



TC03518

Appeal number: TC/2011/07972

Income tax - Penalty under Schedule 56 Finance Act 2009 for late payment of income tax - payment delegated to member of staff - whether reasonable excuse - no - whether disproportionate – no- appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KARL VELLA

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE MICHAEL S CONNELL
MR ALAN SPIERS**

Sitting in public at Alexandra House, The Parsonage, Manchester on 6 January 2014

Mr Chris Gayton for the Appellant

Mrs Tony O'Grady Officer of HM Revenue and Customs for the Respondents

DECISION

- 5 1. This is an appeal by Karl Vella ('the Appellant') against a late payment penalty imposed under s59 Taxes Management Act 1970 for his failure to pay tax on time in respect of his personal self-assessment liability for the year ending 5 April 2010.
- 10 2. Under s59B Taxes Management Act (TMA) 1970 the Appellant was required to pay his income tax liability for the year ended 5 April 2010 by 31 January 2011. The total liability was £103,085.93 and by 31 January 2011 only £4,954.55 of this sum had been paid. To avoid a surcharge the balance outstanding of £98,131.38 should have been paid no later than 28 February 2011. It was not paid in full until 7 March 2011
- 15 3. HMRC imposed a penalty of 5% of the tax paid late in the sum of £4,906.56.
4. The point at issue is whether the Appellant had a reasonable excuse for the late payment of tax of £98,131.38 and if so, whether that excuse continued up to the date of payment.

20 The Appellant's case

5. The Appellant claims that he had a reasonable excuse, which existed throughout the period of default. The Appellant says that he "*was unable to ensure that payment was made any earlier (than 7th March 2011) due to unforeseeable and exceptional circumstances beyond my control. I believe that I had a reasonable excuse*".
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6. The Appellant says in his notice of appeal and correspondence with HMRC:

30 "*At the time the payment became due, I was away on important timely business and was therefore unable to make the payment myself. However I did instruct a key member of my staff to make the payment on my behalf. Unfortunately, this was missed due to the chaotic time my business was involved in, this being the acquisition of a new business that was about to go into administration. As you can see the timing of these events was unforeseeable and out of my control*".

35 "*I had instructed someone to make the payment on my behalf. It could be upheld that I am someone who seriously intended to honour my tax liabilities. However I failed to do so due to unforeseeable and exceptional circumstances beyond my control*".

“I believe that my reasons (or excuse) are reasonable in that I genuinely did not know that this had not been paid”.

5 *“This incident was merely a hiccup caused by unforeseeable circumstances, and I believe that is a strong reason for not paying my tax by the due date of 31 January 2011, or by 28th February 2011”.*

10 *“I believe that I have been treated unfairly by HM Revenue & Customs in charging a surcharge of £4906.56 given that this payment was made only a little late and given that I have of course also paid the interest charged of £282.29. The amount charged of £4906.56 is totally disproportionate to the amount of tax outstanding and the length of time overdue, although I understand that this is the correct percentage”.*

- 15 7. Mr Gayton said that the Appellant had been extremely busy towards the end of February 2011. He was buying a company in Barrow in Furness which was going into liquidation and also heavily involved with the WorldSkills Olympics in London where international teams compete in vocational skills. He said that the Appellant knew that he would be unable to pay all his tax by 31 January 2011, but that he would be able to discharge the balance due by 28 February 2011. He left matters with a trusted assistant to deal with matters. Unfortunately because of the
20 exceptionally busy period the payment was missed.

Relevant legislation

- 25 8. Section 59B (4) TMA 1970 establishes the date of payment of Income Tax as being on or before 31 January next following the year of assessment.
- 30 9. Section 59B(3) Taxes Management Act 1970 provides that where a person notifies chargeability to HMRC under s7 Taxes Management Act 1970 within six months from the end of the year of assessment in which that person became chargeable, but was not given notice to file a return under s8 Taxes Management Act 1970 until after 31st October following the end of the year in which that person became chargeable, then any balance payable will be payable at the end of a period of three months beginning with the day upon which the notice to file under s8 was given.
- 35 10. Section 59B(4) Taxes Management Act 1970 provides that in any other case, any balance shall be payable on or before the 31st January next following the end of the year of assessment.
- 40 11. Section 59C(2) Taxes Management Act 1970 provides that where any tax remains unpaid following the expiry of 28 days from the due date, the taxpayer shall be liable to a surcharge equal to 5% of the unpaid tax.
12. Section 59C(9) Taxes Management Act 1970 provides that if it appears to the Tribunal that the taxpayer had a reasonable excuse for not paying the tax throughout the period of default, then the Tribunal may set aside the

imposition of the surcharge, or if the Tribunal does not consider that there is a reasonable excuse, the imposition of the surcharge may be confirmed.

