



**TC03431**

**Appeal number: TC/2013/07852**

*Penalty – late payment of PAYE – Appellant’s assumption that PAYE liability coded out not reasonable excuse – penalty confirmed – appeal dismissed.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DEREK ROSS**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE PETER PETHERBRIDGE**

**The Tribunal determined the appeal on the 05 February 2014 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 the 08 November 2013, (with enclosures) and HMRC’s Statement of Case submitted on the 18 December 2013 (with enclosures).**

**The Appellant has requested full written findings and reasons, which are now provided.**

**© CROWN COPYRIGHT 2014**

## DECISION

### Introduction

This appeal concerns a penalty for late payment of the Appellant's 2011-2012 tax liability.

- 5 The Penalty is imposed under Section 59B Taxes Management Act ("TMA") 1970 that the Appellant had been required to pay his tax liability for the year ended 05 April 2012 by the 31 January 2013 that was not paid by the Appellant until the 07 October 2013.

### Facts

- 10 1. A Notice to File for the year ending 05 April 2012 was issued to the Appellant on the 06 April 2012.
2. The filing dated was the 31 October 2012 for a paper tax return or 31 January 2012 for an electronic tax return.
3. The Appellant's electronic tax return for the tax year 2011-2012 was received by HMRC on the 28 December 2012 and was "*processed*" on that date.
- 15 4. The Appellant's tax liability for the tax year 2011-2012 was £807.40 and that tax was due to be paid by the Appellant on the 31 January 2013 in accordance with Section 59B (4) of TMA 1970.
5. The Respondent issued a Notice of Penalty assessment on the 19 March 2013 for £40 being 5% of the tax unpaid at the penalty date and a Notice of Penalty assessment was issued  
20 on the 14 August 2013 for that amount.

### The Appellant's appeal

6. The Appellant's appeal was lodged by his accountants, Messrs McLay, McAlister and McGibbon LLP who lodged the Appellant's appeal on the 21 June 2013.
7. It was said on behalf of the Appellant that the 2012 tax return had been submitted and the underpayment for the year had been declared properly. The Appellant had properly checked  
25 the box requesting that the underpayment be collected through his PAYE tax code.
8. The Appellant did not consider that there was any good reason that the tax could not have been collected through the tax code and the Appellant assumed that that would be done.
9. The HMRC sent the Appellant a decision letter on the 23 July 2013 rejecting the  
30 Appellant's appeal and offering a review of the decision. HMRC's letter said that there was insufficient PAYE liability to enable the additional self-assessment tax to be collected through the Appellant's tax code.
10. The Appellant requested a review of HMRC's decision on the 15 August 2013 repeating what had been said in the original appeal letter of the 21 June 2013 and going on to state that:

- The tax due was £807.40, which was below the statutory minimum of £3,000. The election to have the tax collected through the Appellant's tax code had been made ahead of the statutory time limit of the 31 January 2013 and the tax could have been collected through the Appellant's income for 2013/2014 using a "K" code, if necessary.

5

11. HMRC had advised that the tax code would not be adjusted, saying that it was optional as to whether this would be done.

#### HMRC's review

12. HMRC carried out a review of its decision to impose a penalty for late payment in respect of the Appellant's tax liability for the tax year 2011-2012 in a letter dated the 01 October 2013.

10

13. HMRC accepted that the Appellant had completed his tax return on the 28 December 2012 and had elected to have his Balancing Payment collected through his tax code.

15

14. It was admitted that the Appellant's tax liability was £807.40, which was below the statutory minimum to be collected through the tax code.

15. With regard to the issues raised by the Appellant in his appeal, HMRC said this:-

- (1) Self-assessment places a greater degree of responsibility on customers for their own tax affairs. This includes ensuring that we [the Revenue] get payment of the correct amount of tax and National Insurance at the correct time. It is the customer's responsibility to make sure that they meet the deadlines.

20

The election on the self-assessment return states, "we will try to collect the tax you owe through your tax code unless you put an X in the box". To have the Balancing Payment collected through your tax code, there must be sufficient PAYE income so that the Balancing Payment so that the Balancing Payment can be fully collected over the 12 months. We code out the liability if:

25

- The code will collect more than half of the pay; or
- It will double your PAYE tax liability

In 2011-2012 your PAYE income was £10,987 with tax deducted of £701.40. The Balancing Payment of £807.40 arose from your income from property. In 2012-2013 your PAYE income was £11,158 and the tax deducted was £609.60. Inclusion of the Balancing Payment in the 2012-2013 tax code would have more than doubled your PAYE liability. As HMRC were unable to code out the 2011-2012 Balancing Payment, payment should have been made by 31 January 2013.

30

- (2) The statutory due date for payment of the 2011-2012 tax liability was 31 January 2012. HMRC only advise customers who had filed by 31 October of the amount to pay by the due date. Customers who file after this date are expected to calculate the tax due and pay on time without a prompt or reminder from HMRC. The

35

2011-2012 tax return had been filed on line on the 28 December 2012 and the calculation would have been immediately available to the Appellant and his agent.

5 A Notice of Coding had not been issued to advise you that the 2011-2012 Balancing Payment had been included in your 2012-2013 Tax Code. A Statement of Account was issued to you on the 03 March 2012 advising of the amount due and the payment deadline. A 30-day Late Payment Penalty Notice was issued on the 19 March 2013. There is no record of any telephone calls to the contact Centre enquiring about the 2012-2013 Coding Notice or the 2011-2012 Balancing Payment. Payment is outstanding to date.

