



TC01293

Appeal number: TC/2011/00832

Appeal against the first surcharge imposed because of the late payment of tax Appellant claimed that that the tax unpaid arose as a result of only basic rate tax being deducted from his redundancy payment whereas a 40% deduction should have applied – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

GERARD MCCANN

Appellant

- and -

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

Respondents

TRIBUNAL: S.M.G.RADFORD (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 20 April 2011 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 25 January 2011, HMRC's Statement of Case submitted on 3 March 2011 and the Appellant's Reply dated 17 March 2011.

DECISION

1. This is an appeal against the first surcharge imposed in an amount of £1,572.75 because of the late payment of tax due for the tax year ending 5 April 2009.

5 **Background and facts**

2. The tax return for the relevant year was filed online on 8 April 2010. The due date for an online return was 31 January 2010.

3. The HMRC online system calculated the 2008/09 tax liability as £33,777.80 payable by 31 January 2010. The liability was paid in full on 23 April 2010 and the
10 surcharge for the late payment arose on the trigger date of 28 February 2010.

4. A surcharge notice in the sum of £1,688.89 was issued on 13 May 2010.

5. On 27 May 2010 the Appellant appealed against the surcharge.

6. As a result of a claim to “error or mistake relief” the return was amended on 21
15 December 2010 which reduced the tax liability and consequently the surcharge was reduced to £1,572.75.

Legislation

7. Section 86 of the Taxes Management Act 1970 (“TMA”) provides for the payment of interest for late payment.

8. Sections 59C(2) and 59C(3) TMA provide for the imposition of surcharges on tax
20 paid late.

Appellant’s Submissions

9. The Appellant claimed that the tax unpaid arose as a result of only basic rate tax being deducted from his redundancy ex gratia payment whereas a 40% deduction should have applied. In addition no tax had been deducted in respect of share options
25 which he exercised that year.

10. He had been late filing the return because he wanted to be sure that it was correct and he had struggled to reconcile the P60 information.

11. The Appellant contended that even for someone with a tax background like himself, the circumstances of his 2008/09 tax return were extremely demanding. He
30 wanted to ensure that his return was correct but even using HMRC software he had encountered exceptional difficulties.

12. Eventually it was realised that his P60 was incorrect and the Appellant filed his return using the correct information.

13. The Appellant accepted that he should have started completing his tax return earlier but the circumstances of his departure from BP were traumatic and painful and he could not initially face trawling through the relevant papers and correspondence.

5 14. The Appellant submitted that HMRC were acting unreasonably particularly having regard to the incorrect P60 he had received from BP and what he believed from his conversations with BP Pensions was a non statutory basis of the PAYE deduction from his redundancy payment.

10 15. The Appellant submitted that whilst he did not dispute the fact that his tax return and payment were late and interest should apply, he felt that the surcharge was, in the circumstances, inappropriate and excessive.

HMRC's Submissions

15 16. HMRC confirmed that it was standard practice that only basic rate tax is applied to redundancy payments if they are made after the employee has left the employment with the onus on the employee to take all action necessary to resolve any net under or over payment of tax.

17. This means that employees who are higher rate tax payers have to account to HMRC for any tax shortfall at the end of the tax year when they complete their next tax return. The Appellant's submission at 14 above was therefore incorrect.

20 18. As the Appellant was within the self assessment regime he was not disadvantaged by the basic rate deduction as any untaxed income would be accounted for on his self assessment tax return and paid under the self assessment legislation.

25 19. HMRC submitted that the Appellant knew the consequences of not paying his tax on time and that if there were any problems he could have contacted HMRC before 28 February 2010 however records showed that the Appellant did not contact HMRC until appealing against the surcharge on 2 June 2010.

20. HMRC submitted that the Appellant had admitted that he could have filed a provisional return pending resolution of the P60 error.

30 21. HMRC submitted that the Appellant as both a higher rate taxpayer for many years and someone experienced within the self assessment system should have been clearly aware upon receipt of his P60 that the tax deducted by his employer was inadequate to cover his 2008/09 tax liability. He chose however to investigate the matter himself despite being aware of the filing and payment deadlines.

22. The Appellant was not relieved of his obligation to file a return merely because he was unable to produce the final figures needed for the return by the filing date.

35 23. The Appellant had the use of the money for some time and to cancel the financial advantage gained by those taxpayers who pay late over those who pay on time, Section 86 of the Taxes Management Act 1970 ("TMA") provides for the payment of interest for late payment.

24. Sections 59C(2) and 59C(3) TMA provide for the imposition of surcharges. A balance of £31,455 in relation to the 2008/09 tax liability was due to be paid on or before 31 January 2010 and was still outstanding on 28 February 2010 therefore the 5% surcharge was correctly imposed.

5 25. HMRC submitted that in the case of *Dunk v General Commissioners* it was held that the obligation was to make a return which was to the best of the Appellant's knowledge complete and correct. A taxpayer unable to provide final figures can satisfy the filing obligation by providing a return that includes figures estimated to the best of his or her knowledge.

10 26. HMRC submitted that the Appellant, who by his own admission took his tax obligations very seriously, could have filed the return online with provisional figures whereupon the online system would have calculated the tax due thus enabling the estimated amount of tax to be paid by the due date; or, with his experience in tax matters and knowing when his tax was due and knowing the consequences of a late payment, estimated the amount due and paid it before the surcharge trigger date.

15 27. HMRC submitted that it had also been open to the Appellant to arrange a time to pay arrangement before the surcharge trigger date.

Findings

20 28. The Tribunal found that the Appellant had no reasonable excuse for the late payment of the tax. Ignorance of the law is no excuse and it was open to him to contact BP at the time he received his P60 or soon afterwards when he could not reconcile it.

29. The Appellant should have been aware that the tax deducted by BP was inadequate to cover his 2008/09 liability.

25 30. It is standard practice for only basic rate tax to be deducted from a redundancy payment made after the employee has left the employment with the onus on the employee to take all action necessary to resolve any net under or over payment of tax. For instance if the redundancy took place soon after the start of the tax year and the employee was unable to find another employment during that year then it might be the case that no further tax was due for that year apart from the basic rate deducted;

30 alternatively the employee might even be due a refund.

Decision

31. The appeal is dismissed and the surcharge is hereby confirmed.

35 32. 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.

A handwritten signature in black ink, appearing to read "Emily Redford". The signature is written in a cursive, flowing style.

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TRIBUNAL JUDGE
RELEASE DATE: 5 JULY 2011

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