



**TC03651**

**Appeal number: TC/2014/00250**

*Schedule 56 Finance Act 2009 - penalties for late payment of tax - Appellant advised by DWP that lump sum pension payment had been paid to her “net of tax” which was subsequently discovered to be incorrect - whether reasonable excuse - yes - appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PAULINE DOBSON SPINK**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MICHAEL S CONNELL**

**The Tribunal determined the appeal on 15 April 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 on 7 January 2014 and HMRC’s Statement of Case submitted on 17 February 2014, the Appellant submitting a Reply on 17 March 2014.**

## DECISION

1. This is an appeal by Pauline Dobson Spink ('the Appellant') against penalties imposed following the late payment of tax for the year ending 5 April 2012.

2. The Appellant appeals a first late payment penalty imposed under Paragraph 3(2) of Schedule 56 Finance Act ('FA') 2009, and a second late payment penalty imposed under Paragraph 3(3) of Schedule 56 for the failure to pay tax on time for the year ending 5 April 2012

3. The due date for the payment of the amount of self-assessment tax as required by s9 TMA 1970 is 31 January following the year of assessment.

4. Where any tax remains due on the day following the expiry of 28 days from the due date, the taxpayer shall be liable to a penalty equal to 5% of the unpaid tax at that date and, where any tax remains unpaid 6 months after the due date, the taxpayer shall be liable to a further penalty of 5% of the unpaid tax at that date.

### Background facts

5. The return for the year ending 5 April 2012 was issued to the Appellant on 6 April 2012.

6. The filing date was 31 October 2012 for a non-electronic return or 31 January 2013 for an electronic return.

7. The Appellant's non-electronic return for the year 2011-12 was received on 25 September 2012 and processed on 8 October 2012. The Appellant's tax liability for the year was £7,821.40.

8. On 26 October 2012 amendments were made to the Appellant's tax return. The outcome was that the married couple's allowance was amended, but the liability remained the same. The maximum amount of married couple's allowance due for 2011-12 is £7,295 and 10% of this is allowed as a deduction against income.

9. The Appellant's return included a state pension lump sum payment of £39,107.18 which HMRC said was fully chargeable at the Appellant's marginal rate of tax. Although the Appellant had included the pension payment in her return, she referred to it as "tax deducted" as that is what she had been advised by the payer, the DWP. On 11 November 2012 HMRC issued a revised self-assessment statement to the Appellant.

10. Between 26 October 2012 and 28 March 2013 there was an exchange of correspondence and telephone conversations between HMRC and the Appellant as to whether or not the lump sum pension payment was taxable, and if so the amount of the Appellant's tax liability. The Appellant was advised of how the married couple's allowance is allocated and of how a lump sum state pension is taxed and the amount

of her tax liability. The Appellant maintained that the lump sum was not taxable because she had been told it had already borne tax.

11. Any tax payable by the Appellant was due to be paid on or before 31 January 2013, in accordance with s 59B (4) TMA 1970.

5 12. On 19 February 2013 the Appellant's payments on account for the following year 2012-13 were reduced to nil because the tax liability for the 2011-12 year included the lump sum one off payment and was not therefore indicative of the potential liability for 2012-13.

10 13. HMRC maintained that the pension payment was taxable, and because at the penalty date of 3 March 2013 £7,821.40 of the claimed tax liability remained unpaid, HMRC issued a first penalty assessment on or around 17 March 2013 in the amount of £391, being 5% of the tax unpaid at the penalty date.

14. On 19 March 2013 the Appellant appealed against the penalty.

15 15. HMRC sent a letter on 2 May 2013 explaining that the tax was still outstanding and asking the Appellant to pay this amount immediately to allow them to fully review the appeal. HMRC advised the Appellant that if the tax was not paid in full, further late payment penalties would be charged at 6 and 12 months after the due date. HMRC also advised the Appellant of interest charges.

20 16. HMRC sent the Appellant a decision letter on 5 July 2013 stating that the payment was still outstanding, rejecting her appeal, and offering a review.

17. In August 2013, five months after the penalty date of 31 March 2013, £7,821.40 of the tax liability still remained unpaid.

18. HMRC issued a second penalty assessment on 14 August 2013 in the amount of £391, being 5% of the tax unpaid five months after the penalty date.

25 19. The tax liability was finally paid in full on 3 September 2013.

20. On 13 September 2013 HMRC wrote to the Appellant stating that as they did not have a request for a review or an appeal to the Tribunal, the appeal would be treated as settled and the penalty is payable.

