



TC03720

Appeal number: TC/2014/09205

Schedule 56 Finance Act 2009 - penalties for late payment of tax - Appellant says he overlooked payment because of his father's illness and because he had become unemployed - whether reasonable excuse - no - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PALBINDER SINGH KONDEL

Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL S CONNELL
MR IAN MENZIES-CONACHER**

Sitting in public at 45 Bedford Square London WC1B 3DN on 21 May 2014

The Appellant did not attend and was not represented

Mr Paul Reeve, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by Palbinder Singh Kondel ('the Appellant') against a penalty imposed under Schedule 56 Finance Act 2009 ('FA 2009') in the amount of £6,372.00 following the late payment of tax for the year ending 5 April 2012.

2. The issue before the Tribunal is whether the penalty charged for the year ended 5 April 2012 should be confirmed, or whether it should be set aside.

3. The Tribunal must decide whether the Appellant had a reasonable excuse for making his payment late, and if so satisfied, that the reasonable excuse lasted for the entire period of default.

4. The Appellant did not attend the hearing, nor had he made any contact with the Tribunal service. The hearing had previously been scheduled for 13 March but was adjourned at the request of the Appellant because his father was ill and the Appellant is his main carer. The Tribunal was satisfied that the Appellant had been given notice of the time, date and venue of the adjourned appeal hearing, together with a warning that if he did not attend the matter may be decided in his absence, and that it was in the interests of justice to proceed.

Background facts

5. The due date for the payment of the amount of self-assessment tax as required by s.9 TMA 1970 is 31 January following the year of assessment.

6. A notice to file a 2011-12 Self-Assessment tax return was issued to the Appellant on 6 April 2012. It advised of the return filing date, the payment deadlines, and the consequences of late filing and late payment.

7. The statutory filing date and due and payable date for payment for the 2011-12 tax year was 31 January 2013.

8. In December 2012 a reminder was issued to all customers who had not already filed their return reminding them of the filing date. The reminder also warned that payment was due by 31 January 2013 and that if payment was outstanding thirty days after the due and payable date then a 5% penalty would be charged.

9. The Appellant filed his 2011-12 tax return electronically on 18 December 2012. The tax calculation was immediately available to the Appellant and showed that the amount of tax due for the year was £128,030.13.

10. The Appellant paid his 2011-12 liability on 15 March 2013. Payment was forty-three days late.

11. HMRC issued a penalty notice on 19 March 2013, in the amount of £6,372.00.

12. On 13 April 2013 the Appellant submitted an appeal to HMRC on the basis that he had a reasonable excuse for the late payment. Collection of the penalty was “suspended” whilst it was under appeal.

5 13. On 10 May 2013 HMRC advised the Appellant that it did not consider that the excuse put forward for late payment was a reasonable reason, and so did not revise their decision.

10 14. On 10 September 2013 the Appellant wrote to HMRC upon receiving a demand for the late payment penalty. He advised that he had not sought a review of HMRC’s decision to reject his appeal because he didn’t realise that the penalty had not been cancelled.

15 15. When the Appellant asked an HMRC operative what was outstanding he was correctly told that nothing was due - technically correct because at that time the penalty was suspended. HMRC agreed that this was perhaps confusing and under the circumstances decided to undertake a further review.

16. On 5 November 2013 HMRC’s review concluded that the original decision to refuse the grounds of appeal was correct, and confirmed that the penalty remained payable.

17. On 1 December 2013 the Appellant submitted an appeal to HM Courts & Tribunals Service.

20 Relevant Legislation

18. Schedule 56 (3) FA 2009 makes a taxpayer liable to a 5% penalty where any tax remains unpaid on the day following the expiry of thirty days from the due date.

19. Schedule 56 (13) FA 2009 allows for an appeal to be made against any penalty that has been charged.

25 20. Schedule 56 (16) FA 2009 allows for the penalty to be discharged if there was a reasonable excuse for the late payment, and the failure to pay on time was remedied without unreasonable delay once the excuse had ceased.

