



TC02013

Appeal number TC2011/01915

Reasonable excuse. Surcharge.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR JOHN LONDAL

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE GERAINT JONES Q. C.
RICHARD THOMAS ESQ**

Sitting in public at 45 Bedford Square, London WC1 on 05 March 2012.

Mr Levitt of Haslen Fentons LLP for the Appellant

**Mr. Reeve, instructed by the General Counsel and Solicitor to HM Revenue and
Customs, for the Respondents**

DECISION

1. The appellant, Mr Londal, appeals against a surcharge in the sum of £27,969.17 sought against him by the respondent. It arises in this way. In 2008 the respondent
5 enquired into the appellant's tax return for the tax year 2004/2005. We need not go into the detail of that enquiry, save to say that it related to whether or not property transferred into a FURBS scheme fell out of liability to tax. It suffices for us to say that that became a contentious issue between the appellant, three other people and the respondent. It further suffices for us to say that it was a difficult and complicated issue
10 which, in the end, was resolved against the appellant. The upshot of that issue being resolved against the appellant was that he had an additional tax liability for the year 2004/2005, which has now been paid, together with interest thereon.
2. Notwithstanding that there had been a genuine and understandable issue that needed to be resolved prior to the final tax figure becoming known, the respondent
15 demanded a surcharge in the sum mentioned above.
3. The appellant sought a review of that decision which did not vary the sum demanded. Accordingly, the appellant has appealed to this Tribunal.
4. It is common ground between the parties that section 59C(9) Taxes Management Act 1970 provides that a surcharge shall be set aside if, throughout the period of
20 default, the taxpayer has had a reasonable excuse for not paying the tax.
5. On 15 October 2008 the respondent amended the appellant's tax return for 2004/2005 with the result that just short of an additional £300,000 was due to be paid.
6. On or about 1 August 2008 the appellant had deposited £1 million in a deposit
25 account at Kaupthing Bank. He deposited an additional £100,000 into account on 31 August 2008. He was extremely unfortunate because that bank went into liquidation on 9 October 2008. The story of how banks have gone into liquidation, both in the Isle of Man and Iceland, has been well documented in the respectable press. The recent difficulties with banks has been a wakeup call to many who thought that banks were both respectable and guaranteed to repay monies deposited with them, in accordance
30 with the contractual arrangements in respect of such deposits. There are now few who have such blind faith.
7. It is the appellant's case that the £1.1 million represented all his liquid assets or savings and that when the additional tax was payable, he was unable to pay it until
35 such time as he had received monies from the liquidator of the ill fated bank to which he had entrusted his money.
8. At the hearing before us Mr Reeve cross examined the appellant on the basis that he might have been able to release funds by borrowing. Presumably, that was a reference to commercial borrowing against the security of the appellant's house. We reject that as a matter for our consideration because it was speculative cross
40 examination not based upon any evidence that a person of the appellant's mature years would have been able to borrow the necessary funds or that his wife, a co-owner of

the matrimonial home, would have been willing to execute a first legal charge in favour of any intended lender.

9. The appellant's case is that he had a reasonable excuse for the late payment of the tax, which, by 17 November 2008, it had been decided was lawfully due and payable.
5 The appellant acknowledges that impecuniosity is not a reasonable excuse. However, the underlying cause of impecuniosity may amount to a reasonable excuse. The intention of Parliament has been to prevent those whose impecuniosity has been caused by an excess of good living, from praying in aid such lack of funds. This Tribunal has held that where the impecuniosity has arisen as a result of some
10 unexpected or unusual event, that unexpected or unusual event may itself feed the argument that a reasonable excuse for non-payment exists.

10. In this case the appellant says that the reasonable excuse is that the funds with which he could have paid any tax were deposited in a bank where he believed his monies to be safe and available to him upon demand but which, we all now know,
15 proved to be misplaced faith. There can be no suggestion that the appellant was in any way responsible for the misfortune that befell him because, prior to the bitter experience of banks collapsing or almost collapsing, over the last four or five years, that was an experience almost unknown in the Western world, at least since the burst of the South Sea Bubble.

20 11. At the hearing before us progressed it was plain that the appellant may have had the makings of a good case based upon him having a reasonable excuse for late payment. However, what was not clear, was when he received monies from the liquidator and when he received such monies. In those circumstances we offered the appellant an opportunity to submit a chronology, together with supporting documents,
25 which has now happened. We gave each side the opportunity to submit further written submissions once any such further material had been made available.

