



**TC03963**

**Appeal number: TC/2014/03160**

*Income tax – self assessment late payment penalty – whether reasonable excuse*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ALAN STEAD**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 21.08.2014 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 04.06.2014 (with enclosure) and HMRC's Statement of Case submitted on 24.06.2014 (with enclosures).**

## DECISION

1. The Tribunal decided that the Self Assessment Late Payment Penalty Notice  
5 dated 18.03.2014 in respect of the year 2012-2013 in the sum of £1,931.00 was properly issued by the Respondents.

2. The appeal is dismissed.

3. The Tribunal found that the filing date for the Appellant's electronic return for  
10 the year 2012-2013 was 31.01.2014. The return was received electronically by the Respondents on 25.01.2014. The Appellant's tax liability for the year, calculated pursuant to his Self Assessment Return, was £38,620.50 and the tax was due to be paid on or before 31.01.2014. The tax liability was paid in full on 03.03.2014.

4. The Tribunal further found that there was no reasonable excuse for the late payment of the tax.

15 5. The Respondents have properly calculated the penalty at 5% of all tax remaining unpaid after the expiry of 30 days from the due date in accordance with Paragraph 3(2) of Schedule 56 of the Finance Act 2009. The 'penalty date' as defined in Paragraph 1(4) means the date on which a penalty is first payable for failing to pay the amount, that is to say the day after 30 days from the date specified in Section  
20 59B(3) or (4).

6. In an appeal to the Respondents dated 17.04.2014 the Appellant's agent suggested that the effective date of payment was 28.02.2014 being one bank working day before cleared funds were received by the Respondents.

7. In his Notice of Appeal to the Tribunal the Appellant acknowledges that the tax  
25 was paid late. He says that it was paid a day late and the penalty is disproportionate. He complains that the "final reminder" from the Respondents was not received until 25.02.2014 and that he arranged payment as soon as possible after that date.

8. The Respondents correctly observe that the effective date of payment is the date  
30 payment is made at the bank counter: the Appellant's payment was received by the Respondents on 04.03.2014 so the effective date of payment was properly considered to be 03.03.2014 and not 28.02.2014 as suggested by the Appellant's agent. The last date that the Respondents could receive payment of the Appellant's tax without penalty was 02.03.2014; this was a Sunday; if the Appellant complains that payment could not have been made on this date his complaint is answered by the observation  
35 that he should have made payment on an earlier banking day so as to ensure that the Respondents received payment in time.

9. The appellant's liability to pay his tax on time was not dependent upon his  
40 receiving a tax demand, payment slip or reminder from the Respondents. The Notice to File and the online tax calculation both clearly showed the due date for payment and it was ultimately the Appellant's responsibility to pay the tax due on time.

10. The Tribunal has considered whether any Special Reduction in the penalty can be applied pursuant to Paragraph 9 of Schedule 56 of the Finance Act 2009. There is no evidence of any special circumstances that would justify a reduction of the penalty below the statutory minimum.

5 11. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and of due diligence and a proper regard for the fact that the tax would be payable on a particular date would not have avoided the default. The facts and chronology of events, set out in the Notice of Appeal and the Respondents' Statement of Case, disclose that such foresight and  
10 diligence by the Appellant would have avoided the default.

12. In so far as the Appellant may suggest that the imposition of the penalty is disproportionate, unjust or unfair, those arguments have already been disposed of by the Upper Tribunal in *HMRC v Hok* [2012] UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Limited* [2012] UKUT 418 (TCC). In the former it was  
15 made clear that the First-tier Tribunal has no jurisdiction to determine the fairness of a penalty imposed by statute. It is plain from a perusal of the latter that a penalty of the magnitude of that imposed in this case could not be described as disproportionate even if the Tribunal had jurisdiction to deal with the issue.

13. This document contains full findings of fact and reasons for the decision. Any  
20 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)"  
25 which accompanies and forms part of this decision notice.

**WDF COVERDALE  
TRIBUNAL JUDGE**

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**RELEASE DATE: 27 August 2014**