



TC07024

Appeal number: TC/2017/07580

Income tax - penalties for late payment of income tax - appellant asserts he received contradictory claims from HMRC as to the amount due - no evidence provided - whether reasonable excuse - no - appeal dismissed

FIRST-TIER TRIBUNAL

TAX

THOMAS BULLOCH

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE MICHAEL CONNELL

The Tribunal determined the appeal on 8 February 2019 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 11 October 2017, and HMRC's Statement of Case received by the Tribunal and Appellant on 17 November 2017 with enclosures. The Tribunal wrote to the Appellant on 25 November 2017 stating that if he wished to reply to HMRC's Statement of Case he should do so within 30 days of receiving a copy from HMRC. The Appellant did not respond.

DECISION

1. This is an appeal by Mr T Bulloch ('the appellant') against:

(1) A first late payment penalty of £101 imposed under Paragraph 3(2) of Schedule 56 Finance Act ('FA') 2009 for his failure to pay tax on time for the year ending 5 April 2016.

(2) A second late payment penalty of £101 imposed under Paragraph 3(3) of Schedule 56 FA 2009 for his failure to pay tax on time for the year ending 5 April 2016.

2. The point at issue is whether the appellant has a reasonable excuse for making the late payments.

Background facts

3. The appellant's return for the year ending 5 April 2016 was issued to him on 6 April 2016.

4. The filing date was 31 October 2016 for a non-electronic return or 31 January 2017 for an electronic return.

5. The appellant's electronic return for the year 2015-16 was received on 28 January 2017 and was processed on 27 January 2017. The return was filed online, whereby the liability was automatically calculated. The due dates for payment were also shown.

6. The appellant's tax liability for the year was £119,717.90.

7. The amount of £119,717.90 included a balancing payment of £2,029.60 for 2013-14.

8. The tax was due to be paid on or before 31 January 2017 in accordance with s 59B (4) TMA 1970.

9. An amount of £117,688.30 was paid on 26 January 2017.

10. A further payment £12,416.44 was paid on 31 January 2017 and transferred from the appellant's statement of account to that of his children's statements of account on 11 July 2017, to settle his children's Capital Gains tax liability.

11. Following the reallocation of £12,416.44, £2,029.60 of the appellant's 2015-16 tax liability remained unpaid and this amount was finally paid in full on 4 August 2017.

12. HMRC issued a notice of penalty assessment on or around 11 July 2017 in the amount of £101, being 5% of the tax unpaid at the penalty date (£2,029.60 @ 5% = £101.48).

13. HMRC issued a notice of penalty assessment on or around 29 August 2017 in the amount of £101, being 5% of the tax unpaid at the penalty date (£2,029.60 @ 5% = £101.48).

14. On 26 September 2017 the appellant appealed against the penalties on the grounds:

- “I sent my tax return on time.
- There has been an ongoing issue with the exact amount of tax to pay.
- I called HMRC around 25th July 2017 as I have received multiple, conflicting payment requests from HMRC. I escalated the issue and on 4 August 2017, the manager in the Cardiff office advised the amount outstanding was £2056.51. I paid this in full on the same day.”

15. HMRC sent the appellant a decision letter on 4 October 2017 rejecting his appeal and offering a review.

16. On 11 October 2017 the appellant notified his appeal to the Tribunal, giving his grounds as:

- “I received various, contradictory amounts for tax to be paid from HMRC during 2017 and called HMRC several times to clarify this.
- I escalated this to a manager, Richard Davis, in Cardiff Office and he sent me a letter on 26 July stating the full amount outstanding.
- I received this on 4th August and paid the full amount on the same day.
- I have since received further requests for late penalty amounts which I believe are not valid as the letter I received on the 4th August was for the full amount outstanding which I duly paid immediately.
- When speaking to Richard he stated these letters are system generated so I believe these should be deleted and the matter should now be treated as closed without any further payment.”

Relevant Legislation

17. The legislation relating to the imposition of penalties for late payment of income tax is contained in:

Taxes management Act (TMA) 1970

Section 59 B (3) & (4)) - Payment of income tax and capital gains tax

(3) In a case where the person-

(a) gave the notice required by section 7 of this Act within six months from the end of the year of assessment, but

(b) was not given notice under section 8 or 8A of this Act until after the 31st October next following that year, the difference shall be payable or repayable at the end of the period of three months beginning with the day on which the notice under section 8 or 8A was given.

(4) In any other case, the difference shall be payable or repayable on or before the 31st January next following the year of assessment.

Schedule 56 Finance Act 2009

Paragraph 1(1) & 1(4)

(1) A penalty is payable by a person where he/she fails to pay an amount of tax payable 30 days after the date specified in section 59B(3) or (4) TMA 1970 as the date by which the amount must be paid.

