



TC01723

Appeal number: TC/2011/6584

INCOME TAX – SURCHARGE FOR LATE PAYMENT OF TAX – *Did the Appellant have a reasonable excuse – No – Appeal dismissed*

FIRST-TIER TRIBUNAL

TAX

KATRINA LONDON

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 27 September 2011 and the Appellant's Reply dated 26 October 2011.

DECISION

1. The Appellant appealed against the imposition of a surcharge issued on 3 April 2011 in the amount of £267.39 for the late payment of the tax due for the year ending
5 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 27 January 2011 which contained a self calculation of the tax due. The Appellant's tax liability for the year was £5,347.85
10 which remained outstanding at the surcharge trigger date of 1 March 2011. The Appellant paid the tax due on 24 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 £5,347.85 equating to £267.39.

3. The Appellant's argued that she had a reasonable excuse. The under payment of tax was a one-off which was due to an error on the part of her employer. The Appellant volunteered the information on the under-payment without prompting from HMRC. The Appellant stated that her tax adviser had notified HMRC online of her change of address on 5 February 2011. Also her adviser had written to HMRC on two occasions, 6 February 2011 and 11 March 2011, requesting that the outstanding tax be
15 deducted through the tax code. HMRC did not respond to the first letter and only replied to the second one after the Appellant had contacted the debt recovery office to pay the outstanding amount.
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4. The Appellant maintained that she had a reasonable excuse:

25 "The underpayment was drawn to the attention of HMRC by me and a request be made that it be paid through my PAYE at the same time. I received no response from HMRC to that request despite reminders from my agent. I did not receive any notification from HMRC that I would be subject to a surcharge. Once I was made aware that the request for phased payment was unlikely to be granted, following a
30 telephone call made by myself to HMRC, I made immediate payment"

5. HMRC contended that whilst it has no obligations to remind tax payers of their legal responsibilities to pay tax on time, the notice to file which was sent to the Appellant on 6 April 2010 warned that interest and surcharges would be payable if tax was paid late. HMRC stated that it did not receive the tax adviser's letters of 6
35 February and 11 March 2011 and was unaware of the change of address until advised by the Appellant by phone. HMRC said that the Appellant had used her previous address on the 2009/10 tax return, and that she had indicated on that return that she did not want the underpayment to be collected via the PAYE system. HMRC pointed out that, in any event, the PAYE facility was only available if the tax due was less
40 than £2,000. According to HMRC, the Appellant had been associated with self assessment since 1996 indicating that she had knowledge of the tax requirements. HMRC concluded that the Appellant knew how much she had to pay and had provided no reason preventing her from making the payment.

6. 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.

7. 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.

8. There is a clear conflict between the two parties about the existence of correspondence. The Tribunal is prepared to deal with this Appeal on the basis that the Appellant's tax adviser sent the letters on 6 February and 11 March 2011. The Tribunal starts from the principle that the tax payer is responsible for his/her tax affairs and cannot pass that responsibility to HMRC.

9. The Tribunal finds the following facts:

(1) The Appellant was under a legal obligation to complete a self assessment tax return, and make a correct declaration of the tax owed.

(2) The Appellant should have been aware of her responsibilities to pay the outstanding tax by the due date and of the consequences of not meeting the deadlines.

(3) On 6 April 2010 HMRC informed the Appellant in its *Notice to File* of the consequences of interest and surcharges if payment was not made on time.

(4) The Appellant knew that she was liable to pay tax of £5,347.85 by no later than 28 February 2011.

(5) The Appellant in her tax return did not request to make payment of the outstanding tax through the PAYE code, and would have known from completion of that form that HMRC only considered such requests if the amount was less than £2,000.

(6) The Appellant's tax adviser sent a letter on 6 February 2011 requesting payment of the outstanding tax through the Appellant's tax code phased over two years. The Appellant should have known that it was unlikely that such a request would have been granted in view of the £2,000 limit.

(7) The Appellant's tax adviser did not receive a response to the letter of 6 February 2011, and sent a reminder on 11 March 2011 which was after the deadline date of 28 February 2011.

(8) The Appellant settled the amount in full on 24 March 2011 after contact with HMRC's debt recovery team.

10. The Tribunal is satisfied that the above facts which are the most favourable to the Appellant do not constitute a reasonable excuse. The Appellant knew the likelihood of HMRC agreeing to payment of the tax through PAYE was remote. Given that payment was due by no later than the 28 February 2011, a prudent tax payer would have not waited until 11 March 2011 to chase up the request of 6 February. It would have been done earlier and before the cut-off date. Her actions were not those of prudent tax payer exercising reasonable foresight and due diligence and having proper regard for her responsibilities under the Taxes Acts.

11. The Tribunal dismisses the Appeal, and confirms the surcharge in the sum of £267.39.

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: 5 January 2012