



TC05655

Appeal number: TC2016/05794

Income tax, penalty for late filing of SA return; whether reasonable excuse; no; Finance Act 2009 Schedule 56 paragraph 16; appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

STELLA OCHUKO NWAPANYI

Appellant

- and -

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

TRIBUNAL: JUDGE J GORDON REID QC, FCI Arb.

The Tribunal determined the appeal on 6 February 2017 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 8 November 2016 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 11 January 2017 and the Appellant's Reply dated 16 January 2017 by email (with enclosures) together with further sundry correspondence.

DECISION

Introduction

5 1. This is an appeal against a penalty of £131 imposed for late payment of income tax for the tax year 2014/15. There was also a penalty charge of £46 for the tax year 2012/13 issued on or about 21 June 2016. However, in their Case Statement (Statement of Case), HMRC state that *As Mrs Nwapanyi kept to this (a TTP plan) HMRC have decided to cancel the late payment penalty of £46.* This decision will
10 therefore largely confine itself to the appeal against the self -assessment late payment penalty of £131 for the tax year 2014/15.

Procedure

2. The appeal was allocated to the default paper case category. Neither party requested a hearing although they had the opportunity of doing so (letter to appellant
15 11 January 2017).

Statutory background

3. Payment of tax was due on 31 January 2016. A penalty of 5% of the unpaid tax is due after the expiry of 30 days from the due date (here 2 March 2016)

4. The general statutory background may be found in s59B Taxes Management Act 1970, and paragraphs 3(2), 1(1)(4) [penalty date] of schedule 56, FA2009
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5. A penalty will not arise if the taxpayer satisfies HMRC that she had a reasonable excuse for the failure to pay the tax by the due date.

6. Paragraph 16 of schd 56 provides as follows:-

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25 (1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a payment if the person satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of sub-paragraph (1)—

30 (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

35 (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Note The above version was included in the papers provided by HMRC. It has been amended (in relation to paragraph 1) in respects which are not material to this appeal

(See Finance (No 3) Act 2010 Schd 11 and *Luddington v HMRC* [2015] UKFTT 0361 (TC) paragraph 31).

Factual Background

5 7. A notice to file a return for the tax year 2014/15 was issued to the appellant on or about 6 April 2015. The filing date for a paper return was 31 October 2015 and for an electronic return was 31 January 2016. The appellant's electronic return was received by HMRC on 29 January 2016. Her tax liability was automatically calculated, at £2630.56. It was due to be paid by 31 January 2016. By 2 March 2016 (the penalty date) it remained unpaid.

10 8. On or about 21 June 2016, HMRC issued a penalty notice to the appellant in the sum of £131, being 5% of the tax unpaid at the penalty date, namely £2630.56.

15 9. On 29 June 2016, the appellant appealed against the penalty. In summary, she stated that she could not afford the financial penalty due to her financial circumstances. She pointed to the fact that she had set up a plan to pay monthly the tax due for the tax year 2012/13.

20 10. By letter to the appellant dated 27 July 2016, HMRC refused the appeal. They pointed out that, to avoid the 30 day late payment penalties, either a payment in full had to be made on time or a payment arrangement had to be agreed within 30 days of the due date. That was not done here and HMRC asserted that there was no reasonable excuse for the failure to do so. She was offered a statutory review which she thereafter sought on or about 29 Jul 2016.

25 11. In her request for review, dated 29 July 2016, the appellant pointed out that since January 2016 her family *had just one source of income with two Adults and two Children ...that was the reason I have arranged payment which is the only amount I can manage to pay.....We are struggling to meet up and cope with our monthly bills at the end of each month. And we don't have any form of support or benefit to aid us.*

30 12. The arrangement referred to was a TTP arrangement entered into on 16 July 2015 to cover only the 2012/13 assessment, the proposal being monthly payments of £61.50. The appellant kept to this arrangement and HMRC cancelled the late payment penalty of £46. An amended TTP arrangement was subsequently entered into at £50 per month. This appears to have been made on about 20 June 2016, more than 30 days after the due date for payment of the tax due for the tax year 2014/2015.

35 13. The decision to impose the penalty (in relation to the 2014/15 tax year) was upheld on review by HMRC letter dated 15 September 2016. HMRC stated there was no reasonable excuse for late payment and no special circumstances justifying reduction of the penalty.

