



TC03663

Appeal number: TC/2013/05115

*Income Tax – late payment of tax – whether permission to appeal out of time
– no – whether a reasonable excuse for late payment – no – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RAJESH KALRA

Appellant

- and -

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

**TRIBUNAL: DR KAMEEL KHAN
MR NICHOLAS DEE**

Sitting in public in Bedford Square, London on 25 March 2014

The Appellant appeared in person

**Hellie Lai, Presenting Officer, assisted by Eleanor Gardner, HMRC Officer,
instructed by the General Counsel and Solicitor to HM Revenue and Customs,
for the Respondents**

DECISION

The matters in issue

- 5 1. There is a preliminary matter to be decided. This concerns an application for permission to admit late appeals dated 1 August 2013 pursuant to s49(2)(b) TMA 1970 in respect of late payment surcharges for the years 2004-2005, 2005-2006, 2006-2007, 2007-2008 and 2009-2010.
- 10 2. There is a substantive appeal against the late payment surcharges for the years 2004-2005, 2005-2006, 2006-2007, 2007-2008 and 2009-2010 charge under s59C TMA 1970.
3. The 5% Surcharges for late payment are detailed below:

Tax Year	Tax Due	Due Date	First Surcharge issued	First Surcharge 5%	Second Surcharge issued	Second Surcharge 5%	Total Surcharge Due
2004-2005	6938.35	31/01/2006	16/03/2006	346.91	22/09/2006	346.91	693.82
2005-2006	3818.40	31/01/2007	23/03/2007	190.92	24/08/2007	190.92	381.84
2006-2007	1353.89	31/01/2008	01/05/2008	67.69	11/08/2008	67.69	135.38
2007-2008	3753.00	31/01/2009	01/04/2009	187.65	11/08/2009	187.65	375.30
2009-2010	1260.00	31/01/2011	01/04/2011	63.00	17/08/2011	63.00	126.00

- 15 4. There is also an appeal against the income tax penalty for late payment of tax in respect of the year 2010-2011 charge under Schedule 56 FA 2009.

5. The 5% penalty for the late payment are detailed below:

2010-2011 – Tax due £2277.28	Issued	Penalty
30 days late payment penalty	10/04/2012	£106.00
6 months late payment penalty	04/09/2012	£106.00
12 months late payment penalty	19/02/2013	£106.00
	Total	£339.00

Issues before the Tribunal

- 5 (1) The Tribunal must decide whether permission is given for the appeal to be heard out of time and whether the Appellant has a reasonable excuse for not appealing within the statutory time limit. This concerns the appeals for the tax year 2004-2010.
- (2) The total late penalty Surcharge for the period 2004-2010 is £1712.34 and the penalty for 2010-11 is £339.00. This gives a total of £2,051.34.
- 10 (3) If the Tribunal does not give leave to appeal out of time then the only appeal which the Tribunal would hear would be in respect of the tax year 2010-2011. For this appeal the Tribunal must decide whether the Appellant has a reasonable excuse for the late payment and if so whether the reasonable excuse. The Law
6. The following provisions are relevant:
- (1) Sections 8, 9, 49, 59B, 59C TMA 1970.
- 15 (2) Schedule 56 Finance Act 2009.

Background facts

- (1) On 28 October 2012, the Appellant appealed against the late penalty charges that HMRC had issued. He explained that the late payment was due to financial and health hardships.
- 20 (2) On 22 November 2012 HMRC wrote to the Appellant requesting “the dates from which you started suffering from the mental condition which prevented you from paying your taxes on time”.
- (3) On 20 December 2012, the Appellant explained that he suffered from sleep apnoea and other issues relating to this condition since June 2002. The condition was ongoing and required monitoring to avoid a heart attack.
- 25 (4) On 22 January 2013, HMRC advised the Appellant that the deadline to appeal against the Late Penalty Surcharges for years ending 5 April 2005, 2006, 2007, 2008 and 2010 had passed. On 15 March 2013 HMRC advised the Appellant that the appeal against the penalty on tax paid late in respect of the year ending 5 April 2011 can be independently reviewed. On 11 April 2013, a request for review was received from the Appellant and on 16 May 2013, HMRC upheld the decision to charge the late penalties. On 1 August 2013, the Appellant appealed to HM Courts and Tribunals Service.
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Time to Pay and County Court Judgment

- 5 (1) On 28 March 2006, HMRC obtained a County Court Judgment (CCJ) against the Appellant for unpaid tax for years up to and including the amount of £6938.35 in respect of the years 2004-2005. For the period 29 March 2006 – 1 December 2008 HMRC contacted the Appellant requesting payment of all outstanding liabilities for the years 2004-2007.
- 10 (2) On 2 December 2008, HMRC agreed to a time to pay arrangement with the Appellant. Under the terms of that arrangement the Appellant agreed to pay £250 per month for six months starting 31 December 2008. The time to pay arrangement was not honoured by the Appellant. On 20 July 2009, the Appellant offered to pay HMRC £250 a month to clear his outstanding liability. This was rejected by HMRC.
- (3) The Appellant's last payment on account to HMRC was on 5 December 2012 for £100 set against the Appellant's self-assessment tax liability.

15 Appellant's submissions

- 20 (1) The Appellant's core submission is that the late appeal was due to ongoing medical, financial and other matters. He categorised these as matters which were "out of my control" and considered the charges and levies to be "unjust, unfair and compounding my problem of financial and health issues".
- 25 (2) He explained that the reason for not paying his tax liabilities in the period 2004-2011 was due to a "life threatening medical condition along with mental health issues in care of family member ... with suicidal issues" as well as financial and litigation matters which had "exhausted my health". He explained that he had responsibility and care for a disabled vulnerable person.
- (3) He expressed his interest in clearing his liabilities but due to these problems he was unable to do so.
- 30 (4) A further reason given is the "economic climate and banking litigation". He had applied for a bank loan but this was turned down.