21. On 24 September 2013 the Appellant requested a review of HMRC's decision.

30 22. HMRC issued their review conclusion on 8 November 2013. The outcome of the review was that HMRC's decision should be upheld.

23. On 22 November 2013 the Appellant wrote again to HMRC.

24. HMRC responded on 12 December 2013 stating that a customer is only entitled to have the decision reviewed once, and as no new information had been submitted to

change the decision, the conclusion outlined in the letter of 8 November remained unchanged.

25. On 7 January 2014 the Appellant notified her appeal to the Tribunal.

The Appellant's contentions

5 26. The appeal to the Tribunal contains an application for permission to appeal out of time. HMRC does not object to the application.

The following is a summary of the Appellant's Notice of Appeal:

10 "My Self-Assessment Tax Return for the 2011-12 Tax Year was completed and submitted on 21<sup>st</sup> September 2012 and contained a declaration of 'accumulated state pension' (tax deducted) and a further reference under 'additional information' as a 'lump sum deferred pension, tax deducted', together with a reference advice note dated 8<sup>th</sup> December 2011.

15 The Appeal is against 3-month penalty charge for non-payment of tax levied on the state pension lump sum received in the tax year 2011-12. At the time of the Appeal dated 19<sup>th</sup> March 2013, a penalty for non-payment of tax was not relevant as there was no evidence submitted that my declared understanding of my 2011-12 assessment was incorrect, as the lump sum deferred pension had been documented as paid 'net of tax'. Hence the official determination of HMRC on 7<sup>th</sup> February 2013 that my statement of penalties issued was amended to nil.

20 Initial correspondence during October 2012 was concerned with incorrect calculations regarding non-inclusion of the Married Couple's Allowance, and my rejection of HMRC's deduction of tax from the declared lump sum net of tax, which also included a demand from SA for payment of £11,732.10!

25 I raised queries as to why HMRC had not raised the matter regarding the lump sum earlier if they considered it incorrect, rather than merely demanding tax on the lump sum in their revised Self-Assessment Statement dated 11 November 2012.

30 This clearly demonstrates, together with the further documentation below (timeline) that I cannot be held responsible for any delays that appear to stem from the multi-office administration system, and when chasing a reply, the automatic phone response was that 'answers could take up to four weeks'.

35 In correspondence with the Technical Support Officer in February 2013, who was trying to obtain information from the DWP, I was advised that in circumstances of lump sum payments, the HMRC has an obligation to contact the DWP to establish what tax, if any, was deducted and determine whether further tax should be added. This investigation did not formally start until 21<sup>st</sup> February, at which time I had been advised, as already stated, that notice of any payments due that I had received on account for 2011/12 tax year and due in 2013, should be reduced to nil, as it related to the lump sum payment not yet verified (this cancellation applied to the initial demands of two payments, January 31<sup>st</sup> and July 31<sup>st</sup> 2013).

40 Since being contacted by the Technical Department on 7<sup>th</sup> February, I have cooperated fully by supplying all correspondence relative to the lump sum payment. My replies have

all been by immediate Recorded Delivery whereas HMRC has taken considerable time on occasions to reply.”

27. The Appellant then set out her ‘Timeline’ records of which the following is an extract:

- 5           13th Jan. 2013. I outlined my objection to the incorrect self-assessment statement and said that according to the HMRC Charter, no payment was due until the correct amount of tax is accurately stated as due .. I also indicated my concern at the serious flaws in internal communications.
- 10           7<sup>th</sup> Feb, 2013. I explained further my reason for declaring receipt of the lump sum pension payment as being net of tax on my Self-Assessment.
- 21<sup>st</sup> Feb. 2013. HMRC responded (Mrs. Dominick) (2 weeks later) asking for copy correspondence between DW&P and myself, together with extracts from their Guide Booklet.
- 15           7<sup>th</sup> March 2013. I replied to Mrs. Dominick providing details of relevant conversations with DWP.
- 11<sup>th</sup> March 2013. Notice from Debt Management and Banking (Mike Skelton) of unpaid tax £7,846.47 nil interest.
- 18<sup>th</sup> March 2013. Advised by Mrs. Dominick that she was still dealing with the matter.
- 19<sup>th</sup> March 2013. Notice of Penalty Assessment received for payment within 30 days.
- 20           2nd April 2013. I received a letter from Mrs. Dominick confirming that she had written to the DWP for further information and advised HMRC’s Debt Management and Banking Division to review the case.
- 26<sup>th</sup> June 2013. HMRC issued a Self-Assessment Statement collating all amounts claimed to be owed, including the Penalty of £391.
- 25           5<sup>th</sup> July 2013. HMRC rejected my appeal.
- 9<sup>th</sup> August 2013. Letter received from Mrs. Dominick explaining her frustrations at receiving no response from DWP in spite of four reminders since April. She said that the matter could not be resolved until she received a response.
- 12<sup>th</sup> August 2013. My response confirming no further information I can supply.
- 30           14<sup>th</sup> August 2013. Mrs Dominick wrote to say that the DWP now say that they did not deduct tax from the pension payment, notwithstanding that they had declared it “net of tax”. The DWP said that they were unable to supply Mrs Dominick with the information they had used in determining the tax position. Mrs. Dominick advised I should contact the Debt Management and Banking Team to discuss liability and method of payment.

