



TC03824

Appeal number: TC/2014/02615

***Income tax – self assessment late payment surcharge and late payment penalty –
whether properly imposed – whether reasonable excuse***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RICHARD O'RIORDAN

Appellant

- and -

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

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 18.07.2014 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 08.05.2014 (with enclosures), HMRC's Statements of Case submitted on 13.06.2014 (with enclosures) and the Appellant's Reply dated 23.06.2014.

DECISION

1. The Tribunal decided that the Self Assessment Late Payment Surcharges in respect of the years 2008-2009 and 2009-2010 in the sums of £319.54 and £289.56 respectively were properly issued by the Respondents.
2. The Tribunal also decided that the Self Assessment Late Payment Penalty in respect of the year 2010-2011 in the sum of £264.00 was properly imposed by the Respondents.
- 10 3. The appeal is dismissed.

2008-2009

4. The Tribunal found that the Appellant's Self Assessment Return was received by the Respondents on 30.11.2012. His liability for tax for the year was £3,195.40; this was due to be paid on or before 20.02.2013 in accordance with Section 59B(3) of the Taxes Management Act 1970. The liability was paid in full on 14.02.2014 by which time two surcharges totalling £319.54 had been imposed by the Respondents for late payment: the period of default was 359 days.

2009-2010

5. The Tribunal found that the Appellant's Self Assessment Return was received by the Respondents on 30.11.2012. His liability for tax for the year was £2,895.80; this was due to be paid on or before 20.02.2013 in accordance with Section 59B(3) of the Taxes Management Act 1970. The liability was paid in full on 14.02.2014 by which time two surcharges totalling £289.56 had been imposed by the Respondents for late payment: the period of default was 359 days.

2010-2011

6. The Tribunal found that the Appellant's Self Assessment Return was received by the Respondents on 30.11.2012. His liability for tax for the year was £2,656.70; this was due to be paid on or before 20.02.2013 in accordance with Section 59B(3) of the Taxes Management Act 1970. The liability was paid in full on 26.02.2014 by which time two penalty assessments totalling £264.00 has been issued by the Respondents for late payment: the period of default was 371 days.

7. The Tribunal is aware that the surcharges and late payment penalty have been paid by the Appellant.

8. The Tribunal further found that there was no reasonable excuse for the late payment of tax by the Appellant.

9. It is noted that the Appellant made a complaint to the Respondents' Adjudicator's Office (which was upheld and £25.00 compensation paid) but the tax

remained payable by the Appellant. The Appellant has not pursued any further avenues of appeal with regard to liability for payment of the tax itself.

10. Claims by the Appellant's agent for remission of the tax debt under Regulation 72 of the Income Tax (Pay As You Earn) Regulations 2003 and under Extra Statutory Concession (ESC) A19 have been rejected by the Respondents.

5 11. There is, in any case, no provision in law for an appeal against self assessment.

12. The Tribunal is aware that the liability for tax in this case was originally a PAYE issue (underpayments) but the Respondents have properly adopted the course of Self Assessment returns in order to assess and recover the tax due from the 10 Appellant. The Appellant could have paid the underpayments at an earlier stage notwithstanding that they were initially under dispute and could thereby have avoided the need for him to enter the Self Assessment system.

13. The Appellant did not enter into a payment plan until 05.12.2013 which was after both the due payment dates and the trigger dates for the surcharges and penalty.

15 14. It was the Appellant's choice to continue to pursue his argument with the Respondents' Adjudicator's Office but he also chose to wait for the outcome of his complaint before making payment or arranging a payment plan and he evidently took no account of the possible consequences if the Respondents' view prevailed. Any perceived delay by the Respondents in dealing with this matter and any subjects of the 20 Appellant's complaints do not constitute reasonable excuse for the late payment of tax.

15. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and of due diligence and a proper 25 regard for the fact that payment of the tax would become due on a particular date would not have avoided the default. The facts and chronology of events, set out in the Notice of Appeal and the Respondents' Statement of Case, disclose that such foresight and diligence by the Appellant would have avoided the default.

16. In so far as the Appellant may suggest that the imposition of the surcharges and the penalty is disproportionate, unjust or unfair, those arguments have already been 30 disposed of by the Upper Tribunal in *HMRC v Hok* UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Limited* UKUT 418 (TCC). In the former it was made clear that the First-tier Tribunal has no jurisdiction to determine the fairness of a penalty imposed by statute. It is plain from a perusal of the latter that the surcharges and a penalty of the magnitude of those imposed in this case could not be described as disproportionate even if the Tribunal had jurisdiction to deal with the issue.

35 17. 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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**WDF COVERDALE
TRIBUNAL JUDGE**

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RELEASE DATE: 22 July 2014