



**TC03524**

**Appeal number: TC/2013/02436**

*Late payment surcharges – self-assessed tax payments due – application for late appeal – reasonable excuse for late payments – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PAUL A WILLIAMS**

**Appellant**

**- and -**

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

**TRIBUNAL      JUDGE MALACHY CORNWELL-KELLY  
                         MRS JANET WILKINS**

**Sitting in public at 45 Bedford Square, London, on 3 April 2014**

**The taxpayer did not appear and was not represented**

**Ms Beverly Levy of HMRC for the Crown**

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## DECISION

1 We were satisfied under Rule 33 that the taxpayer had been notified of the hearing  
and that, given that we were in possession of all the taxpayer's written evidence, it  
was in the interests of justice to proceed with the appeal. We must note however that  
5 the task of piecing together the evidence from the documentation available would  
have been considerably easier if the taxpayer had attended the hearing of his appeal; it  
would also have been easier if the papers provided by HMRC had been a complete  
record of the correspondence of dealings with Mr Williams, which they were not.

### *Facts*

10 2 The case concerns an out of time application to appeal against late payment  
surcharges and, if the application is admitted, an appeal against the surcharges  
themselves. It helps to be clear at the outset that Mr Williams was a taxpayer whose  
returns were, as far as this appeal is concerned, self-assessment returns and as such  
the tax shown to be due on them was the tax payable; there were no relevant Revenue  
15 assessments, or amendments to the returns, and there is therefore no dispute as to the  
tax liability itself.

3 Mr Williams left the UK in December 2000 to live in Cyprus, having ceased trading  
in November 2000. Mr Williams says that he informed HMRC of his new address in  
Paphos, Cyprus and that his accountant presented his end of trading accounts to  
20 HMRC in January 2001. HMRC records show that his self-assessment return for  
1999-00 was submitted on 11 December 2000 and that his 2000-01 self-assessment  
return was submitted on 29 January 2002. This showed that there was an outstanding  
balance for 2000-01 payable on 31 January 2002 of £6,471.

25 4 Mr Williams provided the Tribunal with a copy of a statement of tax dated 14  
August 2001 showing the second payment of tax on account due for 2000/01 which  
he paid on 16 August 2001. He wrote to HMRC on 12 August 2002 stating that he  
did not believe that he owed any further tax. We have not been able to establish  
whether he had received any statements of account showing the balance due for  
30 payment on 31 January 2002.

5 In 2002, Mr Williams moved from Paphos to Limassol and claims that he informed  
HMRC of this further address. It appears that this change of address was not actioned  
and, receiving no more correspondence from HMRC, Mr Williams considered his UK  
35 tax affairs to be closed. Also in about May 2002, after suffering an accident which  
prevented him from working normally, Mr Williams invested all his funds in a local  
company for a three year period at interest, but regrettably he has still not succeeded  
in recovering them.

40 6 The same year, however, Mr Williams paid a visit to his property in the UK where  
he says he found a "letter" from HMRC relating to tax payments due; he replied to  
this letter on 12 August 2002 from his new address in Limassol saying that he had  
paid all tax due to that date. A surcharge of £323.55 for late payment had been issued  
on 26 April 2004 and it is probable that this was the "letter" to which Mr Williams  
45 was replying.

7 On 27 September 2002, a second surcharge was issued for £323.55. On 6  
November 2002, Mr Williams wrote again to HMRC (referring to his letter of 12  
August, and to one from HMRC of 24 September) explaining again his circumstances.

5 HMRC's records show that a "claim to reduce" was actioned on 15 November 2002 in respect of payments on account for 2001-02 which were not due following the cessation of Mr Williams' business. It seems probable that Mr Williams was then aware of the second surcharge, which would have been mentioned in whatever correspondence or notices from HMRC that he was replying to.

