



**TC01408**

**Appeal number: TC/2011/02013**

*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 PETER CULMAN**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: Dr Christopher Staker (TRIBUNAL JUDGE)**

The Tribunal determined the appeal on 13 July 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 9 March 2011, and HMRC's Statement of Case dated 19 April 2011, and other papers in the case.

## DECISION

### Introduction

- 5 1. This is an appeal against first and second default surcharges of £851.84 each 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 59C of the TMA states in relevant part as follows:

- 10 (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.
- 15 (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.
- ...
- 20 (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
- 25 (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.
- ...
- 30 (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.
- ...
- 35 (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.
- 40 (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;

5 “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**

10 3. The HMRC statement of case states the following facts which have not been disputed by the Appellant. The Appellant left his employment with National Air Traffic Services Ltd on 31 July 2008. He received a redundancy payment in the year ended 5 April 2009. The redundancy payment was taxed at source at the basic rate. A review of HMRC records identified on 3 June 2010 that the Appellant had received  
15 untaxed income in 2008/09. A personal tax return for 2008/09 was issued to the Appellant on 3 June 2010. The return was filed on 19 August 2010. It was processed on 24 August 2010 showing £17,036.85 of tax outstanding for 2008/09. The tax should have been paid on or before 31 January 2010. HMRC issued a surcharge notice on or shortly after 17 September 2010, containing the first and second  
20 surcharges (TMA s.59C(2) and (3) respectively) in the sum of £851.84 each.

4. In the Appellant’s notice of appeal, in the grounds for appeal, the Appellant states that he is not appealing the fact that he owed the tax. He states that “I knew I did and I had taken steps to ensure that I had sufficient funds available to pay as and when  
25 HMRC advised me of what I owed”. He says that once he received a tax return, he filled it in and returned it promptly. When he then received the final tax bill, he paid it promptly.

5. The Appellant says that he was expecting to receive a tax return from HMRC at the end of the 2008/09 tax year, that he did not worry when he did not receive it as he had been told verbally that HMRC’s “catch up” can take 2 years, that there was no  
30 information on the HMRC website as to what he was required to do, and that he therefore decided to wait. The Appellant says that it was his understanding of the way that the system works that HMRC would realised that there was a significant difference between tax expected and tax received and would send him a tax return. The Appellant says that HMRC failed to do this, due to a transition to a new IT  
35 system and due to a reduction in staff. The Appellant feels that HMRC is using technicalities of tax law to recoup money from him because he is a soft target.

6. The HMRC statement of case argues amongst other matters as follows. The Appellant’s failure to comply with his legal obligation to file a tax return on time does not relieve him of his legal obligation to pay the tax on time. Information about  
40 notification of chargeability, criteria for inclusion in self-assessment, payment dates, trigger dates, surcharges, rates of tax and PAYE is widely available, including through HMRC’s website, telephone helpline and public counters. Self-assessment legislation places responsibility for awareness of tax obligations upon the taxpayer,

and not being aware of tax obligations does not relieve the taxpayer of the duty to comply with them. In other words, ignorance is not an excuse. This appeal is not concerned with specialist or obscure areas of tax law, but with the everyday responsibilities of a taxpayer, for which no specialist knowledge is required. There  
5 was nothing exceptional that prevented the Appellant from complying with the obligation.

7. By a letter dated 22 May 2011, the Appellant filed a reply to the HMRC statement of case, raising a number of other arguments.

### **The Tribunal's view**

10 8. The Appellant's notice of appeal contains a request for permission to appeal outside the time limit, stating that his wife died suddenly in February 2011. The Tribunal is sympathetic to this unfortunate circumstance, and grants the requested permission.

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

10. The Tribunal is satisfied on the material before it that the Appellant is liable to the surcharges 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.

20 11. 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  
25 *LaMancha Limited v HMRC* [2010] UKFTT 638 (TC) at [13], quoting *Rowland v HMRC* [2006] STC (SCD) 536 at [18]).

30 12. The Appellant's grounds of appeal state expressly that he knew that he owed the tax and that he had "taken steps to ensure that I had sufficient funds available to pay as and when HMRC advised me of what I owed". The Appellant's case is that he was operating under the "understanding" that he did not have to do anything until he was contacted by HMRC, and that this might take up to two years. The Tribunal finds that as a matter of law that is incorrect, and that the obligation was on the Appellant to pay the tax by 21 January 2010. The Tribunal does not accept that HMRC were required to send him a tax return in time for him to pay tax within the deadline only after the  
35 tax return had been filed and processed. Nor does the Tribunal accept that the Appellant was entitled to do nothing until he had been sent a tax return by HMRC.

13. The issue then is whether it could amount to a reasonable excuse that the Appellant acted in what he suggests was good faith on the basis of what he understood to be the correct position, even if that position was in fact incorrect.

14. The Appellant says that he was aware that he had to pay the tax. His grounds of appeal state that there was no information on the HMRC website as to what he was required to do, and that he therefore decided to wait. The Tribunal is not satisfied that the Appellant did everything that could reasonably be expected in the circumstances.  
5 Knowing that he had to pay the tax, and having found nothing on the HMRC website, the Appellant could reasonably have been expected to make further enquires as to what he had to do, either free of charge by contacting the HMRC helpline, or for instance by consulting a tax adviser.  
15. The Tribunal therefore finds that the Appellant does not have a reasonable excuse  
10 for the late payment.

**Conclusion**

16. For the reasons above, the Tribunal dismisses the appeal and confirms the imposition of the surcharges.  
17. This document contains full findings of fact and reasons for the decision. Any  
15 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  
20 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**DR CHRISTOPHER STAKER**

25 **TRIBUNAL JUDGE**  
**RELEASE DATE: 22 AUGUST 2011**

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