40 14. The appellant appealed to the tribunal by Notice of Appeal dated 8 November 2016. This appears to be late by a few weeks but no objection to its lateness has been made. The tribunal allow it to proceed, it being fair and just to do so.

15. The appellant's employment with the NHS Foundation Trust, Newcastle, came to an end on about 10 August 2016 (see paragraph 21 below).

Notice of Appeal

5 16. In summary, the appellant stated *inter alia* that (1) she and her spouse had two children but no work, (2) she had been managing with help from family and friends, and (3) she was not currently entitled to claim benefit.

17. The phrase *reasonable excuse* is not used in the Notice of Appeal but there appears to be no other basis for the appeal identified in the papers.

10 18. In an accompanying email to the tribunal dated 8 November 2016, the appellant stated *inter alia* that *I explained in my appeal letter the circumstances of my family at the time the tax was due. My husband lost his job and my family was living on about 1000 pound monthly from job then and my business has closed'*

15 19. *Presently I do not work as well thus the both parents do not have a job which I explained to who was dealing with my case for a review of the decision which I requested, I have two children ages 6 and 4 and I do not collect child benefit or any (sic) because I am not eligible for now as (sic) do not have my Permanent Settlement yet.*

20 20. By email dated 16 January 2017 the appellant wrote to the tribunal attaching a P45 (not P60 as referred to in her email). She pointed out that it had been very difficult for her and her family *keeping up and all the debts here and there*. The P45 showed that her employment with NHS Foundation Trust, Newcastle, came to an end on 10 August 2016.

HMRC Position

25 21. HMRC say *inter alia* that they would have expected a prudent taxpayer to have kept money aside to pay her tax bill. Where customers are unable to pay in full by the due date a TTP arrangement can be entered into. The potential effect that payment of penalties may have on the appellant's finances would not be a reasonable excuse justifying removal of the penalty.

30 22. There was therefore no reasonable excuse for failure to pay the tax on time and no special circumstances justifying a reduction of the penalty.

Discussion

23. The tribunal has some sympathy for the plight of the appellant. Nevertheless, however forcefully she puts her case, the essentials of it are that she had insufficient funds to make the payment by the due date and perhaps paid other bills in preference

to HMRC. There was no particular event occurring as at January/March 2016 which could reasonably be said to be out of her control. Her employment did not terminate until August 2016. She has a young family and a husband who is out of work; the precise date when he became unemployed is unclear. His earnings are not specified and it is not known what effect it would have had on her ability to pay the tax due on time. She and her family have a hard job just to manage. Unfortunately, none of this can be said to be out of her control in the sense described in paragraph 16 of Schedule 56. There was no particular event or series of events (apart from lack of funds) which prevented her from making due payment; there was no question of serious physical or mental illness arises or something similar which might amount to a *reasonable excuse*.

24. Moreover, the appellant did not make or attempt to make a TTP arrangement at the appropriate time with HMRC's Debt Management Service. Even although not automatic it seems likely that some arrangement would have been made given that she already had a TTP in place (for a different tax year) which was subsequently amended. Late payment and the incurring of a penalty was reasonably avoidable. Here, no attempt to was made to enter into a TTP before the payment date. In these circumstances, it must be questionable whether the appellant seriously intended to honour her tax liabilities between January and March 2016.

25. The appellant's circumstances, in essence, were that she did not have sufficient funds at the time. Without much more, such as possibly a genuine mistake for which the failure to pay by the penalty date is attributable, that does not constitute a reasonable excuse for failing to pay tax by the due date. Such failure exposes a taxpayer to a statutory penalty. Without more, liability cannot be avoided. The evidence about the closure of her business and the termination of her husband's employment is, unfortunately, general and not sufficient to conclude that the payment of the tax on time could not reasonably be avoided. The tribunal cannot speculate on the possible effect of these matters.

26. The appellant's financial circumstances are special to her but not in the sense used in the legislation, ie exceptional, abnormal or unusual or out of the ordinary run of events, or uncommon. They were not exceptional. Without more, it cannot be concluded that there are special circumstances justifying a reduction in the penalty. The HMRC conclusion on special circumstances is not flawed. There is no evidence on which a finding of special circumstances can be justified.

27. The appeal against the late payment of tax due for the tax year 2014-2015 is therefore dismissed. The penalty for the earlier year has already been cancelled (see paragraph 1 above).

28. 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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JUDGE REID

TRIBUNAL JUDGE

RELEASE DATE: 10 FEBRUARY 2017

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