



**TC03628**

**Appeal number: TC/2013/05332**

*PAYE – Late payment of tax – was there a time to pay arrangement or a reasonable excuse – Appeal allowed*

**FIRST-TIER TRIBUNAL  
INCOME TAX**

**RONAN CAMPBELL**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE IAN W. HUDDLESTON  
MS CELINE CORRIGAN**

**Sitting in public at Bedford Street, Belfast on 24 January 2014**

**Mr Chapman, Higher Officer, of HMRC appeared on behalf of the Respondents**

**Mr John McVeigh of John McVeigh Accountants appeared on behalf of the  
Appellant**

## DECISION

### *Appeal*

- 5 1. This is an Appeal against surcharges imposed upon the Appellant pursuant to Section 59(C)(3) of the Taxes Management Act 1970 for failure to pay tax on time for the tax years 2008/09 (where the surcharges were £4,759.84), 2009/10 (where the surcharges were £2,745.24) and 2010/11 (where the surcharges were £1,140).

### *Appearances*

- 10 2. Mr Chapman appeared on behalf of the Respondents.
3. The Appellant was represented by Mr John McVeigh of John McVeigh Accountants and the Appellant also appeared before the Tribunal to give evidence.
4. Before the commencement of the Tribunal the Tribunal Judge indicated that he knew Mr Campbell personally and professionally and offered to recuse himself but  
15 both parties confirmed that they were happy for Mr Huddleston to continue to hear the matter.

### *The Facts*

- 20 5. Mr Ronan Campbell (the Appellant) is a 50% partner in a commercial estate agency operating in Belfast. From the evidence submitted it appears that he had an exemplary tax record up until the year 2008/09. In that year it would seem that as a result of a downturn in the property market the Appellant was unable to pay the tax liability of £55,538.48 which fell due on the 31 January 2010.
6. Evidence was provided to the Tribunal (which was not disputed) that his income had fallen from circa £227,000 per annum (in the year ending 2007) to circa £46,000  
25 (in the financial year ending 2010).
7. Evidence was also given that Mr Campbell and his business partner had jointly purchased the business premises from which the firm operated, together with other premises all of which had fallen substantially in value and were, from the evidence given to the Tribunal, in negative equity.
- 30 8. It would seem that on the 20 January 2010 (ie. 11 days before the due date for payment of the tax) Mr John McVeigh's office contacted HMRC to advise them that the £55,538.48 which was due on the 31 January 2010 could not be paid. In that telephone call the offer was made that the Appellant could make payments of £2,000 per month for a period of 28 months to discharge that liability. HMRC's response  
35 was that because the proposed time to pay arrangement exceeded a year that it had to be proved by an inspector but that the taxpayer should make the initial payment on account.
9. Mr McVeigh wrote to HMRC on 28 January 2010 reiterating the offer and confirming that an "informal arrangement" had been agreed whereby that HMRC

would accept payments of £2,000 for the months January, February and March 2010.

10. The letter also set out, in some detail, Mr Campbell's monthly income against expenditure.

5 11. This letter was followed by a further letter from Mr McVeigh on the 16 June 2010 again confirming that Mr Campbell was unable to make any further contributions towards his tax liability other than continuing to make the £2,000 per month payment.

10 12. From this point, there is a dispute between the parties on the evidence. HMRC's position is that it is quite clear from the correspondence and conversations which were had with the Appellant and his advisor that no formal time to pay arrangement was ever entered into. Mr McVeigh's position is somewhat different in that he says that HMRC accepted the £2,000 per month (and continued to accept it post the initial review date of May 2010) and that therefore a de facto time to pay arrangement was in place and that therefore the surcharges should not have been levied.

15 13. We reviewed both the correspondence and the print out of the self-assessment records from HMRC's records in relation to this particular question – which confirmed the payments were made.

20 14. It would seem that matters continued largely in this vein until May 2011 when Mr McVeigh wrote to HMRC again referring to the on-going discussions with HMRC and indicating that he wished to appeal against the surcharges (which by then had been levied) on the basis that:-

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- he had contacted HMRC in January 2010 with a proposed payment plan which he had followed up with HMRC;
  - Mr Campbell had continued to make payments at the rate of £2,000 per month in accordance with that understanding;
  - it was not appropriate to impose surcharges in relation to the account.

30 14. It would seem that no response was received to that letter but a further surcharge notice was subsequently issued which prompted Mr McVeigh to write to HMRC on the 6 September 2011 again with a copy of his May 2011 letter and again stating that he wished to appeal.

35 15. HMRC responded on the 14 October 2011 indicating that they had reviewed the appeals against the surcharges for the years ended 5 April 2009 and 5 April 2010 and that they had considered that there was no reasonable excuse largely because there was no time to pay arrangement in place.

16. The conclusion of that letter was as follows:-

*"Although Debt Management and Banking have accepted the £2,000 per month your proposal to pay has not been accepted and no formal instalment arrangement has been made so that the surcharges for 2008-09 and 2009-10 cannot be cancelled on these grounds".*

5 17. It is largely against the outcome of that letter which the Appellant now appeals.

