



TC04854

Appeal number: TC/2015/06308

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PETER CHRISTOVIC

Appellant

- and -

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

TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP

The Tribunal determined the appeal on 29 January 2016 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 13 October 2015 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 9 December 2015.

Introduction

1. This is an appeal against the imposition of a penalty of £124 for the late payment of the tax due for the year ended 5 April 2014. There is no dispute about the background facts which are set out below.
2. Paragraph 16(1), Schedule 56 Finance Act 2009 provides that an appeal against a late payment penalty will be successful where the taxpayer shows that there is a reasonable excuse for paying late.
3. The self-assessment payment was due to be paid by 31 January 2015. The payment was made on 20 March 2015.

4. On 1 July 2015 the appellant appealed the late payment penalty and on 16 September 2015 HMRC wrote to the appellant rejecting that appeal on the basis that no *reasonable excuse* had been advanced.

Discussion

5. There was no dispute about the facts in this appeal.

6. The appellant's 2013-14 Tax Return was filed online. The appellant accessed the online system on 30 January 2015 and the Return was processed on 31 January 2015.

7. The appellant was aware that there was tax due and when completing the self-assessment online under the section headed "Tax refunded or set off" there is the question "If you have not paid enough tax" which states:-

"If you owe tax for 2013-14 and have a PAYE tax code, we will try to collect the tax due (if less than £3,000) through your tax code for 2015-16, unless you put 'X' in the box".

8. He did not put an 'X' in the box since he wished the tax to be collected through PAYE. It was only later that he discovered that that was not possible unless such a request was submitted before 30 December in the tax year. (The appellant indicated that it was at 31 December but it is in fact 30 December).

9. When filing the Return the appellant checked his online statement. The screenshot on which the appellant relies stated that there was nothing to pay. It also makes it explicit that it is "Information as at 30 Jan 2015" and goes on to say that his options were to make an amendment to that Return, view the last submitted Tax Return or alternatively file or amend the Return using commercial software. It also provided a link "Information to help complete your tax return".

10. The obvious points arising from that screen shot are:

(a) the Return had not been filed at that point,

(b) the tax was not due until 31 January 2015 and the screen shot was dated the previous day, and

(c) there was readily available information to assist taxpayers.

11. The HMRC website makes it explicit that the option of collection of tax through the tax code cannot be and is not offered after 30 December in any tax year.

12. This appeal is not concerned with a specialist or obscure area of tax law. It is the taxpayer's responsibility in terms of the self-assessment regime to ensure that Returns and payments are made on time. The information in that regard is widely publicised and in unequivocal terms. Reasonable excuse is not defined but taxpayers are expected to attend to their tax affairs exercising reasonable foresight and due diligence and having proper regard for the responsibilities under the Tax Acts.

13. The appellant's argument that because the screenshot had stated that he had nothing to pay he had understood that the tax would be collected through PAYE is not tenable because the return had not yet been filed. It would be reasonably expected that he should have checked the guidance as to how tax which was due should be paid. Had he done so he would have known that he had to make payment by 31 January 2015.

14. His further argument that Self-Assessment online is misleading, invalid and unfair and the system should be amended so that such an "error" cannot recur is not accepted either. The Tribunal does not have the jurisdiction to consider whether the "system" or indeed any penalty is unfair. The jurisdiction extends only to deciding whether a Return or payment is late and, if either or both are late, whether there is a reasonable excuse for the delay. In this case, for the reasons given, the Tribunal finds that there is not a *reasonable excuse*.

15. HMRC has considered whether there any special circumstances in this case which would allow for a reduction of the penalty in terms of paragraph 16 Schedule 55 Finance Act 2009 and decided not. We agree.

Conclusion

16. Accordingly, the appeal is dismissed and the late filing penalty is upheld.

17. This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties and may publish them on its website and either party will have 56 days in which to appeal. 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.

ANNE SCOTT

TRIBUNAL JUDGE

RELEASE DATE: 2 FEBRUARY 2016

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