10 As you have not provided a reasonable excuse for failing to pay your tax on time, the penalty for late payment has been correctly charged.

16. On the 08 November 2013, the Appellant's formal appeal was lodged stating that:

15 The tax due was not paid by the "trigger" date of the 28 February 2013.

The tax due was £807.40.

The Appellant considered that the tax would be coded out during 2013-2014 and, therefore, the "trigger" date [28 February 2013] did not apply.

20 The Appellant first became aware that HMRC had refused to code out [the tax liability] when a statement was issued on the 03 March 2013.

#### The Tribunal's decision

17. The due date for the payment of an individual's self-assessment tax liability is prescribed in legislation and in the Appellant's case was, and remained, the 31 January 2013.

25 18. Information had been made available by HMRC to the Appellant about the collection of self-assessment tax and had the Appellant consulted that guidance he would have observed firstly that:

"To protect you from paying unreasonable tax deductions you won't be able to pay back the tax you owe through your tax code in the following circumstances:

You don't have enough PAYE income to enable HMRC to collect it.

30 You would pay more than 50% of your PAYE income in tax.

You would end up paying more than twice as much tax as you normally do each time.

You receive your pay or pension."

AND secondly:

“If you owe tax of less than £3,000, and you have filed your return by the 30 December we will **try** (Tribunal’s emphasis) and collect it through your 2013-2014 PAYE tax code, if you have one. However, be aware that we can’t always collect the amount through your code for a number of reasons. So **check** (Tribunal’s emphasis) your PAYE code for next year to make sure it has definitely been coded out.”

5

19. The Tribunal agree with HMRC that it acted correctly by not adjusting the Appellant’s tax code and it was reasonable and proper to expect him to have paid his tax on time (that is on or before the 31 January 2013).

10 20. The Appellant had a responsibility to pay his own tax liability without further prompt or reminder and the fact that his tax liability was under £3,000 is not relevant in this instance insofar as HMRC has the option whether or not to code out any liability due.

15 21. The Tribunal has failed to understand the Appellant’s argument that the 28 February 2013 was the payment deadline and the “trigger” date, as the Appellant’s payment deadline was, in fact, the 31 January 2013 and if payment had not been made within 30 days of that date, a late filing penalty become chargeable, which in this instance would have been the 02 March 2013.

20 22. The Appellant’s accountants had confirmed that they received the statement of account issued by HMRC on the 03 March 2013 and this showed that the Appellant’s tax liability remained outstanding. On the 19 March 2013 HMRC then sent the Appellant a Notice of Penalty Assessment, which would have explained why the penalty was being charged and advising him that he should pay the required sum (£807.40) without delay. As the Appellant’s tax return had been filed electronically, it would have been possible for him to have checked his self-assessment account on line at any time from 28 December 2012 (the filing date) onwards.

25 23. The Tribunal accept that HMRC had no record of any contact being made by the Appellant or his accountant prior to the letter of appeal of the 21 June 2013 and that no evidence has been presented that would properly explain by the Appellant did not pay his tax liability either after receipt of the statement of account or the penalty notice.

30 24. The Tribunal are satisfied that the Appellant would have been aware that the Appellant’s tax liability could not be collected via the PAYE system.

25. No explanation has been provided by the Appellant or his accountant as to why it took him until the 07 October 2013 for the Appellant’s tax liability to be paid and the Tribunal accept that the Appellant has failed to show any reasonable excuse for the late payment.

35 26. The Tribunal find that the late payment penalty charged to the Appellant is in accordance with legislation and there was no reasonable excuse for its failure to pay its tax on time nor by the date the penalty arose. The Tribunal also accept that there are no special circumstances which would allow the penalty to be reduced under Special Reduction and, therefore, dismisses the Appellant’s appeal and find that the £40 late payment penalty is confirmed.

27. In their decision in *Hok Limited* the Upper Tribunal considered whether the jurisdiction of the First-tier Tribunal includes the ability to discharge a penalty on the grounds of unfairness. At paragraph 36 of that decision it states “.....the statutory provision relevant here, namely TMA s100b, permits the Tribunal to set aside a penalty which has not, in fact, been incurred, or to correct a penalty which has been incurred but has been imposed in an incorrect amount, but it goes not further....It is plain that the First-tier Tribunal has no *statutory* power to discharge, or adjust a penalty because of a perception that it is unfair”. The Tribunal considers that that principle applies in this case. The level of the penalty has been laid down by Parliament and the legislation relating to penalties has been properly and accurately applied HMRC. The only other consideration that falls within the jurisdiction of the First-tier Tribunal is whether, or not, the Appellant had reasonable excuse for the late payment.

28. As previously stated in this decision, the Tribunal did not accept that the Appellant had shown having reasonable excuse for the late payment. The Tribunal is satisfied that HMRC applied the legislation correctly and calculated the amount of the penalty accurately at £40, being 5% of the tax due for the period 06 April 2011 to the 05 April 2012, which remained unpaid at the 31 January 2013.

29. 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.

25

**P M PETHERBRIDGE  
TRIBUNAL JUDGE**

30

**RELEASE DATE: 19 March 2014**

