



TC01402

Appeal number: TC/2011/01114

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 ADRIAN LANGAN

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 8 February 2011, and HMRC's Statement of Case dated 8 March 2011, and other papers in the case.

DECISION

Introduction

- 5 1. This is an appeal against a default surcharge of £324.28 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.

The relevant legislation

2. Section 59B(6) of the TMA states in relevant part as follows:

- 10 (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.

3. Section 59C of the TMA states in relevant part as follows:

- 15 (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.

- 20 (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.

...

- 25 (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

- 30 (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.

...

- 35 (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.

...

- (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) 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;
- “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

4. The HMRC statement of case states the following facts which have not been disputed by the Appellant. His 2008/09 return showed a tax liability of £6,485.54. The tax liability was due to be paid on or before 31 January 2010. The tax liability was paid on 28 August 2010. HMRC issued a first and second surcharge notice on or a few days after 17 September 2010. Each surcharge was in the amount of £324.28, calculated at 5% of £6,485.64 which was the amount of liability outstanding at both the first surcharge trigger date of 28 February 2010 and the second surcharge trigger date of 31 July 2010.
5. In a letter to HMRC dated 18 October 2010, the Appellant indicated that he wished to appeal against both of these surcharge liability notices. In that letter, the Appellant acknowledged that his 2008/09 tax return had been filed late, and that he only paid his tax liability in August 2010. However, he considered that the scale of the surcharge was excessive.
6. In his notice of appeal, in the grounds for appeal, the Appellant states that he now seeks to appeal against the second of the two surcharge liability notices only. The grounds for appeal refer to the reasons given in the Appellant’s 18 October 2010 letter, as well as in the Appellant’s request for review of the decision by HMRC, dated 17 December 2010.
7. The grounds for appeal against the second surcharge liability notice are in particular the following. The Appellant submitted his tax return, albeit late, on 31 May 2010. He was awaiting a statement of liability from HMRC to pay the tax due. Had he paid by 31 July 2010, he would not have incurred the second default surcharge. HMRC sent the Appellant a notification dated 14 July 2010, advising him that he needed to resubmit his return as he had not submitted all information in the required form. Had the Appellant been residing in the UK, he would have received this notification earlier, and would have been in a position to pay the amount of tax he

owed before the date on which the second surcharge was levied. However, he did not receive the notification until 4 August 2010. He replied to it with the information in the correct form promptly on 6 August 2010. It was only on 27 August 2010 that he then received from HMRC his statement of liability dated 14 August 2010. He again responded promptly by sending a cheque on the same day.

8. The Appellant further contends that he provided all the necessary information in his original return on 31 May 2010, and that it is excessively bureaucratic for his payment of the liability to have been extended on the basis that the information was “not on the right form”. The Appellant adds that while HMRC contend that he could have paid by the deadline what he estimated to be the amount of tax liability, as someone new to the UK he had no idea how much he would have to pay, and he thought that he could get the figure worked out by declaring his income and replying to HMRC’s assessment. The Appellant contends that in the circumstances, the imposition of the second surcharge was not fair.

9. The HMRC statement of case argues amongst other matters as follows. Section 8 and 8A TMA require that returns provide information reasonably required for the purpose of establishing the amounts in which a person is chargeable. In this case a return that satisfied the requirements of ss.8 and 8A TMA was not filed until 3 August 2010. Extensive advice on how to complete a tax return is shown on HMRC online guidance, which would have been available to the Appellant. The late filing of a return cannot in itself be deemed a reasonable excuse for late payment of of tax liability. The requirement to include the self-assessment applies to all taxpayers except those who submit the return in sufficient time for HMRC to calculate the tax due. The Appellant’s tax return was filed outside the required time limits and did not include a self-assessment, and in such circumstances, HMRC cannot guarantee to notify a taxpayer of any tax due before the due date for payment. Contrary to what the Appellant contends, postal delays were not the key reason for the late payment. It was the responsibility of the Appellant to ensure that his tax affairs were dealt with correctly and on time, and this duty was not negated by the absence of a tax bill or reminder from HMRC. Ignorance of the law is no excuse. Guidance is available from the HMRC website or telephone helpline. The surcharge rate is prescribed by legislation, and the amount charged was statutorily due.

10. In a reply to the HMRC statement of case, the Appellant repeats his submission that the imposition of the second surcharge was unfair, excessive and disproportionate in the circumstances.

The Tribunal’s view

11. The Tribunal must determine questions of fact on the evidence before it on the basis of the balance of probability.

12. The Tribunal is satisfied on the material before it that the Appellant’s tax liability was not paid until August 2010, after the trigger date for the second default surcharge of 31 July 2010. The Appellant is therefore liable to the second default surcharge

unless he has a reasonable excuse for the late payment. The burden is on the Appellant to establish circumstances that would amount to a reasonable excuse.

5 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
understands 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
10 *LaMancha Limited v HMRC* [2010] UKFTT 638 (TC) at [13], quoting *Rowland v*
HMRC [2006] STC (SCD) 536 at [18]).

14. The Tribunal finds that the Appellant has not established that there exist
circumstances amounting to a reasonable excuse by virtue of the fact that he was
“someone new to the UK”. Such an unparticularised statement, unsupported by
evidence, cannot be a reasonable excuse. In principle, the fact that a person is new to
15 the UK does not mean that they are relieved of their obligation to meet their tax
liabilities on time. As HMRC point out, guidance was available.

15. The Tribunal similarly finds that the fact that the Appellant filed his tax return
late, or failed to provide the necessary information in the correct form, does not
amount to a reasonable excuse for late payment of the tax.

20 16. The Appellant also invokes the fact that he was not resident in the UK when
making the return, and that there were delays in mail reaching him. However, no
evidence or details are given in support of this very general statement. The Appellant
does not state where he was at the relevant time. Nor does he explain why it took so
long for mail to reach him. From the papers, it appears that he was in Dublin at the
25 time. In the absence of further details or evidence, the Tribunal is not satisfied that
there would be significant delays in mail from the UK being delivered in Dublin.
However, even if it were the case that there were significant delays in mail reaching
him, the Tribunal is not satisfied that this would amount to a reasonable excuse in the
circumstances of his case. Had he complied with his obligations within the applicable
30 time limits, delays in the mail would have been irrelevant. In any event, if there were
significant delays in mail reaching the Appellant from the UK, presumably he would
have been aware of this, and could have taken steps to deal with the problem.

17. Ultimately, the Tribunal finds that the Appellant is seeking to rely on his own
non-compliance with his obligations as a reasonable excuse for not paying the tax
35 before 31 July 2010. The Tribunal is not satisfied that he has done everything that
could reasonably be expected in the circumstances, and therefore finds that he does
not have a reasonable excuse for the late payment.

Conclusion

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

19. 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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DR CHRISTOPHER STAKER

TRIBUNAL JUDGE
RELEASE DATE:18 August 2011

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