



**TC03928**

**Appeal number: TC/2014/00237**

*Income tax – penalty for late payment – Appellant assumed time to pay arrangement for earlier debt would continue – whether reasonable excuse – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LEN ATTARD**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE MICHEL S CONNELL**

**The Tribunal determined the appeal on 30 May 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 notification of Appeal dated 21 February 2014, and HMRC's Statement of Case received on 15 April 2014, the Appellant submitting no response.**

## DECISION

### The Appeal

1. Len Attard ('the Appellant') appeals against:

5 i. A first late payment penalty of £53 imposed under Paragraph 3(2) of Schedule 56 Finance Act (FA) 2009 for the failure to pay tax on time for the year ending 5 April 2012.

10 ii. A second late payment penalty of £53 imposed under Paragraph 3(3) of Schedule 56 Finance Act (FA) 2009 for the failure to pay tax on time for the year ending 5 April 2012.

2. In addition to the first and second late payment penalties, HMRC imposed a third late payment penalty in the amount of £53 on 25 February 2014 under Paragraph 3(4) of Schedule 56 Finance Act (FA) 2009 for the failure to pay tax on time for the year ending 5 April 2012. This penalty is not under appeal.

3. The point at issue is whether the Appellant has a reasonable excuse for making late the payment.

### Background

20 4. A notice to file for the year ending 5 April 2012 was issued to the Appellant on 6 April 2012. The filing date was 31 October 2012 for a non-electronic return or 31 January 2013 for an electronic return.

5. The Appellant's electronic return for the year 2011-12 was received on 31 January 2013 and was processed on 4 February 2013.

25 6. The Appellant chose to calculate his liability and therefore knew the sum to pay by the due date. He filed online. His tax liability for the year was £1,078.68.

7. The tax was due to be paid on or before 31 January 2013 in accordance with Section 59E3(4) TMA 1970.

30 8. At the penalty date of 3 March 2013, £1,078.68 of the tax liability remained unpaid.

9. Five months after the penalty date of 3 March 2013 the full tax liability remained unpaid.

10. Eleven months after the penalty date of 3 March 2013 the full tax liability remained unpaid.

35 11. Mr Attard's tax liability for the year ended 5 April 2012 remained unpaid as of the date of preparation of HMRC's statement of case, being 28 March 2014.

12. HMRC issued a notice of penalty assessment on or around 14 August 2013 in the amount of £53, being 5% of the tax unpaid at the penalty date.

13. HMRC issued a notice of penalty assessment on or around 14 August 2013 in the amount of £53, being 5% of the tax unpaid 5 months after the penalty date.

5 14. HMRC issued a notice of penalty assessment on or around 25 February 2014 in the amount of £53, being 5% of the tax unpaid 11 months after the penalty date (this penalty is not included in the appeal).

15 15. The onus of proof rests with HMRC to show that the penalties were correctly imposed. If so established, the onus then rests with the Appellant to demonstrate that there was reasonable excuse for late payment of the tax. The standard of proof is the ordinary civil standard of the balance of probabilities.

#### Appellant's contentions

16 16. The Appellant does not dispute that he failed to pay tax income tax on time for the year ending 5 April 2012. The Appellant's grounds of appeal to HMRC were that there was a time to pay arrangement in place; that he was paying £150 per month and this arrangement was stopped by HMRC when a further amount became due. The Appellant told HMRC that he needed the payment arrangement to continue otherwise he would go bankrupt.

17. HMRC carried out a review but decided that their decision should be upheld.

20 18. On 21 February 2014 the Appellant notified his appeal to the Tribunal, giving the grounds as:

25 "The Appellant is not appealing against a particular penalty amount, rather he is appealing against the imposition of a penalty charge and HMRC's policy which does not allow for a tax liability to be added onto an existing payment arrangement.

30 The Appellant states that the mere fact that a payment arrangement is in place signifies financial difficulties. Therefore The Appellant states that not to permit a further liability to be added to an existing payment arrangement is unnecessarily harsh."

#### HMRC's contentions

19. The Appellant has been filing self-assessment tax returns and making payments since 1996 when self-assessment was first introduced. This is not the first occasion on which the issue of late payment arose. Late payment surcharges were charged for the years ended 5 April 2006 and 2010. HMRC consider the Appellant to be experienced with the self-assessment system, the payment process and of the consequences of failing to pay on time.

