



TC03723

Appeal number: TC/2014/00652

Income tax – Penalties under s 59C Taxes Management Act 1970 and Schedule 56 Finance Act 2009 for late payment of income tax – Appellant believed that a time to pay arrangement that had been agreed for tax due in the previous year continued and covered tax due in the following tax year – whether reasonable excuse – no – appeal disallowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PETER J HOWES

Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL S CONNELL
MR NICHOLAS DEE**

Sitting in public at 45 Bedford Square, London WC1B 3DN on 22 April 2014

Mr Peter Howes, the Appellant, in person

Mr Anjum Khawar, Officer of HM Revenue and Customs, for the Respondents

DECISION

5 1. This is an appeal by Peter J Howes ('the Appellant') against penalties imposed under Paragraph 3 of Schedule 56 Finance Act (FA) 2009 for his failure to pay tax on time in respect of his personal self-assessment liability for the year ending 5 April 2011. HMRC imposed three penalties, each penalty being in the amount of £965.00, making a total of £2,895.

10 2. The Appellant's 2010-11 Self-Assessment Return was received on 21 January 2012 and this produced the tax liability for 2010-11 of £19,310.20. The tax was payable by 31 January 2012 but was not finally paid until December 2013.

3. The point at issue is whether the Appellant had a reasonable excuse for the late payment of tax and if so, whether that excuse continued up to the date of payment of the tax.

15 Relevant legislation.

4. Where the customer was given a notice to file under s 8 Taxes Management Act 1970, s 59B (4) Taxes Management Act 1970 sets out the due date for payments as 31 January next following the year of assessment.

20 5. Schedule 56 (1) FA 2009 states the date after which a penalty will be incurred - and this is the date falling thirty days after the date specified in s 59B (4) Taxes Management Act 1970 as the date by which the amount must be paid.

6. In the event of default, Schedule 56 (3)(2) FA 2009 states that the taxpayer is liable to a penalty of 5% of the unpaid tax.

25 7. Schedule 56 (3)(3) FA 2009 states that if any amount of the tax is unpaid after the end of the period of five months beginning with the penalty date, the taxpayer is liable to a penalty of 5% of that amount.

8. Schedule 56 (3)(4) FA 2009 states that if any amount of the tax is unpaid after the end of the period of eleven months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

30 9. Schedule 56 (9) FA 2009 states that HMRC may reduce a penalty if they think it right because of special circumstances.

10. Schedule 56 (16) Finance Act 2009 set outs the legislation in respect of reasonable excuse. Specifically it states that:

- 35
- An insufficiency of funds is not a reasonable excuse unless attributable to the events outside person (s) control.
 - Where person relies on any other person to do anything, that is not a reasonable excuse unless person took reasonable care to avoid the

failure, and

- Where person has a reasonable excuse for the failure but the excuse has ceased, person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

5

Facts

11. On 29 January 2011 the Appellant submitted his electronic return for the year ended 5 April 2010, resulting in a balancing payment of £54,497.40 becoming due.

10 12. The 2009-10 return included a claim by the Appellant to reduce his payments on account for the following year 2010-11 to nil, as there would be no tax or NIC due for that year.

15 13. A time to pay arrangement was verbally agreed with the Appellant on 31 January 2011 to discharge the outstanding debt for 2009-10 over a period of twelve months. It was agreed that the Appellant would discharge the 2009-10 self-assessment debt at a rate of initially £2,000 per month.

20 14. The self-assessment statement on account issued to the Appellant on 11 October 2011 set out dates and amounts of the payments to be made until the 2009-10 liability was fully discharged. In the Statement, HMRC asked the Appellant for some idea of the quantum of the tax due for the year 2010-11. It is argued that that this was a clear indication that the 2009-10 arrangement did not include 2010-11 tax liability.

15. HMRC say that no time to pay arrangement was agreed regarding the Appellant's 2010-11 tax liability.

25 16. On 21 January 2012 the Appellant submitted his electronic return for the year ended 5 April 2011, resulting in payments on account of £9,655.10 due on 31 January 2011 and £9,655.10 due on 31 July 2011.

17. Payment reminders were issued to the Appellant on 10 May 2012 and 16 October 2012 for amounts made up of the payments on account for 2011, the outstanding tax still due for 2010, and accruing interest. The Appellant responded that he believed that he had a time to pay agreement in place to cover this amount.

