



TC01980

Appeal number:TC/2011/02179

Income tax; failure to file self assessment return on time; penalties; s.118(2) TMA; reasonable excuse for failure made out; tax related surcharges for late payment; no reasonable excuse established; s 59C (9) TMA.

**FIRST-TIER TRIBUNAL
TAX**

GUGLIELMO ZADRA

Appellant

- and -

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

Respondents

TRIBUNAL: CHRISTOPHER HACKING

Determined 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 10 March 2011, HMRC's Statement of Case submitted on 27 April 2011 and the Appellant's Reply dated 27 June 2011.

DECISION

1. This was an appeal against penalties and tax related surcharges imposed for the late filing of a self assessment return and payment of income tax due in respect of the tax year 2007/2008 and for late payment of the tax due for the year 2008/2009. The Appellant sought internal reviews of the Revenue's decisions which were subsequently confirmed.

2. The position in regard to the tax year 2007/2008 as set out in the Revenue's Statement of Case is that a notice to file was sent to the Appellant on 6 April 2008. The return was due to be filed by 31 October 2008 if a paper filing or 31 January 2009 if filed on line. The return was received online on 24 January 2010, almost a year late. First and second fixed penalties for the late filing amounting to £200 were charged. The liability for the year was £2,498.40. This should have been paid by 31 January 2009. It was in fact paid on 5 May 2010. The surcharges applied totalled £249.84.

3. For the tax year 2008/2009 a tax return was issued on 6 April 2009. The filing dates were 31 October 2009 for a paper return and 31 January 2010 if filed online. The return was received online on 30 January 2010 within the time limited for this. The liability for the year was £4,359.20. This was due on or before 31 January 2010. Payment was made on 5 May 2010. A first surcharge was applied on 6 May 2010 in the sum of £217.96.

4. The Appellant in appealing the imposition of the surcharges for late payment states that he filed both years' tax returns in January 2010 having spoken with the Revenue. Subsequently on 5 May 2010 he settled the tax due.

5. Mrs Zadra who prepared the Appellant's reply states that her husband was made redundant in May 2008. Following this the Zadras spent most of their time abroad finally settling in Italy in September 2008 where Mr Zadra took up full time employment. The notice to file a return issued in April 2008 was not, says Mrs Zadra, received and this is thought by the Appellant to have occurred because Mr and Mrs Zadra moved from their flat in April 2008. Following the January 2010 online filings, estimated tax demands for the years in question were issued showing payment deadlines which, by the time they were received, had already passed. Payment of the tax due in respect of both of the tax years in question was made on 5 May 2010. These payments were late.

6. It is to be noted that the late filing of the 2007/2008 return appears to have been in part caused by the late provision of salary and other details by Mr Zadra's former employer, Morgan Stanley. It was also the case, states Mrs Zadra, that she was 5 months pregnant at the time the family decided to relocate to Italy. The tribunal can readily understand that this was a time of some considerable stress so far as both Mr and Mrs Zadra were concerned. Their priorities were to relocate to Italy and in Mr Zadra's case to secure remunerative employment. They were both concerned to ensure the safe arrival of their baby.

7. Mr Zadra has stated that he was surprised that he was required to file a tax return as he believed that his income had been taxed at source under the PAYE system, his employers accounting for the tax due. His other income, was he believes, again taxed at source. He had, he says, no reason to suppose that he would be required to file a tax return. The Revenue however points out that a person whose total income amounts to £100,000 or more is required to file a self assessment return. Mr Zadra must, say the Revenue, be assumed to be aware of this. There is however a difficulty with this proposition in that the actual income of Mr Zadra for the year 2007-08 is not stated and there is therefore no evidence before the tribunal that this provision applied to Mr Zadra. Clearly Mr Zadra was unaware of this provision'

8. Section 118 (2) TMA allows for the penalty to be set aside where there is a reasonable excuse for the failure to file on time. What a "reasonable excuse" might be is not defined. The Revenue considers that any such reason would have to be something exceptional or out of the Appellant's control. The Tribunal does not accept that the Revenue's approach to the question of what constitutes "reasonable excuse" is definitive. The words "reasonable excuse" are ordinary words to be construed according to their ordinary and usual meaning. However the criteria proposed by the Revenue, whilst neither definitive nor exhaustive, do in the view of the tribunal, represent a reasonable starting position for considering what is and what is not a "reasonable excuse". It seems unlikely that it was Parliament's intention that a taxpayer could avoid his duty to file a return on time by reason only of some "ordinary" excuse nor does it seem likely that matters within the taxpayers control would generally found such an excuse.

