



**TC01539**

**Appeal number: TC/2011/04413**

*Surcharge. Late payment. Burden of proof. Reasonable excuse. Honest belief.*

**FIRST-TIER TRIBUNAL**

**TAX**

**MR. S. STUART-TURNER**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: GERAINT JONES Q. C. (TRIBUNAL JUDGE)**

**The Tribunal determined the appeal on 07 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 10 June 2011, HMRC's Statement of Case submitted on 11 July 2011 and the Appellant's Reply dated 23 August 2011.**

## DECISION

1. The appellant, Mr Stuart-Turner, appeals against a 5% surcharge levied by the respondent in respect of his income tax liability for the fiscal year ended 5 April 2010.
- 5 2. The appellant's case and his evidence is set out in his letter dated 10 June 2011 in which he says that he had set up a payment arrangement under section 108 Taxes Management Act 1970 which, he honestly believed, related to all and any tax payable by him in respect of a period when he traded, being 2 February 2009 – 16 October 2009. He says that his wife telephoned the respondent and set up the payment arrangement and, through her, he was led to believe that the payment arrangement would cover all the tax due in respect of the 36 weeks for which he traded. The payment arrangement began on 15 April 2010 and, he says, has been honoured with the payment of £60 per month. That is not disputed by the respondent.
- 10 3. The appellant says that he did not realise that as his earnings crossed two different tax years he may need to set up two separate time to pay arrangements, especially given what he understood when the arrangement had originally been put in place.
- 15 4. The appellant contends that it was both unfair and unreasonable for the respondent to impose a penalty given the factual background.
- 20 5. The respondent has not seen fit to adduce any evidence in this appeal.
6. I have no reason to doubt the veracity of the information provided by the appellant in his letter of 10 June 2011. The appellant says that when the payment arrangement was entered into on 15 April 2010 he had been informed, through the agency of his wife, that the payment of £60 per month could continue until the whole of the tax debt arising from his 36 weeks of self-employment had been paid. There is nothing from the respondent to gainsay that account or that evidence. In those circumstances I cannot be satisfied that the respondent has discharged the onus of proof upon it, by demonstrating that no such payment arrangement was in place.
- 25 7. Alternatively, given that I accept that the appellant honestly believed that such a payment arrangement was in place, he has demonstrated that he had a reasonable excuse for not paying the whole amount of the tax due for the tax year ended 5 April 2010 by 31 January 2011. An honest belief in a given state of affairs can amount to a reasonable excuse at least until such time as the person holding that belief is given proper cause to believe that the belief is incorrect.
- 30 8. The surcharge amount of £155.90 is discharged and set aside.
- 35 9. 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
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“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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**TRIBUNAL JUDGE**  
**RELEASE DATE: 2 NOVEMBER 2011**

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