



TC06749

Appeal number: TC/2018/03380

INCOME TAX – penalty for failure to make payment on time – whether reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SONYA CUNNINGHAM

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The Tribunal determined the appeal on 2 October 2018 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 22 May 2018 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 17 July 2018.

DECISION

1. The appellant is appealing against penalties that HMRC have imposed under Schedule 56 of the Finance Act 2009 for a failure to pay tax on time for the tax year 2016-17.

2. A penalty of £468, being 5% of the tax outstanding at the due date, was issued to the appellant on 13 March 2018 under para 3(2) Schedule 56 FA 2009.

Appellant's case

3. The appellant's grounds for appealing against the penalties can be summarised as follows:

(1) She was shocked at the end of the tax year to find that, although she pays PAYE, she still owed approximately £14,000 in tax. She was struggling to make payment.

(2) She had contacted HMRC by telephone in January as she disputed that she owed the full amount as she believes that there is a discrepancy relating to pension contributions. The person she spoke to did not discuss a repayment plan.

(3) She had tried to sell assets in order to be able to make the payment.

(4) When she was unable to raise funds, she had called HMRC again and found out that a payment plan was possible. She had agreed a payment plan with HMRC on 8 March 2018, six days after the penalty arose. If this had been offered when she first called, she would not have missed the deadline.

(5) She is already paying £2,000 more each month to HMRC in tax, plus a repayment plan of £2,000, and feels that the £469 penalty is unjust as she was not given the right guidance when she called in January 2018.

HMRC's case

4. HMRC case is, in summary:

(1) The appellant submitted her tax return online on 19 December 2017. On submission, her tax liability was calculated automatically.

(2) The appellant has not provided any details of pension contributions in her tax return and has signed a declaration that the figures are accurate. She cannot therefore dispute the tax due based on these figures. If she considers that there are errors, she will need to amend her tax return.

(3) A statement of account was sent to the appellant on 2 January 2018, confirming the amount of tax due. This statement of account also gave details of the consequences of failing to pay on time.

(4) The appellant was therefore aware, well before the deadline for payment, of the amount of tax due.

(5) The appellant had been advised in January 2017, when her tax code was issued, that an additional amount of tax in excess of £5,000 would be due for 2016/17.

5 (6) The appellant contacted HMRC on 25 January 2018, six days before the payment was due but some five weeks after her return was submitted. In that telephone call, the appellant disputed figures which she had included in her tax return and stated that she would take the matter up with her agent.

10 (7) The appellant did not contact HMRC again until 8 March 2018, despite correspondence from HMRC Debt Management and Banking team on 14 February 2018 warning her that the amount was outstanding.

5. HMRC submitted that the tax liability should therefore not have been a surprise to the appellant and that she should have made provisions to pay the tax due from income received from January 2017 onwards.

15 6. HMRC submitted that the responsibility for requesting a “time to pay” arrangement lies with the taxpayer and not the responsibility of HMRC to offer such arrangements.

Discussion

20 7. The appellant accepts that her payment for the 2016-17 tax year was late. Subject to considerations of “reasonable excuse” and “special circumstances” set out below, the penalties imposed are due and have been calculated correctly.

25 8. The appellant’s case is, in summary, that HMRC should have advised her during the telephone call of 25 January 2018 that she could request a “time to pay” arrangement and that, because they did not do so, she has a reasonable excuse for the late payment. Paragraph 16(1) Schedule 56 Finance Act 2009 provides that a penalty is not payable where a person satisfies the Tribunal that there is a reasonable excuse for a failure to make a payment.

30 9. Having reviewed the notes of the telephone call in HMRC’s records, there is no indication that the appellant advised HMRC that she would have difficulty paying the amount of tax due on time. The call records that she questioned figures in the tax return and would discuss them with her agent.

10. I find, therefore, that there was no reason for HMRC to discuss a “time to pay” arrangement with the taxpayer as a result of the telephone call on 25 January 2018. The appellant does not, therefore, have a reasonable excuse for the late payment on this ground.

35 11. I have also considered whether the appellant’s statements about having difficulty raising funds could amount to a reasonable excuse. Paragraph 16(2)(a) of Schedule 56 of Finance Act 2009 states, however, that an insufficiency of funds is not a reasonable excuse unless attributable to events outside the appellant’s control.

12. The appellant has given no explanation as to why she did not have the funds to pay the tax on time and so I find that her lack of funds cannot amount to a reasonable excuse for the late payment.

13. The appellant has argued that the penalties charged are disproportionate. The Tribunal's powers on an appeal are set out in paragraph 15 of Schedule 56 of Finance Act 2009 and do not include any general power to reduce a penalty on the grounds that it is disproportionate. Moreover, Parliament has, in paragraph 15(3) of Schedule 56, specifically limited the Tribunal's power to reduce penalties because of the presence of "special circumstances" and, below, I have considered the question of "special circumstances". Therefore, for reasons similar to those set out in *HMRC v Boshier*, [2013] UKUT 01479 (TCC), I do not consider that I have a separate power to consider the proportionality or otherwise of the penalties

14. Finally I must consider whether HMRC should have made a special reduction because of special circumstances within paragraph 9 of Schedule 56 Finance Act 2009. The Tribunal's jurisdiction in this context is limited to circumstances where it considers HMRC's decision in respect of special circumstances was flawed when considered in the light of the principles applicable in judicial review proceedings. HMRC have considered whether to apply a special reduction and have found nothing that is exceptional, abnormal or unusual to justify such a reduction. Applying the judicial review standards I see no reason to overturn HMRC's decision.

Conclusion

15. The appeal is dismissed and the penalty confirmed in full.

Application for permission to appeal

16. 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.

**ANNE FAIRPO
TRIBUNAL JUDGE**

RELEASE DATE: 8 OCTOBER 2018