30 18. On 16 April 2013 a penalty notice was issued in respect of late payment, which included a thirty day penalty, a six month penalty and a twelve month penalty of £965.00 each totalling £2,895.

19. The Appellant appealed the penalties on 6 May 2013. The Appellant wrote:

35 "I think there must have been a misunderstanding here. You will see from my file that agreement was reached with HMRC to discharge the outstanding income tax relating to the tax year 2010-11 at a fixed rate of £2000 per month. This undertaking has been honoured without fail, since the agreement was reached. Interest is being paid on the steadily reducing outstanding amount. No mention of penalties was made

at the time of reaching this agreement with HMRC and I do not believe in the circumstances that the penalty should be charged”

5 20. The Appellant’s letter was referred to HMRC Debt and Management Section on 24 May 2013 and the Appellant notified accordingly.

21. The Appellant received a self-assessment statement from HMRC dated 8 September 2013, which included the three penalties. The Appellant responded on 30 September 2013 restating his case, saying that he had not heard from HMRC’s Debt Management and Banking Department.

10 22. On 5 November 2013 HMRC wrote to the Appellant dismissing the appeal on the grounds that its records did not show a time to pay arrangement in place for 2010-11. HMRC said that if there had been an arrangement in place, the Appellant would have received a letter setting out the terms. HMRC acknowledged that an arrangement for 2009-10 was in place.

15 23. On 22 November 2013 the Appellant requested a review of the decision, stating that he had not received a letter regarding the 2009-10 arrangement, and considered that the arrangement to pay £2,000 per month was an ongoing arrangement.

20 24. On 3 January 2014 a review conclusion letter was issued upholding the previous decision by HMRC. It noted that no time to pay arrangement had been put in place for 2010-11, as the Appellant had stated that he did not expect to have to pay any tax, and had asked for his payments on account for 2010-11 to be reduced to nil.

The Appellant’s contentions

25 25. The Appellant appealed to the Tribunal on 29 January 2014. His stated grounds of appeal were that he had a time to pay arrangement in place in respect of the 2010-11 liability and that it is not right for HMRC to defer notification of penalties so long after they have arisen. He was unaware that he would need to make a new arrangement to cover the year ended 5 April 2011, as he had never received any written agreements relating to the previous arrangement. He said:

30 “HMRC are relying on an assertion that the "time to pay" agreement concerned related only to the tax year 2009-10. It is stated that the agreement did not apply to the tax year 2010-11 "as I had advised HMRC that I would have no liability for 2010-11 and had reduced my payments on account to nil". This is not correct. I did not advise HMRC that I would have no liability for 2010-11: the reason why
35 payments on account were reduced to nil was because I had no information available to me at that time as to how any profit share to which I might have been entitled for the period from 6 April 2010 to 22 October 2010 (being the date of my departure from the partnership Dixon Wilson) would be allocated to French profits (liable only to French tax) or to English profits (liable only to English tax).

40 My tax return for the year ending 5 April 2011 was submitted on time and declared a tax liability of £ 19,310.20. By then (31 January 2012) the time to pay arrangement had been running for twelve months and I had been in regular correspondence with HMRC regarding the continuance of it, so as to pay off all outstanding taxes at the

rate of £ 2,000 per month. On 11 October 2011 HMRC wrote to say "I will accept your proposal to continue paying your self-assessment debt at a rate of £ 2,000 per month".

5 At no time did HMRC send me a written Agreement relating to the time to pay procedure for 2009-10. I was therefore unaware that I should expect to have to claim the same treatment in respect of the tax for 2010-11 and that I would receive an acknowledgement in writing from HMRC as to what had been agreed. I assumed (reasonably in my view) that the arrangement to continue at £2,000 per month had been agreed. Indeed the self-assessment statements number 042, 043, 044, showing 10 the position up to 5 December 2012 all indicate that the Revenue accepted that the tax for the two years concerned was to be discharged by regular monthly payments of £2,000 per month. This is why I feel I have good grounds for making this appeal against the charging of penalties. I do not think it is either lawful or right that the Revenue should impose penalties more than a year after they had tacitly agreed to the 15 continuance of the making of payment by instalments. An agreement is an agreement. HMRC should be bound by it in the same way as I am as a taxpayer."