(4) The penalty date in relation to an amount of tax, means the date on which a penalty is first payable for failing to pay the amount (that is to say, the day after 30 days from the date specified in section 59B(3) or (4)).

Paragraph 3(2), 3(3) & 3(4)

(2) A person is liable to a penalty of 5% of the unpaid tax.

(3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, a person is liable to a penalty of 5% of that amount.

(4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, a person is liable to a penalty of 5% of that amount.

Paragraph 9

(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.

(2) In sub-paragraph (1) "special circumstances" does not include

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to -

(a) staying a penalty, and

(b) Agreeing a compromise in relation to proceedings for a penalty.

Appellant's contentions

18. The appellant's grounds of appeal are as stated above.

HMRC's case

19. HMRC does not dispute the fact that the 2015-16 self-assessment tax return was submitted before the due date of 31 January 2017.

20. 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 establish the due date for payment is not, therefore, a reasonable excuse for late payment of a self-assessment tax liability.

21. HMRC only undertake to advise customers who file by 31 October of the amount to pay by the payment deadline. Customers who file after this time are expected to calculate the amount due and pay on time without a prompt from HMRC. Responsibility to meet the deadlines rests with the appellant.

22. HMRC does not agree that there was an ongoing issue with the exact amount of tax to pay during 2017. The appellant had previously entered a Time to Pay agreement with HMRC in respect of the 2012-13 balancing payment. A set amount and period had already been agreed between HMRC and the appellant and was concluded in December 2016. A statement of account was issued on or around 8 January 2017 to the appellant's address at the time, and shows that the balance of account at that date was £139.64 excluding the balancing payment. The appellant made a payment of £139.64 on 10 January 2017. Therefore the balance of the statement of account before the submission of the 2015-16 online self-assessment tax return on 27 January 2017 would have been nil.

23. The appellant's agent submitted his 2015-16 online tax return on 27 January 2017 on his behalf. On that date the tax liability of £119,717.90 would have been available to the appellant and his agent. The sum of £119,717.90 included the balancing payment.

24. The appellant made a payment of £117,688.30 on 26 January 2017.

25. A further payment of £12,416.44 was made on 31 January 2017.

26. The payment of £12,416.44 remained on the appellant's self-assessment account until 11 July 2017 when it was transferred to the self-assessment accounts of his children. The reallocation of this payment of £12,416.44 meant that there was a shortfall of £2,029.60, the difference between the 2015-16 liability of £119,717.90, and the amount of payment of £117,688.30. This prompted the 30 day late penalty notice to be issued to the appellant on or around 11 July 2017.

27. The appellant then telephoned HMRC on 26 July 2017, but unfortunately the call was disconnected and subsequently he was issued a letter dated 26 July 2017 advising him of the shortfall of £2,029.60 and also the small amount of interest that had accrued.

28. As the amount of £2,029.60 was still an amount outstanding at 31 July 2017, the 6 month penalty was issued on or around 29 August 2017.

29. The appellant then telephoned HMRC again on 26 September 2017 to discuss the penalty notice he had received. He was advised it was for late payment.

30. HMRC contends there was no issue of the correct amount to pay by the 31 January 2017 and that only two telephone calls were made to HMRC during 2017, one on 26 July 2017 and the other on 26 September 2017.

31. The appellant has been required to complete an annual tax return for several years now and should be aware of his obligations under self-assessment. Filing the tax return and paying the tax due by the deadline forms part of his responsibility to meet these obligations.

32. HMRC contends that everyone who has not paid in full or made a time to pay arrangement within the time limit are subject to late payment penalties. Therefore the appellant has been treated the same as any other person who has paid their tax liability late. It is essential that taxpayers who pay the right amount of tax at the right time feel confident that the system does not reward non-compliance. So in addition to interest on late payment there is also a system for imposing late payment penalties.

33. HMRC contends that the obligation to pay the tax liability does not depend on a tax return having been filed, or a bill for the tax liability or reminder having been received from HMRC.

34. Interest is charged under s 101 FA 2009. HMRC have to charge interest when payment is late, this is the law. No one person in HMRC has the authority to ignore or override this law. HMRC charge interest automatically on all tax paid late, whatever the reason for the delay. An interest charge is not a penalty. The concept underlying this legislation is the recognition of which party, HMRC or the customer, has benefited from the use of the money in the period beyond the due and payable date. Interest is not intended to be a penalty but compensates the Exchequer for late payment and prevents those who pay late having an unfair advantage over those who pay on time. Interest is a statutory charge and there is no right to appeal against it, although customers can object to it. Interest can be reviewed once the charges have been paid and the interest has been finalised.