10 8 Mr Williams wrote on 24 March 2005 to HMRC that he had visited his "old Post Box in Paphos which I closed nearly 3 years ago" and had found there a tax statement; but he made no comment on it, merely adding that "I move a lot therefore any correspondence should be sent to [an address in Limassol]". In 2006, the government of Cyprus received a mutual assistance request from the British government to assist in the collection of unpaid tax and Mr Williams was made fully aware then what his position was and of the surcharges.

15 9 On 21 May 2007, HMRC wrote to Mr Williams reviewing what had happened. The letter explained that although he had made two payments on account for 2000-01, there was a balance for that year which was still unpaid and that this was the payment the Cyprus authorities were trying to recover and which had incurred the surcharges. There seem to have been further exchanges between Mr Williams and HMRC  
20 concluding, as far as this appeal is concerned, with a letter from HMRC on 15 August 2012 informing Mr Williams that they would not accept a late appeal against the surcharges. Mr Williams alleges that he was repeatedly told that he could not appeal until all the tax he owed had been paid; he has now returned to the UK and is paying his arrears by instalments.

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#### *Legislation*

10 The Taxes Management Act 1970 provides:-

#### **49 Late notice of appeal**

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(1) This section applies in a case where—

(a) notice of appeal may be given to HMRC, but

(b) no notice is given before the relevant time limit.

(2) Notice may be given after the relevant time limit if—

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(a) HMRC agree, or

(b) where HMRC do not agree, the tribunal gives permission.

(3) If the following conditions are met, HMRC shall agree to notice being given after the relevant time limit.

(4) Condition A is that the appellant has made a request in writing to HMRC to agree to the notice being given.

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(5) Condition B is that HMRC are satisfied that there was reasonable excuse for not giving the notice before the relevant time limit.

(6) Condition C is that HMRC are satisfied that request under subsection (4) was made without unreasonable delay after the reasonable excuse ceased.

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(7) If a request of the kind referred to in subsection (4) is made, HMRC must notify the appellant whether or not HMRC agree to the appellant giving notice of appeal after the relevant time limit.

(8) In this section "*relevant time limit*", in relation to notice of appeal, means the time before which the notice is to be given (but for this section).

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#### **118 Interpretation.**

(2) For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within

5 such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased.

*Conclusions*

*– application to admit a late appeal*

10 11 We can be confident that Mr Williams was aware of both surcharges at issue by at least a date in 2006, and probably by March in 2005 when he visited his old post box in Paphos. There is therefore a long gap between, at best, 2006 and the date sometime in 2012 (it is not recorded in HMRC’s letter of 15 August 2012) when Mr Williams first applied for leave to appeal out of time against the surcharges. On the other hand, 15 there is the assertion by Mr Williams that he was repeatedly told – at least until sometime in 2012 – that he could not appeal until he had paid all the tax due, and it seems to us right to give the taxpayer here the benefit of the doubt and to admit a late appeal against the two surcharges.

20 *– the surcharges*

12 Unfortunately for Mr Williams, however, that is as far as we can take it. The tax HMRC have been trying to collect was all tax which the self-assessment returns had shown as being due, and the evidence we have points simply to Mr Williams not realising the extent of his arrear. Whether that was due to lack of advice from his 25 accountant or to some other cause is not clear, but there is no basis on which we can find that there was a reasonable excuse for the late payments.

13 It is true that the circumstance of Mr Williams having invested his money in Cyprus in 2002 for three years, thinking that he had no outstanding tax debts, meant 30 that when the existence of the debts finally became clear to him he was not in a position to pay them off. But these debts existed before that point and the fact of the investment in 2002 was not material to his pre-existing failure to take them into account. The appeal against the surcharges must therefore be dismissed.

35 *Further appeal rights*

14 The taxpayer, not having been present or represented at the hearing of this appeal, is entitled pursuant to Rule 38 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 to make an application in writing to be received by the tribunal no later than 28 days after this Decision is sent to it for the Decision to be set aside 40 and remade.

15 This document contains the full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply in writing 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 the tribunal no later than 45 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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**MALACHY CORNWELL-KELLY  
TRIBUNAL JUDGE**

**RELEASE DATE: 23 April 2014**