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14<sup>th</sup> August 2013. I contacted the DWP to query how they had arrived at their conclusion that the payment had been made without payment of tax. The DWP said that after the amount of time that had elapsed, they no longer held the relevant documentation, and apart from a “note on file” the papers had been destroyed.

5           3<sup>rd</sup> Sept. 2013. Returned from holiday — contacted Debt Management and Banking Team.

          4<sup>th</sup> Sept. 2013. Paid by Debit Card £7,323.83.

28. By way of summary, the Appellant’s grounds of appeal are that she was prepared to pay any tax due on the lump sum pension payment if it could be shown that the  
10 DWP’s statement that the payment had been made “net of tax” was incorrect. The delays at arriving in a resolution of the matter were caused by HMRC not ascertaining, as they had assured the Appellant they would, from the DWP whether or not the pension payment had been paid net of tax. There was also some confusion as to whether or not the penalties had been cancelled, because of HMRC’s reference to  
15 the penalties being “suspended” and the Appellant receiving a statement to say that there was “nothing to pay”.

#### HMRC’s contentions

29. The Appellant has been filing self-assessment tax returns and making payments since self-assessment was introduced in 1996. HMRC consider her to be experienced  
20 with the self-assessment system and the regulations for making payments by the statutory deadlines.

30. Self-assessment places a greater degree of responsibility on customers for their own tax affairs. This includes ensuring that payment of the correct amount of tax is made at the correct time. The tax guidance and HMRC website give ample warning  
25 about filing and payment deadlines and it is the taxpayer's responsibility to fulfil their obligations.

31. Self-Assessment is based on voluntary compliance. HMRC charge penalties so that there is no advantage to taxpayers who pay late over those who pay in time. It is essential that taxpayers who pay the right amount of tax at the right time feel  
30 confident that the system does not reward noncompliance. HMRC do appreciate that there will always be some taxpayers who intend to pay on time but, for some genuine reason, fail to do so. The thirty day period before a penalty ensures that these taxpayers do not incur such a charge. Information about Self-Assessment, the completion of returns, tax payment dates, late payment penalties, etc. is well within  
35 the public domain and widely available via HMRC's website, telephone helpline, enquiry centres and public notices.

32. The Appellant’s 2011-12 tax return was filed on 25 September 2012, and she chose not to include a self-assessment of the tax due for 2011-12 in her return. The process of HMRC calculation does not require any officer of the Board to make a  
40 judgment on the accuracy of the figures contained in the information section of the tax return. It is simply a question of taking the information provided by the taxpayer and

using that information in the appropriate tax calculations. A calculation made by HMRC is treated as if it were a self-assessment made by the taxpayer. This self-assessment is based on the information contained in the tax return and will create a legal charge to tax.

5 33. On 26 October 2012, the Appellant's 2011-12 tax return was amended and  
calculations were issued. Although the amount of married couple's allowance claimed  
was amended, this did not affect the overall tax liability. The state pension lump sum  
payment and the amount of tax liability did not change. A revised statement of  
10 Appellant knew the amount of her tax liability well in advance of the payment  
deadline, yet she did not pay her tax liability until September 2013, seven months  
after the payment deadline.

15 34. HMRC advise taxpayers that interest and penalties will be charged on late  
payments. To avoid these charges the tax liability should be paid on time. Any  
subsequent amendments to the tax return that affect the tax liability will result in a  
repayment/credit or a further charge. HMRC advise taxpayers that if they are unsure  
of how much they owe they should make a payment based on their estimate to avoid  
or minimise interest and penalties.

