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**TC05750**

**Appeal number: TC/2013/05587**

*INCOME TAX – Whether reasonable excuse for late payment of an amount detailed in a partner payment notice - No.*

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**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**WILLIAM PAUL GLEN HAYNES**

**Appellant**

**- and -**

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

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

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**The Tribunal determined the appeal on 2 April 2017 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 letters from the appellant to the Tribunal dated 19 September 2016 and 11 October 2016 which have been taken as an appeal, and HMRC's Statement of Case received by the Tribunal on 22 December 2016 with enclosures. The Tribunal wrote to the appellant on 22 December 2016 indicating that if he wished to reply to HMRC's Statement of Case he should do so within 30 days. A short reply dated 3 January 2017 was received and considered by the Tribunal.**

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## DECISION

### 1. Introduction

5 On the 19 September 2016 the appellant wrote to the Tribunal appealing against a penalty of £125.59 imposed by the respondents (HMRC) under Paragraph 7 of Schedule 32 and Section 226 Finance Act 2014 for the late payment of an amount of £2,511.80 being an amount due under a Partner Payment Notice (PPN) issued by HMRC to the appellant in respect of the tax year 2012-2013. The letter of 19 September 2016 was sent by the appellant by recorded delivery but was not received  
10 by the Tribunal. A copy was received by the Tribunal from the appellant on 12 October 2016. In the circumstances HMRC do not oppose the appellant's late appeal application and the Tribunal has therefore proceeded to consider the appeal.

Papers included in the documents considered by the Tribunal include appeals to HMRC against the imposition of both the appeal referred to above and against a  
15 similar penalty for £893.41 in respect of the tax year 2013-2014. Both penalties were also subject to a review by HMRC. The appeal to the First-tier Tribunal of 19 September 2016 specifically appeals the penalty of £125.59. It has been taken as such by HMRC who have prepared their statement of case in respect of the imposition of that penalty only. The Tribunal has therefore only been able to consider that penalty.  
20 Should the appellant wish to appeal against the imposition of the penalty of £893.41 in respect of the tax year ended 5 April 2014 a separate appeal to the Tribunal should be lodged. An appeal at this stage would however be late and may be contested by HMRC.

### 2. Legislation

25 Finance Act 2009 Schedule 56  
Finance Act 2014 Section 226 and Schedule 32  
Taxes Management Act 1970, in particular Sections 12AC(1), 49B, 49C(2), 49E and 49G

### 3. Case law

30 Greenslade v Revenue & Customs Commissioners [2015] UKFTT 591 (TC)  
Lorimer v Revenue & Customs Commissioners [2016] UKFTT 315 (TC)  
Roper v HMRC [2014] UKFTT 736 (TC)  
Rowe & Ors v HMRC [2015] EWHC 2293 (Admin)

### 4. Facts.

35 The appellant was the victim of major crime of theft and fraud from his business of an amount approaching £2 million, resulting in its collapse. The thefts were conducted across the calendar years 2010-2013 and the business Verridian PLC was forced into  
40 liquidation in October 2013 having ceased trading in August 2013. Arrests were made in 2014 after a lengthy police investigation by Avon and Somerset Police but there is no prospect of recovery of the stolen funds.

45 Dr. E.S Potter of Whiteladies Medical Group, Clifton, Bristol. wrote a letter dated 10 December 2013 confirming that the appellant had been seriously ill since early 2013 and was hospitalised in March 2013. His general health and other related issues

resulted in him becoming clinically depressed. As a result he did not respond quickly or accurately to issues raised.

5 On 16 May 2014 HMRC opened an enquiry into the Tamar Films LLP partnership tax return for the year ended 5 April 2013. The appellant was a partner of Tamar Films LLP at all relevant times.

10 On 23 April 2015 Dr. Caroline Jones also of Whiteladies Medical Group wrote “Mr. William Haynes was hospitalised on 13 January 2015 with syncope and chest pains. He has subsequently had further investigations at the BRI.”  
The Tribunal understands that the initials BRI refer to Bristol Royal Infirmary.

15 On 15 October 2015 HMRC notified the appellant that they would soon issue a PPN to him in relation to the Tamar Film LLP’s participation in the “Further Film Sale and leaseback Business” tax avoidance scheme.

20 On 7 December 2015 HMRC issued to the appellant PPN’s for the tax years ended 5 April 2013 and 5 April 2014 in the amounts of £2,511.80 and £17,868.37 respectively. Payment was due by 10 March 2016.

On 28 January HMRC wrote to the appellant to remind him that the payment was due by 10 March 2016.

25 On 3 February 2016 the appellant made representations to HMRC as to why he considered the payments covered by the PPNs were not due or correct.

30 On 1 April 2016 HMRC wrote to the appellant stating that the result of the review of the appellant’s representations on the PPNs was that the amounts shown on the PPNs were confirmed. However HMRC confirmed that the latest date for payment was now 7 May 2016. The letter also warned that penalties would be charged in respect of payments not made before that date.

35 On 9 June 2016 HMRC wrote to the appellant saying that as the PPN’s had not been paid by 7 May 2016 late payment penalties for £125.59 (2013) and £893.41 (2014) had been issued on 9 June 2016,

On 19 June 2016 the Appellant wrote to HMRC to request a review of the late payment penalties

40 On 5 August 2016 HMRC wrote to the appellant requesting an extension of time to 2 September 2016 to complete their review.