21. Schedule 56 (9) FA 2009 allows the penalty to be reduced by HMRC if it considers that there are any special circumstances.

30 22. Schedule 56 (15) FA 2009 allows a Tribunal to affirm HMRC’s decision, or substitute for HMRC’s decision another decision that HMRC had the power to make.

The Appellant’s contentions

35 23. The Appellant contends that he has a reasonable excuse for not paying his tax liability on time. The Appellant contends that personal matters relating to a family member’s illness caused him to be distracted from attending to his personal financial affairs. He says that in February 2013 his elderly father was admitted to hospital due

to a recurring illness. The Appellant provided a letter from his father's GP confirming this.

24. The Appellant says that his father is an insulin dependant diabetic and that he (the Appellant) had to administer the medication to his father and ensure that it was administered correctly. He says that he had to support his parents for nearly five weeks.

25. The Appellant contends that he had also lost his employment some months earlier, and that this was an added factor which caused him to be distracted from his finances.

26. The Appellant states that following the receipt of a reminder from HMRC in the first week in March 2013 he paid in full within twenty four hours.

27. The Appellant says that over the previous fifteen years he has paid in full and on time.

HMRC's contentions

28. HMRC contends that the Appellant does not have a reasonable excuse for his late payment.

29. HMRC says that the Appellant's initial contention that he paid on time in previous years is false.

30. The Appellant's payment history is as follows:

Year	Payment Due	Paid	Days Late
2000/01	31/01/02	09/05/02	98
2001/02	31/01/03	02/05/13	91
2002/03	31/01/04	28/01/04	0
2003/04	31/01/05	29/01/05	0
2004/05	31/01/06	22/03/06	50
2005/06	31/01/07	31/01/07	0
2006/07	31/01/08	30/01/08	0
2007/08	31/01/09	24/01/09	0
2008/09	31/01/10	03/02/10	3
2009/10	Overpaid in year	-	-
2010/11	From 09/10	-	-
2011/12	31/01/13	15/03/13	43

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31. In respect of his father's health issues, whilst HMRC has sympathy with the Appellant, the Appellant's father's poor health is not a reasonable excuse for his failure to pay his tax on time.

32. HMRC notes that the letter provided by the Appellant's father's Doctor states that he was presented to hospital on 22 February 2013 after suffering diarrhoea and vomiting the previous day. He was discharged the next day and was advised to see his GP in the following three -five days for a follow up.
- 5 33. HMRC notes that the Doctor's letter states that the Appellant's father had similar conditions in the past - and indeed in his appeal the Appellant states that his father's condition was recurring. HMRC contend that regular/recurring events, and the regular monitoring of a non-life threatening condition, do not amount to a reasonable excuse for failing to pay tax on time.
- 10 34. HMRC contends that the Appellant's father's hospitalisation occurred twenty two days after the due and payable date, and that he was discharged only one day later - which was still twenty days before the Appellant paid his tax liability.
- 15 35. HMRC accepts that on the day of his father's hospitalisation, and indeed on the day of his discharge, the Appellant would perhaps have had a reasonable excuse for not paying, but submit that in the twenty two days from 31 January 2013 to 22 February 2013, and in the twenty days from 23 February 2013 to 15 March 2013 there is no reasonable excuse for not paying - and as a reasonable excuse is required for the entire period of default the penalty is correctly due, should not be set aside by the Tribunal.
- 20 36. HMRC submits that in the period from 31 January 2013 to 22 February 2013 the Appellant's father's condition was exactly the same as it had been in previous years, he was an insulin dependant diabetic, but the condition in itself did not require constant monitoring by the Appellant, or at least not at that time. His father's condition did not require the Appellant's intervention until the particular problem on
- 25 21 February 2013.
37. HMRC therefore contends that in the initial twenty two day period following the due and payable date there was no reasonable excuse for not paying on time. The Appellant was aware of the exact amount of his tax liability on 18 December 2012 (the date that he filed his return), and previous reminders (the notice to file in April
- 30 2012, and the reminder in December 2012) reminded him of the payment date and warned him of the consequences of late payment. HMRC contends that the Appellant should have made a prominent note of the payment date and ensured that he made payment on or before that date. HMRC contend that sending payment was an act that needed very little time and effort, and that time should have been found to do that.
- 35 38. As for the period from 23 February 2013 to 15 March 2013, HMRC contends that the Appellant does not have a reasonable excuse for not paying in that period either, and suggests that it was only his forgetfulness that led to the payment being late - because by his own admission as soon as he received a demand for payment in March 2013 he paid in full. If the excuse (his father's health and the need for constant
- 40 supervision) was ongoing as the Appellant suggests, then how could he break off that supervision the moment a demand from HMRC was received and pay in full? HMRC contend that it is not credible that his father's health eased sufficiently for him to pay

