



TC01492

Appeal number: TC/2011/1908

Income tax – surcharge for late payment of tax- section 59C TMA- taxpayer not receiving return from HMRC- whether reasonable excuse]

FIRST-TIER TRIBUNAL

TAX

SEAN JONES

Appellant

- and -

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

Respondents

TRIBUNAL: CHARLES HELLIER (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 30 June 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 March 2011 and HMRC's Statement of Case submitted on 12 April 2011

DECISION

1. Mr Jones is a non UK resident who receives property and interest income taxable in the UK. He submitted tax returns for the years ending 5 April 2001 to 2007, but
5 had no UK tax liability in those years because he had property losses. In the year to 5 April 2008 (“2008”, and similar abbreviations for other years) he had net taxable UK income and a liability to UK income tax.

2. Because Mr Jones’ returns for the earlier years had not disclosed a tax liability HMRC did not send him a tax return for 2008. (Indeed they did not appear to have
10 sent him one for 2007 although he submitted one nevertheless.). On 8 January 2010 Mr Jones’ Irish accountants wrote to HMRC advising them that they had recently become Mr Jones’ accountants in place of KMR and noting (a) that Mr Jones had not received a tax return, and (b) that he had UK income for 2008 and 2009. They asked HMRC to “reactivate his registration ..and issue him with the necessary documents to
15 file his return.”.

3. Mr Jones’ 2008 return was filed promptly thereafter, on 29 January 2010 , and Mr Jones paid the tax due immediately on being notified of the amount due on 28 January 2010.

4. It seems to me that, though Ryan & Co took admirably prompt steps to rectify the
20 failure to file an pay for 2008, it is likely that in the change from KMR to Ryan & Co the payment of UK tax and returning of UK income may have slipped through the net.

5. On 22 June 2010 HMRC assessed two surcharges on Mr Jones for the late
25 payment of his tax for 2008. The first, under section 59C(2) TMA, because the tax was more than 28 days late, and the second, under section 59C(3), because the tax was more than six months late. The surcharges, as subsequently amended, were each of £1,670.68. Mr Jones appeals against these surcharges.

6. Under section 59C(8) this tribunal may set aside a surcharge if the taxpayer has a reasonable excuse for his failure to pay.

7. Ryan & Co in their letter of 30 June 2010 to HMRC say “ we had not received
30 any notification, nor had our client, that his registration was to be deactivated. You will note we contacted your offices...requesting that you reactivate his registration, In a later letter they point out that HMRC had “deregisterd Mr Jones from 5 April 2007” and that no reminders or tax returns were received. In the notice of appeal they point out that it “ is entirely feasible, in the absence of receiving reminders, that a non-
35 resident individual could miss the deadline..”.

8. HMRC say that any individual in receipt of UK taxable income has a duty under
40 section 7 TMA to notify MHMRC within six months of the year end if they have not received a return. They note that if Mr Jones had so notified them the date for the payment of his tax would have been deferred under section [58B] until three months after he had been sent a return. They say ignorance of the law is no defence.

9. In appointing Ryan & Co Mr Jones took in my view the reasonable and responsible step of obtaining a qualified agent to deal with his tax affairs. It seems likely to me that Mr Jones relied on his agents to ensure his compliance. Such reliance in the case of Ryan & Co seems reasonable. But I do not consider that mere reliance
5 on another person, no matter how reasonable that reliance, can constitute a reasonable excuse. Where a person uses an agent then, generally, the acts of the agent should be treated as those of his principal for these purposes.

10. It is understandable that either KMR or Ryan & Co may not have been aware of the provisions of section 7 TMA, but I fear that such ignorance even in one outside
10 the UK cannot be a reasonable excuse.

11. The concept of the registration of a taxpayer is not one which appears in this context in the Tax Acts, but it plainly reflects the practice of HMRC in sending returns to some people and not to others, and may reflect practice in the Republic of Ireland,. But that practice does not supersede the provisions of the statute and only if
15 it gives rise to an expectation that a person is not required to pay tax unless he is “registered” is it possible to say that “non registration” gives rise to a reasonable excuse for non payment.

12. This is not a case where an explicit representation was made, nor does it seem to me that HMRC’s simply not sending a return to the taxpayer could reasonably create
20 the impression that he did not have to pay UK tax or return his UK income.

13. Given that Mr Jones’ UK income was substantial, it seems to me that his agents do not have a reasonable excuse for not having considered his UK obligations at an earlier date, or not having taken advice on or considered the UK Statutory language from which they would have concluded that his payment and return obligations ere
25 unaffected by his not having received a return. (Indeed that seems to have been the conclusion reached in 2007 when he submitted a return although one had not been sent to him.) .

14. I conclude that Mr Jones does not have a reasonable excuse for failure.

15. The appeal is dismissed.

30 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
35 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

CHARLES HELLIER

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TRIBUNAL JUDGE
RELEASE DATE: 28 July 2011

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