



TC05398

Appeal number: TC/2016/04043

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INCOME TAX – late payment of individual tax return – Whether payment made late – Yes. Whether reasonable excuse for late payment – No, a penalty is due. Whether amount of penalty is accurate – insufficient evidence.

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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DAVID SAMUEL LUDZKER

Appellant

- and -

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

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**TRIBUNAL: PRESIDING MEMBER
 PETER R. SHEPPARD FCIS FCIB CTA
 AIIT**

The Tribunal determined the appeal on 28 September 2016 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 26 July 2016 with enclosures, and HMRC's Statement of Case received by the Tribunal on 4 August 2016 with enclosures. The Tribunal wrote to the appellant on 8 August 2016 indicating that if he wished to reply to HMRC's Statement of Case he should do so within 30 days. No reply was received by the Tribunal.

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DECISION

1. Introduction

5 This considers an appeal against a penalty of £147 imposed by the respondents (HMRC) under Paragraph 3(2) of Schedule 56 Finance Act 2009 for the late payment by the appellant of the amount due on his individual tax return for the tax year ending 5 April 2015.

2. Legislation

Finance Act 2009 Schedule 56
10 Taxes Management Act 1970, Section 59B (4)

3. Case law

Crabtree v Hinchcliffe (Inspector of Taxes) [1971] 3 ALL ER 967
Clarks of Hove Ltd v Bakers' Union [1979] All ER 152
15 Garnmoss Ltd T/A Parham Builders [2012] UKFTT 315 (TC)
Rowland v HMRC [2006] STC (SCD) 536
Anthony Wood t/as Propave v HMRC [2011] UK FTT 136 (TC)

4. Facts

20 HMRC say the appellant's self-assessment tax return for the year ending 5 April 2015 was issued on 6 April 2015 and so the filing date was 31 October 2015 for a non-electronic return or 31 January 2016 for an electronic return. The appellant submitted his individual tax return electronically on 22 January 2016 and so submission was on time. As the return was filed online the liability was automatically calculated. The tax
25 due for the year was £5,185.60. At the penalty date of 3 March 2016 HMRC say that £2,945 of this sum remained unpaid. HMRC say that the tax liability was finally paid in full on 30 June 2016.

On or around 15 March 2016 HMRC issued a notice of penalty assessment in the sum of £147 being 5% of the tax they say was unpaid at the penalty date of 3 March 2016.

30 5. On 17 March 2016 the appellant sent a form SA370 Appeal to HMRC appealing against the penalty for late payment.

He gave the following reason for the appeal "To the best of my memory (I am 70) this is the first time that I have requested paperless reminders. Because I am always expecting a letter through the post I have not been vigilant in opening all my e-mails.
35 Naturally I will be more careful in future."

On 15 March 2016 HMRC replied saying that they did not agree that the appellant had a reasonable excuse. They said that the appellant should have been aware of his obligations concerning the payment due by 31 January 2016. They noted that the appellant had not contacted HMRC within 30 days of the balance being due in order
40 to set up a Time To Pay agreement. They therefore considered the penalty had been imposed correctly.

The letter gave details of HMRC views on the subject of “reasonable excuse” and offered a review.

6. The appellant requested a review.

7. On 28 June 2016 HMRC wrote to the appellant giving the conclusion of the review which was that Under Section 59B Taxes Management Act 1970 the appellant was required to pay his tax liability for the year ended 5 April 2015 by 31 January 2016 and by that date the tax had not been paid in full. HMRC also considered that the appellant’s reason for the late payment did not provide a reasonable excuse. They pointed out that on submission of his return electronically on 22 January 2016 the appellant was immediately advised of the amount due and so had time in which to arrange payment by 31 January 2016.

Therefore the review confirmed that the penalty had been imposed correctly

8. On 26 July 2016 the appellant appealed to the Tribunal His grounds for appeal were

“The law does not say “What is a reasonable excuse” for not paying one’s income tax on time. In my case I have requested for no paper reminders (naturally in order to benefit HMRC and the country in general). Consequently it was expected of me to monitor my e-mails for reminders which I acknowledge.

However being an old aged pensioner and being forgetful from time to time because of medications I missed seeing the reminders HMRC sent me through the e-mail.

This was the first year of using the e-mail system and I have said above I was not sufficiently vigilant.

I am asking you to take my situation into consideration as an honest member of society who has over the years paid tens of thousands of pounds to HMRC”.

