



TC01397

Appeal number: TC/2010/08670

INCOME TAX – Surcharges on late payment of income tax (Taxes Management Act 1970 s.59C) – Whether a reasonable excuse for late payment – Appeal dismissed

FIRST-TIER TRIBUNAL

TAX

MR MELVIN JEFFREY CRUMP

Appellant

- and -

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

Respondents

**TRIBUNAL: DR CHRISTOPHER STAKER (TRIBUNAL JUDGE)
MRS SUSAN LOUSADA (TRIBUNAL MEMBER)**

The Tribunal determined the appeal on 31 May 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 6 November 2010, and HMRC's Statement of Case dated 14 December 2010, and other papers in the case.

DECISION

Introduction

1. This is an appeal against a default surcharge imposed pursuant to s.59C of the Taxes Management Act 1970 (the “TMA”) in respect of the late payment by the Appellant of tax due on 31 January 2010 in respect of the 2008/09 tax year.
2. This matter is now being decided following a decision of Tribunal Judge Peter Kempster dated 26 April 2011, setting aside an earlier decision of the Tribunal pursuant to Tribunal Procedure Rule 38.

The relevant legislation

3. Section 59B(6) of the TMA states in relevant part as follows:
 - (6) Any amount of income tax or capital gains tax which is payable by virtue of an assessment made otherwise than under section 9 of this Act shall, unless otherwise provided, be payable on the day following the end of the period of 30 days beginning with the day on which the notice of assessment is given.
4. Section 59C of the TMA states in relevant part as follows:
 - (1) This section applies in relation to any income tax or capital gains tax which has become payable by a person (the taxpayer) in accordance with section 55 or 59B of this Act.
 - (2) Where any of the tax remains unpaid on the day following the expiry of 28 days from the due date, the taxpayer shall be liable to a surcharge equal to 5 per cent of the unpaid tax.
 - (3) Where any of the tax remains unpaid on the day following the expiry of 6 months from the due date, the taxpayer shall be liable to a further surcharge equal to 5 per cent of the unpaid tax.
 - ...
 - (5) An officer of the Board may impose a surcharge under subsection (2) or (3) above; and notice of the imposition of such a surcharge—
 - (a) shall be served on the taxpayer, and
 - (b) shall state the day on which it is issued and the time within which an appeal against the imposition of the surcharge may be brought.
 - ...
 - (7) An appeal may be brought against the imposition of a surcharge under subsection (2) or (3) above within the period of 30 days beginning with the date on which the surcharge is imposed.
 - ...

- 5 (9) On an appeal under subsection (7) above that is notified to the tribunal section 50(6) to (8) of this Act shall not apply but the tribunal may—
- (a) if it appears that, throughout the period of default, the taxpayer had a reasonable excuse for not paying the tax, set aside the imposition of the surcharge; or
 - (b) if it does not so appear, confirm the imposition of the surcharge.
- 10 (10) Inability to pay the tax shall not be regarded as a reasonable excuse for the purposes of subsection (9) above.
- ...
- (12) In this section—
- “the due date”, in relation to any tax, means the date on which the tax becomes due and payable;
 - 15 “the period of default”, in relation to any tax which remained unpaid after the due date, means the period beginning with that date and ending with the day before that on which the tax was paid.

The arguments of the parties

- 20 5. The HMRC statement of case states that the tax liability for that year was £4,507.86, and that on 31 January 2010 there was an unpaid balance of £3650.86, which was not paid in full until 28 April 2010. A default surcharge of £182.54 was imposed pursuant to s.59C of the TMA on 1 April 2010, and the notice was issued to the Appellant some time thereafter.
- 25 6. The Appellant has not taken issue with the fact of the late payment or the amount of the surcharge in the event that there is no reasonable excuse for the late payment. The Appellant’s case is that he has a reasonable excuse for the late payment, for purposes of s.59C(9).
- 30 7. In a request dated 15 September 2010 for review by HMRC of the decision to impose the surcharge, the Appellant stated that he went through a divorce that commenced in December [presumably 2009] at Chelmsford County Court, with the decree nisi being issued on 8 September [presumably 2010]. It stated that divorce is a very traumatic event, that “Everything that I should have attended to suffered through this period, not just HMRC, and that the Appellant has never before been late in
- 35 making a payment.
8. On 27 October 2010, following the review, HMRC upheld the original decision.
9. In his notice of appeal to the Tribunal, the Appellant states by way of grounds of appeal that his circumstances met the criteria of a reasonable excuse, that his personal circumstances were “sudden and unexpected and continued over the entire period [of default]”, and repeats the points made in his 15 September 2010 request for review of
- 40 the decision.

