



TC04167

Appeal number: TC/2012/08545

INCOME TAX - penalty for late payment of income tax due upon self assessment – whether there was a “reasonable excuse” - no – whether there were special circumstances – no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR KNUT OLSEN

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 23 August 2013 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 03 September 2012 (with enclosures) and HMRC’s revised Statement of Case dated 20 March 2013 (with enclosures)

DECISION

The appeal

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1. This is an appeal against penalties imposed for the late payment of income tax, amounting to £2,354.26, for the years 2008-09, 2009-10 and 2010-11.

10 2. The penalties were calculated at the rate of five per cent of the tax due and were imposed in accordance with Section 59C Taxes Management Act 1970 (“TMA”) and Paragraph 3 Schedule 56 Finance Act 2009 (“FA”).

3. The penalties imposed were as follows:

Tax year 2008-09

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(1) A first late payment penalty of £530.82, imposed on 01 April 2011. (S59C(2) TMA)

(2) A second late payment penalty of £530.82, imposed on 07 October 2011. (S59C (3) TMA)

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Tax year 2009-10

(1) A first late payment penalty of £320.31, imposed on 26 October 2012. (S59C(2) TMA)

25 (2) A second late payment penalty of £320.31, imposed 26 October 2012. (S59C(3) TMA)

Tax year 2010-11

30 (1) A first late payment penalty of £652, 10 April 2012. (Para 3(2) Schedule 56 FA)

The issue

35 4. Mr Olsen appeals on the grounds that there was a reasonable excuse for the late payments. This is disputed by HMRC.

The Law

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5. The paragraphs below provide a summary of the relevant law.

Imposition of penalties

6. The penalties for the years 2008-09 and 2009-10 were imposed in accordance with S59C TMA. The section provides that the first penalty is incurred if the tax remains unpaid for 28 days after the due date and the second penalty is incurred if the tax remains outstanding six months after the due date.

5 7. The penalty incurred for the tax year 2010-11 was imposed in accordance with Para 3(2) Schedule 56 FA. The section provides that the first penalty is incurred if the tax remains unpaid within 30 days of the due date.

8. The penalty applied is calculated at the rate of five per cent of the tax due.

Reasonable excuse

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9. The Tribunal has the power to allow an appeal against a penalty if there is a “reasonable excuse” for the late payment throughout the default period. S59C (9) TMA and Paragraph 16 Schedule 56 FA.

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10. An insufficiency of funds does not amount to a reasonable excuse for late payment. S59C (10) TMA and Para 16 (2) a Schedule 56 FA.

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11. There may be a reasonable excuse due to insufficiency of funds if the insufficiency arises from circumstances outside the taxpayer’s control. Paragraph 16(2)(a) FA also *Customs and excise commissioners v Steptoe [1992] STC (757)*

12. Reasonable excuse is otherwise not defined in legislation and is decided on all the circumstances of the case. *Rowland v HMRC [2006] STC (SCD) 536*.

Special circumstances

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13. HMRC may cancel or reduce the penalty if they consider that there are “special circumstances”. Paragraph 9 (1) Schedule 56 FA

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14. In the absence of a decision by HMRC this Tribunal has the power to consider the application of special circumstances. *Rodney Warren & Co v Revenue & Customs [2012] UKFTT 57 (TC)*.

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15. Special circumstances are defined as circumstances which are “unusual or uncommon”.

The agreed facts

The tax background

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2008-09

16. The original return was submitted on time.

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17. The amended return was submitted on 20 January 2011. The additional tax was due on 19 February 2011 and remained unpaid six months thereafter.

18. Mr Olsen's declared income for the tax year was £86,780 and the additional tax due was £10,616.40.

2009-10

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19. The paper return was due on 31 October 2010 and was submitted on 10 August 2011. The tax was due on 31 January 2011 and remained unpaid six months thereafter.

10 20. The first and second late penalties were originally imposed in the sum of £488.97. However these were reduced to £320.31 on 26 October 2012 following a claim by Mr Olsen to reduce his self-assessment income.

15 21. Mr Olsen's declared income for the tax year was £87,091 and the additional tax due was £6,406.38.

2010-11

20 22. The return was submitted on time. The tax was due on 31 January 2012 but was not paid until 09 July 2012. The trigger date for the imposition of the penalty was 01 March 2011, 30 days after the due date.

23. Mr Olsen's declared income for the tax year was £103,547, and the tax due was £13,042.41.

25 *Personal background*

30 24. Mr Olsen was involved in a serious car accident on 15 February 2009 during which he sustained a number of injuries. He was able to return to work after the accident. However the nature of his injuries affected his ability to work normally and his earning capacity was greatly reduced.

25. Mr Olsen has provided a number of medical reports documenting his injuries the contents of which are not disputed. The expert physiotherapist's report of Mr Christian Worsfold dated 03 April 2012 contains the following paragraph :

35 *in the first year following the index accident he was certified approximately 30% off work. In the second year ..he was certified 10 % off work. Over the previous year he has been certified 10 to 20 % off work.*

40 26. Mr Olsen has provided a further medical report from the Firda Physical-Medical Centre in Norway, dated 30 April 2012. This report documents injuries to the neck and suggests a course of treatment.

27. Mr Olsen incurred additional expenditure as follows :-

- (1) legal fees pursuant to a claim for compensation and
- (2) Medical expenses relating to injuries sustained in the accident.

The Arguments

The Appellant's case

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28. Mr Olsen accepts that he has been able to work since the accident but states that he has done so solely out of necessity. He states that the accident has had a “catastrophic affect” on his finances as he has been unable to work normally. He has also incurred substantial expenditure on medical treatment and legal expenses.

