



TC07721

Appeal number: TC/2019/06680

FIRST-TIER TRIBUNAL
TAX CHAMBER

Income Tax – late payment penalty – Schedule 56 FA 2009 – Whether reasonable excuse – No – whether penalty unfair and should be reduced – Yes – Appeal allowed in part.

Colm Buteux

Appellant

- and -

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

Respondents

TRIBUNAL JUDGE: DR K KHAN

The Tribunal determined this appeal on 7 April 2020 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 21 October 2019 and the HMRC Statement of Case dated 10 December 2019.

INTRODUCTION

The matter before the Tribunal is an appeal against a late payment penalty charged under Schedule 56, Finance Act (FA) 2009 in respect of the late payment of tax for the year ending 5 April 2018.

The penalty charged in the amount of £108.00 is as follows:

Tax Year ending	Date penalty created/issued	Description	Amount (3)
2017-2018	09/08/2019	30 day late payment penalty	£108.00
		Total	£108.00

Payment is due in accordance with Section 598 Taxes Management Act (TMA) 1970 and in this instance the due date for payment was 14 June 2019 under Section 598(3). A late payment penalty is chargeable where a taxpayer is late in paying tax due.

FACTS

1. The Notice to File for the year ending 5 April 2018 was issued to Mr CJ Buteux on or around 7 March 2019. The address the notice to file was issued to is 33 Woodlands Drive WA4 2JL.
2. The filing date is determined by Section 8 (1D) TMA 1970 et seq. which states that for the year ended 5 April 2018 a non electronic return must be filed by 31 October 2018 and an electronic return by 31 January 2019. A late filing penalty is chargeable where a taxpayer is late in filing their Individual Tax return.
3. When a return is issued late the filing dates may be different. Section 8 (1G) TMA 1070 states that if a notice in respect of 2017-18 is given after 31 October 2018, a return (whether electronic or not) must be delivered during the period of 3 months beginning with the date of notice.
4. The filing date was 14 June 2019 for a non-electronic return or for an electronic return.
5. Mr Buteux's electronic return for the year 2017-2018 was received on 5 July 2019.
6. Mr Buteux filed online whereby the liability was automatically calculated.

7. Mr Buteux's tax liability for the year was originally calculated at £3188.39 but this was amended to £2172.60 by HMRC, following an issue with the calculation.
8. The tax was due to be paid on or before 31 January 2019 in accordance with Section 59B (3) TMA 1970.
9. At the penalty date of 3 March 2019, £2172.60 of the tax liability remained unpaid, HMRC issued a notice of penalty assessment on or around 9 August 2019 in the amount of £108.00, 5% of the tax unpaid at the penalty date (£2172.60 @ 5% = £108.00).
10. The 'penalty date' as defined at Paragraph 1(4) Schedule 56 FA 2009 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 598(3) or (4)).

THE APPEAL

11. On 3 September 2019 HMRC was in receipt of an appeal under the terms of paragraph 13 Schedule 56 FA2009 in respect of the penalties charged.
12. HMRC issued a letter on 18 September 2019 which did not give a decision on the appeal to HMRC but simply reiterated the law.
13. On 21 October 2019 Mr Buteux lodged an appeal before the First Tier Tribunal.

POINTS AT ISSUE

14. Whether the Appellant has a reasonable excuse for the late payment of tax for the period ending 5 April 2018.
15. If a reasonable excuse exists, whether the payment was received without any unreasonable delay once any excuse had ended.
16. The onus of proof is for the Respondents to show that the penalty have been correctly calculated. The burden then shifts to the Appellant to demonstrate that a reasonable excuse exists for the default. The standard of proof is on a balance of probability.

LEGISLATION

17. Section 598 Taxes Management Act 1970
Section 7 Taxes Management Act 1970
Section 8 Taxes Management Act 1970
Section 9 Taxes Management Act 1970
Schedule 56 Finance Act 2009 - paragraph 3 (2), (3) & (4)

Schedule 56 Finance Act 2009 - paragraph 1 (1), (4) & (5)
Schedule 56 Finance Act 2009 - paragraph 13
Schedule 56 Finance Act 2009 - paragraph 16
Schedule 56 Finance Act 2009 - paragraph 9
Schedule 56 Finance Act 2009 - paragraph 15
CH170600 - What are Special Circumstances
Section 101 Late Payment Interest FA2009

APPELLANT'S CONTENTIONS

18. From the appeal dated 28 August 2019

“Effectively, you have not given me notice to pay. I T issues with your system?”

On 5 July 2019, I submitted tax return for 2017-18 on time, as your systems show. I called your helpline and spoke to Jenny on 5th July. She confirmed that the system had been updated to show I was on time with my submission. I then received an email stating that you had received my submission and that you would process the return.