20 35. On 19 February 2013, the Appellant's payments on account for 2012-13 were  
reduced to nil, because the tax liability for 2011-12 included a lump sum one-off  
payment and therefore the 2011-12 tax liability was not indicative of the potential tax  
liability for 2012-13. The amendment to the 2012-13 payments on account has no  
bearing on the balancing payment that was due for 2011-12, or on the late payment  
penalties that were charged on the 2011-12 tax that was paid late.

25 36. In accordance with Paragraph 16(1) Schedule 56 FA 2009, an appeal against a  
late payment penalty will be successful where the taxpayer shows that there is a  
reasonable excuse for paying late.

30 37. There is no statutory definition of reasonable excuse, which "is a matter to be  
considered in the light of all the circumstances of the particular case". HMRC  
consider that a reasonable excuse is normally an unexpected or unusual event that is  
either unforeseeable or beyond the taxpayer's control, and which prevents them from  
complying with their obligation to pay on time. A combination of unexpected and  
unforeseeable events may, when viewed together, be a reasonable excuse.

35 38. HMRC have to be seen to be consistent in their approach to all their customers,  
particularly to those who comply with the regulations. The tax was due on 31 January  
2013 and was paid late on 3 September 2013. HMRC contend that the penalties have  
been correctly charged in accordance with the legislation because the payment was  
made late. The Appellant knew how much to pay and knew this in advance of the due  
date.

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## Conclusion

39. The Appellant appears to have been advised by the DWP that her deferred lump sum pension was net of tax. HMRC however took the view that the lump sum payment had been paid gross. That decision was based on advice from HMRC's  
5 Technical Support Department in late January 2013, but there is nothing in the exchange of correspondence, telephone records or elsewhere as to how they had arrived at that conclusion. Subsequent telephone conversations between the parties in February 2013 confirm that HMRC asked the Appellant for copy letters from the DWP confirming that the payment had been made net of tax. There is also a record of  
10 HMRC advising the Appellant that they had contacted the DWP and also the Debt Management and Banking Team to ask for a decision on how to deal with the issue of collection in the interim period. HMRC's telephone records confirm that "...no definite outcome has been given to the taxpayer yet".

40. In early April 2013 the Appellant received a letter from Mrs. Dominick of  
15 HMRC saying that she had written to the DWP for clarification of the tax position regarding the lump sum. On 9 August 2013, the Appellant received a further letter from Mrs. Dominick explaining her frustrations at having received no response from the DWP, in spite of four reminders since April 2013. During this period of delay, HMRC rejected the Appellant's appeal and wrote pressing for payment of the tax and  
20 first penalty.

41. On 2 August 2013, HMRC finally notified the Appellant that they obtained confirmation that the lump sum payment had in fact been paid gross. The Appellant says that she was told the DWP would not supply HMRC with the information they used and how they had determined the tax status of the payment other than, after that  
25 amount of time, documentation, apart from a 'note' appeared to have been destroyed. Mrs. Dominick advised the Appellant to contact the Debt Management and Banking Team to discuss liability and method of payment. The Appellant says she did not receive the letter until 14 August 2013, on which date HMRC issued the second penalty.

30 42. The Appellant appears to have been due to go on holiday at that point, as she refers to her contacting the Debt Management and Banking Department on 3 September 2013 on her return, and making payment of the tax due the following day.

43. The actions of the taxpayer should be considered from the perspective of a  
35 prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts. If the taxpayer could reasonably have foreseen the event, whether or not it is within their control, it would be reasonable to expect them to take steps to meet their obligations. If there is a reasonable excuse it must exist throughout the failure period.

44. The Appellant was advised that HMRC were obliged to contact the DWP to  
40 establish what tax, if any, was deducted from the lump sum and determine whether any or further tax was due. All subsequent telephone conversations between February and August 2013 confirmed that this was what was happening. Correspondence from



5 HMRC however appeared to indicate that the tax and accruing penalties had to be paid. The Appellant would probably have been both concerned and confused, but relied more on conversations she was having with individuals at HMRC than the correspondence she received, some of which may have appeared to be generic or automated. It was therefore not unreasonable for her to take the view that until the tax status of the lump sum had been determined, she had no liability to tax. Within a very short period of time of being told that the lump sum was taxable, she paid the tax.

45. The Tribunal takes the view that the Appellant has a reasonable excuse for the late payment of the tax due for the year ending 5 April 2012.

10 46. For the above reasons the appeal is allowed and the penalties discharged.

48. 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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**MICHAEL S CONNELL  
TRIBUNAL JUDGE**

**RELEASE DATE: 28 May 2014**

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