



**TC01512**

**Appeal number: TC/2011/04211**

*INCOME TAX – Surcharge on late payment of income tax (Taxes Management Act 1970 s.59C) –Appeal dismissed*

**FIRST-TIER TRIBUNAL**

**TAX**

**MR MOHAMMED IRSHAD KHOKHAR**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: Dr Christopher Staker (Tribunal Judge)**

**The Tribunal determined the appeal on 3 October 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 13 May 2011, and HMRC's Statement of Case dated 23 June 2011, and other papers in the case.**

## DECISION

### Introduction

- 5 1. This is an appeal against a default surcharge of £3,294.83 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.
- (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.
- 15 (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
- (b) shall state the day on which it is issued and the time within which an appeal against the imposition of the surcharge may
- 25 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.
- 30 ...
- (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
- 35 (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
- 40 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 Appellant’s notice of appeal states by way of grounds of appeal merely that: “Tax Paid allocated wrongly, resulting in unnecessary surcharges & interest. This matter should be reviewed and recalculated”.

15 4. The HMRC statement of case states the following facts which have not been disputed by the Appellant. The filing date for the Appellant’s 2008/09 tax return was 31 October 2009 if a paper return was filed, or 31 January 2010 if filed online. A paper return was filed on 7 April 2010. HMRC processed the tax return on 12 April 2010 and issued a calculation, together with an explanation of the amounts due and the due dates, on 12 April 2010. This assessment showed that the Appellant’s total tax liability for the year was £65,896.70.

20 5. According to the HMRC statement of case, this tax liability was paid by the Appellant through three payments, made on 22 March 2010, 13 April 2010 and 22 June 2010.

25 6. On 11 May 2010, HMRC imposed a surcharge of £3,294.83. The Tribunal notes that if the dates of payment are correct, the amount of this surcharge, being 5% of the total tax liability, would appear to be correctly imposed under s.59C(2) of the TMA (subject to the issue of reasonable excuse), since none of the tax was paid within 28 days of the due date.

7. HMRC understand the Appellant to be raising two grounds of appeal.

30 8. The first ground of appeal is that age related allowances were not allowed. This ground of appeal would appear to suggest that the amount of the assessment was too high. The HMRC position is that the Appellant’s income exceeded the limit whereby age related personal allowances are applicable.

35 9. The second ground, which appears to be reflected in the wording of the Appellant’s notice of appeal, is that payments on account were not properly allocated. In this respect, HMRC refer to a letter from HMRC to the appellant, dated 12 July 2010, after the Appellant had notified an appeal against the surcharge. That letter requests the Appellant to specify which payments made by the Appellant were intended to be offset against the 2008/09 tax bill, and states that payments will then be allocated in accordance with his wishes, which may reduce or cancel the surcharge.  
40 The HMRC statement of case now says that what was stated in this letter was

incorrect. The HMRC position is now that a taxpayer can determine how a payment is to be allocated at the time that it is paid or up to the point that HMRC communicates the allocation to the taxpayer. In the absence of any determination by the taxpayer before that point, HMRC will determine how the payment is to be allocated and this will then be binding on the taxpayer. Included in the papers is a letter from HMRC to the Appellant dated 9 February 2011 stating that “I have examined your account carefully and I am satisfied that payments made by you have all been allocated so that the earliest payments have been set against the oldest outstanding charges on your account at the time payments were received, in accordance with our normal accounting procedures”. That letter went on to note that, in any event, the Appellant had not responded to HMRC’s 12 July 2010 asking for details of payments believed to have been incorrectly allocated.

### **The Tribunal’s view**

10. On its consideration of the material before it, the Tribunal finds nothing to suggest that the Appellant was entitled to age related allowances which were not allowed in the tax assessment.

11. On its consideration of the material before it, the Tribunal also finds nothing to suggest that HMRC has improperly allocated payments made by the Appellant, such that the amount of surcharge was higher than it should have been, or such that a surcharge was imposed when it should not have been.

12. The Appellant does not appear to be suggesting that he otherwise had a reasonable excuse for the late payment of the tax. In any event, on its consideration of the material before it, the Tribunal finds nothing to suggest that there is a reasonable excuse for the late payment of the tax.

### **Conclusion**

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

14. 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.

**DR CHRISTOPHER STAKER**

**TRIBUNAL JUDGE**

**RELEASE DATE: 20 OCTOBER 2011**

5