



TC05566

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Appeal number: TC/2016/04786

INCOME TAX – Whether reasonable excuse for late payment for individual tax return - No.

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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TIMOTHY C. KRETSCHMER

Appellant

- and -

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

**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA
AIIT**

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The Tribunal determined the appeal on 12 December 2016 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 7 September 2016 with enclosure, and HMRC's Statement of Case received by the Tribunal on 27 October 2016 with enclosures. The Tribunal wrote to the Appellant on 31 October 2016 indicating that if he wished to reply to HMRC's Statement of Case he should do so within 30 days. No reply was received.

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DECISION

1. Introduction

5 In the notice of Appeal the appellant states his appeal is against a decision of the respondents (HMRC) dated 9 Aug 2016 and states the amount of tax penalty or surcharge as £873.64.

The decision of HMRC dated 9 Aug 2016 was the result of a review requested by the appellant in respect of a penalty of £537.00.

10 It appears from a statement in the papers that the amount of £873.64 is a balance outstanding on 19 May 2016 and consists of the £537.00 penalty; four amounts of interest on tax paid late £176.39, £108.00, £7.79, and £42.74 (total £334.92); and a small amount of £1.72 being unpaid tax.

15 Neither party has made any submissions in respect of these specific amounts of interest and tax. Therefore the Tribunal has assumed that the appeal is intended to be solely against a first late payment penalty of £537 imposed by the respondents (HMRC) under Paragraph 3 (2) of Schedule 56 Finance Act 2009 for the failure by the appellant to pay tax on time in respect of his individual tax return for the tax year 2014 – 2015.

2. Legislation

20 Finance Act 2009 in particular Schedules 55, 56
Taxes Management Act 1970, in particular Sections 7, 8, 9, 59A and 59 B.

3. Case law

25 *Crabtree v Hinchcliffe (Inspector of Taxes)* [1971] 3 ALL ER 967
Clarks of Hove Ltd v Bakers' Union [1979] 1 All ER 152
Rowland v HMRC [2006] STC (SCD) 536
David Collis [2011] UKFTT 588 (TC)

4. Facts

30 The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970. In this case in respect of the tax year ended 5 April 2015 HMRC issued a notice to file to the appellant on 6 April 2015. A non-electronic return was required to be submitted by 31 October 2015 or an electronic return by 31 January 2016.

35 In respect of the year 2014-2015 the appellant submitted his electronic individual tax return on 27 January 2016. Payment of £10,793.20 was due by 31 January 31 2016 but full payment was not made until 7 May 2016

5. Appellant's submissions

40 In the Notice of Appeal the appellant states "HMRC's decision is wrong because I believe it is too severe and does not take into consideration the fact that while I was willing to pay and kept up a detailed file of communications with HMRC informing

them of the circumstances I was in and the timescale I was working too, they totally disregarded this, showing inflexibility and a lack of understanding of the circumstances and categorised me as if I was avoiding my responsibilities as a tax paying citizen of the UK.

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To expand on my circumstances, I am a UK citizen employed under a German contract by Eon Climate & renewables GmbH based in Essen Germany since 1 Aug 2012. The German tax system while similar to UK is offset by some months when it comes to tax rebates. Due to my working in and outside Germany I declare my German working days against my tax return for both Germany and UK but pay German tax as if I worked 100% there, this means I am due an annual rebate. The rebate timing and UK tax demand occur the wrong way round regarding having money to pay my UK tax liability before I receive my German tax refund, therefore I struggle to have the means to pay against HMRC due dates.

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This situation has been explained to HMRC and my multiple communications are on their database to show that I have kept in regular contact.

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Unfortunately this, while I am sure is appreciated and whilst HMRC have given me response deadlines in progressing my rebate, had no effect on the time penalty system within HMRC and they duly applied the penalties. These penalties multiplied until they got to the figure declared. There is no breakdown of the penalty cost and as I understand they are not allowed to charge interest on interest I am unable to ascertain if this is the case.

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I believe that this is unfair and penalises me the same as if I did nothing, it stigmatises me and does not recognise the efforts I went to in keeping HMRC informed. I accept that I paid late but when the means were mine I paid in full including the tax penalty, the situation was beyond my control and I informed HMRC of this fact repeatedly but in reality they showed no interest or customer care and therefore behaved unreasonably.

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A letter dated 16 May 2016 from the appellant to HMRC included "To reiterate the background to this delayed payment was a misunderstanding last year when I enquired if I could delay payment because I believed this was a one off tax demand and the tax system between Germany and UK would sort out the problem. I did not realise that this was an ongoing situation that I would have to manage annually."

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40 6. HMRC's submissions

HMRC say that the appeal is not concerned with specialist or obscure areas of tax law. It is concerned with ordinary every day responsibilities of the appellant to ensure his 2014-2015 tax return was filed by the legislative date and payment made on time.

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7. 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.

8. HMRC's view is that 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 is within their control, HMRC would expect them to take steps to meet their obligations.

9. HMRC say that penalties charged are set within the legislation. HMRC say they have no discretion over the amount charged and must act in accordance with legislation

10. On 23 February 2015 the appellant made a call to HMRC and made an adjustment to his payments on account for the tax year ending 5 April 2015 reducing the tax payable on 31 January 2015 and 31 July 2015 to nil on the grounds that his income would be less than the personal allowance for 2014-15.

