



**TC05048**

**Appeal number: TC/2015/05198**

*INCOME TAX – self-assessment – penalty – HMRC website message –  
whether reasonable excuse – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ANDREW JOHN HALFORD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE FAIRPO**

**The Tribunal determined the appeal on 18 January 2016 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 16 September 2015 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 21 October 2015.**

## DECISION

### **Introduction and background**

5 1. This is an appeal against a penalty for late payment of a self-assessment tax liability for the 2013-2014 tax year. The appellant (“Mr Halford”) appeals against the penalty and the interest on the grounds that he had a reasonable excuse for the late payment.

10 2. Mr Halford submitted his tax return online for the 2013-14 tax year on 30 January 2015. The return was submitted on time, the due date for filing an electronic return having been 31 January 2015.

15 3. Mr Halford paid the associated tax liability on 9 March 2015. The due date for payment of the tax liability was 31 January 2015; as the payment was made more than 30 days after the due date, a penalty of 5% of the tax liability was imposed. As the tax liability was £1,443.89, the penalty imposed was £72. Interest was also charged on the late payment.

20 4. Mr Halford appealed the penalty to HMRC on 26 March 2015. On 15 July 2015, HMRC rejected his appeal. Mr Halford requested that HMRC review that decision on 22 July 2015. The subsequent review upheld the decision to impose the penalty and HMRC notified Mr Halford accordingly on 25 August 2015. Mr Halford appealed to this tribunal on 16 September 2015.

### **Evidence**

25 5. Mr Halford’s evidence is that, having completed his tax return and having been notified by HMRC’s system that he had a tax liability for the 2013-2014 tax year, he ‘logged back in again to check’ if the tax was due to be paid immediately. He was “presented with the message “You have nothing to pay”” and understood this to mean that the tax liability was ‘not immediately due’. Accordingly, he logged out of the system and ‘thought nothing more of it’.

30 6. Mr Halford received a letter from HMRC ‘a couple of months later’ stating that the tax liability was due for payment and telephone HMRC to make payment. He subsequently received a further letter stating that a penalty of £72 had been imposed for late payment of his tax liability.

35 7. HMRC agree that Mr Halford’s tax return was submitted online on 30 January 2015. HMRC agree that the online return system would, immediately after submission of the return on 30 January 2015, have stated that Mr Halford had nothing to pay on that date as the information in his tax return had not yet been processed and so the information would have been correct at that time.

8. HMRC's evidence is that Mr Halford's return was processed on 3 February 2015 and a reminder letter in respect of the outstanding tax liability was sent to Mr Halford on 9 February 2015.

5 9. It is agreed between the parties that the tax liability was paid on 9 March 2015. As the tax liability was outstanding on 3 March 2015, the penalty date for the return, a penalty was imposed by HMRC and notified to Mr Halford by letter on 17 March 2015.

### **Relevant law**

10 10. s59B(4) of the Taxes Management Act 1970 ("TMA 1970") provides that payment of a self-assessment tax liability in the circumstances applying in this case shall be made 'on or before 31 January next following the year of assessment'.

15 11. Para 1(1) of Schedule 56 of the Finance Act 2009 ("Sch 56 FA 2009") provides that a penalty is payable where the taxpayer 'fails to pay an amount of tax payable 30 days after the date specified in [s59B(4) TMA 1970] as the date by which the amount must be paid'.

12. Para 3(2) of Sch 56 FA 2009 provides that the amount of the penalty under para 1(1) shall be 5% of the unpaid tax.

13. Para 9 of Sch 56 FA 2009 provides that HMRC may reduce a penalty where special circumstances exist.

20 14. Para 16 of Sch 56 FA 2009 provides that liability to a penalty under Sch 56 FA 2009 does not arise if the taxpayer has a reasonable excuse for the failure.

### **Mr Halford's submissions**

25 15. Mr Halford submits in his appeal that the tax liability was paid late as a result of an 'erroneous message' from the HMRC website and that he 'made every reasonable effort' to check whether or not he needed to make payment and that he made payment 'as soon as [he] received notification that it was due'.

