



**TC04684**

**Appeal number: TC/2015/00936**

***INCOME TAX – LATE PAYMENT SURCHARGE – WHETHER  
REASONABLE EXCUSE – YES – APPEAL ALLOWED***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**IAN DUNCAN**

**Appellant**

**- and -**

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

**TRIBUNAL: DR K KHAN (TRIBUNAL JUDGE AND  
ANDREW PERRIN FCA TRIBUNAL  
MEMBER**

**The Tribunal sat in Belfast on 7 August 2015.**

**Appearing for the Appellant was David Bamber, Accountant.**

**Appearing for HMRC was Shiobhan Brown, Presenting Officer.**

## DECISION

### Introduction

- 5 1. This is an appeal against a surcharge on tax paid late for the 2009 to 2010 tax year.

### The Law

- 10 2. Under Section 59B Taxes Management Act (TMA) 1970 a taxpayer is required to pay the tax liability for the year ending 5 April 2010 by 31 January 2011.

3. Under Section 59C a surcharge is levied on unpaid income tax where the tax remains unpaid on the day following the expiry of 20 days from the due date.  
15 The taxpayer is liable to a surcharge equal to 5% of the unpaid tax.

4. An appeal against the surcharge is allowed if it appears that, throughout the period of default, the taxpayer had a reasonable excuse for not paying the tax.

### 20 The relevant facts

5. The facts are not in dispute in this case. They are as follows:

- 25 (1) A late payment surcharge was imposed on 11 June 2014. The surcharge relates to unpaid capital gains tax charged by assessment on 3 April 2014.

- 30 (2) The total tax for the year 9/10 was £112,288.32 and with interest and other charges was £123,077.21. Of this sum £55,000.00 was paid on 16 May 2014 with the remainder being paid in October 2014.

- 35 (3) The information giving rise to the tax charge was provided on 20 January 2014 by the Appellant's advisers (Nichol Allen) to HMRC. It related to a partial rollover for capital gains tax on a disposal which took place in February 2010.

- 40 (4) HMRC replied to the Appellant's letter of 20 January 2014 on 24 March 2014, two months after, and issued an assessment on 3 April 2014 .

- 45 (5) On receipt of the assessment, the Appellant's representative, Nichol Allen, telephoned the HMRC on 7 April 2014 with a request to have the Debt Management and Banking Section agree a structured payment plan.

- (6) The Debt Management Unit, after receipt of the £55,000.00 payment on account of the tax, suggested that the Appellant seek

5 other sources of finance to pay the remaining £68,000.00. This took some time as the Appellant had to prepare up-to-date financial accounts for a submission to financial institutions. The initial application to his existing mortgage provider failed. However, the Appellant was successful with further applications and raised the necessary finance in October 2014 and paid the tax in full on 10 October 2014.

10 (7) A late payment surcharge was issued on 11 June 2014 which imposed a late payment penalty of £2,864.41 being 5% of the outstanding tax. It is this penalty which is appealed.

### **The Appellant's submissions**

15 6. The Appellant says that the whole surcharge is unfair and should be removed.

20 7. In the first instance, they say that there was a delay by HMRC in replying to their letter dated 20 January 2014 which notified HMRC that the Appellant had not reinvested the full proceeds on disposal of his farm asset in the 2009/10 tax year. HMRC only replied to this letter two months later setting out the revised capital gains tax computation. HMRC indicated that they proposed to issue an assessment within 30 days.

25 8. The Appellant said they acted in a reasonable manner in contacting the Debt Management Unit immediately and there was great difficulty in obtaining finance to pay the remaining tax in such a short period. This was particularly the case as accounts had to be prepared and mortgage applications made.

30 9. The Debt Management Unit informed the Appellant that no arrangements could be considered until they had exhausted all potential sources of finance.

35 10. An application was made to their mortgage provider which was unsuccessful and only further applications were successful over time.

11. It is the Appellant's view that a time to pay arrangement with HMRC was agreed by phone on 7 April 2014 when the initial call was made to the Debt Management Unit.

40 12. In the circumstances the Appellant felt they acted reasonably and that the whole surcharge had been moved.

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### **The Respondents submissions**

13. The Respondents say that the surcharge seeks to make payment of tax promptly and in this case payment was not promptly made. They said that the deadline for amendments for 2009/2010 tax return was 31 January 2012 and any tax due for that year had to be paid by 31 January 10/2011. Amendments and payments received after those deadlines would have resulted in surcharges being charged.

14. They also say that there was no agreement with the Debt Management Unit and queried whether a telephone call was made on 7 April 2014; they accepted at the Tribunal that the call was probably made by the Appellant's representative.

15. The imposition of the surcharge was correct and there was no reasonable excuse in this case since an insufficiency of funds does not give rise to a reasonable excuse.

16. The conversation which took place on 7 April 2014 which informs HMRC of the Appellant's intention to request a structured payment plan was not an agreement and a structured payment plan was declined. In any event a structured payment plan could only be agreed after all existing matters of financing have been exhausted.

17. The points made by Mrs Brown were reiterated in the review by HMRC on 7 January 2015.

**Conclusion**

18. The Tribunal allowed the appeal at the time of the hearing.

19. When a Tribunal is asked to look at whether a taxpayer has a reasonable excuse the Tribunal has to assess all the facts by the standards of reasonableness which one would expect of a taxpayer who is seeking to honour their obligations. The particular facts of the case and the attributes of the taxpayer should be considered as well as their circumstances and their finances among other factors. The Tribunal will look to see whether the taxpayer made as a priority their compliance with their duties to make payment on time and to ensure that their returns were accurate and timely.

20. In this case the taxpayer acted entirely reasonably. First, HMRC were informed that the taxpayer had a tax obligation since full rollover relief was not available. There was a delay by HMRC in responding to the taxpayer's letter, which took over two months. This then left very little time for the assessed tax to be paid within the time limit.

21. The taxpayer made all efforts with their original mortgage lender to obtain further financing. This proved a slow process given the amount of financial information which has to be provided and prepared.

22. In an act of good faith, the taxpayer paid £55,000.00 of the tax due when the taxpayer finally obtained the financing to pay the full amount of tax this was done promptly and without any delay.

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23. It is clear that the taxpayer intended to honour their obligations and acted reasonably in the circumstances. This is certainly a situation where there is a reasonable excuse.

10 24. The Tribunal therefore allows the appeal.

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**TRIBUNAL JUDGE**  
**K KHAN**  
**RELEASE DATE: 29 October 2015**