11. HMRC records show that the appellant submitted the 2014-2015 tax return on 27 January 2016. This showed income from employment of £70,593. The tax payment due for the tax year ending 5 April 2015 was £10,753.20.

12. HMRC contends that if the appellant had paid the two payments on account for 2014-2015 on 31 January 2015 and 31 July 2015 each of £4,848.20 (total £9,696.40) then the balancing payment due on 31 January 2016 would have been £1,056.80.

13. A first late payment penalty is calculated at 5% of all tax remaining unpaid after the expiry of 30 days from the due date in accordance with paragraph 3 (2) Schedule 56 Finance Act 2009. The penalty charged to the appellant for 2014-2015 has been calculated on the amount outstanding at the penalty date of 3 March 2016 is as follows: £10,753.20 @ 5% = £537.65. HMRC have rounded this down to £537.00

14. HMRC point out that legislation at paragraph 16 Schedule 56 of the Finance Act 2009 states that "an insufficiency of funds is not a reasonable excuse unless attributable to events outside a person's control.

15. HMRC have considered special reduction under (paragraph 16 Schedule 55 of the Finance Act 2009. They say special circumstances must be "exceptional, abnormal or unusual" (*Crabtree v Hinchcliffe*) or "something out of the ordinary run of events" (*Clarks of Hove Ltd. v Bakers' Union*). Special circumstances must also apply to the particular individual and not be general circumstances that apply to many taxpayers by virtue of the penalty legislation (*David Collis*) HMRC consider that waiting for a tax refund from the German Tax authorities are not special circumstances which would merit a reduction of the penalty below the statutory amount. They also consider that there are no other special circumstances which would allow them to reduce the penalty.

16. Tribunal's Observations

The Tribunal agrees with HMRC that it is the Appellant's responsibility to submit payment for returns on time. Payment of £10,793.20 for the return for the period 2014-2015 was due to be submitted by 31 January 2016, but payment was not made in

full until 7 May 2016. The appellant accepts that payment was made late. A penalty of £537 being 5% of the outstanding amount is therefore due unless the appellant can establish a reasonable excuse for the delay as referred to in Paragraph 23(1) Schedule 55 Finance Act 2009. A reasonable excuse is normally an unexpected or unusual event that is unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their obligation to file on time.

17. The Tribunal accepts that the appellant had every intention to honour his tax obligations but unfortunately he took actions which did not help his situation. The Tribunal observes that the appellant refers to a detailed file of communications with HMRC. The communications provided to the Tribunal in the bundle of papers all appear to have occurred after the tax was due on 31 January 2016. The Tribunal notes that HMRC accept that telephone calls were made by the appellant to HMRC on both 1 February 2016 and 4 April 2016. Unfortunately if a taxpayer wishes to make an arrangement for time to pay in order to avoid penalties this must be done before the due date and not after it.

18. The appellant is responsible for meeting the deadlines for filing his tax return and for paying any tax due. The appellant refers to the circumstances he was in but to some extent these were of his own making. He called HMRC on 23 February 2015 and reduced his payments on account to nil on the grounds his earnings for the year to 5 April 2015 would be less than the personal allowance for 2014-2015. The standard personal allowance for 2014-2015 was £10,000. When the appellant submitted his tax return for the period ending 5 April 2015 it showed income of £70,593. Therefore in the 41 days from 23 February 2015 to 5 April 2015 the appellant's income for the tax year increased by well over £60,000. The Tribunal considers that the appellant's view that he would earn below the annual personal allowance was a serious under-estimate and the consequences were that by 31 January 2016 no money had been paid on account to meet a tax bill of what the appellant must have known from his previous year's earnings would be of the order of £10,000. In the Tribunal's view this was a matter within the appellant's control.

19. The appellant says that he thought the difficulties in 2013-2014 were a one off but he should have realised that in 2014-2015 he was continuing to be paid in the same way as the previous year. He does not appear to have put any of his earnings aside to meet his tax liabilities. The legislation provides that insufficiency of funds is not considered to be a reasonable excuse. However the Tribunal is aware that the reason for that insufficiency might be. In this case it is clear that the mismatch of the date UK tax is due and the date of the German Tax rebate caused the appellant cash flow difficulties. However although he was aware well in advance of the mismatch the appellant made no attempt to pay any money on account, rather he reduced the proposed payments on account to nil. Whilst this action may have been the result of a genuine misunderstanding by the appellant it cannot be regarded as establishing a reasonable excuse.

20. Therefore the Tribunal considers that the appellant has failed to establish that he had reasonable excuse for his failure to make payment by the due date.

21. Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none. The Tribunal gave some thought on whether it should intervene and reduce the penalty but concluded that similar circumstances would have happened to others working in Germany therefore following *David Collis* there were no special circumstances specific to the appellant.

22. HMRC has applied the late filing penalty in accordance with legislation. The appellant has not established a reasonable excuse for the late payment of his individual tax return for the period 2014-2015. There are no special circumstances to allow reduction of the penalty. Therefore the appeal against the late filing penalty of £537 is dismissed.

23. 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.

PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 20 DECEMBER 2016