his tax bill the day that a demand was received for payment, but not before that. HMRC say that it is far more likely (on the balance of probabilities) that the Appellant had overlooked his tax payment, and only paid it once he had been reminded that it was overdue.

5 39. In respect of the loss of employment, HMRC submits that is not a reasonable
excuse for the late payment either, because the Appellant's unemployment occurred a
number of months before the payment was due. Additionally, HMRC notes that
despite the distraction of unemployment the Appellant managed to log onto his
computer and file his tax return in good time (on 18 December 2012). HMRC
10 contends that if the distraction of unemployment failed to prevent him from
completing the far more complicated task of completing and filing a tax return that
contained multiple employments and capital gains, he should have been able to
complete the far less complicated task of paying on time around one month later.
HMRC do not accept that the alleged distractions of unemployment are a reasonable
15 excuse for not paying on time.

40. In summary, HMRC do not consider that the Appellant has a reasonable excuse
for late payment, and certainly does not have one that lasted the entire period of
default - as the legislation dictates he must, if the penalty is to be set aside.

41. HMRC concludes that on the evidence available, the reason that the Appellant
20 did not pay was not because of his father's ill health - it was because he failed to note
and comply with his obligation to ensure payment of tax due was made by the
payment date - despite HMRC's reminders.

42. Finally, the Appellant does not have a previously unblemished payment history
as he suggests. The Appellant has paid late on five previous occasions. HMRC
25 considers this to be a poor compliance record.

Conclusions

43. 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.

30 44. 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
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
35 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
the public domain and widely available via HMRC's website, telephone helpline,
enquiry centres and public notices.

45. 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.

5 46. 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.

10 47. The actions of the taxpayer should be considered from the perspective of a 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
15 reasonable excuse it must exist throughout the failure period.

48. In the Tribunal’s view, the Appellant does not have a reasonable excuse for not paying the tax when it was due. The health issues of his father did not encompass the entire period of default - the hospitalisation period accounted for only one day in the middle of the forty-three day period of default. Prior to his hospitalisation the
20 Appellant’s father had a condition that was being successfully managed by medication - only becoming serious on 22 February 2013 (twenty two days after the due and payable date) when he was hospitalised.

49. In respect of the loss of employment, as HMRC say, this occurred a number of months before the payment was due. The Appellant filed his tax return in good time.
25 He would have been aware of his obligation to pay the tax due at the end of January. We do not accept that the unemployment issues constituted a reasonable excuse for the entire period of default.

50. We accordingly find that the Appellant has not shown a reasonable excuse for late payment of the 2011-12 tax liability and that the penalty charged under Schedule
30 56 FA 2009 was correctly charged in the amount of £6,372.00

51. For the above reasons the appeal is not allowed and the penalty confirmed.

52. 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
35 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.

**MICHAEL S CONNELL
TRIBUNAL JUDGE**

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RELEASE DATE: 11 June 2014