*The Appellant's Case*

18. The Appellant's case is relatively straightforward:-

10 (1) Mr McVeigh, as I have said, appeared before us and described the sequence of events and his explanation of them to substantiate his view that a payment plan - albeit informally – had been in place from January 2010. When queried as to why this was not formalised as between the parties Mr McVeigh's response was that at the time in question that time to pay arrangements could be and were operated by and with HMRC on an informal basis and did not necessarily need to be documented. In short he was of the view that HMRC had accepted that his client was simply unable to pay more than £2,000 per month;

15 (2) that the Appellant had a reasonable excuse insofar as the underlying reason for his inability to pay the tax arose from the dramatic fall in the property market in Northern Ireland which impacted considerably upon his ability to trade. In support of that Mr McVeigh referred to the fact (which HMRC did not dispute) that Mr Campbell's income had fallen from a high of £227,000 in 2007 to £46,000 in 2010 and in fact that he had been living largely meeting his day to day expenses by utilising a minimum of five credit cards;

20 (3) that Mr Campbell did everything that he could to pay the tax as and when he could. Evidence was given that Mr Campbell's father had sold a property and lent Mr Campbell £40,000 which was immediately paid to discharge some of the tax liability and further that Mr Campbell later sold his family home and moved into rented accommodation to ensure that the tax liability was met as quickly as possible. Both these events occurred in 2012 but took some considerable time to complete simply because of the slowness in the property market at that time.

25 (4) Relying on the case of Cuco (TC2550) Mr McVeigh said that Mr Campbell had done everything "within the bounds of reasonableness" as mentioned in that case to ensure settlement of the tax liability as quickly as possible and should not, therefore, be subject to a surcharge.

*HMRC's Case*

30 19. HMRC's case is equally as straightforward. In the first place they say that based on the telephone attendance notes that there is no evidence of a time to pay arrangement formally having been entered into and that the continued payment of £2,000 over a period of 23 months should not be construed as their acceptance of any such arrangement. What they say, in effect, is that an offer of a time to pay

arrangement was made which was never formally accepted notwithstanding the fact that continued payments were made which they then accepted.

20. As to the grounds of reasonable excuse HMRC say that from the profits in the year to 30 April 2008 (circa £201,000) that Mr Campbell ought to have made sufficient reserve to pay his tax as and when it fell due.

*Decision*

21. The parties have two contrary submissions. The first is that there was an effective time to pay arrangement in place. In relation to that we heard evidence from both parties and reviewed the relevant documentation. As to the second submission the Appellant raises the defence of reasonable excuse for his defaults in the sense that that term is used in Section 118 of the Taxes Management Act 1970.

22. Taking the first of those propositions ie. whether or not there was a time to pay arrangement. May we say at the outset that from the documentary evidence and correspondence passing between the parties we do accept that there was no formal time to pay arrangement in place. However Mr McVeigh made the point - which was not contradicted by HMRC - that at the relevant time it was entirely possible for informal time to pay arrangements to be in place. There was clearly a conversation between the Appellant's representative and HMRC in January 2010 which allowed for an informal arrangement to continue for a period of 4 months at a rate of £2,000. HMRC were very clear that for the proposal to formally continue for the suggested 28 months further information as to the Appellant's resources and a formal internal approval would be needed. The fact is, however, that £2,000 per month was continued for a period of 23 months and accepted by HMRC . We do, therefore, find it difficult to accept that there was not some implicit acceptance on the part of HMRC that whilst they had never formally reviewed the time to pay arrangement they were broadly happy with what was being proposed - on the basis (we assume) that regular payments were better than no payments. Mr Campbell, who clearly was in straightened circumstances at the time managed to maintain those payments through to October 2011 - which was the point at which HMRC (having served the surcharge notices) finally reviewed his case and determined that the surcharges should stand. By that point Mr Campbell had enlisted the support of family members and was in the process of selling his matrimonial home in order to clear his liabilities - something which he achieved during the course of 2012. We were referred to the case of Cuco [TC02550] on this point and, as in that case, are equally satisfied on the facts before us that everything "that could reasonably be done" was done to pay the liability due.

23. We conclude that these steps were taken on his part with an expectation that, having striven in difficult times to meet the £2,000 per month commitment, leading to his use of credit cards for day to day living expenses and the sale of his home - that he would not, then, be subject to surcharges on top of the tax liability.

24. As to the question of whether or not there was "reasonable excuse" it is clear that mere impecuniosity is not a sufficient reason – unless it arises from a sudden and underlying circumstance which is entirely outwith the control of the Appellant.

25. In the present circumstances based on the accounts information which we received it is clear that there was a cataclysmic fall off in the trading circumstances of Mr Campbell's business. His profits from the business fell from £227,000 to £46,000 within two years. We find that a fall in trading revenue (and therefore his income) of that magnitude must fall within the category of exceptional (again as in Cuco) and, therefore, on that basis we find that he does have reasonable excuse.

26. For both those reasons we allow the appeal.

27. 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.

**IAN HUDDLESTON  
TRIBUNAL JUDGE**

**RELEASE DATE: 21 May 2014**