



TC01793

Appeal number: TC/2011/04790

INCOME TAX – Surcharge on late payment of income tax (Taxes Management Act 1970 s.59C) – Appeal allowed

FIRST-TIER TRIBUNAL

TAX

MR ANTHONY METCALFE

Appellant

- and -

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

Respondents

TRIBUNAL: Dr Christopher Staker (Tribunal Judge)

The Tribunal determined the appeal on 20 January 2012 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 4 June 2011, and HMRC's Statement of Case dated 22 September 2011, and other papers in the case.

DECISION

1. This is an appeal against a default surcharge imposed pursuant to s.59C of the Taxes Management Act 1970 (the “TMA”) in respect of the late payment of tax for the 2002/03 tax year.

2. There is something of a history to the case, but it is unnecessary to delve into that history in detail. The appellant brought an appeal before this Tribunal in respect of the tax due for the 2002/03 tax year, which was dismissed by the Tribunal. The hearing before the Tribunal in relation to that matter was held on 28 September 2010, and the release date of the determination was 15 October 2010. If the determination was notified to the Appellant by post, it is to be assumed that he would have received it after 15 October 2010. The Appellant says that in fact he received it on 22 October 2010.

3. The position taken in an HMRC letter to the Appellant dated 12 April 2011 is that the Appellant was required to make payment within 30 days of the Tribunal’s “determination”, which is stated by HMRC to have been on 28 September 2010, such that the payment was due on 28 October 2010, and such that the Appellant became liable to a default surcharge under TMA s.59C 28 days after that due date, namely on 25 November 2010.

4. Section 59C of the TMA provides in relevant part as follows:

(2) Where any of the tax remains unpaid on the day following the expiry of 28 days from the due date, the taxpayer shall be liable to a surcharge equal to 5 per cent of the unpaid tax.

...

(12) In this section—

“the due date”, in relation to any tax, means the date on which the tax becomes due and payable;

“the period of default”, in relation to any tax which remained unpaid after the due date, means the period beginning with that date and ending with the day before that on which the tax was paid.

5. According to HMRC, the Appellant requested a time to pay arrangement on 22 December 2010, which HMRC granted, and the Appellant made payment in accordance with that agreement on 21 March 2011.

6. The Appellant’s position is as follows. He only received the Tribunal’s determination on 22 October 2010. If payment was due 28 days after the date of the Tribunal’s determination, time should run from 22 October 2010. The Appellant says that this would mean that he would not become liable to a default surcharge until 25 December 2010, which was after the date that he had entered into a time to pay agreement with HMRC.

7. The HMRC statement of case does set out the statutory provisions relating to the date on which payment of tax becomes due in cases where it is required to be paid following a Tribunal appeal. Even assuming that it is the case that the tax must be paid within 30 days of the Tribunal's determination, HMRC does not explain on what basis it contends that time begins to run in this case from 28 September 2010, which was the date of the hearing before the Tribunal. There does not appear to be any suggestion that the Tribunal gave its decision orally on the date of the hearing. Presumably the first that the Appellant would have known about it was when he received the written determination. The release date of the determination is 15 October 2010, and the Appellant says he received it on 22 October 2010. The parties do not address arguments as to whether, as a matter of law, time runs from the release date or the date of receipt of the decision by the Appellant, or, for instance, a date of *deemed* receipt of the decision by the Appellant, or even the date of expiry of the period in which to seek permission to appeal, in the event that there is no application for permission to appeal.

8. The only response by HMRC to the Appellant's argument is to say in the HMRC statement of case that even if the Appellant did not receive formal notification of the Tribunal decision until 22 October 2010, receipt of notification on that date "would still have allowed him ample time to make payment ... before the surcharge trigger date of 25 November". However, HMRC does not address the central question, which is whether 25 November 2010 is in fact the surcharge trigger date.

9. The Tribunal has considered whether it should invite further submissions from the parties on this issue. The Tribunal has decided against this course. The default surcharge is in the sum of only £474.02. The Appellant has made his position quite plain. The HMRC statement of case has not directly addressed the Appellant's argument. The core of the HMRC case is that time began to run from 28 September 2010, which appears to be plainly wrong. That was the date of the hearing, not the date of the Tribunal's determination. In any event, HMRC gives no explanation why HMRC considers that to be the correct date from which time starts to run. The Tribunal considers that in all the circumstances it would be disproportionate to invite further argument on such matters, having regard to the overriding objective in rule 2 of the Tribunal's Rules. The appropriate course is to allow the appeal.

Conclusion

10. Appeal allowed.

11. 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.

5

DR CHRISTOPHER STAKER

TRIBUNAL JUDGE

RELEASE DATE: 31/01/2012

10