



TC03158

Appeal number: TC/2013/06285

INCOME TAX – whether late payment of income tax, Yes. Whether reasonable excuse for late payment - No.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KATHERINE ANNE SHEPPERD Appellant
(Also known as KATHERINE ANNE SHEPHERD)

- and -

THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS

**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA
AII**

The Tribunal determined the appeal on 4 December 2013 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 5 September 2013, and HMRC's Statement of Case submitted on 16 October 2013 with enclosures. The Tribunal wrote to the Appellant on 21 October 2013 indicating that if they wished to reply to HMRC's Statement of Case they should do so within 30 days. No reply was received.

DECISION

1. Introduction

5 This considers an appeal against a penalty of £45 levied by HMRC for the late payment of income tax of £913.09 due to be paid by 31 January 2013 which was not paid until 22 March 2013.

2. Legislation

Finance Act 2009 Schedule 56

10 Taxes Management Act 1970, in particular Sections 7, 8, 9, 59A and 59B

3. Case law

HMRC v Hok Ltd. [2012] UKUT 363 (TCC)

15 Rowland v HMRC [2006] STC (SCD) 536

Anthony Wood trading as Propaye v HMRC [2011] UKFTT 136 TC 001010

4. Facts

20 The appeal to the Tribunal was submitted under the name Katherine Shepperd by the appellant's agent Lee, chartered accountants. HMRC records hold the name Katherine Shepherd. They say the surname in their records was changed from Shepperd to Shepherd by request on 2 July 2009.

25 5. The appellant's tax return for 2011/12 was submitted electronically on 14 December 2012. The appellant chose to calculate her liability and therefore knew the sum she would have to pay and filed online whereby the liability was automatically calculated. The appellant's tax liability for the year was £913.09 and in accordance with Section 59B(4) Taxes Management Act 1970 the due date for payment was 31 January 2013.

30 6. On 19 March 2013 HMRC issued a notice of penalty assessment of £45 being 5% of the tax outstanding. On 22 March the appellant paid the outstanding tax liability.

7. In respect of levying a penalty for late payment HMRC allow 30 days grace during which the penalty can be avoided by making payment. Thus if the appellant had made payment before 3 March 2013 no late payment penalty would have been levied.

35 8. Appellant's submissions

The appellant's agent Lee, chartered accountants appealed to HMRC in a letter dated 15 April 2013 stating that the appellant received no reminder or statement of account between submission of her tax return and the due date.

HMRC replied on 7 May 2013 saying that the amount due would have appeared on screen when the return was submitted HMRC do not normally accept that the fact they did not send a reminder constitutes a reasonable excuse for the late payment.

9. A request for a review was subsequently made with a similar outcome.

5 10. The appellant's agent wrote to HMRC on 2 August 2013. The letter includes:

“The problem is that 99% + of taxpayers receive a request for payment. It seems very unfair that our client should have a penalty when she is one of the unlucky 1%. This does not seem fair for her. If the Revenue did not issue requests we as accountants would know that we had to follow it up and would ensure this was done.

10 However because the Revenue normally does issue a request for payment we assumed our client would have received one and therefore this problem would not have arisen. It seems to us that the Revenue should either send to all people who owe tax or none. To just leave out a few and then fine them seems very unfair on those few as our client would have paid on time if she had received the demand.”

15 11. In the Notice of Appeal dated 5 September 2013 the appellant makes comments similar to the above

12. HMRC's Submissions

HMRC say that it is the responsibility of the tax payer to ensure their tax affairs are up to date, returns submitted and tax liabilities paid over by the due date.

20 13. Under the legislation the obligation is on the taxpayer to pay the tax liability on time. The obligation to pay tax does not depend on a tax return having been filed, or a bill for the tax liability or reminder having been received from HMRC. An individual is expected to arrange their affairs to ensure that payment is made on time.

25 14. HMRC say that on behalf of the appellant Lee, Chartered Accountants submitted the appellant's 2011/12 return online on 14 December 2012. They say that when completing a self assessment return on line a tax calculation is calculated. Thus the appellant's agent would have been aware of the outstanding balance at that date. The date for payment is provided by the Taxes Management act 1970.

30 15. HMRC say that they do not agree with the appellant's agent's statement that the failure to issue a request for payment or a reminder constitutes a reasonable excuse.

16. The Tribunals Observations

35 In their decision in Hok Limited the Upper Tribunal considered whether the jurisdiction of the First-tier Tribunal includes the ability to discharge a penalty on the grounds of unfairness. At Paragraph 36 of that decision it states “...the statutory provision relevant here, namely TMA s 100b, permits the tribunal to set aside a penalty which has not in fact been incurred, or to correct a penalty which has been incurred but has been imposed in an incorrect amount, but it goes no further. ...it is

plain that the First-tier Tribunal has no *statutory* power to discharge, or adjust a penalty because of a perception that it is unfair.” The Tribunal considers that that principle applies in this case.

5 17. The level of the penalties has been laid down by parliament and the legislation relating to penalties has been properly and accurately applied by HMRC. The only other consideration that falls within the jurisdiction of the First-tier Tribunal is whether or not the appellant has reasonable excuse for the late payment.

10 18. The Tribunal accepts that in many cases HMRC do issue requests for payment of tax. In the papers before the Tribunal there is no evidence which gives the percentage of cases that HMRC issue such requests for payment. The figure of 99%+ seems to have been suggested by the appellant’s agent.

15 19. There is no legal requirement for HMRC to issue to the taxpayer a request for payment or a reminder to pay. The amount due to be paid was advised on screen at the time of submission of the return. In addition as the appellant is registered for self assessment online she could have viewed her self assessment payments and any amounts owed at any time before the due date for payment. The due date for payment in accordance with legislation was 31 January 2013.

20 20. The Tribunal Paragraph 9 of Schedule 56 of the Finance Act 2009 (Special Reduction) provides HMRC with discretion to reduce any penalty if they think it right to do so because of special circumstances. On the information held in this case HMRC did not consider there were any special circumstances which would allow them to reduce the penalty. The Tribunal sees no reason to disagree with HMRC’s view and finds that there were no special circumstances in this case.

25 21. HMRC applied the legislation correctly and calculated the amount of the penalties accurately as £45 (rounded down to the nearest pound) being 5% of the tax of £913.09 for the period 6 April 2011 to 5 April 2012 which remained unpaid at 31 January 2013. In the Tribunal’s view the appellant has not established that she had reasonable excuse for the late payment of the tax due. Therefore the appeal is dismissed.

30 22. 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)”
35 which accompanies and forms part of this decision notice.

PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

40 **RELEASE DATE: 16 December 2013**