5 13. Section 59C(10) Taxes Management Act 1970 provides that inability to pay shall not be regarded as a reasonable excuse for the purposes of the reasonable excuse provision set out in s59C(9) Taxes Management Act 1970.

10 14. Section 59C(12) Taxes Management Act 1970 defines the due date as the date upon which the tax becomes due and payable, and the period of default as the period beginning with the due date and ending on the day before the day upon which the tax was eventually paid.

15 15. Section 118(2) Taxes Management Act 1970 provides:

"For the purposes of this act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the Tribunal or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased".

20 HMRC's case

16. HMRC submit that the Appellant does not have a reasonable excuse for the late payment of the balance of tax, which was due for 2009-2010.

17. HMRC issued to the Appellant a notice to file a 2009-2010 return, on 6 April 2010.

25 18. The notice to file will have explained that internet returns had to be submitted by 31 January 2011 at the latest, and that late submission of the return would result in the imposition of a penalty.

30 19. The notice to file will have also explained that the payment of any balance due should be made by the 31 January 2011 filing date, and that late payment would result in interest and a surcharge being imposed.

20. Consequently the Appellant was completely aware of his obligations regarding submission of the 2009-2010 return and the payment of any tax arising therefrom, and was also fully aware of the consequences arising from late submission of the return or late payment of the balance due.

35 21. On the above basis, HMRC argue that the Appellant should have taken all necessary steps to ensure that the balance of tax for 2009-2010 was paid by the due date, or at the very least by 28 February 2011 in order to avoid the surcharge.

- 5 22. With regard to the Appellant's comments regarding the chaotic time that his business was having, HMRC point out that there are many other businesses trading in the United Kingdom who are chaotically busy all of the year round, but who still manage to comply with their obligations to HMRC. Being chaotically busy is not an unforeseeable event which should have prevented the Appellant from paying the balance of the tax arising for 2009-2010 on time. He knew that the tax was due, and he should have taken all reasonable steps to ensure that the payment was actually made.
- 10 23. The fact that the making of the payment was delegated to another member of staff does not divest the Appellant of his responsibilities. There was nothing at all to prevent the Appellant from checking with the appointed staff member in say mid February 2011, in order to ensure that the payment had been made. This is what a reasonable prudent person would have done, and such action would have alerted the Appellant to the fact that the payment had been missed. Thus the surcharge could have easily been avoided.
- 15 24. Furthermore whilst the Appellant says he did not know that the payment had not been made until he was notified of the surcharge, a reasonable prudent person would have checked. This was the Appellant's own liability. The Appellant has an internet account with HMRC. He could have logged on to this account at any time during the first three weeks in February, and a simple perusal of his statement would have informed him that the balance of £98,131.38 was still outstanding. However he did not do this, and HMRC argue that this amounts to neglect.
- 20 25. HMRC also submit that the surcharge is not disproportionate as the level of penalty is set down in legislation and geared to the amount of tax outstanding.
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Conclusion

- 30 26. The self-assessment system places a greater degree of responsibility on taxpayers for their own tax affairs. It is necessary to consider the actions of the Appellant from the perspective of a prudent taxpayer exercising reasonable foresight and due diligence and having proper regard for their responsibilities provided by legislation.
- 35 27. When a person appeals against a penalty they are required to have a reasonable excuse. There is no definition in law of reasonable excuse, which is a matter to be considered in the light of all the circumstances of a particular case. A reasonable excuse is normally an unexpected or unusual event either unforeseeable or beyond a person's control which prevents him from complying with an obligation. The reasonable excuse must also exist throughout the entire period of default.
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5 28. Taking all the facts and submissions into consideration and for the reasons argued by HMRC we conclude that the Appellant does not have a reasonable excuse for paying the balance of the 2009-2010 tax late. The surcharge which has been imposed has been properly charged in accordance with the formula prescribed by the legislation. Nor is the surcharge disproportionate. It is a tax geared penalty based on the amount outstanding at the due date.

29. The appeal is therefore dismissed

10 30. 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.

20 **MICHAEL S CONNELL**

TRIBUNAL JUDGE

RELEASE DATE: 23 April 2014

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