



TC01701

Appeal number: TC/2011/05656

Appeal against surcharge for late payment of tax – reasonable excuse – appeal allowed

FIRST-TIER TRIBUNAL

TAX

SARAH CORNES

Appellant

- and -

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

Respondents

TRIBUNAL: J. BLEWITT (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 17 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 17 July 2011 and HMRC's Statement of Case submitted on 14 September 2011.

DECISION

1. This is an appeal against a surcharge imposed for the late payment of tax for the tax year 2009/2010, imposed pursuant to section 59C Taxes Management Act 1970.

5 Submissions of the parties

2. By Notice dated 17 July 2011, the Appellant appealed to the Tribunal. The grounds relied upon can be summarised as follows:

- (a) The Appellant is a salaried partner in a small solicitors firm who has taken a 50% pay cut for the last 2 years as a result of the recession;
- 10 (b) The Appellant's husband lost his livelihood 3 times in the past 3 years with a near nervous breakdown many times throughout that period;
- (c) The couple have debts of approximately £85,000 which are being repaid under a Debt Management Plan;
- 15 (d) Due to the Appellant's husband being an alcoholic, combined with the financial pressures suffered, the couple separated on 20 April 2011. Throughout this period, the Appellant made all efforts possible to manage the separation, her 2 children, working full time and controlling the debt. There was only so much she could cope with and was unable to manage the amount of paperwork coming in.

20 3. HMRC's Statement of Case does not dispute the facts relied upon by the Appellant. Instead, it submits that hardship or distress is not a consideration that HMRC can take into account; any such request would be considered by the time to pay unit. For the surcharge not to have been raised, it is submitted that the Appellant was required to either pay the liability due at 31 January 2011 or have an agreed time
25 to pay arrangement in place by the trigger date of 28 February 2011. The Appellant made a time to pay request on 23 February 2011; she was told that HMRC would contact her for further discussion. HMRC telephoned the Appellant on 29 March 2011; she was not available and a letter was issued requesting the Appellant to call back in 7 days. On 23 May 2011 the Appellant contacted HMRC and agreed a
30 monthly payment plan which commenced on 2 June 2011.

Decision

4. The issue for the Tribunal to determine is whether there was a reasonable excuse for the late payment. The claims relied upon by the Appellant are not disputed by HMRC and therefore I find them as fact.

35 5. HMRC accept that the Appellant made contact prior to the trigger date in order to request a time to pay arrangement. There is no explanation as to why an agreement was not reached on 23 February 2011; instead the Appellant was told she would be contacted to discuss this issue further at a later date. Contact was attempted by HMRC on 29 March 2011, over 1 month later, however the Appellant was unavailable. The
40 Tribunal notes that this contact by HMRC post dates the trigger date for the surcharge of 28 February 2011. In the absence of any evidence to the contrary, the Tribunal

finds as a fact that the Appellant made all reasonable attempts to arrange a time to pay agreement prior to the trigger date and cannot be held accountable for the delay in HMRC attempting to contact her when she had been told that HMRC would contact her to discuss the matter.

5 6. HMRC rely upon the fact that the Appellant did not make contact with HMRC following their letter dated 29 March 2011, until 23 May 2011. The Tribunal finds as a fact, having accepted the circumstances of the Appellant to be as set out in the Notice of Appeal, that the separation of the Appellant and her husband, taken together with her husband's alcoholism, constitutes a reasonable excuse. Separation and the no
10 doubt numerous difficulties arising as a result, not least housing and childcare, is an unforeseeable difficulty and one outside of the sole control of the Appellant. Such events are also not easily resolved overnight. The Tribunal finds that the Appellant had acted as a prudent and diligent taxpayer in attempting to agree a time to pay arrangement prior to the surcharge trigger date. The Tribunal finds as a fact that there
15 is a reasonable excuse lasting throughout the time between the letter from HMRC dated 29 March 2011 and the Appellant's telephone contact with HMRC on 23 May 2011 on the basis of her circumstances throughout that period.

7. The appeal is allowed.

8. This document contains full findings of fact and reasons for the decision. Any
20 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
25 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

30

TRIBUNAL JUDGE
RELEASE DATE: 3 January 2012

35