16. Accordingly, he submits that he has a reasonable excuse and that no penalty should be imposed, nor should any interest be payable to HMRC in respect of the late payment of tax.

### **HMRC's submissions**

30 17. HMRC submits that under self-assessment, it is the taxpayer's responsibility to pay the right amount of tax, at the right time and that there is no obligation on the part of HMRC to notify a taxpayer that a tax liability exists before the due date for payment of that tax.

35 18. HMRC submit that, for there to be a reasonable excuse for late payment of a tax liability, there must have been 'an unexpected or unusual event that is either

unforeseeable or beyond the taxpayer's control' which prevents them from complying with their obligation to make payment of their tax liability on time. In determine whether an event is unforeseeable or outside the taxpayer's control, HMRC submit that the actions of the taxpayer should be considered from the perspective of a prudent  
5 person, exercising reasonable foresight and due diligence, with proper regard for their legal responsibilities.

19. HMRC further submit that the due dates for payment of tax liabilities are clearly available on their website and that a prudent person who has, as Mr Halford has, submitted self-assessment tax returns each year since 2007 would be aware of the due  
10 date for payment of a self-assessment tax liability.

20. Although Mr Halford did not specifically submit that special circumstances existed which should have been taken into account in establishing the amount of the penalty, HMRC state that they have also considered whether any special  
15 circumstances existed which would enable them to reduce the penalty below the statutory amount. Such circumstances must be 'exceptional, abnormal or unusual' (*Crabtree v Hinchliffe* or 'something out of the ordinary run of events' (*Clarks of Hove Ltd v Bakers' Union*). HMRC submit that not knowing the due date for payment of a tax liability is not a special circumstance which would allow them to reduce the penalty.

20 21. With regard to interest, HMRC submit that statute imposes an interest charge on late payments of tax liability and HMRC has no authority to ignore or override this statutory requirement.

### **Findings of fact**

22. The tribunal finds the following facts:

25 23. Mr Halford submitted his tax return for the 2013-2014 tax year online on 30 January 2015.

24. Mr Halford was notified of his tax liability for the 2013-2014 tax year by the online return submission system on 30 January 2015.

30 25. Mr Halford understood that the message displayed on HMRC's online return system, that he had no amount to pay, meant that no payment was immediately due in respect of his tax liability.

26. Following receipt of that message, Mr Halford made no further attempt to establish the due date for payment of that tax liability.

35 27. HMRC sent a reminder letter in respect of the outstanding tax liability to Mr Halford on 9 February 2015.

28. Mr Halford paid the outstanding tax liability on 9 March 2015.

## **Discussion and decision**

29. There is no definition in the legislation of a “reasonable excuse”, and it “is a matter to be considered in the light of all the circumstances of the particular case” (*Rowland v HMRC* [2006] STC (SCD) 536 at [18]).

5 30. Having considered all the circumstances of this case, and in particular Mr Halford’s evidence that he understood that there was a tax liability to be paid and that he understood this message on HMRC’s website to mean that there was nothing ‘immediately’ due and that he ‘thought nothing more of it’, this tribunal finds that Mr Halford does not have a reasonable excuse for the late payment.

10 31. The due date for payment for self-assessment tax liabilities is set out in statute and readily ascertainable. Statute is clear that it is the taxpayer’s responsibility to comply with such due date and there is no statutory obligation on HMRC to notify a taxpayer of the due date for payment. A failure on the part of a taxpayer to correctly  
15 establish the due date for payment is not, therefore, a reasonable excuse for late payment of a self-assessment tax liability.

32. The tribunal also finds that there were no special circumstances which should have been taken into account with regard to the amount of the penalty.

33. Accordingly, the appeal is dismissed with regards to both the penalty and the interest.

20 34. 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  
25 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

30 **ANNE FAIRPO**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 22 APRIL 2016**