



TC05869

Appeal number: TC/2016/04224

PENALTY – late payment of income tax – whether reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MOHSIN SHAMEEM

Appellant

- and -

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

TRIBUNAL: JUDGE BARBARA MOSEDALE

Decided on the papers at the request of the appellant and with the consent of HMRC under Rule 29(1)(b) the Tribunal being satisfied that it was able to decide the matter without a hearing.

D Logan, Zenith Tax Solutions, for the Appellant

E Sidey, HMRC officer, for the Respondents

DECISION

1. I consider that the only issue in this appeal is a late payment penalty amounting to £828 imposed for late payment of tax relating to the year ended 2014. I take this view because the notice of appeal specifically mentions the figure of £828 being the penalty in dispute and that it relates to the tax year 13/14. The appellant also states that he appealed to HMRC on 16 March 2016 and that letter related only to the £828 penalty. Further, the only decision letters from HMRC enclosed with the notice of appeal relate to the £828 penalty.

2. The notice of appeal does enclose other letters written by the taxpayer to HMRC, and one letter from HMRC, which deal with, in very general terms, other penalties imposed on the appellant. Moreover, the appellant in places does specifically complain about penalties imposed in a number of earlier years. However, it is impossible to identify from the appeal papers any other specific penalty and certainly no decision letter relating to any other penalty is enclosed.

3. The Tribunal only has jurisdiction where the appellant provides the details of the decision appealed against (Rule 20(2)(d)) and a copy of the decision letter (Rule 20(3)). Therefore, as the £828 penalty imposed in respect of the year end 2014 is the only penalty specifically identified and the only penalty in respect of which the Tribunal was given the decision notice, I consider that it is the only penalty under appeal. That is the only penalty this decision notice will consider. If the appellant wishes the Tribunal to consider other penalties, he must specifically refer to them in a notice of appeal, provide the decision letter (or an explanation why he cannot do so) and, where appropriate, apply to appeal out of time.

The Law

4. The penalty was imposed under Schedule 56 of Finance Act 2009 ('Sch 56'). Paragraph 1 of Sch 56 imposes a penalty if the taxpayer pays self assessed income tax late. A penalty of 5% of the tax unpaid can be imposed if the tax is unpaid more than 12 months after the due date: paragraph 1(4) and 3(4).

5. Paragraph 9 provides that HMRC may reduce a penalty due to special circumstances, but that special circumstances do not include ability to pay. On an appeal, however, the Tribunal only has power to consider special circumstances if HMRC's decision on it was flawed in the public law sense.

6. Liability to a penalty does not arise where the taxpayer can satisfy the Tribunal on appeal that he has a reasonable excuse for the late payment (paragraph 16). However, paragraph 16(2)(a) states insufficiency of funds is not a reasonable excuse, and that where the taxpayer had a reasonable excuse which ceased, the reasonable excuse is treated as continuing if the failure to pay the tax was remedied without unreasonable delay after the excuse ceased.

7. Reasonable excuse is not defined in the legislation but I consider that it must be understood to be something which causes the penalised failure and which could have caused a conscientious taxpayer, aware of his obligations to HMRC and intending to fulfil them, similarly to fail to fulfil his obligations.

5 **The facts**

8. HMRC submitted a statement of case on 11 October 2016. Although the appellant stated he would file a reply to it, he never did so despite reminders from the Tribunal. Therefore, as the appellant has chosen not to dispute assertions made by HMRC in their statement of case, I find the following facts.

10 9. I find that HMRC served a notice to file a tax return for the year ended 5 April 2014 on the appellant on 6 April 2014. I also find that the appellant filed his tax return electronically on 16 June 2014 showing a tax liability of £17,403.52.

15 10. On 23 February 2016, HMRC assessed a penalty of £828 for late payment of this tax, which remains unpaid to the date (at least) that the statement of case was filed (11 October 2016).

Was the penalty properly imposed?

20 11. The appellant does not dispute HMRC's statement that his return showed a tax liability of £17,403.52. Nor does he dispute HMRC's case that it remained unpaid as at the date that the 12 months' penalty was imposed, although HMRC also state that some part of it had been paid off by the date of the Statement of Case. In fact, as the penalty was only charged at £828 it appears a small amount of the tax had been paid off before the penalty was imposed (5% of £17,403 being £870).

12. In any event, the appellant has not disputed HMRC's case that the penalty was correctly calculated and I find that it was.

25 13. The appellant has also not disputed that he was late in paying his tax. I find that the penalty was properly imposed. The question for the Tribunal is whether the appellant has a reasonable excuse for his late payment and/or whether there are special circumstances.

Reasonable excuse for late payment?

30 14. The appellant puts forward the following grounds of appeal:

- (a) He had been allocated two unique taxpayer reference ('UTR') numbers by HMRC;
- (b) The illness and subsequent death of his father;
- (c) the severe illness of his baby daughter;
- 35 (d) Difficulties with paying due to costs of his father's treatment, travelling in respect of, and direct costs of, his father's funeral;

- (e) Burglary of his home;
- (f) He has a time to pay arrangement with HMRC.

Two UTRs

15. The appellant's case is that HMRC allocated him two UTRs in tax year 1999
5 and despite many attempts by him to resolve this issue, HMRC have refused to
engage with him over this. Although his letter is vague, the appellant appears to
allege that he would make a return and pay tax under one of the UTRs, only to be
charged penalties under the other UTR for not making a return and not paying tax. He
accepts that HMRC combined the UTRs into a single UTR in 2013 but states this did
10 not entirely resolve the problem because it led to later tax payments on one UTR
being set off against earlier tax liabilities on the other UTR.

