



TC06991

Appeal number: TC/2018/05409

INCOME TAX – penalty for late payment of balancing payment of income – whether reasonable excuse: no – whether special circumstances: yes – penalty reduced to nil.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CHRISTOPHER JONES

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE RICHARD THOMAS

The Tribunal determined the appeal on 4 February 2019 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 17 August 2018 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 24 October 2018.

DECISION

1. This was an appeal by Mr Christopher Jones (“the appellant”) against a penalty of £255 for failure to pay an amount of income tax by the due date. The Tribunal decided that the penalty is reduce to nil and so effectively cancelled.

Facts

2. The appellant filed his 2016-17 return electronically on 5 January 2018. This showed a tax liability of £14,925.77.

3. As at 3 March 2018 £5,116.67 of this amount, the balancing payment after deducting payments on account already made, remained unpaid.

4. On 13 March 2018 HMRC assessed the appellant to a penalty of £255 because of the tax unpaid on 3 March. £255 was 5% of the unpaid tax.

5. On 17 March 2018 the appellant paid the outstanding amount.

6. On 4 April 2018 the appellant appealed to HMRC against the penalty.

7. On 14 May 2018 HMRC rejected the appeal as they said that the appellant had shown no reasonable excuse for the failure to pay by the penalty date. They informed him that he could request a review or notify his appeal to the Tribunal.

8. On 19 May 2018 the appellant requested a review.

9. On 18 July 2018 HMRC wrote to the appellant with the conclusion of the review. The conclusion was that the penalty was upheld

10. On 17 August 2018 the appellant notified his appeal to the Tribunal.

The law

11. The law imposing these penalties is in Schedule 56 Finance Act 2009 and in particular paragraph 3(2) (penalty of 5% of tax unpaid by a date 30 days after the filing date, which in this case was 31 January 2018). The penalty may only be cancelled, assuming it is procedurally correct, if the appellant had a reasonable excuse for the failure to pay by the given date (paragraph 16 Schedule 56), if a time to pay arrangement was in force (paragraph 10) or if HMRC’s decision as to whether there are special circumstances was flawed (paragraph 9).

Grounds of appeal & HMRC’s response

12. The grounds of appeal are:

(1) Despite HMRC saying to the contrary, it was never a question of him not knowing how much to pay but when and how, as he had not received the SA Statement telling him the HMRC bank details he needed.

(2) This was due to HMRC sending post to the wrong address, something which was accepted by them and the address was changed.

13. The gist of what HMRC say in response in a statement of case that is remarkable for its irrelevance, prolixity and repetitiveness:

(1) The appellant had been sent many notices, including SA Statements, at the address he says was wrong, but he had not raised this point before nor informed HMRC that the address was wrong.

(2) Information about how to pay is readily available and can be requested from HMRC over the phone.

(3) There is therefore no reasonable excuse.

Reasons for my decision

14. In my view there is no reasonable excuse for the failure to pay the tax by 3 March 2018.

15. If he had not received the SA Statement, it wouldn't have been difficult for the appellant to find out the information he needed at any time up to 2 March 2018,

16. HMRC have addressed the question whether there were special circumstances, but have found none. One of the matters they say they considered was that the late payment interest on the amount of the balancing charge of £5,116.67 was cancelled. They do not say why having considered this they did not think it was unusual or exceptional¹. It is no good HMRC just “submitting” that it is not a special circumstance – they must explain why, especially when they must know that it is very rare for HMRC to cancel an interest charge. In my view the decision was flawed because it did not take into account the rarity of an interest charge cancellation or, it seems, bother to find out why it had been cancelled.

17. I therefore can and do remake the decision. HMRC's Debt Management Manual at DMBM405030 says:

“It is impossible to give a full list of all the situations where the Interest Review Unit may consider giving up interest. The main considerations must be that:

- interest was increasing during the period involved, and^[SEP]
- HMRC was responsible for the conduct of the case during the period, and^[SEP]
- the delay was extensive and unreasonable in the circumstances, and^[SEP]
- it was only this delay that caused the absence of payment, and^[SEP]
- the customer was not aware that a debt existed, or might arise, that they should have paid or made a payment on account against.

So if the interest was building up already, or was going to build up, on a delayed payment as a result of the customer's actions, then there is no reason for the Interest Review Unit to consider giving up interest. The

¹ Since drafting this decision I have read the (now notorious) decision in *Krzysztof Pokorowski v HMRC* (the case of a homeless man given penalties of £1,600). In that decision at [14] to [20] Judge Nicholas Aleksander analysed HMRC's perennial submission that for there to be special circumstances there must be something “exceptional, abnormal or unusual” and concluded that it is based on a statement by Viscount Dilhorne in *Crabtree v Hinchcliffe* [1971] 3 All ER 967 that was not the position of the majority in the House of Lords. In this decision I have found that the circumstances were special because they were actually exceptional or unusual, so I do not need to consider whether *Pokorowski* affects the issue.

customer was already going to be facing an interest charge. HMRC delay, no matter how long, did not cause the charge.

The question to ask for every case is, ‘would the interest charge still have existed if HMRC had not caused any unreasonable delay?’ If ‘yes’ then the interest charge should be upheld. If ‘no’ then consider giving up interest.”

18. The considerations are it seems cumulative not separate, ie all must be in point. Given the recognition by the Interest Review Unit that HMRC was at fault, the circumstances are clearly exceptional and unusual and so special and justify a reduction of the penalty to nil.

19. 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.

**RICHARD THOMAS
TRIBUNAL JUDGE**

RELEASE DATE: 18 FEBRUARY 2019