



TC01689

Appeal number: TC/2011/05027

Appeal against surcharge for late payment of tax - Reasonable excuse—Appeal dismissed

FIRST-TIER TRIBUNAL

TAX

MR BRIAN YOUNG

Appellant

- and -

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

Respondents

TRIBUNAL: J. BLEWITT (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 16 November 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 27 June 2011, HMRC's Statement of Case submitted on 25 August 2011 and the Appellant's Reply dated 26 September 2011.

DECISION

1. This is an appeal against a surcharge imposed pursuant to Section 59C (2) Taxes Management Act 1970 (“TMA”) in respect of late payment of tax for the tax year ended 5 April 2010.
2. Payment of the Appellant’s self-assessment liability was due on 31 January 2011. Liability for the year was £1217.60. The liability was paid on 18 March 2011.
3. When a balancing payment or payment on account is still unpaid more than 28 days from the due date a surcharge automatically arises under s.59C(2) TMA1970. This initial surcharge is equal to 5% of the tax unpaid at that date. A further 5% surcharge applies where payment remains unpaid for more than 6 months after the due date under s.59C(3) TMA1970. The surcharge notice was issued to the Appellant on or about 17 March 2011 in the sum of £60.88.
4. Under Section 59(C)(9) TMA1970, if it appears to the Tribunal that the taxpayer had a reasonable excuse for not paying the tax throughout the default period, it may set aside the imposition of the surcharge.

Submissions

5. The case for the Appellant is set out in the Notice of Appeal dated 27 June 2011. The Appellant submitted his 2009/2010 tax return in the summer of 2010. The return was sent back to the Appellant at his address in Northern Cyprus as incomplete, however it was returned to HMRC as undelivered. At no time was the Appellant aware of this situation. The Appellant changed his address to a UK postal address due to difficulties receiving mail and wrote to HMRC informing them of this fact. The Appellant also wrote to HMRC on 29 June 2010, in response to which HMRC replied to the Appellant using the new address on 21 September 2010 and apologised for the delay in responding to him; the Appellant submits that HMRC were therefore aware of his new address from sometime in July.
6. The Appellant disputes that his return was inaccurate although he was told that the residency page had not been filled in. When the Appellant found out in January 2011 that HMRC did not have his return he immediately submitted a second return before the deadline of 31 January 2011. The Appellant was then informed that there was an underpayment and after some time spent investigating, the Appellant discovered the mistake; HMRC had failed to tax his smaller pension, although the Appellant accepts that he should have spotted the error and takes responsibility for his tax matters. The Appellant took action to see how the amount could be paid. HMRC were unhelpful and the Appellant was left to find the money for immediate payment; he also looked at appealing, all of which took time and as a result a surcharge was imposed for late payment.
7. The extenuating circumstances relied upon by the Appellant are as follows:
- (a) Had the original return been auctioned there would have been sufficient time to arrange payment;

(b) HMRC should take some blame for not instructing the paymaster to tax the smaller pension;

(c) It was not long after the return was rejected that HMRC had the Appellant's new address, yet where was the follow up action;

5 (d) The Appellant has an exemplary record with HMRC, he is 67 years of age and pensioners do have memory lapses.

8. By email dated 26 September 2011 to the Tribunals Service, the Appellant responded to HMRC's Statement of Case. The Appellant disputes that HMRC did not have his new address to send the incomplete return to once it was returned
10 undelivered. The Appellant is still unaware of the problem with the first return. The Appellant lives in Northern Cyprus where there are postal problems; as a result he was unaware of the problem until late January 2011. Time was required to investigate, which took well into February 2011. A final reminder of the outstanding debt differed from the original calculation; when challenged, HMRC did not respond and it later
15 transpired that the correct amount was the lowest. HMRC have not taken any responsibility.

9. HMRC's Statement of Case can be summarised as follows: the return for the year ending 5 April 2010 was issued on 29 April 2010 with a filing date of 31 January 2100 if filed online. An unsatisfactory return was received on 6 July 2010 and
20 returned to the Appellant's address as shown on his self-assessment record on 13 July 2010. The return was received by HMRC as undelivered on 15 January 2011. The Appellant filed his return online on 23 January 2011; the return contained a self calculation of the tax due. In addition the return was filed online therefore the tax was automatically calculated. The liability was paid on 18 March 2011 and the period of
25 default was therefore 45 days (from 31 January 2011 to 16 March 2011).

10. The Taxes Management Act 1970 requires that returns provide information reasonable required; where the return does not satisfy the requirements as stated in the "Notice to file", the return is sent back to a taxpayer to ensure that a complete return is submitted. As part of the online filing system, a tax calculation and confirmation of
30 the liability due is provided, therefore the Appellant would have been aware of the liability due and had sufficient time prior to the payment deadline of 31 January 2011 and surcharge trigger date of 28 February 2011 to make payment. Inability to pay is not a reasonable excuse (section 59C (10) TMA 1970) and the Appellant did not request a time to pay arrangement. The responsibility rests with the Appellant to
35 ensure that his tax affairs were dealt with on time.

Decision

11. The issue for the Tribunal to determine is whether there was a reasonable excuse for the late payment of tax, which lasted the period of the default. The Tribunal was sympathetic to the postal problems experienced by the Appellant, and accepted that he
40 had notified HMRC of his change of address. However, the Tribunal noted that, albeit close to the deadline, the Appellant became aware that the return had not been filed and was able to submit the return on 23 January 2011, prior to the due date of payment.

12. The Appellant accepted in his Notice of Appeal that he was then informed that there was an underpayment and that he spent some time finding the mistake. The Tribunal found as a fact, as was accepted by the Appellant, that the responsibility to ensure that tax obligations are complied with rested with the Appellant, not HMRC.
5 The length of time taken by the Appellant to investigate does not amount to a reasonable excuse.

13. As regards the Appellant's query as to why the original return was unsatisfactory, the Appellant accepted that there was an error in the second return submitted and that, as a result, payment was made late. The Tribunal found as a fact that the
10 unsatisfactory nature of the first return was not relevant to the issue to be decided by the Tribunal; namely whether there was a reasonable excuse for the late payment of tax.

14. The Tribunal accepted that had difficulties not arisen in respect of the original return submitted, the Appellant would have had more time to arrange payment.
15 However there is no evidence before the Tribunal as to why the Appellant's investigations had taken so long or why no time to pay arrangement was made in the meantime. Legislation specifically states that insufficiency of funds is not a reasonable excuse (Section 59(C)(10) TMA1970). Legislation obliges the taxpayer to discharge his tax liabilities in full by the due date. There is no evidence that the
20 Appellant notified HMRC of any hardship or requested a payment plan prior to the surcharge trigger date. In the absence of such evidence the Tribunal found as a fact that there was no reasonable excuse.

15. The Appellant submits that a final reminder received on 22 February 2011 contained a figure which differed from the original calculation. No further
25 information is provided. The Tribunal found as a fact that the payment due date had expired by this point and the Appellant was aware of the amount due. In the absence of any further information as to the effect of this reminder on the late payment, the Tribunal did not accept that this provided the Appellant with a reasonable excuse.

16. The Tribunal confirms the surcharge and dismisses the appeal.

30 17. 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.

40 **TRIBUNAL JUDGE**
RELEASE DATE: 20 December 2011