35. HMRC's view is that the actions of the taxpayer should be considered from the perspective of a prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts. The decision depends upon the particular circumstances in which the failure occurred and the particular circumstances and abilities of the person who failed to file their return on time. Whether a person has a reasonable excuse depends on the particular circumstances in which the failure occurred, as well as the particular circumstances and abilities of the person who has failed in their obligation. The test is to consider what a reasonable person, who wanted to meet their tax obligations would have done in the same circumstances and decide if the action of the person met that standard.

36. It is the contention of HMRC that in order for the appellant's appeal to succeed, he must demonstrate that a reasonable excuse existed which prevented him from complying with his Income Tax obligations. HMRC have concluded, based on the evidence held, that no reasonable excuse exists as to why the liability was not paid in full by 31 January 2017, and as a consequence the penalties were correctly charged in accordance with legislation.

Special reduction

37. Paragraph 16(1) allows HMRC to reduce a penalty if they think it is right because of special circumstances.

38. "Special circumstances" is undefined save that, under paragraph 16(2), it does not include:

- ability to pay, or
- the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

39. In other contexts "special" has been held to mean 'exceptional, abnormal or unusual' (*Crabtree v Hinchcliffe* [1971] 3 All ER 967), or 'something out of the ordinary run of events' (*Clarks of Hove Ltd v Bakers' Union* [1979] 1 All ER 152). The special circumstances must also apply to the particular individual and not be general circumstances that apply to many taxpayers by virtue of the penalty legislation (*David Collis* [2011] UKFTT 588 (TC), paragraph 40).

40. HMRC have considered the reasons put forward by the appellant for the delay in paying the balance of tax due for the year ending 5 April 2016 and submit that they are not special circumstances which would merit a reduction of the penalties below the statutory amount and that the penalties are appropriate in the circumstances.

41. Where a person appeals against the amount of a penalty, paragraph 22(2) and (3) of Schedule 55 FA 2009 provide the Tribunal with the power to substitute HMRC's decision with another decision that HMRC had the power to make. The Tribunal may rely on paragraph 16 (Special Reduction) but only if they think HMRC's decision was "flawed when considered in the light of the principles applicable in proceedings for judicial review".

42. HMRC's decision not to reduce the penalties under paragraph 16 was not flawed, but in any event, there are no special circumstances which would require the Tribunal to reduce the penalties. The late payment penalties charged are in accordance with legislation and there is no reasonable excuse for the appellant's failure to pay his tax on time, nor by the date the penalty arose. HMRC also consider that there are no special circumstances which would allow the penalty to be reduced under the Special Reduction regulations.

Conclusion

43. An appeal against a late payment penalty will be successful where the taxpayer shows that there is a reasonable excuse for paying late.

44. Also, where the appellant had a reasonable excuse for the failure, but the excuse has ceased, the Appellant is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

45. There is no statutory definition of reasonable excuse, which “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 paragraph 18). This was confirmed by the First-tier Tribunal, in *Anthony Wood trading as Propaye v HMRC* (2011 UK FTT 136 TC 001010). Although the decisions in these cases are not binding, HMRC’s view is that the reasoning is relevant to this appeal.

46. A reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond the taxpayer’s control, and which prevents them from complying with their obligation to pay on time. However, a combination of unexpected and foreseeable events may, when viewed together, be a reasonable excuse.

47. The actions of the taxpayer should be considered from the perspective of a prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts. If the taxpayer could reasonably have foreseen the event, whether or not it is within their control, HMRC would expect them to take steps to meet their obligations.

48. The appellant has not provided any evidence in support of his assertion that he received various, contradictory amounts for tax to be paid from HMRC during 2017. He has not provided the details of the dates he telephoned HMRC to query the contradictory amounts claimed, the names of the individuals to whom he spoke or the outcome of those conversations. HMRC contends that only two telephone calls were made to HMRC during 2017. One on 26 July 2017 and the other on 26 September 2017. Both conversations were after the penalty dates.

49. The appellant’s agent submitted his 2015-16 online tax return on 27 January 2017 on his behalf. On that date the tax liability of £119,717.90 would have been available to the appellant and his agent. The liability for the tax year ending 5 April 2016 was due for payment on 31 January 2017.

50. The appellant did not make full payment until 4 August 2017.

51. The grounds of appeal put forward by the appellant do not amount to a reasonable excuse for the late payment.

52. Therefore the late payment penalties were correctly imposed in accordance with paragraph 3(2) of Schedule 56 Finance Act 2009. There are no special circumstances which would allow the penalty to be reduced.

53. I therefore dismiss the appeal and confirm the late payment penalties imposed of £202.

54. 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.

**MICHAEL CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 4 MARCH 2019