10 *The Respondent's case*

15 29. HMRC accept that the accident affected Mr Olsen's ability to work at full capacity during the relevant period. However they point out that the declared income, for the relevant tax years, demonstrates that Mr Olsen regained the ability to work and organise his life.

30. They consider that whilst there would have been a reasonable excuse for failure to pay the tax due immediately after the accident, this excuse ceased at the point that he returned to work.

Reasons for decision

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Reasonable excuse

31. I accept that Mr Olsen suffered a number of long lasting injuries as a result of the accident and that this has had a profound effect upon his income.

25 32. However I do not find that these circumstances amount to a reasonable excuse for the late payment of income tax due for the following reasons:

(1) The first late payment did not occur until two years after the accident by which time Mr Olsen had returned to work.

30 (2) Mr Olsen was clearly able to work effectively after the accident, albeit at a reduced capacity, as evidenced by the medical report provided by Mr Worsfold and the relatively high value of his declared income for the tax years 2009-10 and 2010-11.

35 (3) Mr Olsen's ability to work indicates that he was also able to organise himself sufficiently to pay the tax owed by the due dates.

33. I accept that Mr Olsen's income was greatly reduced as a result of the accident. However this does not amount to a reasonable excuse for the late payment as the tax due was calculated as a proportion of his reduced income.

40 34. I do not find that there was a reasonable excuse due to an insufficiency of funds because the medical and legal expenses incurred were within Mr Olsen's control.

Special circumstances

5 35. HMRC are required to consider whether there are any “special circumstances” in which the penalty may be reduced or cancelled.

36. In this case HMRC did not consider whether there the application of special circumstances. This amounts to a “flawed” decision and accordingly this Tribunal has the power to consider the issue.

10 37. Special circumstances have been interpreted as an unusual or uncommon event but does not include the ability to pay the tax due. Paragraph 9(2) (a) Schedule 56 FA.

15 38. I do not find that there are any special circumstances in this case in which the penalties could be reduced or cancelled because the legislation provides that the Tribunal cannot take into account the taxpayer’s ability to pay. I also take into account the reasons given in paragraphs 32 to 35 (above).

Decision

20 39. There is no reasonable excuse for the late payment of income tax due for the tax years 2008-09, 2009-10 and 2010-11.

40. There are no special circumstances which would enable the Tribunal to cancel or reduce the penalty payable.

25 41. The appeal against the late payment penalties amounting to £2,354.26, is refused.

Right of appeal

30 42. 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)”
35 which accompanies and forms part of this decision notice.

JOANNA LYONS

TRIBUNAL JUDGE

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RELEASE DATE: 19 November 2014

APPENDIX

Liability for late payment penalties

5 *Applicable legislation tax years 2008-09 and 2009-10*

Section 59C (2) Taxes Management Act (“TMA”) provides *where any of the 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 five per cent of the unpaid tax.*

10 Section 59C (3) TMA provides *where any of the tax remains unpaid on the day following the expiry of six months from the due date the taxpayer shall be liable to a further surcharge equal to five per cent of the unpaid tax.*

Applicable legislation tax years 2010-11

15 Schedule 56 Finance Act 2009 (“FA”) Paragraph (1) (1) provides that *a penalty is payable by a person where he fails to pay an amount of tax payable 30 days after the [due] date.*

Paragraph 3(2) Schedule 56 FA provides a person is liable to a penalty of five per cent of the unpaid tax.

Reasonable excuse

20 Section 59C (9) TMA provides *on appealif it appears that throughout the period of the default, the taxpayer had a reasonable excuse for not paying the tax, set aside the imposition of the surcharge.*

Paragraph 16 FA provides that *Liability to a penalty does not arise ... if the person satisfies the Tribunal that there is a reasonable excuse for the failure.*

25 There is no statutory definition of the term reasonable excuse. Case law has established that a reasonable excuse is a matter to be considered in the light of all the circumstances of the particular case. *Rowland v HMRC [2006] STC (SCD) 536.*

Insufficiency of funds

30 Section 59C (10) *An inability to pay the tax shall not be regarded as a reasonable excuse for the purposes of subsection (9) above.*

Paragraph 16 (2) (a) provides *an insufficiency of funds is not a reasonable excuse unless attributable to events outside the taxpayers control.*

Customs and Excise Commissioners v Steptoe [1992] STC (757).

35 Statutory exclusion of insufficiency of funds did not preclude consideration of the underlying cause of the insufficiency.

if the exercise of Reasonable foresight and of due diligence and a proper regard for the fact that the tax would become due on a particular date would not have avoided the insufficiency of funds which led to the default then the tax payer may well have a reasonable excuse for the non-payment.

5 **Special circumstances**

Para 9 (1) Schedule 56 FA provides *If HMRC think it right because of special circumstances they may reduce the penalty.*

Paragraph 9 (2) Schedule 56 FA provides that "*special circumstances*" does not include - (a) *ability to pay, or...*"

- 10 Para 15 (3) Schedule 56 FA provides that the Tribunal may substitute a different decision *if the Tribunal thinks that HMRC's decision in respect of the application of paragraph 9 was flawed.*

Para 15 (4) Schedule 56 FA defines the term "flawed" as *flawed when considered in the light of the principles applicable in proceedings for judicial review.*

- 15 In the case of *Rodney Warren & Co v HMRC [2012] UKFTT 57 (17 January 2012)* the First Tier Tribunal found that

failure to consider paragraph 9 at all is a flawed decision for the purposes of paragraph 15(3). It is thus open to the tribunal to rely upon paragraph 9 to the extent it considers it right in the circumstances.

- 20 In the case of *Crabtree V Hinchcliffe (Inspector of Taxes) [1971] 3 All ER 967* established that the word *special ..must mean unusual or uncommon.*