



TC03867

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Appeal number: TC/2014/02630

Income Tax – late payment of tax – penalties raised following late voluntary filing of tax return – taxpayer unfamiliar with UK tax regime – taxpayer disabled – no reasonable excuse

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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MR BAIDAR KHAN

Appellant

- and -

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

TRIBUNAL: JUDGE ALASTAIR J RANKIN

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The Tribunal determined the appeal on 29 July 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 6 May 2014 (with enclosures), and HMRC's Statement of Case submitted on 4 June 2014 (with enclosures).

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DECISION

5 1. Mr Baidar Khan is appealing against a first self assessment late payment penalty of £252.00 for being 30 days late and a second self assessment late payment penalty of £252.00 for being 6 months late in paying his income tax for the tax year 2010/11.

2. Mr Khan advised HMRC during a telephone conversation on 29 February 2012 that he was no longer self employed. Based on this information HMRC recorded a nil return for 2010/11.

10 3. In September 2013 Mr Khan consulted accountants who advised him to voluntarily submit returns for 2010/11 and 2011/12. As a result of these returns HMRC assessed tax due for payment by Mr Khan for the year ended 5 April 2011 of £5,057.88 and a repayment due to Mr Khan for the year ended 5 April 2012 of £5,108.20.

15 4. As the tax of £5,057.88 should have been paid by Mr Khan by 28 February 2012 a late payment penalty of £252.00 being 5% of the tax due arose. As the tax remained unpaid after six months a second late penalty again for £252.00 became payable. The total late payment penalty due was £504.00 and this was raised by HMRC on 8 October 2013 the day after it processed the returns.

20 5. HMRC's records show that Mr Khan was sent a letter in December 2011 reminding him to file his tax return by the filing date. Mr Khan states that he did not receive this reminder.

25 6. It appears Mr Khan only telephoned HMRC on 29 February 2012 upon receipt of a late filing penalty issued on 14 February 2012 in respect of the tax year 2010/11. As a result of this telephone conversation the late filing penalty was cancelled. HMRC also sent Mr Khan a letter confirming that Mr Khan had told it that he no longer needed to fill in self assessment tax returns. This letter referred to as SA789 clearly sets out the reasons for filling in a tax return.

30 7. In his appeal Mr Khan states that his failure to file the returns was not done intentionally but was due to his failing to understand or have a full grip on the United Kingdom tax system. He also states that he is a disabled person but no indication of his disability appears in the papers.

The Law

35 8. Paragraph 1(1) of Schedule 56 Finance Act 2009 states that a penalty is payable by a person where he fails to pay an amount of tax 30 days after the due date. Paragraph 3(2) states that the penalty is 5% of the unpaid tax. Paragraph 3(3) provides that if any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date the person is liable to a penalty of 5%.

9. Paragraph 16(1) of Schedule 56 Finance Act 2009 provides that an appeal against a penalty will be successful where the taxpayer shows that there is a reasonable excuse.

The Decision

5 10. There is no statutory definition of reasonable excuse which according to Rowland v HMRC [2006] STC (SCD0 536 is a matter to be considered in the light of all the circumstances of the particular case. HMRC consider that a reasonable excuse normally is an unexpected or unusual event that is either unforeseeable or beyond the taxpayer's control.

10 11. It is well known that ignorance of the law is no excuse. It is important that HMRC applies the law fairly to all tax payers. Mr Khan admits that his failure to pay the tax on time was due to his failing to understand or have a full grip on the United Kingdom tax system.

15 12. In the absence of any reasonable excuse the appeal is dismissed. The penalties totalling £504.00 remain payable by Mr Khan.

20 13. 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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Alastair J Rankin
TRIBUNAL JUDGE

RELEASE DATE: 01 August 2014

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