I was not advised when submitting of the payment terms for the quite considerable sum I owed.

In fact - if you look at item B attached, you will see that the online system actually stated that I had to pay the tax owed for 2017-18 by 31 January 2019.

Clearly when I submitted my return, to tell me online that I had to pay the outstanding sum of £3188.39 5 months ago to the date of my submission, is nonsensical.

I have not received any correspondence advising me therefore of how to pay this amount noting the above date is clearly incorrect.

In your penalty notice, you advised that the penalty related to unpaid tax as of 14th July 2019.

Are you implying that having submitted my tax return on 8th July and your system telling me I had to pay the full amount 5 month prior (31st January 2019) that because I didn't pay by 14th July, am I being charged a penalty?

Even if I was meant to pay the full amount by 14th July, surely you have to

- i. Advise me of the payment date I need to comply with (which can't be 5 months in the past)*

- ii. *Give me more than 9 days to pay the full amount, noting that it is a very large amount?*
- iii. *Tell me how to pay?*

Hopefully you can see the many issues and discrepancies in how your IT system has processed this and why I am appealing.”

HMRC'S CONTENTIONS

19. Self-assessment is based on voluntary compliance so it is essential that those taxpayers who pay the right amount of tax at the right time feel confident that the system does not reward noncompliance in any way. Penalties and interest are designed to cancel the immediate financial advantage for those who pay late over those who pay on time.
20. Self-assessment places responsibility on customers for their own tax affairs. This includes ensuring that HMRC get payment of the correct amount of tax and National Insurance at the correct time. The tax guidance and HMRC website give plenty of warning about filing and payment deadlines. It is the customer's responsibility to make sure they meet the deadlines.
21. To support taxpayers with their responsibility, HMRC publishes information and advice about their obligations and how they can adhere to them. This information about self-assessment, the completion of returns, tax payment dates, penalties and so on, is well within the public domain and widely available via the internet including HMRC's website. An individual acting in a responsible manner to ensure that they adhere to their legal obligations would make themselves aware of such information and act accordingly.
22. The tax liability calculated by the online system is computed from the figures the Appellant or their agent enters onto the system. The online system is an integral part of the self-assessment system using the same application for calculating a tax liability. The amount calculated by the online system is automatically entered onto the taxpayers account once the return is filed by the user. The self-assessment system includes that amount in its next statement run unless the user amends the return beforehand.
23. A period of 30 days is allowed before a late payment penalty is imposed to allow time to make payment or make arrangements to pay. The original liability is calculated using all information on Mr Buteux's tax return.
24. Interest is calculated for each day that the penalties are not paid. Interest can be avoided or reduced by paying the penalties.
25. The Appellant has no reasonable excuse.

Discussion

26. The due date for payment for self-assessment tax liabilities is set out in statute and readily ascertainable. Statute is clear that it is the taxpayer's responsibility to comply with such due date and there is no statutory obligation on HMRC to notify a taxpayer of the due date for payment. A failure on the part of a taxpayer to correctly establish the due date for payment is not, therefore, a reasonable excuse for late payment of a self-assessment tax liability.

27. HMRC expects all of its customers to settle their tax bills on time and this is to be the standard and not the exception.

28. As Mr Buteux had PAYE income of more than £100,000 for the year 2017-2018, his self-assessment record was reactivated and a notice to file was issued on 7 March 2019 to the address on record which is the same address as that provided by Mr Buteux in his appeal to the Tribunal.

29. As the tax return was issued outside the normal issue timescales, HMRC have allowed 3 months and 7 days for the return to be completed and sent back. Payment was due on 31 January 2019 under S.59 B (3), TMA 1970.

30. Following a telephone call on 6 June 2019, HMRC agreed to give Mr Buteux further time to submit his return because he needed an activation code.

31. The due date for payment for self-assessment tax liabilities is set out in statute and readily ascertainable. Statute is clear that it is the taxpayer's responsibility to comply with such due date and there is no statutory obligation on HMRC to notify a taxpayer of the due date for payment. A failure on the part of a taxpayer to correctly establish the due date for payment is not, therefore, a reasonable excuse for late payment of a self-assessment tax liability.

32. HMRC expects all of its customers to settle their tax bills on time and this is to be the standard and not the exception.

33. Paragraph 16 of Schedule 56 FA 2009 specifically provides that a penalty does not arise in relation to a failure to make a payment if the person satisfies HMRC (or on appeal, a Tribunal) that there is a reasonable excuse for the failure and they put right the failure without unreasonable delay after the excuse has ended.

34. HMRC consider reasonable excuse to be something that stops a person from meeting a tax obligation despite them having taken reasonable care to meet that obligation. It is necessary to consider what a reasonable person, who wanted to meet their obligation would have done in the same circumstances and decide if the action of the person met that standard as outlined by Judge Medd in *The Clean Car Company (LON/90/138X)*.

