



TC03654

Appeal number: TC/2013/09469

Income Tax - Section 59C Taxes Management Act 1970 - surcharges for late payment of tax - whether reasonable excuse - no - appeal disallowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PACITA RIDLEY

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE MICHAEL S CONNELL

The Tribunal determined the appeal on 15 April 2014 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 12 December 2013 and HMRC's Statement of Case submitted on 17 January 2014, the Appellant submitting a Reply on 27 January 2014.

DECISION

The Appeal

- 5 1. This is an appeal by Patrica Ridley ('the Appellant') against surcharges imposed under s 59C Taxes Management Act ('TMA') 1970 following the late payment of tax for the year ending 5 April 2009.
2. Under s 59B(4) TMA 1970 the due date for the payment of the amount of self-assessment tax as required by s 9 TMA 1970 is 31 January following the year of assessment.
- 10 3. Under s 59C(2) TMA 1970, where any tax remains unpaid on the day following the expiry of 28 days from the due date the taxpayer shall be liable to a surcharge equal to 5% of the unpaid tax at that date and, under sub-section (3), where any other tax remains unpaid 6 months after the due date the taxpayer shall be liable to a further surcharge of 5% of the unpaid tax at that date.

15 Background facts

4. In the tax year ending 5 April 2010, the Appellant was employed by Royal Holloway University, Compass Group and Surecare North & Mid Surrey.
5. The personal allowance for 2009-10 was £6,475. If full personal allowance was attributed to an employment, the tax code operated would be 647L and if no personal
20 allowance was attributed the tax code operated would be BR.
6. In the Appellant's case, two of her employers operated tax code 647L, meaning that she availed of double the permitted personal allowance for 2009-10 resulting in an underpayment of tax for the year.
7. When HMRC receives employer P14 details for a taxpayer the records are
25 reconciled to ensure the correct amount of tax has been paid. If it appears that the right amount of tax has not been paid, HMRC will issue a P800 Tax Calculation to explain what HMRC considers the correct amount of tax to be and whether the taxpayer has paid too much or too little.
8. To ensure the correct amount of tax would be collected in future years the
30 Appellant's employers were sent coding notices instructing that full allowances be given at Royal Holloway University only; all others would operate code BR.
9. In this case, although the coding change would ensure there would be no further PAYE underpayments in future tax years, it was not to facilitate collection of the 2009-10 underpayment.
- 35 10. HMRC issued a P800 to the Appellant on 6 February 2011, showing that she had underpaid tax for the 2009-10 tax year.

11. On 17 February 2011 HMRC issued a follow up letter and pay slip to the Appellant, requesting her to pay the tax owed and advising that if she was unable to do so the tax would be collected through the Self-Assessment tax system.
- 5 12. On 2 March 2011 the Appellant telephoned HMRC to enquire about the underpayment, and if it could be spread over three years. She was told the underpayment had resulted from her receiving duplicate allowances and a letter was sent to her to explain why the payment could not be coded out.
- 10 13. As no payment was received, HMRC issued a further letter to the Appellant on 21 November 2011 advising her that if full payment was not made the tax would be collected through the Self-Assessment tax system, which would mean she would have to complete a Self-Assessment tax return.
14. As no response was received, HMRC set up a Self-Assessment record for the Appellant on 20 December 2011. The return for the year ending 5 April 2010 was issued to the Appellant on 20 December 2011.
- 15 15. The filing date was 27 March 2012 for both a non-electronic and electronic return.
16. The Appellant's non-electronic return for the year ending 5 April 2010 was received on 12 August 2013 and processed on 22 August 2013.
- 20 17. The Appellant's tax liability for the year was £1,297.80. The tax was due to be paid on or before 27 March 2012 in accordance with s 59B(3) TMA 1970.
18. At both the first and second surcharge trigger dates £1,297.80 of the tax liability remained unpaid.
19. HMRC issued the Appellant with a surcharge notice on 3 September 2013; this notice was for the first (£64.89) and second (£64.89) surcharges totalling £129.78.
- 25 20. When the Appellant's tax return for the year ended 5 April 2013 was processed, it showed a tax overpayment of £124.20. This was set against her 2009-10 tax liability, leaving the sum of £1,173.60 due.
21. On 13 September 2013 the Appellant wrote to HMRC, stating:
- I have received your letter dated the 30th of August 2013, a copy enclosed.
- 30 The sum for the tax years 2009-2010, was paid in full in the summer of 2011.
- I enclose a copy of the adjudication letter from Newcastle HMRC, where all tax returns were received, and an adjudication made that all penalties have been cancelled. I have also been informed that I will never again receive self-assessment tax forms.'
- 35 22. As a copy of the late payment surcharge notice was attached to the Appellant's letter, HMRC treated this letter as an appeal against the surcharges for the year ended 5 April 2010.

