



TC03125

Appeal number: TC/2013/06133

INCOME TAX – whether late payment of income tax, Yes. Whether reasonable excuse for late payment - No.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ALEX KHOSROWPOUR

Appellant

- and -

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

**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA
AIIT**

The Tribunal determined the appeal on 2 December 2013 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 August 2013, and HMRC's Statement of Case submitted on 22 October 2013 with enclosures. The Tribunal wrote to the Appellant on 28 October 2013 indicating that if they wished to reply to HMRC's Statement of Case they should do so within 30 days. A reply bearing the date 5 October 2013 with enclosures was received on 15 November 2013 and considered by the Tribunal.

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DECISION

1. Introduction

5 This considers an appeal dated 28 August 2013 against amounts totalling £388.89 levied by HMRC for the late payment of income tax of £3,079.60 due to be paid by 31 January 2012.

2. Legislation

Finance Act 2009 Schedule 56
10 Taxes Management Act 1970, in particular Sections 7,8,9 and 59B

3. Authorities

Rowland v HMRC [2006] STC (SCD) 536
15 Anthony Wood trading as Propaye v HMRC [2011] UKFTT 136 TC 001010

4. Facts

The appellant completed a non-electronic return which was received by HMRC on 3 August 2011. HMRC processed this return on 16 August 2011. It showed a tax liability of £3,079.60 which was due to be paid by 31 January 2012. Payment of this
20 tax was not made until 24 April 2013.

Self assessment of tax is based on voluntary compliance. Taxpayers who are within the self assessment system must file their returns by the due date and pay the tax they owe by the date specified in law.

25 Payment is due in accordance with Section 59B Taxes Management Act 1970 and in the case of the appellant the due date was 31 January 2012.

A late payment penalty is chargeable where a taxpayer is late in paying tax due. The first penalty is calculated at 5% of all remaining tax unpaid after the expiry of 30 days from the due date in accordance with paragraph 3 (2) Schedule 56 of the Finance Act 2009. Thus the appellant was due a first late payment penalty of 5% of £3,079.60 i.e.
30 £153.98 which HMRC rounded down to £153.

A second penalty is calculated at 5% of all remaining tax unpaid after the expiry of a further 5 month period in accordance with paragraph 3 (3) Schedule 56 of the Finance Act 2009. Thus the appellant was due a second late payment penalty of 5% of £3,079.60 i.e. £153.98 which again HMRC rounded down to £153.

35 Where tax remains unpaid after the expiry of 12 months from the date the tax was due in accordance with paragraph 3 (4) Schedule 56 of the Finance Act 2009 a further late payment penalty of 5% of the tax remaining unpaid is due. The tax outstanding after

12 months was £1,084.40 so the appellant was due a further late payment penalty of £54.22 which HMRC rounded down to £54.

The total of the penalties is therefore £360.

5. Appellant's submissions.

- 5 In the Notice of Appeal the Appellant states "Admittedly I was late in paying up but you must see the misery of my plight. I was unemployed and also your office was erroneously computing my tax position more than a few times."

10 In the Notice of Appeal the amount appealed against is £388.89. HMRC's statement of case covers penalties of £360. The Tribunal has received no information from either party concerning the difference of £28.89 although it notes in the various statements of account from HMRC that they have levied small amounts of interest. However no combination of these adds up to £28.89.

15 The Appellant complains that HMRC miscalculated the tax he was due to pay for the period 2011/12 by double counting an amount of income. This appears to have been accepted by HMRC.

The Appellant also complains that HMRC made misleading statements about future tax returns in a letter dated 16 March 2012

6. HMRC Submissions

20 HMRC submit that the appellant submitted his non-electronic return well in time on 3 August 2011 and was advised of the amount due. They submit that the appellant had been advised of the various deadlines which included the deadline for payment of tax.

7. HMRC submit that they have levied the penalties in accordance with The Finance Act 2009 Schedule 56.

25 8. HMRC say that a statement of account was sent to the appellant on 13 December 2011 confirming the amount of tax due to be paid by 31 January 2012.

9. HMRC state that it is often possible for taxpayers who do not have the means to pay a tax bill to negotiate with them a deferred payment plan. In these circumstances a late payment penalty can be avoided if the arrangements are made before the payment is due. However the appellant did not contact HMRC until 28 February 2013.

30 10. HMRC submit that any difficulties or confusion in respect of the 2011/12 return form and calculation have no bearing on this appeal which concerns the late payment of tax due in respect of the previous year.

11. The Tribunals Observations

35 The level of the penalties has been laid down by parliament and the legislation relating to penalties has been properly and accurately applied by HMRC. The only

other consideration that falls within the jurisdiction of the First-tier Tribunal is whether or not the appellant has reasonable excuse for the late payment.

12. The Tribunal considers that the chronology of events is important in determining this case. Many of the submissions made by the appellant relate to events which
5 occurred after 31 January 2012 which was the due date for payment of the tax due. For example the alleged misleading information given in the letter dated 16 March 2012 cannot be a reason for failing to pay tax on 31 January 2012. The double counting of income in a tax calculation re 2011/12 also occurred well after 31 January 2012. These cannot therefore be considered as giving reasonable excuse for the failure
10 to pay the tax due on 31 January 2012.

13. The appellant has admitted that he was late in paying the tax due. His only excuse was that he did not have the money. Schedule 56 paragraph 16 provides that an insufficiency of funds is not a reasonable excuse. The appellant's tax return for 2010/11 shows that he was reasonably well paid during the year 2010/11 and he
15 should have been able to put money on one side to meet the tax bill due on 31 January 2012 which he had been notified of in August 2011.

14. Paragraph 9 of Schedule 56 of the Finance Act 2009 (Special Reduction) provides HMRC with discretion to reduce any penalty if they think it right to do so because of special circumstances. On the information held in this case HMRC did not consider
20 there were any special circumstances which would allow them to reduce the penalty. The Tribunal sees no special circumstances that would apply to enable it to overturn HMRC's decision.

15. HMRC have applied the legislation correctly and calculated the amount of the penalties accurately as £360 as detailed in paragraph 3. above. The appellant has
25 established no reasonable excuse for the late payment of the tax due. Therefore the appeal is dismissed and the late payment penalties of £360 are confirmed. In respect of the remaining £28.89 appealed against the Tribunal suspects this may be interest but has received no submissions or evidence from either party as to what this amount represents and whether it is an accurate calculation or why it is appealed against. The
30 Tribunal has therefore no information to enable it to make any determination.

16. 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
35 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.

PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

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RELEASE DATE: 11 December 2013