'One must ask oneself.' was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do? Put in another way which does I think alter the sense of the question; was what the taxpayer did not an unreasonable thing for a trader of the sort I have envisaged, in the position that the taxpayer found himself, to do?'

35. Reasonable excuse is not further defined beyond paragraph 16 (2) of schedule 56 but was considered in detail in the Upper Tribunal decision in *Christine Perrin v Commissioners for HMRC* ((2018) UKUT 0156 (TCC)). Whilst confirming that reasonable excuse should be judged objectively, Judge Herrington stated at paragraph 71.

*"In deciding whether the excuse put forward is, viewed objectively, sufficient to amount to a reasonable excuse, the tribunal should bear in mind all relevant circumstances; because the issue is whether the particular taxpayer has a reasonable excuse, the experience, knowledge and other attributes of the particular taxpayer should be taken into account, as well as the situation in which that taxpayer was at the relevant time or times (in accordance with the decisions in *The Clean Car Co* and *Coales*).*

36. Whether a person has a reasonable excuse will depend on the particular circumstances in which the failure and the abilities of the person who has failed. What is a reasonable excuse for one person may not be a reasonable excuse for another person.

37. If there is a reasonable excuse it must exist throughout the failure period.

38. HMRC submits that it was not "objectively reasonable", in the circumstances of this particular case, for Mr Buteux to have been ignorant of his obligation to pay the balancing payment of tax due by the due date. The Tribunal agrees that there is no reasonable excuse and the taxpayer should be aware of their payment obligations.

SPECIAL REDUCTION

39. Under Paragraph 9 of Schedule 56, Finance 2009 provides HMRC with discretion to reduce any penalty if they think it right to do so because of special circumstances.

40. HMRC policies on penalties are set out in the Compliance Handbook, and CH170600, folio 40, defines "special circumstances" as follows:

41. Special circumstances are either

- i. uncommon or exceptional, or

- ii. where the strict application of the penalty law produces a result that is contrary to the clear compliance intention of that penalty law.
42. To be special circumstances, the circumstances in question must apply to the particular individual and not be general circumstances that apply to many taxpayers by virtue of the penalty legislation.
43. Mr Buteux makes several statements about his circumstances in the appeal letters to support his view that he should not have been charged a penalty under schedule 56 FA 2009, as follows:
- *Effectively, you have not given me notice to pay. IT issues with your system?*
 - *On 5 July 2019 I submitted tax return for 2017-18 on time, as your systems show.*
 - *I was not advised when submitting of the payment terms for the quite considerable sum/owed.*
 - *I have not received any correspondence advising me therefore of how to pay this amount noting the above date is clearly incorrect.*
 - *In your penalty notice, you advised that the penalty related to unpaid tax as of 14th July 2019.*
44. As the Notice to File the tax return was issued late (after 31 October), Mr Buteux was given 3 months and 7 days to submit his tax return pursuant to S. 59 B B1 TMA 1970.
45. However, HMRC considers that when the penalty notice was issued Mr Buteux was made aware of the payment being overdue.
46. The due date for payment for self-assessment tax liabilities is set out in statute and readily ascertainable. Statute is clear that it is the taxpayer's responsibility to comply with such due date and there is no statutory obligation on HMRC to notify a taxpayer of the due date for payment. A failure on the part of a taxpayer to correctly establish the due date for payment is not, therefore, a reasonable excuse for late payment of a self-assessment tax liability.
47. It is clear that when the taxpayer filed his return on 5 July, he was told that he should have paid his tax on 31 January 2019. However, an error was made in the calculation of his tax liability and his review letter from HMRC was not clear on the decision made. There are elementary mistakes and while the Appellant should obey the law and deadlines for payment and filings, he was not helped by HMRC when he sought help to understand his payment obligations. In the circumstances, the penalty of £108 is reduce by 50% given these errors.

48. Where a person appeals against the amount of a penalty, paragraph 15(2) and (3) of Schedule 56, FA 2009 provide the tribunal with the power to substitute HMRC's decision with another decision that HMRC had the power to make. The tribunal may rely on paragraph 9 (Special Reduction) but only if they think HMRC's decision was 'flawed when considered in the light of the principles applicable in proceedings for judicial review. The Tribunal has used this power to reduce the penalty.

CONCLUSION

49. The Tribunal finds as fact that the Appellant did not have a reasonable excuse for the failure to pay his tax on time.

50. The Tribunal finds that there are special circumstances which would allow the penalty to be reduced. It is accordingly reduced by 50% to £54.00.

51. Appeal allowed in part.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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.

DR KAMEEL KHAN

TRIBUNAL JUDGE

RELEASE DATE: 21 MAY 2020