



TC05181

Appeal number: TC/2015/06993

INCOME TAX – late payment penalty – whether reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DAVID ROWLANDS

Appellant

- and -

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

TRIBUNAL: JUDGE DR. K KHAN

The Tribunal determined this appeal on 22 March 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 26 November 2015 and HMRC's Statement of Case submitted on 6 January 2016.

DECISION

Introduction

- 5 1. This is an appeal against a penalty imposed under Paragraph 3(2) of Schedule 56
Finance Act 2009 (FA 2009) for the failure to pay on time for the year ending 5 April
2014.
- 10 2. Taxpayers within the self-assessment system must file their returns by the due date
and pay the tax owed by the date specified in law. The due date for payment was 31
January 2015 and where a payment is late a Late Payment Penalty is chargeable.
- 15 3. An appeal against a Late Payment Penalty would be successful where a taxpayer
shows a reasonable excuse for paying late.

Relevant facts

- 20 4. A Notice to File for the year ending 5 April 2014 was issued to the Appellant on 6
April 2014 with the filing date of 31 October 2014 for non electronic returns or 31
January 2015 for an electronic return.
- 25 5. The Appellant's electronic return for the year 2013-2014 was received on 15
December 2014. The Appellant calculated his own tax liability for the year as being
£55,681.42 with the tax to be paid on or before 31 January 2015 in accordance with
Section 59B(4) Taxes Management Acts 1970 (TMA 1970). At the penalty date of 3
March 2015 £29, 681.42 of the tax liability remained unpaid. The tax liability was
finally paid in full on 22 June 2015.
- 30 6. HMRC issued a Notice of Penalty Assessment on or around 2 June 2015 in the
amount of £1,484.05 being 5% of the taxes unpaid at the penalty date.

The Appellant's submission

- 35 7. The Appellant made the following points -
- 40 a) The reason his income tax was underpaid in the year ending 5 April 2014 was due
to a mistake by HMRC with a calculation of PAYE. The mistake was a result of
HMRC making an assumption that he would make similar lump sum payments into a
personal pension as in the previous year and therefore he would receive a similar tax
refund. Whereas no lump sum pension contribution was made in the year ended April
2014. As a consequence, the PAYE deductions were considerably less than they
should have been.
- 45 b) The mistake was discovered completing the tax return for 2013-2014 with his
advisor in December 2014. On discovering the error, the Appellant explained that he
called HMRC to agree a repayment schedule which commenced with an immediate
payment of £25,000. The last instalment of the repayment was due in June 2015.

5 c) The Appellant disputes the Penalty Payment on the basis that the underpayment was an error made by HMRC and as soon as the error was identified by his advisors they immediately contacted HMRC to arrange a repayment schedule of the underpaid amount.

10 d) The Appellant requested a review on 25 August 2015 on the basis that the underpayment of tax was as a result of a mistake by HMRC with regard to his coding. HMRC carried out a review and issued their review decision on 5 October 2015 which upheld HMRC's decision to impose the penalty.

15 e) On 26 November 2015 the Appellant stated that he was appealing against the amount of the Late Penalty on the ground that HMRC assumed incorrectly that tax relief would be the same as in previous year.⁸ The Taxpayer is saying that HMRC made an error with regard to his coding which resulted in an underpayment of tax.

HMRC's submission

20 9. HMRC says that the Appellant submitted returns for the year end 2012-2013 on 17 November 2013. The return showed that £156,250.00 contribution was made into the registered pension scheme. Tax relief was given at the appropriate level. Individuals in the self-assessment regime have their tax code automatically calculated based on the return information. As a result of changes in the tax code a notification (P2) was issued to the Appellant and a coding notification (T9) was issued to the employer.

25 The P2 coding was issued on 17 December 2013 and included an allowance for the personal pension relief. The P2 included notes which stated as follows;

30 "Your tax code has changed because of information in your tax return.

Your personal pension payments are made after basic rate tax relief has been given. We think you will pay 45% so we have included £69,445.00 in your tax-free amount to give you the extra tax relief due. If you have stopped paying or the amount has changed, please tell us".

