



**TC03857**

**Appeal number: TC/2014/00821**

*Penalty for late payment of income tax - Appellant diagnosed as having terminal illness - Appellant filed return on time and calculated his own tax liability - no request for a time to pay arrangement - whether in the circumstances reasonable excuse - no - appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MATTHEW ROPER**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MICHAEL S CONNELL**

**The Tribunal determined the appeal on 23 May 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 4 February 2014, HMRC's Statement of Case submitted on 7 March 2014 the Appellant submitting no reply.**

## DECISION

### The Appeal

1. Mr Matthew Roper, ('The Appellant') appeals against :
  - 5 i. a first late payment penalty imposed under Paragraph 3(2) of Schedule 56 Finance Act (FA) 2009 for the failure to pay tax on time for the year ending 5 April 2011
  - ii. a second late payment penalty imposed under Paragraph 3(3) of Schedule 56 Finance Act (FA) 2009 for the failure to pay tax on time  
10 for the year ending 5 April 2011, and
  - iii. a third late payment penalty imposed under Paragraph 3(4) of Schedule 56 Finance Act (FA) 2009 for the failure to pay tax on time for the year ending 5 April 2011.
- 15 2. The point at issue is whether or not the Appellant has a reasonable excuse for making late payments.

### Background

- 20 3. Taxpayers within the self-assessment system must file their returns and pay the tax they owe by the date specified in law.
4. Payment is of income tax due in accordance with Section 59B Taxes Management Act (TMA) 1970 and in this instance the due date for payment was 31 January 2012 under Section 59B(4). A late payment penalty is chargeable where a taxpayer is late in paying tax due.
- 25 5. The first penalty is calculated at 5% of all tax remaining unpaid after the expiry of 30 days from the due date in accordance with Paragraph 3(2) Schedule 56 FA 2009.
6. Where tax remains unpaid, after the end of the period of 5 months beginning with the penalty date, a further penalty of 5% of the tax unpaid at that date is imposed  
30 under Paragraph 3(3) Schedule 56 FA 2009.
7. Where tax remains unpaid, after the end of the period of 11 months beginning with the penalty date, a further penalty of 5% of the tax unpaid at that date is imposed under Paragraph 3(4) Schedule 56 FA 2009.
8. The 'penalty date' as defined at Paragraph 1(4) Schedule 56 FA 2009 means the  
35 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).
9. A notice to file for the year ending 5 April 2011 was issued to the Appellant on 6 April 2011.

10. The filing date was 31 October 2011 for a paper tax return or 31 January 2012 for an electronic tax return.
11. The Appellant's electronic tax return for the tax year 2010-11 was received by HMRC on 6 January 2012 and was processed on the same date.
- 5 12. The Appellant chose to calculate his own liability and therefore knew the sum to pay by the due date and filed his return online whereby the liability was automatically calculated. His tax liability for the year was £2,320.68.
13. The tax was due to be paid on or before 31 January 2012 in accordance with Section 59B(4) TMA 1970.
- 10 14. At the penalty date of 2 March 2012, £2,320.68 of the Appellant's tax liability remained unpaid.
- 15 15. Five months after the penalty date of 2 March 2012, £1,690.48 of the Appellant's tax liability remained unpaid.
16. Eleven months after the penalty date of 2 March 2012, £1,690.48 of the Appellant's tax liability remained unpaid.
17. £1,690.48 of the Appellant's tax liability for the tax year 2010-11 remains unpaid as of today, 28 February 2014.
18. HMRC issued a notice of penalty assessment on 10 April 2012 for £116.00; that is, 5% of the tax unpaid at the penalty date.
- 20 19. HMRC issued a notice of penalty assessment on 4 September 2012 for £84.00; that is, 5% of the tax unpaid 5 months after the penalty date.
20. HMRC issued a notice of penalty assessment on 19 February 2013 for £84.00; that is, 5% of the tax unpaid 11 months after the penalty date.
- 25 21. The total tax, interest and (disputed) late payment penalties owed by the Appellant is £2,099.58.
22. The Appellant submitted an appeal against the 2010/11 late filing penalties to HMRC on 2 December 2013.
- Appellant's contentions
- 30 23. The Appellant's grounds of appeal are that he collapsed in July 2011 and was subsequently diagnosed as having a brain tumour. He says that his illness prevented him from making payment of the tax due by 31 January 2012.
24. On 12 December 2013 HMRC wrote to the Appellant to advise him that his appeal was out of time.
25. On 18 December 2013 the Appellant responded saying:

