



TC01816

Appeal number: TC/2011/06736

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

FIRST-TIER TRIBUNAL

TAX

MRS JUDITH MARY LYONS

Appellant

- and -

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

Respondents

TRIBUNAL: Dr Christopher Staker (Tribunal Judge)

The Tribunal determined the appeal on 27 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 26 August 2011, and HMRC's Statement of Case dated 28 September 2011, the Appellant's reply dated 23 October 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 2009/10 tax year.

2. The facts as set out in the HMRC statement of case include the following. The Appellant received a one-off share dividend on 13 November 2009 which then required a capital gains tax payment. The due date for payment of the tax was 31 January 2011. The outstanding liability was paid on 7 March 2011. At the time that the Appellant received the share dividend on 13 November 2009, she was not registered on the self-assessment system. The first year of her liability was 2009/10. The Appellant informed HMRC on 10 January 2011 that she had received the share dividend. She was issued with a tax return on 3 February 2011. The due date for the filing of the return was 10 May 2011. The return was in fact filed within this deadline on 3 March 2011, and was processed on 4 March 2011.

3. The Appellant has not disputed any of these facts.

4. Section 7 of the TMA provides as follows:

(1) Every person who—

(a) is chargeable to income tax or capital gains tax for any year of assessment, and

(b) has not received a notice under section 8 of this Act requiring a return for that year of his total income and chargeable gains, shall, subject to subsection (3) below, within six months from the end of that year, give notice to an officer of the Board that he is so chargeable.

5. 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.

...

(7) An appeal may be brought against the imposition of a surcharge under subsection (2) or (3) above within the period of 30 days beginning with the date on which the surcharge is imposed.

...

(9) On an appeal under subsection (7) above that is notified to the tribunal section 50(6) to (8) of this Act shall not apply but the tribunal may—

(a) if it appears that, throughout the period of default, the taxpayer had a reasonable excuse for not paying the tax, set aside the imposition of the surcharge; or

(b) if it does not so appear, confirm the imposition of the surcharge.

(10) Inability to pay the tax shall not be regarded as a reasonable excuse for the purposes of subsection (9) above.

5 ...

...

(12) In this section—

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

10 “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.

15 6. The Appellant states in her grounds of appeal as follows. She is a senior citizen who received a one-off share dividend that required a capital gains tax payment. The reason for the late submission of her tax return was the delay by HMRC in issuing her with a Unique Tax Reference number (UTR). When she queried that this situation would result in her missing the 31 January 2011 deadline, she was told that the delay was due to the volume of first time users, and that she was assured that she would be
20 issued with no penalty. The Appellant is very upset about the surcharge which was due to a situation beyond her control. The Appellant was completely unaware that it was her responsibility to inform HMRC that the money in question was in her account. Nevertheless, she attempted to complete this procedure before the due date. The Appellant considers that she has at all times acted in an honest and responsible
25 fashion and has not tried to hide her finances.

7. HMRC argues as follows. Under s.7(1) TMA, the Appellant was required to inform HMRC of her liability to capital gains tax arising in 2009/10 by 5 October 2010. She did not do so until 10 January 2011. The Appellant did not receive a
30 penalty for the late filing of her return. The surcharge is imposed because the Appellant did not pay the tax by the due date. The self-assessment guidelines that were issued to the Appellant on 3 February 2011 stated that she should not wait for a tax calculation or a request to make payment and that she should work out the approximate amount of tax due and make a payment. However, she did not file the
35 return online until 3 March 2011, some 28 days later. Had she filed the return as soon as she received it in early February 2011, then the online calculation would have informed her of the amount of tax due and she could have made payment as soon as the amount was identified on the date of the online filing. Had she made any payment by 28 February 2011, HMRC would not have imposed a surcharge.

40 8. In her reply, the Appellant reiterates that she was unaware of the need to send her tax return earlier than she did, and that she followed what she thought was the correct and proper procedure.

9. The Tribunal has given careful consideration to the information before it. It is not disputed that payment was made after 28 February 2011, and the Appellant is

therefore liable to the surcharge unless she can establish a reasonable excuse for the late payment. The burden is on the Appellant to establish circumstances amounting to a reasonable excuse on a balance of probability.

5 10. Under s.7(1) TMA, the Appellant should have notified HMRC of her liability to capital gains tax for 2009/10 by 5 October 2010. She did not do so. The only reason she gives for not doing so is that she was unaware that she was required to do this. Had she complied with the obligation under s.7(1) TMA, there is no reason to think that she would not have been issued with her tax return sooner. Thus, it cannot be
10 that she did not contribute to the situation she found herself in. While she says that she was unaware of this obligation, ignorance of the law is not generally an excuse for failing to comply with it.

11. However, the Tribunal accepts that delays by HMRC in issuing the UTR number were also a factor. It is not clear exactly when the UTR was requested, although presumably it was on or around 10 January 2011. The Appellant says that her UTR
15 was issued on 1 February 2011. This means that by the time that she received her UTR, although the 31 January 2011 deadline had already passed, she still had sufficient time to pay the tax by 28 February 2011, and had she done so, there would have been no default surcharge. Yet she did not file the tax return until 3 March 2011, and did not pay the tax liability until 7 March 2011, over a month after
20 receiving her UTR.

12. HMRC have not disputed the claim in the Appellant's notice of appeal that she applied for her UTR before the 31 January 2011 deadline, and that before that deadline she was in contact with HMRC expressing concern that she would not receive the UTR in time to meet the 31 January 2011 deadline. It is therefore
25 apparent that at some time before the deadline she was actively taking steps to meet her obligation by the deadline. Furthermore, HMRC have not disputed her claim that she was told on the telephone by HMRC that there were delays in issuing UTRs due to the high volume of first time users.

13. Although it took the Appellant some 35 days to pay her tax after receiving her
30 UTR, the time taken was not so long as to evidence a lack of willingness to comply with her obligations to pay tax.

14. The Tribunal considers this to be a borderline case. On its consideration of the circumstances as a whole, the Tribunal is satisfied that the Appellant has a reasonable excuse for the late payment of the tax.

35 **Conclusion**

15. Appeal allowed.

16. 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
40 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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DR CHRISTOPHER STAKER

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TRIBUNAL JUDGE

RELEASE DATE: 8 February 2012

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