12. The documents provided to us support the appellant's case that he had made the deposit with Kaupthing Bank. The liquidator of that bank wrote to the appellant (and probably many others) on 4 September 2009 admitting that the bank had owed him
30 £1,283,761.80p and stating that a first interim distribution of 24.8% was being paid to his bank account, in the sum of £310,852.93. It appears that £200,000 of that money was placed on deposit with Brown Shipley and £114,000 was paid to the respondent within a reasonable time thereafter.

13. The appellant received a second distribution from the bank's liquidator in the sum
35 of £196,651.79 on 8 December 2009. On 26 February 2010 he paid a further £162,330.66 to the respondent. We do not consider that delay to be unreasonable given the intervention of the festive holiday season and/or to be sufficient to negate any argument about there being a reasonable excuse based upon the non-availability of funds caused by the bank collapsed which we have referred.

40 14. The letter dated 6 March 2012 from the appellant's accountants refers to the fact that on 8 October 2008 the appellant attempted to transfer £1,213,302.44p to Brown Shipley but that because the provisional liquidator was appointed on 9 October 2008,

that transaction was reversed and the monies did not get transferred to Brown Shipley. That is apparent on the face of the bank statement, where a reversal of the entry is to be seen. Thus it would not be right for us to proceed on the basis that that sum was transferred to some other deposit account and was available for the appellant's use.

5 15. However, when the appellant gave evidence he told us that there were no other funds from which the additionally assessed tax could be paid. We take the date of due payment as late 2008, the appellant's appeal against the increased liability having failed on 17 November 2008.

10 16. One of the documents sent to us, in support of the further submissions, is the appellant's bank statement for his Kaupthing account between 1 August 2008 – 9 October 2008. It shows that on 8 October 2008 the appellant tried to transfer £1,213,302.44 to a bank account at Brown Shipley, as he told us in his evidence and as referred to by his accountants.

15 17. On behalf of the respondent, Mr Reeve has pointed out that the respondent's records show that for the tax year ended 5 April 2009 the appellant disclosed that he had received interest from Brown Shipley and ING Direct totalling £9813.83. We do not know the rate at which interest was paid on any monies deposited by the appellant with those institutions or for how long any such deposits were maintained. However, it causes us to regard the appellant's evidence, that he had no other funds available with which the tax could be paid, with scepticism. If interest had been earned at, say, 20 2.5% throughout a complete year, that would indicate a sum on deposit of around £275,000. That capital figure could be higher or lower depending upon the precise interest rate. It should also be recorded that the interest received from Brown Shipley was paid on balances held in seven different accounts held at that institution and one 25 account held with ING Direct.

18. It seems to us that the appropriate inference that we must draw is that, contrary to what the appellant said during his evidence, he did have other funds available from which virtually all of the additional tax could have been paid quite regardless of his difficulties with his deposit at Kaupthing. On that basis, this appeal must fail.

30 19. However, we are acutely aware that the additional information concerning monies on deposit at Brown Shipley and ING Direct has arisen as a result of the further written submissions submitted by Mr Reeve, upon which the appellant has not commented. We are concerned that there might be an explanation concerning those deposits, which demonstrates that, for a reason presently unknown to us, that money 35 was no longer available to the appellant and, thus, when he said in cross examination that he had no other funds from which the tax could be paid, that was and remains a truthful and accurate statement.

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24. Because we are troubled by the fact that the appellant has not had an opportunity to deal with that point, this appeal will be dismissed but the appellant is at liberty, within 28 days of receiving this Decision, to apply to the same constitution of this
5 Tribunal to set aside its Decision and/or to reconsider it in the light of such further explanations or material as the appellant may see fit to put forward. It will be for the Tribunal to consider whether any such further explanations or material can be dealt with purely on paper, or whether a further hearing will need to be convened.

25. This document contains full findings of fact and reasons for the decision. Any
10 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
15 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

Decision.

26. Appeal dismissed but the appellant is at liberty, within 28 days of receiving this
20 Decision, to apply to the same constitution of this Tribunal to set aside its Decision and/or to reconsider it in the light of such further explanations or material as the appellant may see fit to put forward. It will be for the Tribunal to consider whether any such further explanations or material can be dealt with purely on paper, or whether a further hearing will need to be convened.

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**GERAINT JONES Q.C.
TRIBUNAL JUDGE**

RELEASE DATE: 01 May 2012

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