16. However, HMRC's statement of case, which the appellant has not disputed,
states that the appellant was given only one UTR in 1999. The second UTR was not
set up until 2003. HMRC accept this was a mistake which they are unable to explain.
15 The original UTR was then closed down in 2006 and the duplicate (now only) UTR
continued in use. As the appellant has not filed a reply, I accept HMRC's version of
events. The appellant has therefore only had one UTR since 2006.

17. HMRC do not accept that the duplicate UTRs led to the late payment of tax at
issue in this appeal. I accept that. Indeed, even on the appellant's own case, it is very
20 difficult to see any explanation as to how a duplicate UTR closed down no later than
2013 could have caused him to fail to pay tax which should have been paid no later
than 31 January 2015. I reject this as a reasonable excuse: it is no explanation at all.

Illness and death of father

18. The appellant's father was diagnosed with cancer in 2014 and the appellant's
25 case is that he spent a lot of time in 2014 and 2015 with his father in Pakistan helping
him obtain treatment. His father died in January 2016. The appellant returned to the
UK in February 2016, although returned to Pakistan for a period in March 2016 to
deal with his father's estate.

19. HMRC's view is that they do not accept that the appellant's absence from the
30 UK 2014-February 2016 was continuous nor in any event actually prevented him
from arranging payment of the due tax. I accept HMRC's case on this: the appellant
did not reply to HMRC's allegations contained in their statement of case. He did not
explain how he was able to earn the same in his job as an accountant employed in the
UK in 14/15 as 13/14 which suggests that he was present, working, in the UK when
35 he says he was in Pakistan. Moreover a contemporaneous letter from the appellant
stated that he would be in Pakistan 'from' the third week of January 2016, indicating
he was present in the UK before then. The appellant's evidence is contradictory and I
reject it.

20. Further, in any event, I agree with HMRC that the appellant's absence in
40 Pakistan should not have prevented him paying tax which he knew was due on 31

January 2015. Indeed, on 30 January 2016 he paid his 13/14 tax (late) but at a time when he stated he was in Pakistan.

21. And even if his absence in Pakistan was a reasonable excuse (which I do not accept) it ceased by April 2016 yet the tax had still not been paid by October 2016.
5 The legislation makes it clear that to be a reasonable excuse, the tax has to be paid without unreasonable delay (see §6 above) after the excuse ceased. I consider the unexplained gap of at least 6 months unreasonable delay.

22. Therefore, I find the appellant's visits to Pakistan did not amount to a reasonable excuse.

10 *Illness of baby daughter*

23. His daughter was born in around 2005 with a serious heart condition which necessitated 3 open heart surgeries and led to the appellant giving up work for most of 2005.

24. HMRC do not dispute these allegations but they consider them irrelevant, as I
15 do. Whatever difficulties the appellant faced in 2005, they had nothing to do with his failure to pay tax due ten years later. His daughter's illness in 2005 is no explanation of his continuing failure in October 2016 to pay tax due on 31 January 2015. It is not a reasonable excuse.

Lack of funds

20 25. The appellant paid for his father's cancer treatment and as a result is short of funds.

26. As explained above at §6, a shortage of funds cannot be a reasonable excuse. Nevertheless, it is accepted that the cause of a shortage of funds can amount to a reasonable excuse. The cause of the shortage of funds here was stated by the
25 appellant to be his decision to use his money to pay for cancer treatment for his father and to pay for his own travel costs to Pakistan to be with his father. I accept that a conscientious taxpayer, faced with the dilemma of paying for urgent medical treatment for a close family member or paying his taxes, might reasonably choose the former. However, the appellant has in no way provided any evidence, let alone
30 sufficient evidence, that the payment of urgent medical treatment did in fact leave him unable to pay his tax bill.

27. He has not made out his case on this and I do not accept it amounts to a reasonable excuse.

Burglary

35 28. The appellant gives no explanation of when the burglary took place and why it caused him to pay his tax late. Without any such details, I am unable to consider it as a reasonable excuse: it is inherently unlikely to amount to a reasonable excuse in any

event as, however upsetting a burglary is, it is very difficult to see how it could explain a failure to pay tax that has lasted for well over 18 months.

Time to pay arrangement

29. The appellant stated in his notice of appeal that he had a time to pay arrangement but gave no details about it nor evidence of its existence. In such
5 circumstances, I cannot consider it as a reasonable excuse as I have no evidence that it related to the tax paid late nor that the appellant kept to the terms of it.

30. HMRC's statement of case denies that there was an agreed time to pay arrangement. The appellant has not responded to this and therefore I find that there is
10 no time to pay arrangement and therefore it cannot amount to a reasonable excuse.

Special circumstances

31. HMRC considered on review whether the illness and death of the appellant's father amounted to special circumstances and concluded that it did not. I do not consider that this decision was flawed in the public law sense and therefore cannot
15 review it: I do not consider it flawed as it appears to be a reasonable conclusion. As I have already said, the appellant has not proved that he was continuously absent from the UK; and even if he could have proved this, it does not explain his failure to pay his tax; and even if he could explain that, he has not explained why he did not pay the tax within a reasonable time of his return to the UK in early 2016.

20 32. HMRC did not consider whether any of the other grounds of appeal put forward by the appellant amounted to special circumstances: I do not consider that a flawed decision either because I can see no grounds, for the reasons given above, why any of those grounds of appeal could amount to special circumstances any more than reasonable excuses.

25 **Conclusion**

33. I find the penalty was properly imposed; I find that there are no special circumstances; I do not consider that any of the grounds of appeal put forward by the appellant amount to a reasonable excuse.

34. The appeal is dismissed.

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35. 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.

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**BARBARA MOSEDALE
TRIBUNAL JUDGE**

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RELEASE DATE: 9 MAY 2017