"I am terminally ill with a grade 4 brain tumour, which was diagnosed in July 2011, and they gave me 6-12 months to live!"

26. HMRC replied to the Appellant on 10 January 2014 reiterating that the Appellant had made his appeal too late but that an appeal to the Tax Tribunal could still be made.

5 27. On 4 February 2014, the Appellant's representative, Mrs Rachel Roper, submitted the Appellant's appeal to the Tribunal. The Appellant states:

"I believe HMRC's decision to reject my appeal is incorrect because they have not been compassionate to my illness.

10 When I initially rang HMRC I was told that I had a good reason to be late with my return seeing as I was terminally ill.

I also thought my tax affairs were in order as in June 2013 I had a tax refund relating to 2012-13.

I have been unable to work (since the onset of my illness) and I am on benefits.

15 I am on chemotherapy every three weeks and this takes its toll on me and my family

I hope HMRC will accept a payment plan that I can afford out of my benefits."

#### HMRC's contentions

20 28. HMRC wish to make it clear that they give an absolute and unequivocal assurance to the Appellant that it was and remains compassionate to his personal circumstances. Although it was not possible to consider his initial appeal of December 2013, HMRC decided to accept his late appeal based on the reasons given in his appeal to the Tribunal.

25 29. HMRC contends that in order to show that a person has a reasonable excuse for their failure to comply with their legal obligations the individual must show that he has taken action to correct the breach of an obligation as soon as possible. HMRC submits that the Appellant has not done that.

30 30. The Appellant explained that in July 2011 he was diagnosed with a terminal brain tumour and that his illness prevented him from settling his tax bill by the due date of 31 January 2012. Although no medical evidence has been presented to support this assertion, HMRC accept the truth of this statement.

35 31. HMRC contends however that the Appellant has failed to explain why he has not taken corrective remedial action to bring his tax affairs up to date, by paying the outstanding arrears or contacting HMRC to arrange an alternative payment plan.

HMRC says that as £1,690.48 of the Appellant's tax liability remains outstanding his claim to have a reasonable excuse is unfounded.

5 32. Despite his health problems, the Appellant was able to file his 2010-11 tax return on time. He filed his tax return electronically on 6 January 2012. As part of that filing process the Appellant was able to calculate his own tax liability and enter the computed figure on to his own tax return. His tax return shows that he calculated his tax liability to be £2,320.68.

10 33. Upon completion of the filing process the Appellant (or any person acting under his authority) would have been able to pay the tax using the same online system. It would therefore have been possible for him to make an electronic transfer of funds. HMRC contends that this method of payment is a simple and straightforward affair that requires little extra effort over that expended during the submission of the tax return.

15 34. HMRC will sometimes agree to allow a taxpayer to settle an outstanding tax debt in monthly instalments. However in order to avoid a penalty, HMRC require that contact is established prior to the penalty date. There is no evidence to show that either the Appellant or his representative has sought HMRC's assistance in this regard. Information taken from HMRC's website explains some of the help that can be offered to taxpayers

20 35. Following the filing of his tax return the Appellant would have received numerous reminders that his tax was overdue and that immediate payment was required.

