



TC01895

Appeal number TC/2010/09125

FIRST-TIER TRIBUNAL

Default Surcharge – S.59C TMA 1970 – mistaken inclusion of information on a wife's chargeable gain on her husband's return – Reasonable Excuse argued in mitigation – Defence not established – Appeal Dismissed

CHRISTINE SHANNON

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS ("HMRC")**

Respondents

**TRIBUNAL: IAN WILLIAM HUDDLESTON, TRIBUNAL JUDGE
A.F. HENNESSEY, ESQ.**

**Mr. J. Corbett, Officer for HMRC
Mr. A. Shannon for the Appellant**

Sitting in public in Belfast on 25 July 2011

DECISION

1. This is an appeal against a default surcharge in the sum of £534.74 (plus interest) raised under Section 59C of the Taxes Management Act 1970 as notified by a surcharge notice dated the 13 May 2010.
2. The Appellant did not appear but was represented in the case by her husband, Mr. A. Shannon. HMRC were represented by Mr. J. Corbett.

The Facts

3. The facts of the case are relatively straightforward. The default surcharge arises in relation to the alleged failure of the Appellant to properly return a chargeable gain arising in connection with the sale of a house by the Appellant and her husband.
4. It appears that the house in question was inherited by Mr. Shannon from his father and, in or around September 2007, was transferred by Mr. Shannon to he and his wife jointly.
5. As Mr. Shannon acknowledged, the transfer appears to be have been effected to avail of Mrs. Shannon's CGT allowance.
6. In September 2008 the house was sold to a third party.
7. Mr. Shannon then included the details of the sale on his personal tax return for the tax year 2008/9 and, within the relevant additional information on the CGT pages annexed, indicated that the relevant gain was to be split between he and his wife.
8. On the 20 January 2010 HMRC wrote to Mr. Shannon pointing out that it was inappropriate for he to include details pertaining to his wife on his tax return, and that she needed to lodge her own tax return in respect of the chargeable gain which had been made - emphasising that any such return had to be completed before the 31 January 2010.
9. In the circumstances, Mr. Shannon gave evidence that it was simply not possible to complete that exercise, given the need to first complete registration before filing the return. Even using the online filing facility he indicated that he would not have had time to complete the requisite filing.
10. In those circumstances, therefore, Mr. Shannon, on behalf of his wife asserted that there was a reasonable excuse for the delay in both notification and the filing of the tax return, and that the default surcharge should be waived. He pointed out that his wife had not needed to submit a tax return since 1974.
11. HMRC's perspective, as advised to the Tribunal by Mr. Corbett, was that since the implementation of self-assessment it was entirely reasonable for individuals to know that where a taxable event arose that they had to notify that to HMRC and that a

tax return would be required. To the extent that individuals were not aware of that, Mr. Corbett indicated that it was HMRC's position that it was reasonable for them to investigate the position – particularly given the accessibility of information on-line.

5 12. With reference to the particular circumstances pertaining to this case, and the sale of the house in September 2008, Mr. Corbett made the point that as that fell within the tax year ending 5 April 2009, that the Appellant had until the 5 October 2009 to notify the chargeable event.

13. Following HMRC's letter of the 20 January 2010, Mrs. Shannon completed a tax return which was in order.

10 14. There was no question or suggestion that the tax in question had not been proffered at the appropriate time. The issues between the parties was simply Mr. Shannon's suggestion that he had not been aware of the need for his wife to submit an individual tax return and that in the circumstances the default surcharge was unreasonable and that the Appellant had a reasonable excuse.

15 **Decision**

15. The law surrounding the availability of the defence of "reasonable excuse" establishes that the benchmark is high – for example it is settled law that impecuniosity is not a reasonable ground, except in the most extreme circumstances.

20 16. It is also settled that tax payers must order their affairs in such a way as to comply with the statutory requirements such as, in this case, both the notification and filing of a tax return where a chargeable event occurs in relation to capital gains tax.

17. Lack of knowledge of those requirements is not considered a good defence.

25 18. In the present circumstance, Mr. Shannon acknowledged that the Appellant and her husband transferred the subject property with a view to maximising tax efficiency on an onward sale. It appears to the Tribunal that having taken that first step that they both ought to have reasonably been aware that independent filing of tax returns would have been required to bring that tax efficiency to fruition.

19. In the circumstances, therefore, the Tribunal finds that the defence of reasonable excuse is not made and accordingly dismisses the appeal.

30 20. No order as to costs.

35 21. 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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IAN WILLIAM HUDDLESTON

TRIBUNAL JUDGE

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RELEASE DATE: 25 January 2011