The Respondents' submissions

- 35 (1) HMRC contended the Appellant has not put forward a reasonable excuse for the late appeal. There must be a reasonable excuse for the entire period of the default in order for the appeal to be successful. The first Default Surcharge was issued on 16 March 2006 and the final Default Surcharge was issued on 17 August 2011. This is a substantial period of default and there is no reasonable excuse for such a long period.

- (2) The Appellant has simply not paid his tax liability as obliged to do by the due date and the surcharges were levied. The Appellant had received surcharge notices in respect of the tax period 2004-5, 2005-6, 2006-7, 2007-8 and 2009-10.
- 5 (3) The Appellant has never missed a self-assessment filing date and has never incurred a late filing penalty. This means that the Appellant is aware of his obligation to file the self-assessment returns electronically and pay the tax liability by 31 January.
- 10 (4) HMRC explained that an insufficiency of funds is not a reasonable excuse unless attributable to events outside of the Appellant's control. There is no reasonable excuse in this case based on insufficiency of funds.
- 15 (5) HMRC entered into a time to pay arrangement with the Appellant on 2 December 2008. This was not honoured by the Appellant. The last payment remitted by the Appellant to HMRC was 5 December 2012 for £100.
- (6) The Appellant has not been hindered in the preparation and submissions of his self-assessment returns due to health or financial reasons. The Appellant continues to trade and there is no cessation date for his self-employment.
- 20 (7) HMRC contend that the Appellant would have used his income for personal spending and had made a choice not to pay his income tax liability. This appeared not to be a priority and therefore he should be rightly liable for the Late Payment Penalties.

Discussion and Conclusion

25 7. The Tribunal does not grant permission for the late appeals to be heard. The reason is that there is no reasonable excuse for not appealing within the statutory time limits. The time limits have been set to ensure a finality of litigation and to bring the taxpayer's affairs to an end. It is helpful to HMRC to know that they can close off
30 particulars years of assessment. The time limit is designed to strike a balance between the interests of the Appellant in being able to pursue an appeal and the interest of the Respondents in knowing that the assessed liabilities will be paid and the matter brought to an end. A discretion has been given to the Tribunal to extend the time limit beyond the statutory period but this is only granted in exceptional
35 circumstances rather than as a matter of course. While the Tribunal sympathises with the personal issues which the Appellant has had to deal with and the family pressures which this would have placed both on himself and his family, the Appellant continued to perform his self-employment and to file his self-assessment returns. We can find no reason, other than lack of financial means, why the Appellant did not pay his taxes. An insufficiency of funds is not a reasonable excuse and given that the appeals go
40 back to 2004-5, it would not be fair in the circumstances to allow the appeals to now be heard.

8. For this reason and for the reasons given at the hearing, the preliminary application to admit late appeals would not be granted. Such a decision would not be fair.

5 9. This means that the sole matter which will be considered by the Tribunal would be in respect of an appeal against an income tax penalty for late payment of tax for the year 2010/11.

10 10. For the 2010/11 period the tax has remained unpaid adding to the debts which the Appellant has accumulated in the earlier years. The Appellant has provided no reasonable excuse for the late payment of tax. It is understandable that he has personal health problems as well as the health problems relating to his wife which have no doubt taken a significant toll on his family. He has acted in a capacity of supporting a vulnerable person as well as coping with his own medical condition. It is difficult however to see how these conditions would have prevented him from paying monies he clearly owes. His foot condition and sleep apnoea would not have prevented the payment of his tax.

15 11. The Tribunal takes the view that if the Appellant was in a position to file his tax returns then he should have been in a position to pay his tax liability on the due date. He has simply not paid his tax liability on time. He has never missed or incurred a penalty for late filing. This suggests that the Appellant is familiar with the rules on filing his self-assessment returns but he has chosen not to pay the tax. Indeed he has never paid his tax liability by 31 January in any year (there was no tax liability for 2001-2 and 2008-9 and therefore a surcharge did not arise for those years). The facts suggest that the Appellant is a habitual defaulter who does not have the means to pay his tax. Sadly, the inability to pay tax is not a reasonable excuse under section 59 C (10), TMA 1970.

20 12. This leads us to the question of the insufficiency of funds and whether this is a reasonable excuse. It would appear that the Appellant only focused on the issue of payment when HMRC obtained a County Court Judgment against the Appellant for unpaid tax in 2006 for the year 2004-5. This prompted the Appellant to make payments on accounts to clear his debt. The Appellant then sought to enter into a sensible time to pay arrangement in December 2008. However, while these arrangements were entered into they were never honoured by the Appellant. He was provided with contact points to help him make an informed decision in resolving his hardship problems. These were not taken up.

25 13. The Tribunal has not seen any medical evidence that shows that the Appellant was hampered in his ability to control his financial affairs by his illness. The Appellant is still trading and there is no cessation date for his self-employment.

30 14. For these reasons the appeal is dismissed.

35 15. The Tribunal would like to bring to the attention of HMRC the fact that the penalties can be reduced in special circumstances. These circumstances are either uncommon or exceptional or where the strict application of the penalty law produces

a result that is contrary to the declared compliance intention of that penalty law. The circumstances in question must apply to the particular individual and not be general circumstances that apply to taxpayers. It does not include any matters which are already covered by legislation. The Tribunal would like to draw HMRC's attention to these provisions and to suggest, if they have not already done so, to consider a reduction in the penalty due to special circumstances relating to the Appellant's and his wife's health and personal issues.

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 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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**DR KAMEEL KHAN
TRIBUNAL JUDGE**

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RELEASE DATE: 30 May 2014