25 8. **HMRC’s Submissions**

HMRC say that self-assessment places a greater degree of responsibility on customers for their own tax affairs. This includes ensuring that HMRC get payment of the correct amount of tax and National Insurance at the correct time. The tax guidance and HMRC website give plenty of warning about filing and payment deadlines. It is the customer’s responsibility to make sure they meet the deadlines without prompt or reminder from HMRC.

9. HMRC say that no concession is given to age or circumstances, the due date for payment for self-assessment tax liabilities is set out in statute and readily ascertainable. Statute is clear that it is the taxpayer’s responsibility to comply with such due date and there is no statutory obligation on HMRC to notify a taxpayer of the due date for payment.

10. HMRC say that the appellant did arrange a Time To Pay agreement with them, but after the penalty date. It was emphasised at the time a TTP agreement is a concession and the appellant needs to make provisions in the future to meet his tax obligations on time. The appellant has also been charged late payment penalties in the 2010-2011 and 2012-2013 tax years.

11. HMRC say that the appellant has been submitting self-assessment returns for a number of years and should have been fully aware of his obligations under self-assessment. He should have been aware of the due dates for making payments of tax and the penalty regime when payments were made after the deadline

5 12. HMRC have considered special reduction under (paragraph 9 Schedule 56 of the Finance Act 2009). They say special circumstances 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*). In their view there are no special circumstances which would allow them to reduce the penalty.

10 **13. Tribunal’s Observations**

In respect of the appellant’s self-assessment tax return for the period ended 5 April 2015 it is clear that an amount of £5,185.60 was due to be paid on or before 31 January 2016.

15 14. HMRC say that an amount of £2,945 remained unpaid on the penalty date of 3 March 2016. This figure is not challenged by the appellant. A self-assessment statement for the appellant was included in the papers provided by HMRC, but it is not clear from that statement how the figure of £2,945 has been calculated.

20 15. The Tribunal accepts the submissions of HMRC in respect of the fact that whilst the appellant made Time To Pay arrangements these were made after the due date for payment and after the penalty date, and were therefore too late to avoid the penalty.

16. The Tribunal is mindful of the decision of the First-tier Tribunal in the case of *Garnmoss Ltd T/A Parham Builders* [2012] UKFTT 315 (TC) where at Paragraph 12 it is stated

25 “What is clear is that there was a muddle and a bona fide mistake was made. We all make mistakes. This was not a blameworthy one. But the Act does not provide shelter for mistakes, only for reasonable excuses. We cannot say that this confusion was a reasonable excuse.....”

Although that case concerned a failure to pay VAT on time the Tribunal considers that a similar view can be taken in this case involving late payment of income tax.

30 A bona fide mistake was made in that the appellant accepts that he was not vigilant enough in checking his e-mails. The Tribunal cannot say that this lack of vigilance provides the appellant with a reasonable excuse for the late payment.

17. The appellant advances no other submissions which offer any reasonable excuse for the late payment.

35 18. Paragraph 9 of Schedule 56 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there any special circumstances in this case which

would allow them to reduce the penalty and have concluded there are none. The Tribunal sees no reason to disagree.

5 19. The appellant has not established a reasonable excuse for the late payment of his individual tax return for the period 2014-2015. Therefore the appeal against a penalty is dismissed. It is clear that the amount due on 31 January 2016 was cleared by payments from the appellant which were made after 31 January 2016 and therefore made late and a penalty is due. However the Tribunal has not been provided with information to clearly demonstrate that the amount outstanding at the penalty date was £2,945 and therefore has been unable to verify the accuracy of the calculation of the penalty of £147. The Tribunal notes that on the statement there are recorded a number of adjustments and reductions which appear to suggest that the amount outstanding in respect of the 2014/2015 return at the penalty date of 3 March 2016 might be less than the £2,945 stated by HMRC. The appellant has made no comment about the accuracy of the amount outstanding at the penalty date or about the accuracy of the calculation of the penalty.

20. It is clear to the Tribunal that a penalty for late payment is due and so the appeal is dismissed in that respect. However The Tribunal has not been provided with evidence to support the precise amount outstanding at the penalty date and it is therefore unable to verify the accuracy of the amount of the penalty levied by HMRC. In the circumstances the Tribunal suggests that the amount outstanding at the penalty date and the resulting 5% penalty be agreed between the parties. If the amount outstanding at the penalty date, and hence the amount of the penalty cannot be agreed then a fresh appeal should be lodged with the First-tier Tribunal.

21. 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.

PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 4 October 2016