25 36. Firstly, he was issued with a penalty notice for each of the penalties now under appeal. The first of these was issued on 10 April 2012 and the most recent on 19 February 2013

30 37. Secondly, the statements of account issued to the Appellant throughout the same period would have provided him with a complete explanation of his liabilities and payments. This included a statement which showed that an immediate payment of £2,320.68 in settlement of his 2010-11 tax bill was required. It also included the notation "Interest is running on the amount to pay. Please pay it now".

38. The statement of account would have been accompanied by a payment slip and could have been used either by the Appellant or an agent to pay the required sum. Payment could have been made by cheque and then either posted directly to HMRC or paid via a bank or the Post Office.

35 39. Thirdly, Mr and Mrs Roper contacted HMRC by telephone regarding the Appellant's outstanding tax liability on 27 November 2013 which was followed by his appeal to the Tribunal. HMRC therefore contends that this shows that Mr and Mrs Roper were cognisant of the fact that the tax liability was overdue.

40 40. The only payment made to reduce the Appellant's 2010-11 tax liability was a credit of £630.20. HMRC records show that on 3 July 2012 a 'Freestanding Credit'

(miscellaneous credit) of £4,744.44 was awarded. That credit was distributed, with the bulk of the credit being set against Mr Roper's debts for the tax year 2008-09.

5 41. A further statement of account (dated 8 November 2012) provided the Appellant with information about allocation of this credit. The same information was also available to the Appellant on his online self-assessment account.

10 42. A freestanding credit is only given upon receipt of an application made by a taxpayer or their agent. The application can either be made on a later tax return or as a separate paper exercise and is a way for the taxpayer to offset losses against other tax liabilities. A claim for a freestanding credit does not affect the due date for payment or the tax liability for the year in question. HMRC maintains that given the lengthy delay, it has acted correctly and lawfully by charging the Appellant the late payment penalties.

15 43. Paragraph 9 Schedule 56 FA 2009 (Special Reduction) allows HMRC to reduce a penalty below the statutory minimum if they think it is right because of special circumstances. While 'special circumstances' are not defined the courts accept that for circumstances to be special they must be 'exceptional, abnormal or unusual' (*Crabtree v Hinchcliffe*) or 'something out of the ordinary run of events' (*Clarks of Hove Ltd v Bakers' Union*).

20 44. HMRC asserts that there are no special circumstances which would allow the penalty to be reduced.

### Conclusion

25 45. The onus of proof rests with HMRC to show that the penalty or penalties were correctly imposed. If so established, the onus then rests with the Appellant to demonstrate that there was reasonable excuse for late filing of his return. The standard of proof is the ordinary civil standard of the balance of probabilities.

30 46. 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. 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. A combination of unexpected and unforeseeable events may, when viewed together, be a reasonable excuse.

35 47. If the Appellant was unable to pay his tax liability in full by 31 January 2012, it was his responsibility to contact HMRC and seek assistance. HMRC has mechanisms in place to assist individuals in financial difficulties. He received numerous reminders that his tax was overdue. In the Appellant's Notice of Appeal to the Tribunal he acknowledges that his tax is outstanding and refers to arranging a payment plan with HMRC that he 'can afford' from his weekly benefits. However neither he nor Mrs Roper have made contact with HMRC to put something in place.

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48. The Tribunal accepts that the Appellant has been unable to work because of his illness and did not have the means to pay his outstanding tax. It is however not clear why he has failed to arrange a payment plan. As HMRC say he filed his tax return electronically on time, was able to calculate his tax liability and enter the computed figure on to his tax return. There would appear to be no reason why either he or his appointed representative Mrs Roper could not have contacted HMRC to arrange a method of paying the outstanding tax over a suitable period of time.

49. The Tribunal therefore must come to the conclusion that 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. There are no special circumstances which would allow the penalty to be reduced under Special Reduction. Therefore the appeal is dismissed and the £284.00 late payment penalties are confirmed.

50. 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 S CONNELL**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 31 July 2014**