HMRC's contentions

26. Schedule 56 (16) FA 2009 does not state what a reasonable excuse is, but does state that inability to pay is not a reasonable excuse. Customers are expected to keep 20 funds aside to pay their tax liabilities.

27. HMRC agrees that a time to pay arrangement was made on 31 January 2011 with the Appellant was for the 2009-10.

28. The 2009-10 self-assessment tax return submitted by the Appellant on 29 January 2011 electronically included a claim to reduce his payment on account for 2010-11 to 25 nil. This was accepted by HMRC. No time to pay agreement could be made to cover the period from 2010-11 as there was no debt to pay for that period. HMRC can only put a time to pay arrangement in place when there is tax to be paid.

29. On 21 January 2012 the Appellant submitted his 2010-11 self-assessment tax return electronically, resulting in payments on account of £9,655.10 due 31 January 30 2011 and £9,655.10 due 31 July 2011 becoming due. These payments were identified by the figures provided by the Appellant and not HMRC. The Appellant provided the figures, despite a previous request to reduce to nil. HMRC has only acted on the Appellant's figures.

30. No time to pay arrangement was requested to cover the 2010-11 liability. The time 35 to pay arrangement in place was clearly for 2009-10 only.

31. The payments on account were not paid in full by the prescribed penalty trigger dates, and penalties were charged accordingly.

32. Time to pay is a concession made by agreement only, and is not an automatic 40 right. An agreement made for one year does not automatically roll over to the next. Time to pay arrangements lasting over a year are only agreed in exceptional cases.

33. HMRC accepts that the onus rests with it to demonstrate that the Appellant has failed to pay his tax on time. The evidential burden then shifts to the Appellant to show that he has a reasonable excuse for any failures to pay his tax on time. The standard of proof is the ordinary civil standard, which is the balance of probabilities.

5 34. HMRC are unable to agree that the Appellant has any 'reasonable excuse' for the failure to make payment of the tax due, as required by the relevant legislation.

35. In dealing with the grounds of appeal relating to unfairness, HMRC refer to the case of *Hok Ltd v HMRC* in which it was accepted that the First-tier Tribunal has no jurisdiction beyond that which is stipulated in legislation.

10 Conclusion

36. The time to pay arrangement in place was clearly for 2009-10 only. The 2009-10 self-assessment tax return submitted by the Appellant on 29 January 2011 electronically included a claim to reduce his payment on account for 2010-11 to nil. This was accepted by HMRC. No time to pay agreement could be made to cover the
15 period from 2010-11 as there was no debt to pay. No time to pay arrangement was requested to cover the 2010-11 liability.

37. When a person appeals against a penalty they are required to have a reasonable excuse. There is no definition in law of reasonable excuse, which is a matter to be considered in the light of all the circumstances of a particular case. A reasonable
20 excuse is normally an unexpected or unusual event either unforeseeable or beyond a person's control which prevents him from complying with an obligation. The reasonable excuse must also exist throughout the entire period of default.

38. The self-assessment system places a greater degree of responsibility on taxpayers for their own tax affairs. This includes ensuring that tax is paid on time without
25 waiting for a tax demand or prompt for payment

39. It is accepted practice that an agreement to accept deferred payment of tax is entirely within the discretion of HMRC. In order for the customer to be allowed time to pay they must meet set conditions agreed in advance. The arrangement must relate to a specific amount and there must be a clearly defined and structured payment
30 schedule. The customer must be able to show that he has the means to make the agreed payments. The period is normally as short as possible and is normally (but not always) confirmed in writing and noted in HMRC's records.

40. It is necessary to consider the actions of the Appellant from the perspective of a prudent taxpayer exercising reasonable foresight, due diligence and having proper
35 regard for their responsibilities provided by legislation. The Tribunal recognises that the Appellant genuinely thought that HMRC had agreed a time to pay arrangement which rolled over into the following year. However a mistake, even one based on an honestly held belief, is not a ground of appeal.

41. For the above reasons we therefore find that the Appellant did not have a
40 reasonable excuse for the late payment of his tax for the year 2010-11.

42. The appeal is therefore disallowed and the penalties confirmed.

43. 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.

10

**MICHAEL S CONNELL
TRIBUNAL JUDGE**

15

RELEASE DATE: 11 June 2014