



TC01706

Appeal number: TC/2011/6634

INCOME TAX – SURCHARGE FOR LATE PAYMENT OF TAX – *Did the Appellant have a reasonable excuse – Yes – Appeal allowed*

FIRST-TIER TRIBUNAL

TAX

LARAINÉ COGHILL

Appellant

- and -

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

Respondents

TRIBUNAL: MICHAEL TILDESLEY OBE (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 12 December 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 19 August 2011, HMRC's Statement of Case submitted on 28 September 2011 and the Appellant's Reply dated 13 October 2011.

DECISION

1. The Appellant appealed against the imposition of a surcharge issued on or a few days after 1 April 2011 in the amount of £475.50 for the late payment of the tax due for the year ending 5 April 2010.

2. On 6 April 2010 HMRC issued the Appellant with a notice to file her 2009/10 tax return by 31 October 2010 for a paper return, and if online by 31 January 2011. The Appellant filed her return online on 22 January 2011 which contained a self calculation of the tax due. The Appellant's tax liability for the year was £12,517.25 of which £9,510.10 remained outstanding at the surcharge trigger date of 28 February 2011. The Appellant paid the balance of the tax due on 2 March 2011. The Appellant was therefore liable to pay a surcharge for the outstanding tax due as at the day following the 28 February 2011, which was fixed at five per cent of £9,510.10 which equated to £475.50.

3. The Appellant's agent argued that she had a reasonable excuse. The agent stated that the balancing payment was sent to HMRC by first class post on 24 February 2011, in which case the payment should have been delivered before the cut off date of 1 March 2011. The Appellant's husband was seriously ill in 2010 which had meant that their tax affairs had not been dealt with in the same timely manner as in previous years. They had used the professional services of their agent to complete their tax returns by the due date. On 22 February 2011 they provided the agent with the monies to settle the outstanding balance. The agent always franked its post first class which was delivered by hand to a local post office before the final collection for the day.

4. HMRC contended that the Appellant did not have a reasonable excuse. In HMRC's view the Appellant had long experience of the self assessment system and was aware of her responsibilities to meet the due dates for payment. HMRC considered the Appellant had not allowed sufficient time for postal delays by posting the payment on the 24 February 2011. HMRC was not responsible for inefficiencies within the postal system. HMRC did not challenge the agent's assertion that the payment was posted first class on 24 February 2011.

5. The Tribunal has limited jurisdiction in penalty Appeals which reflects the purpose of the legislation of ensuring that tax payers pay their tax on time. The Tribunal has no power to mitigate the penalty. The Tribunal can either confirm the penalty or quash it if satisfied that the Appellant has a reasonable excuse for her failure. If there is a reasonable excuse it must exist throughout the period of default. The Appellant has the obligation of satisfying the Tribunal on a balance of probabilities that she has a reasonable excuse for not paying the tax on time.

6. The statute provides no definition of reasonable excuse except that inability to pay the tax shall not be regarded as an excuse. In considering a reasonable excuse the Tribunal examines the actions of the Appellant from the perspective of a prudent tax payer exercising reasonable foresight and due diligence and having proper regard for her responsibilities under the Taxes Acts.

7. The Tribunal finds that the Appellant exercised due diligence in instructing a professional agent to assist her and her husband with their tax affairs, particularly in view of her husband's serious illness which meant that they were unable to attend to their tax affairs in the timely manner of previous years. The Appellant put the agent in funds in sufficient time to pay the outstanding balance by the deadline for triggering the five per cent surcharge.

8. The Tribunal is satisfied that the agent despatched the payment at such time and in such manner that it was reasonable to expect that it would be received by HMRC before the day following the expiry of 28 days from the due date. The agent posted the payment by first class post on 24 February 2011 which was a Thursday. The Post Office aims to deliver first class post by the next working day which includes a Saturday. This meant that the agent had allowed three working days for delivery of the payment, Friday, Saturday and Monday.

9. The Tribunal notes that HMRC did not contest the agent's statement that the payment was posted first class on 24 February 2011. HMRC argue that the agent should have allowed for the possibility of excessive postal delays. The Tribunal considers HMRC's contention distorts the ordinary meaning of reasonable foresight which underpins the concept of reasonable excuse. Reasonable foresight is not about anticipating every possible event. The Tribunal finds that the agent exercised reasonable foresight by allowing three working days for delivery of the letter containing the payment.

10. The Tribunal is satisfied that the above facts found constitute a reasonable excuse within the meaning of section 59C(9)(a) of the Taxes Management Act 1970.

11. The Tribunal allows the Appeal, and sets aside the surcharge in the sum of £475.50.

12. 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.

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MICHAEL TILDESLEY OBE
TRIBUNAL JUDGE
RELEASE DATE: 4 January 2012

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