On 24 August 2016 the appellant agreed to the extension of time and provided some information re the financial crime that he had been the victim of.

On 1 September 2016 HMRC wrote to the appellant advising that the result of the review was that HMRC’s decision on the penalties was upheld.

## 5. Appellant's submissions

5 The appellant's letter of 19 September 2016 included the following three submissions which are described as mitigating circumstances and have been taken for the purposes of this appeal as the appellant's arguments that he had reasonable excuse for the late payment of the amount due under the PPN.

I am suffering from clinical depression and on medication whilst this was diagnosed in 2013 I have been suffering from it and taking medication for it since. It debilitates me on a daily basis and has led to a meltdown of my financial affairs and my ability to deal with them.

10 I have a heart condition and need to avoid anxiety and stress of any kind. This has obvious implications.

Furthermore I am in the process of agreeing settlement of the accelerated payment with HMRC, something which has caused extreme hardship, worsened my condition and is likely to lead to my insolvency in any case.

## 15 6. HMRC's submissions

20 HMRC say that based on the evidence provided and the time frames involved they contend that the appellant was capable of making arrangements to pay the outstanding accelerated partner payment liability. It is clear that the appellant has actively engaged in the appeal process and that he has responded to various HMRC correspondence in a timely manner. Whilst acknowledging that the appellant has suffered periods of serious ill health in 2013 and 2015, HMRC contend that these do not amount to a reasonable excuse for non-payment of the accelerated partner payment liability due on 7 May 2016.

25 HMRC refer to the decision of the High Court in *Rowe & Ors v HMRC* and say that when the appellant entered into the Further Film Sale and Leaseback Business avoidance scheme he should have known that there was a risk the scheme would fail. They submit that a prudent person would have made provision for such a failure..

30 In respect of the appellant being a victim of financial crime HMRC say the appellant has given insufficient evidence to demonstrate that the fraud on Verridian plc in 2010 to 2013 had affected his ability to pay the PPN in 2016

In respect of the appellant being in the process of agreeing settlement HMRC point out that the process started in September 2016 with final agreement on 27 September 2016. Therefore they say the process started some 4 months after the payment period had expired.

35 7. HMRC do not consider that any of the three mitigating circumstances put forward by the appellant has provided reasonable excuse for the late payment of the amount of £125.59 due by 7 May 2016 as stated on the PPN.

## 8. Tribunal's Observations

The Tribunal considers that the chronology of events is important in determining this appeal.

5 By the time of the issue of the PPN notices on 7 December 2015 the appellant had had two health problems. His depression started in early 2013 and his heart problems in January 2015.

The penalty assessment which is the subject of this appeal was issued on 9 June 2016, which is almost 18 months after the last of those problems started. It was also two months after HMRC had reviewed their decision in respect of the tax due.

10 Whilst the Tribunal accepts that the appellant has had, and continues to have, health difficulties which makes life difficult for him, it considers that these were not so limiting for such a long period as to prevent the appellant from making the payment notified at some time during the six months ending 7 May 2016. Even if the appellant was so debilitated that he could not make the payment himself he had ample time during the 6 month period from 7 December 2015 to arrange for an agent to make the  
15 payment on his behalf.

It could be argued that the appellant was waiting for the result of HMRC's review before deciding what to do next. If so that would leave over a month from the first week in April 2016 to 7 May 2016 for the appellant to either appeal against the result of the review or make payment. There is no evidence that the result of the review was  
20 appealed. Therefore by 7 May 2016 the appellant should have paid the amounts due on the PPNs.

The cases of *Greenslade* and *Lorimer* both consider taxpayers with ongoing health problems. In those cases it was considered that a responsible taxpayer would make arrangements for sending in any payments due or seek professional assistance to deal  
25 with his tax affairs.

In respect of the appellant being the victim of financial crime. The Tribunal observes that the crime occurred between 2010 and 2013, and it was clear by 2014 that there was no prospect of recovery of the stolen funds.

30 The appellant was asked by HMRC to provide details of the crime. The appellant did respond to this but did not provide any evidence to show that the effect of that crime was such that over two years later he did not have funds to meet the £2,511.80 tax due to be paid by 7 May 2016.

5 9. The appellant refers to agreeing a settlement of the accelerated payments with HMRC. The appellant commenced negotiations with HMRC in respect of this settlement in September 2016 with a time to pay agreement being reached on 27 September 2016. The PPN amount to be paid was due by 7 May 2016. Negotiation of an agreement to make payment by instalments made over 3 months after the penalty was issued cannot be considered as providing a reasonable excuse for the late payment which gave rise to the penalty.

10 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. In their review 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.

15 11. The Appellant has not established a reasonable excuse for the late payment of the amount of £2,511.80 which was the subject of a PPN issued to him on 7 December 2015 in respect of the tax year ended 5 April 2013. It follows that his appeal against the late payment penalty of £125.59 is dismissed.

20 12. 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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**PETER R. SHEPPARD  
TRIBUNAL JUDGE**

**RELEASE DATE: 5 APRIL 2017**