10. The HMRC statement of case states amongst other matters as follows. HMRC's records show that there was some level of administration in place from December 2009 to September 2010, as the Appellant filed his 2008/09 tax return online on 19 January 2010, and chose to calculate his liability and therefore knew the sum to be paid by the due date, that there were documents attached to the return, that the Appellant had an agent acting on his behalf, that there is no evidence that the Appellant ever attempted to contact HMRC prior to the surcharge trigger date to explain the circumstances, which it would have been reasonable for the Appellant or his agent to have done.

11. In a reply to the HMRC statement of case sent by e-mail on 4 January 2011, the Appellant states that it is not true that he was dealing with his tax return by submitting his return online, that his agent was dealing with his tax returns from information provided prior to December 2009, and that his tax was paid just under three months late, when it took HMRC a month to acknowledge his appeal and 4 or 5 months to comment on his appeal.

The Tribunal's view

12. The Tribunal must determine questions of fact on the evidence before it on the basis of the balance of probability. The burden is on the Appellant to establish circumstances that would amount to a reasonable excuse.

13. There is no definition in the legislation of what constitutes a "reasonable excuse" for purposes of s.59C of the TMA. In the context of the present case, the Tribunal understand the expression to refer to a situation where a diligent taxpayer (that is, a taxpayer who is not seeking to avoid or be dilatory in his tax obligations), has done everything that could reasonably be expected in the circumstances. It "is a matter to be considered in the light of all the circumstances of the particular case" (see *LaMancha Limited v HMRC* [2010] UKFTT 638 (TC) at [13], quoting *Rowland v HMRC* [2006] STC (SCD) 536 at [18]).

14. The Tribunal accepts that a divorce can be a traumatic experience. However, it does not accept that a divorce of itself renders it not reasonably possible for a person to comply with their obligations to pay income tax on time. The Tribunal does not rule out that on the particular facts of a specific case, divorce proceedings might be such as to amount to a reasonable excuse for late payment of income tax. However, that would depend on the specific facts of the case, which would need to be established by evidence. It would not be sufficient for the Appellant to establish merely that he was going through divorce proceedings at the time. It would be necessary to establish particular circumstances which made it unreasonable to expect him to comply with the obligation to pay tax throughout the period of default.

15. No particulars are given by the Appellant of specific circumstances that made it not reasonably possible for him to pay the tax throughout the period of default, beyond the general statement that he was going through a traumatic divorce. His grounds of appeal contain a generalised statement that "A divorce is a very traumatic event which affects us in a variety of ways, especially after 25 years", that "We stop

eating, taking care of ourselves, neglecting every day chores as they seem trivial”, and that “Work suffers, incomes reduce as my accounts show and things back up as you are not in the right frame of mind to deal with them”.

5 16. The Tribunal finds that such generalised statements, unsupported by documentary evidence, are insufficient to establish a reasonable excuse. The Appellant has not provided documentary evidence or further particulars to show objectively to what extent his ability to work and to function was affected by his divorce proceedings. Indeed, no evidence was even provided that the Appellant in support of his statement that he was going through divorce proceedings at the time.

10 17. The Tribunal finds that generalised statements of the kind in the Appellant’s request for review and grounds of appeal, without further particulars and supporting evidence, cannot be sufficient to establish a reasonable excuse.

15 18. The Tribunal therefore finds that the Appellant does not have a reasonable excuse for the late payment of the tax throughout the period of default, for purposes of s.59C(9) of the TMA.

19.

Conclusion

20. For the reasons above, the Tribunal dismisses the appeal and confirms the imposition of the surcharge.

20 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
25 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

30 **DR CHRISTOPHER STAKER**

TRIBUNAL JUDGE

RELEASE DATE: 17 August 2011

35