20. Self-assessment places a greater degree of responsibility on customers for their own tax affairs. This includes ensuring that payment of the correct amount of tax and

National Insurance is made at the correct time. The tax guidance and HMRC website give ample warning about filing and payment deadlines and it is the taxpayer's responsibility to fulfil their obligations.

5 21. Self-assessment is based on voluntary compliance. HMRC charge penalties so that there is no advantage to taxpayers who pay late over those who pay in time. It is essential that taxpayers who pay the right amount of tax at the right time feel confident that the system does not reward non-compliance. HMRC do appreciate that there will always be some taxpayers who intend to pay on time but, for some genuine reason, fail to do so. The 30 day period before a penalty ensures that these taxpayers  
10 do not incur such a charge. Information about Self-assessment, the completion of returns, tax payment dates, late payment penalties, etc. is well within the public domain and widely available via HMRC's website, telephone helpline, enquiry centres and public notices.

15 22. In line with Paragraph 10 Schedule 56 Finance Act 2009, when someone does not have the means to make payment in full by the due date HMRC can consider and negotiate a deferred payment plan to clear the liability. In these circumstances customers can avoid a late payment penalty if they make payment proposals prior to the penalty date (30 days after the payment deadline) providing certain conditions are met.

20 23. A time to pay arrangement was agreed with Mr Attard to cover a debt which arose prior to the 2011-12 liability. Therefore this agreement did not include the debt of £1,078.68 that arose for 2011-12 and was due and payable on 31 January 2013. One of the conditions for granting a time to pay arrangement is that the taxpayer adheres to any time to pay arrangement already in place.

25 24. HMRC's records show that the Appellant defaulted on the time to pay agreement. He stopped making his monthly payments on his existing arrangement in August 2013 (a further payment was made in January 2014) and the new debt that arose for 2011-12 remains unpaid at today's date.

30 25. HMRC's records show that the possibility of adding the new debt for 2010-11 to the existing time to pay arrangement was discussed with the Appellant in March 2013. HMRC advised the Appellant that they would consider including the new debt within the existing arrangement if he agreed to increase the payments so that any outstanding debt would be cleared by January 2014 as per the original time to pay arrangement. However the Appellant informed HMRC that he was unable to raise additional funds  
35 from the bank or from friends. HMRC therefore advised him that the debt would be referred for recovery proceedings.

40 26. Penalties are applied in accordance with the legislation and are intended are to promote the efficient operation of the taxation system. The legislation at Paragraph 16(2) Schedule 56 FA 2009 states that an insufficiency of funds is not a reasonable excuse. While HMRC accept that the Appellant was experiencing financial hardship, the penalties were correctly charged in accordance with the legislation because the

Appellant failed to pay his tax liability by the payment deadline. The 2011-12 liability remains unpaid at the date HMRC prepared its submission for this appeal.

27. The law allows HMRC to reduce a penalty below the statutory minimum if they think it is right because of special circumstances. While ‘special circumstances’ are not defined, for circumstances to be special they must be ‘exceptional, abnormal or unusual’ (*Crabtree v Hinchcliffe*) or ‘something out of the ordinary run of events’ (*Clarks of Hove Ltd v Bakers' Union*).

28. HMRC have considered special reduction but their view is that there are no special circumstances which would allow them to reduce the penalty

## 10 Conclusion

29. The Appellant was clearly aware of the due date for payments of its income tax and the potential consequences of late payment.

30. The Appellant’s ground of appeal is that he had a time to pay arrangement to cover an earlier debt. Although this agreement did not include the new debt of £1,078.68 that was due and payable on 31 January 2013 the Appellant considers that HMRC should have allowed him to add this new debt to the previous one. However as HMRC say, one of the conditions for granting a time to pay arrangement is that the taxpayer adheres to any existing arrangement in place. Unfortunately the Appellant was in breach of the earlier arrangement.

31. A time to pay arrangement is entirely within the discretion of HMRC. The Appellant was advised that HMRC would consider including the new debt within the existing arrangement if he agreed to increase the payments due under the existing arrangement so that any outstanding debt would be cleared by January 2014 as per the original time to pay arrangement. The Appellant said that he was unable to agree to that.

32. An insufficiency of funds is not a reasonable excuse. Although the Appellant was experiencing financial difficulties, the penalties were correctly charged in accordance with the legislation. The burden of proof is on the Appellant to show that he has a reasonable excuse for the late payment of his income tax for 2011-12. In the Tribunal’s view, for the reasons given above, that burden has not been discharged.

33. The appeal is accordingly dismissed and the surcharge upheld.

34. 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: 18 August 2014**

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