9. Mr Zadra had filed a form P85 informing the Revenue that he had left the UK. He did this in March 2009. Thereafter a letter from the Revenue dated 16 July 2009 was received which indicated that the Appellant's P85 had only been received on 3 June 2009 and which called for the filing of a self assessment return for both the years 2007-08 and 2008-09 before the matter of his tax affairs could be considered further. Mr Zadra realised that the filing date for 2007-08 had passed and decided to file both returns online together. This did not prove to be a simple exercise as it required Mr Zadra to go through the enrolment process, securing a user ID and an online activation code. This code had already expired by the time Mr Zadra was ready to file his return. This was due, as indicated above, to the Appellant's employer proving tardy in supplying necessary documents including forms P45, P60 and payslips. Correspondence ensued. This too was problematic as letters seem to have been lost in the post. However it eventually proved possible for the Appellant to file the returns together online on 30 January 2010, in time for the 2008-09 return but a year late for the return for the year 2007-08.

10. The tribunal accepts that it may well be that Mr Zadra did not in fact receive the notice to file his 2007-08 return. There is no evidence that he did. It is far from clear that Mr Zadra would have been aware of the need to file a return for 2007-08. There is no evidence as to Mr Zadra's actual earnings for the year in question nor does any explanation appear in the papers as to why tax was due for the years in question. The tribunal is accordingly not in a position to form any view as to whether it was reasonable for Mr Zadra to know that he would be required to file a return for 2007-

08. This being so the basis for the imposition of a fixed penalty for this year has not been clearly established and the two £100 penalties ought therefore to be set aside.

11. If, contrary to the above reasoning it was properly to be expected of the Appellant that he should have known of his duty to file a tax return for the year 2007-08 then the
5 tribunal finds that having regard to all of the circumstances prevailing at the time including the fact that the Appellant had been declared redundant after 8 years service with his employer, his wife's pregnancy and the need to return to Italy and to re-establish a home there the tribunal finds that a reasonable excuse existed for the failure to file the return by the due date. The tribunal is satisfied that when Mr Zadra
10 realised that he was required to file a return he took all reasonable steps to do so as quickly as he could being frustrated in this by circumstances outside his control including both his former employers delays and the problems of cross border correspondence described by the Appellant. In all the circumstances the tribunal finds that a reasonable excuse existed throughout the period of delay until the 2007-08
15 filing was completed. It is both just and fair that the penalties of £200 should be set aside

12. The position concerning the surcharges for late payment of tax due is rather different. It is not disputed by the Appellant that tax was due for each of the years 2007-08 and 2008-09. Whether or not Mr Zadra was aware of the fact that tax was
20 due does not affect the fact that payment for the earlier year fell due on 31 January 2009 and for the latter on 31 January 2010. Consequent on the filing of the self assessment returns on 30 January 2010 the Appellant would, say the Revenue, have been given an online calculation showing the tax due for each of the years. The customer service statement attached would have made clear that if the tax was not
25 paid on time interest and surcharges would be applied.

13. The Appellant accepts that the due date for the earlier (2007-08) payment had expired. The 2008-09 tax payment was immediately due. Mrs Zadra states however that she thought that as the calculation of tax due was stated to be an estimate it was in order to wait until a confirmation of the figure was received. That was a mistake. The
30 sum was due and payable immediately. In fact it was not until 5 May 2010 that payment was made. Accordingly surcharges and interest were applied. It is the imposition of these surcharges which Mr Zadra's appeal addresses. Mr Zadra had also appealed the interest charges. There is no relief from this however as section 86 Taxes Management Act 1970 is mandatory in its terms and no relief from the
35 requirement to pay interest on late paid tax exists.

14. In manner similar to that which concerns the late filing penalties, a taxpayer can avoid a surcharge only if he can establish a "reasonable excuse" for not paying the tax throughout the whole of the period in default. This provision is to be found in section 59C(9) Taxes Management Act 1970. Whilst there may have been a reasonable
40 excuse for the failure to account for the tax due during part of the period during which 2007-08 tax was due there is no reasonable excuse for the further delays in respect of tax due for both years from 31 January 2010 to 5 May 2010. Consequently the requirements of section 59C(9) TMA are not met and the surcharges must be confirmed.

15. 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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CHRISTOPHER HACKING

TRIBUNAL JUDGE

RELEASE DATE: 24 April 2012

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