35 These notes were contained in the tax note details provided to the Appellant.

40 10. On 28 January 2014, the Appellant's employer rang HMRC to confirm that the code was correct. The new code was applied on 31 January 2014 and a repayment of tax was made to the Appellant of £24,949.50. HMRC say they were not contacted by the Appellant regarding the amended tax code or the tax refunded.

45 11. The Appellant rang HMRC on 14 January 2015 to explain that he was unable to pay the amount of tax due by the due date while acknowledging the debt; he said that the underpayment arose as a result of HMRC's mistake. He agreed to pay £25,000 by cheque and the balance under a monthly payment arrangement which would have seen the full balance paid by 28 May 2015. There was an outstanding balance on 22

June 2015 which means that the Appellant did not adhere to the Time to Pay arrangement.

5 12. In concluding the review HMRC say that there are no special circumstances which should reduce the penalty. They say that interest is calculated for each day the penalty was unpaid.

Conclusion

10 13. Where a taxpayer receives a tax code it is their responsibility to ensure that the tax code is correct and to notify HMRC if this is not the case. The code should be checked using the information and notes which are provided with the code issued. If the tax code is wrong, the taxpayer should contact HMRC and speak to an adviser explaining that the tax code is wrong and should be updated and provide the necessary information. There are help lines and information on the internet through the HMRC website for taxpayers to get further information on tax coding or how to make contact. When HMRC provided the taxpayer with the amended code number (P2) on 17 December 2013, the notes clearly stated that the taxpayer should contact HMRC if he had “stopped paying or the amount has changed” with regard to the pension payment contributions. The information which HMRC have is based on that which is provided through tax returns and the codes are automatically calculated following the submission of the return information. Tax code notification is issued to the individual and to the employer (P9) where there has been a change in the tax code.

25 14. On 28 January 2014 the Appellant’s employer called HMRC to confirm that the code was correct. The new code was applied on 21 January 2014 and a repayment of tax was made to the Appellant pursuant to the new tax code. It was on their understanding that the Appellant had made substantial pension contributions which proved not to be the case.

30 15. This resulted in an underpayment of tax by the Appellant and the need to enter into a Time to Pay Arrangement for the outstanding tax which was due. The penalty arose because the taxpayer did not adhere to the Time to Pay Arrangement and the full balance of tax was not paid until after the due date.

35 16. The Appellant says that the penalty payment was made on the basis of the underpayment of tax which was as a result of an error made by HMRC which his advisors identified.

40 17. While the Tribunal has sympathy with the Appellant, it is incumbent upon the Appellant and his employer to check the tax code to see if it is correct. If a person is unsure they should contact HMRC for an explanation of the coding. However, if nothing was done to query the tax code then the implication is that the tax code is correct. Further, the employer called HMRC to confirm that they agreed with the tax code. It is reasonable in the circumstances for HMRC to believe that the tax position was correct from the information gathered from the return. HMRC would expect a Taxpayer to have checked the tax code when it was received and to make contact in

the event of an error. In this case, the Appellant had sufficient time to question the accuracy of the tax code when it was provided in December 2013. This was not done.

5 18. For this reason, the Tribunal dismisses the appeal and finds that there is no reasonable excuse. The Taxpayer had sufficient time to raise questions on the accuracy of the tax return and HMRC were informed by the employer that the tax code was in fact correct.

10 19. It is well known that HMRC have made mistakes with tax codes in the past but it is incumbent on Taxpayers to raise questions when they believe their tax code is wrong and to provide the necessary information to correct the coding. The Taxpayer had adequate time to provide HMRC with a more realistic estimate of expenses so that the correct tax code could have been operated correctly but this was not done in a timely manner. It is unfortunate that this is the case as the Taxpayer clearly intended
15 to meet all his tax obligations and had a history of compliance with the tax legislation.

20. In the circumstances, the Late Payment Penalty is confirmed and the appeal is dismissed.

20 21. 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
25 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

30 **DR K KHAN**
TRIBUNAL JUDGE

RELEASE DATE: 17 JUNE 2016