appellant submitted returns for the period ending 5 April 2012 on the 31st of January 2014, which was one year late.

12. HMRC say that the Appellant did not take reasonable care when seeking advice on the issue whether the tax due could have been deferred or not. A reasonable and responsible Appellant would have checked with HMRC to ascertain whether the
15 advice given was correct and if not, whether there was a procedure in place the centre payment of tax.

13. HMRC state the Appellant could have submitted a claim under section 280 TCGA 1992 and if such a claim was submitted and accepted, this would have enabled the Appellant to make payments by instalments of the liability over an agreed period of
20 time.

14. HMRC contend that they issued a letter to the Appellant on the 7th of February 2012 which states that if the Appellant's financial circumstances had changed since the end of the tax year then he must immediately notify HMRC and relevant tax returns should be completed. While the Appellant's circumstances
25 clearly changed the 3rd March 2012, HMRC had not been advised of this change. The only time HMRC knew of the charge to capital gains tax was when he submitted a return for the year ending 5th April 2012 on the 31st of January 2014, which was one year late.

15. HMRC says that the Appellant's ignorance of the law or obligations is not a
30 reasonable excuse and there is no reasonable excuse for late payment of the Appellant's self assessment tax liability for the year ending 15th April 2012.

Conclusion

The Appeal is dismissed.

16. The Tribunal looked to whether there was an excuse and whether the excuse was
35 reasonable. This focuses on the behaviour of the taxpayer. In this case the taxpayer did not seek tax advice from a professional advisor. The area of taxation relating to capital gain is a highly specialized area which requires specialist advice. Such advice was not sought from a competent advisor. The taxpayer has acknowledged that he was reckless with regard to his affairs and did not take the necessary steps to complete

an accurate return not did he reveal any advice which was given to him. He did not seek the information from HMRC's advice line or one of their offices either in writing or on the telephone. The Tribunal found that the taxpayer was careless and did not take reasonable steps to tell HMRC of his liability to tax. It should be added that he was not deliberate in his actions and it was his intention to pay all the tax due and meet all his obligations as a law abiding citizen.

17. In order for the taxpayer to succeed with his defence he would have to show that he sought help from a professional advisor who was properly instructed and who was qualified to carry out the work and to give advice. The taxpayer would also have to show that he checked the advice, complications and suggestions; which were presented to him. These are the steps one would expect of a reasonable taxpayer.

18. It is particularly important in these cases that the appropriate advisor for the particular task be selected and for complex tax advice an equally sophisticated tax advisor should be employed. If a lay person was engaged to give advice then this would amount to not taking reasonable care. A taxpayer has an obligation to choose an advisor who is trained and competent to give advice for the tax in hand.

19. In the circumstances therefore the appeal is dismissed.

20. The taxpayer indicated that he may wish to make a claim for payment of the tax by instalment. At the time of the hearing such a claim had not been made. Should such a claim be made, HMRC are willing to make adjustments to the penalty. The tribunal explained that this would be a matter between the taxpayer and HMRC and for the purposes of the hearing a penalty would still be imposed though not necessarily the amount of the penalty initially imposed.

21. Appeal dismissed.

22. This document contains full findings of facts 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 the Tribunal no later than fifty six days after the 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.

**K KHAN
TRIBUNAL JUDGE**

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