23. The letter issued by HMRC on 30 August 2013, as referred to by the Appellant, relates to late filing penalties charged for the years 2010-11 and 2011-12 and has no bearing on the late payment surcharges for 2009-10.

5 24. HMRC sent the Appellant a letter on 24 September 2013 rejecting the surcharge appeal and offering a review.

25. On 30 September 2013 the Appellant requested a review, further stating:

- 1) 'The arrears have already been paid for the tax years 2009 — 2010. This was done in July 2011.
- 10 2) I should never have had self-assessment forms. This has been duly confirmed by HMRC Newcastle, who state I will no longer be self-assessed.
- 3) I sent all papers, forms to Newcastle all way back to tax years 2007 — they state all payment charges have been dropped.'

15 HMRC carried out a review of the late payment surcharges and issued their review conclusion on 14 November 2013. The outcome of the review was that the surcharges had been correctly charged.

26. The £1,173.60 tax liability for the year ended 5 April 2010 remained unpaid as of the date HMRC prepared its summary of the facts in its Statement of Case dated 17 January 2014.

20 27. The period of default is defined at s 59C(12) TMA 1970 and means the period beginning with the due date and ending with the day before the tax due was paid. In this instance, the period is from 27 March 2012 to 16 January 2014 (being the date before the date of HMRC's Statement of Case), that is 661 days.

The Appellant's contentions

25 28. On 12 December 2013 the Tribunal received an appeal from the Appellant. The grounds of appeal were:

- 'HMRC's decision is wrong, I have never earned more than £30,000 - £35,000 in tax in all the time I have worked.'
- 'I should never have received a self-assessment form in the first place, as I was being taxed by PAYE.'
- 30 • 'I submitted all tax returns from 2007/2008, and Newcastle HMRC did an investigation, and stated all charges had been dropped.'
- 'I also never received a SA102 form to submit my returns, and was under the impression I did not need to submit a return.'
- 35 • 'The underpayment was already paid back in 2010 as it was taken direct from my salary at source.'

HMRC's contentions

29. From the Tribunal Notice of Appeal, it would appear that, in addition to the surcharges, the Appellant is effectively appealing the tax liability derived from her self-assessment for the year ended 5 April 2010 and interest. However, there is no provision in statute for an appeal against self-assessment. The Appellant made the self-assessment in her own figures and HMRC only processed the data when received. If a right of appeal were allowed this would mean that the Appellant would in fact be appealing against her own figures that she herself had put on the tax return.
30. To cancel the financial advantage gained by those customers who pay late over those who pay on time, s 86 TMA 1970 provides that where income tax is paid late it shall carry interest at the appropriate rate from the relevant date until payment. In addition to interest on tax paid late, and to encourage prompt payment, surcharges are imposed under Sections 59C(2) and 59C(3) TMA 1970.
31. There is no mechanism in the Taxes Acts that would allow the Appellant to appeal against interest charged. Interest objections are the subject of internal checks by HMRC and may be lodged via the Appellant's local HMRC office once the tax has been paid in full.
32. In HMRC's view the only appealable decision that is within the jurisdiction of the Tribunal is with regard to the late payment surcharges for 2009-10. In this regard, HMRC believe the Appellant's first ground of appeal is that she should never have received a Self-Assessment form in the first place, as she was being taxed through the PAYE system.
33. For the purpose of establishing the amount in which a person is chargeable to income tax, HMRC may request them to make and deliver a Self-Assessment tax return in accordance with s 8 TMA 1970. The Appellant was placed within the Self-Assessment system to collect a PAYE underpayment as sufficient tax had not been deducted at source and could not be coded out.
34. The Appellant's SA tax liability for the year ended 5 April 2010 was a result of her chargeable income for that year minus any tax deducted at source; she has not incurred any additional tax which she is not liable to.
35. HMRC records show that:
1. The Appellant was advised of the underpayment by P800 issued on 6 February 2011.
 2. Additional information and a payment slip was sent to her on 17 February 2011.
 3. When the Appellant telephoned HMRC on 2 March 2011, she was advised why the underpayment had occurred and a further letter was sent to her advising why the underpayment could not be coded out.

4. On 21 November 2011 the Appellant was advised by letter that if the underpayment was not paid in full the tax would be collected through the Self-Assessment tax system, which would mean she would have to complete a Self-Assessment tax return.

