



TC01377

Appeal number: TC/2010/07536

Reasonable Excuse – income tax/capital gains tax.

FIRST-TIER TRIBUNAL

TAX

Mr JOHN GALLAGHER

Appellant

- and -

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

Respondents

**TRIBUNAL: Rachel Short (TRIBUNAL JUDGE)
William Haarer (MEMBER)**

The Tribunal determined the appeal on 26 January 2011 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 April 2011, HMRC's Statement of Case submitted on 5 November 2010 and the Appellant's Reply dated 29 November 2010.

DECISION

1. This was an appeal against a surcharge raised under Section 59C(2) Taxes Management Act 1970 following late payment of tax for the year 2008 – 2009.

5

The facts

2. The Appellant filed his 2008-9 tax return on line on 29 January 2010. Payment of tax was due on 31 January 2010. The Appellant submitted an amended tax return on 28 April 2010 reducing the amount of tax due for the period to £41,697.90. HMRC issued a surcharge notice on 12 March 2010 and a statement of account on 27 June 2010. The tax was eventually paid on 29 June 2010 and a surcharge of £2084.89 was levied by HMRC.

15 *The arguments*

3. The Appellant has appealed against this surcharge of £2,084.89 on the basis that he was not aware that the relevant tax payment was due on 31 January 2010. The tax payment related mainly to capital gains in respect of the sale of a warehouse made in 2009 and the Appellant had no previous experience of paying capital gains tax.

4. The Appellant had employed an accountant to file a return in respect of the capital gains and assumed that he would be notified of any tax due. He had agreed a “time to pay” arrangement with HMRC in respect of payments due during 2008 and assumed that he could rely on this arrangement for the 2009 payments.

5. The Appellant’s business was struggling and it was difficult for him to pay the surcharge amount.

6. The Appellant also refers, in his reply of 29 November 2010, to the fact that his partner’s father was ill and died on 25 February 2010. This meant that the Appellant was less diligent in managing his tax affairs than would otherwise have been the case.

7. HMRC have stated that since the Appellant submitted his tax return on line, he would have been notified of the amount due as part of that process. They also point out that the Appellant cannot rely on the failure of his accountant to excuse his failure to pay the tax due on time.

8. HMRC also state that while a “time to pay” arrangement had been made for the June – December 2008 period, they have no record of such an arrangement being made prior to the 28 February 2010 due date for the payment of this tax liability.

Decision

45

9. In order to set aside the surcharge under s 59C(2) Taxes Management Act 1970 the Appellant has to demonstrate that he has a “reasonable excuse” for non

payment throughout the relevant period of default, which for these purposes is from the due date of 31 January 2010 until the date when payment of the tax was made, 29 June 2010.

5 10. There is no statutory definition of “reasonable excuse” but there are a number
of previous decisions in this area as well as guidance from HMRC which suggest that
a “reasonable excuse” will exist only where unforeseen circumstances, beyond the
control of the taxpayer, have prevented the tax being paid. The Appellant has raised a
variety of points which might amount to a “reasonable excuse” but the Tribunal does
10 not think that any of them, taken either in isolation or together, amount to a
reasonable excuse.

Reliance on his accountant

15 11. There are a number of authorities which make it clear that reliance on a third
party, such as an accountant, do not generally constitute a reasonable excuse, other
than in relatively extreme circumstances where an agent has engaged in fraud or other
criminal activities. There is no suggestion that such circumstances were present here.

20 *Did not know that tax was due*

12. Similarly ignorance of the requirement to make a tax payment on the part of a
taxpayer does not constitute a reasonable excuse for these purposes. The Tribunal
agrees with HMRC that the onus is on the taxpayer to ensure that tax is paid on time.
25 In this instance the Appellant and his advisers had previously entered into a time to
pay arrangement and should have known both that one was not in place for the 2008 –
9 tax payment and the formalities required to set one up.

Death of partner’s father

30 13. Death or bereavement of a close relative can amount to a “reasonable excuse”
for these purposes, but that excuse has to subsist for the whole of the default period.
The Appellant does refer to the time spent supporting his partner up to the time of her
father’s death in February, but there is no evidence to suggest that this bereavement
35 continued to disrupt the Appellant’s business affairs for the whole of the following
four months until payment was eventually made at the end of June.

Business was struggling

40 14. Finally, the Appellant has argued that his shortage of funds should be taken
account of. Again, while there are extreme circumstances, such as in the *Steptoe* case
([1991]STC 302), when a sudden shortage of funds beyond the taxpayer’s control can
constitute a reasonable excuse, normal cash flow problems suffered by a business do
not generally amount to a reasonable excuse. No evidence has been provided that the
45 lack of available funds here arose as a result of anything other than a period of
difficult trading.

15. For these reasons and on the basis of the statements which we have seen from HMRC and the Appellant we have concluded that the Appellant does not have a reasonable excuse throughout the period of default and so dismiss this appeal.

5 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
10 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

Rachel Short

15

TRIBUNAL JUDGE
RELEASE DATE: 5/8/2011

20