



TC07658

Appeal number: TC/2019/06139

*Income Tax – penalty for late payment – appeal made to HMRC out of time
-whether to allow late appeal.*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CHARLES BROWNING

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE CHARLES HELLIER
CHRISTOPHER JENKINS**

Sitting in public at The Courthouse, Havant on 2 March 2020

The Appellant was neither present nor represented

Annabel Williams for the Respondents

DECISION

The absence of the Appellant or of representation for him

1. At the time advertised to the Appellant for the hearing the Appellant was neither present nor represented. At 10.20am our clerk rang AMA Wise & Co who had been appointed by the Appellant to act for him in the appeal; she was told that they had not been given instructions to attend the tribunal hearing. At 10.25 am our clerk rang Mr Browning; she was told that he was not attending the hearing and was happy for us to proceed without him.

2. We concluded that proper notice had been given of the hearing to the Appellant and that it was just to continue in his absence and the absence of his representatives.

The Appeal

3. In his notice of appeal Mr Browning seeks to appeal against an assessment of a penalty for the late payment of income tax for the year 2017/18 under schedule 56 Finance Act 2009. His appeal to HMRC was made more than 30 days after the assessment was made. As a result the appeal could be heard by the tribunal only if HMRC agreed or the tribunal gave permission.

4. HMRC had not agreed to the late appeal. Thus the first question was whether or not we should give permission.

The Evidence before us and our findings of fact

5. The only evidence from the Appellant to explain the late payment of tax and the lateness of the appeal was the Notice of Appeal and Wise & Co's letter of appeal to HMRC. We also had a print out of Mr Browning's tax account and heard Miss Williams' evidence of how HMRC's systems had been operated.

6. We find that:

(1) As in previous years, Mr Browning was required to submit a tax return for 2017/18 by a notice sent to him on or after 6 April 2018.

(2) Mr Browning made payments of the first and second instalments of tax for 2017/18 on time in 2018 and on 31 January 2019.

(3) At some time before 10 March 2019 HMRC made a change to the information on Mr Browning's online account so that it showed that the date for submission of the return was 26 March 2019 rather than 31 January 2019

(4) Mr Browning submitted his return on 11 March 2019 and paid the balance of the tax due for 2017/18 on the same day.

(5) On 19 March 2019 HMRC sent Mr Browning an assessment of a penalty for the late payment of tax.

(6) On 2 May 2019 Wise & Co made a print out from Mr Browning's online account which showed 26 March 2019 as the date for filing the return.

(7) At some time after 19 March and before the end of April 2019 Mr Browning contacted Wise & Co to discuss filing and payment deadlines.. There was a meeting in late April although it appears that an earlier meeting had been proposed

(8) On 30 May 2019 Wise & Co wrote to HMRC to appeal against the penalty

Permission for a late appeal

7. The assessment was made on 19 March 2019. The appeal was made to HMRC by Wise & Co on 30 May 2019. Thus the appeal was made some 40 days late.

8. The only explanation of the reason for the late appeal was in the Notice of appeal. There Wise & Co say that Mr Browning had contacted Wise & Co when the assessment was issued to discuss the deadlines. They say that a meeting was proposed (we understood this to be a meeting between Mr Browning and Wise & Co for Miss Williams told us there was no record of a meeting with HMRC), but "it coincided with the Easter holidays and the tax year end" and did not take place until late April.

9. We did not think this was a good reason for the delay. There was no evidence that the period surrounding the tax year end was particularly busy, the Easter holidays generally last less than 40 days and, even if delay up to the date of the meeting was a good reason, the delay of over 19 days from the end of April to 19 May was unexplained.

10. Although Miss Williams said that HMRC did not object to permission being given, we decided to refuse permission. In the circumstances before us: fairly long delays without any good reason and no indication of a strong prima facie case, we concluded that permission should not be given for the late appeal.

The Appeal

11. If we had given permission for a late appeal we would, for the following reasons, have dismissed the appeal.

12. Mr Browning did not dispute that the tax was paid late or the calculation of the penalty at 5% of the late paid tax. The effect of sch 56 is thus that his appeal can succeed only if he has a reasonable excuse for the delay in payment or, broadly, if there were special circumstance within para 9 Sch 56 which justified the reduction of the penalty.

13. The legislation in section 59B Taxes Management Act 1970 makes clear that the date for payment of the balance of the income tax due for a year is 31 January in the year following the end of that tax year. There is no provision deferring the date for such payment to the date when a tax return is required.

14. Thus in our judgement Mr Browning will have had a reasonable excuse for the late payment only if: (i) he was unaware that the legislation so required, (ii) he believed that payment was not due until the date the tax return was required to be submitted, (iii) he believed during the period 31 January 2019 to 11 March 2019 that his return did not have to be submitted before 11 March 2019 and (iv) in these circumstances those beliefs were reasonable.

15. There was no evidence that Mr Browning knew of the change of the date for submission of his return shown in his online account before 11 March 2019 when he filed his return. Thus even if he thought that the date for payment of his tax was the day his return was required to be submitted there was no evidence that between 31 January 2019 and 11 March 2019 he could have thought that the latest payment date was 26 March 2019.

16. As a result, even if lack of knowledge of the law could constitute a reasonable excuse in this case, we would not have been able to find that Mr Browning lacked the relevant knowledge at the relevant times. As a result we could not conclude that Mr Browning had a reasonable excuse for the delay in payment.

17. Whilst there was no evidence to suggest that HMRC had considered the application of para 9 with the result that the decision as to whether to apply that paragraph fell within the ambit of our decision making, we did not regard the evidence before us as supporting a contention that there were special circumstances which could justify a reduction in the penalty.

18. Thus we would have dismissed the appeal.

Result

19. The appeal is struck out.

Rights of Appeal

20. 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.

**CHARLES HELLIER
TRIBUNAL JUDGE**

RELEASE DATE: 30 MARCH 2020