5 36. It is therefore reasonable to conclude that the Appellant was fully aware why she needed to complete a tax return for the year ended 5 April 2010,

37. The Appellant's second ground of appeal is that she submitted all tax returns and HMRC Newcastle stated all charges had been dropped. HMRC says that late filing penalties were charged in relation to the tax years ending 5 April 2011 and 5 April 10 2012 and after appeal these penalties were cancelled by HMRC Newcastle. The Appellant also appealed these penalties to the Tribunal under reference TC-2013/04710. On 16 January 2014 HMRC requested the Tribunal close their case as the appeal had been settled.

15 38. The cancellation of the late filing penalties for 2010-11 and 2011-12 have no bearing on this appeal; they were cancelled as returns for those years were not required. The Appellant's employers had operated the correct tax codes for those years, therefore there were no underpayments.

39. The Appellant's third ground of appeal is that she never received a SA102 form and was under the impression she did not need to submit a return.

20 40. HMRC says that as previously stated due to the information sent to the Appellant and the telephone discussion, the Appellant would have been fully aware why she needed to complete a 2009-10 Self-Assessment tax return.

25 41. The SA102 is a tax return supplementary page relating to Employment and can be downloaded directly from the HMRC website. There is no record of the Appellant contacting HMRC to request a SA102 or to advise that one was missing from her 2009-10 tax return. However HMRC records do show that Mr Ridley telephoned on 1 May 2013 to advise that his wife had not received a SA102 for the 2012-13 tax year.

42. The Appellant's fourth ground of appeal is that the underpayment was paid back directly from her salary at source.

30 43. HMRC contends that the Appellant was set up within the Self-Assessment tax system in order for her PAYE underpayment to be collected. Due to the tax code change the Appellant would have paid more tax at source. However this coding change only ensured she paid the correct amount of tax via PAYE from that point on. The coding change and the subsequent increase in tax paid was not therefore a 35 mechanism with which to collect the 2009-10 underpayment.

44. Under the Self-Assessment regime it is for the taxpayer to self-assess the amount of tax due, and make payment on time. The Appellant assumed that the increase in tax paid at source was to collect the underpayment, but this cannot be deemed a reasonable excuse for the non-payment of her 2009-10 tax liability.

45. In summary, the Appellant completed a Self-Assessment tax return for the year ending 5 April 2010; which was received by HMRC on 12 August 2013 and processed on 22 August 2013 using the figures she provided. Based on these figures a tax liability of £1,297.80 was calculated, which was due to be paid by 27 March 2012.
5 However as of the date HMRC prepared its statement of case, 17 January 2014, £1,173.60 of the tax liability remained outstanding.

46. HMRC therefore says that the surcharges have been correctly imposed in line with legislation.

Conclusions

10 47. The Appellant's tax liability for the year ended 5 April 2010 derived from her self-assessment. As HMRC say, there is no provision in statute for an appeal against self-assessment. The absence of any legislation means there is no avenue for appeal. Section 31(1)(d) TMA 1970 states an appeal may be brought against any assessment to tax, which is not a self-assessment. The Appellant made the self-assessment in her
15 own figures and HMRC only processed the data when received. Similarly, legislation does not provide an avenue of appeal against interest on late payments.

48. The Appellant would have been fully aware that it was necessary for her to complete a 2009-10 Self-Assessment tax return.

20 49. The only appealable decision is with regard to the late payment surcharges for 2009-10. The Tribunal agrees with HMRC's submission that the Appellant's Self-Assessment tax liability for the year ended 5 April 2010 was a result of her chargeable income for that year minus any tax deducted at source and that she has not incurred any additional tax which she is not liable to.

25 50. The Tribunal also concurs that the cancellation of the late filing penalties for 2010-11 and 2011-12 have no bearing on this appeal, The Appellant's employers had operated the correct tax codes for those years, therefore there were no underpayments. The penalties were cancelled because returns for those years were not required.

30 51. The Appellant says that the underpayment was paid back directly from her salary at source. However she must have been aware of the reason why that is not correct. Two of her employers operated tax code 647L meaning that she availed of double the permitted personal allowance for 2009-10 resulting in an underpayment of tax for the year. It was for that reason that a tax liability of £1,297.80 was created, which was due to be paid by 27 March 2012 of which £1,173.60 remained outstanding.

52. For the above reasons the appeal is dismissed.

35 57. 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.

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MICHAEL S CONNELL
TRIBUNAL JUDGE

RELEASE DATE: 30 May 2014

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