



TC01982

Appeal number: TC/2011/07748

Late payment of tax; reasons for late payment not accepted as “reasonable excuse; s.59C TMA

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PETER FRANKEL

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE CHRISTOPHER HACKING

The Tribunal determined the appeal on 28 February 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 29 September 2011; HMRC’s Statement of Case submitted on 10 November 2011 and the Appellant’s e-mail Reply dated 26 November 2011

DECISION

The appeal

1. This was an appeal against a decision imposing on the Appellant a surcharge of
5 £5,500.02 under the provisions of section 59C (2) Taxes Management Act 1970 in
respect of the Appellant's tax liability of £110,200.51 due on 31 January 2011 but not
paid until 5 April 2011.

The facts

2. In correspondence with the Revenue Mr Frankel has candidly admitted that the
10 delay in the payment of the tax due by the due date was an oversight. He had been
visiting the United States for some 5 weeks at the beginning of the year returning to
the UK on Sunday 27 March 2011 when he found waiting for him in his post a letter
from the Revenue concerning the overdue payment.

3. Unable immediately to contact his accountant who could not be reached on the
15 telephone Mr Frankel spoke with an officer at the Revenue who confirmed that the tax
was payable representing the balance of his tax liability for the year 2009-2010
together with a further sum being an instalment on account for the 2010-2011 tax
year. The sum payable was £110,200.51 on taxable income for the year of £579,667.

4. Mr Frankel contacted his accountant on 30 March 2011 who confirmed that the
20 tax was due in the sum claimed and that he written to the Appellant in August 2009
pointing out the fact that payment was to be made by 31 January 2011.

5. In correspondence which is referred to and incorporated as part of the Appellant's
Notice of Appeal Mr Frankel states that the fact that the payment was late was due to
inadvertence. As a 71 year old gentleman his memory is not, he says, as good as it
25 used to be. The delay was not intentional.

6. Mr Frankel points out that he had changed accountants and as a result the
Revenue had not sent copies of correspondence to his new accountants which might
have brought the imminence of the payment required to his attention. A statement had
been issued by the Revenue on 12 December 2010 but his computers hard drive had
30 "crashed" and as a result correspondence had been lost. Mr Frankel appears not to
have had a back up to his hard drive.

The issue to be decided by the Tribunal

7. The above factual account is not in dispute between the parties. What the
Tribunal has to determine is whether there exists within the matters addressed by Mr
35 Frankel a reasonable excuse for the late payment such as to enable the surcharge to be
set aside.

The legislation

8. The legislation concerning the right of the Revenue to impose a surcharge is set out in the Revenue's submission to the Tribunal.

5 9. Stated briefly the provision which entitles the Revenue to raise a surcharge is set out at section 59C TMA. As stated the Tribunal may only set the surcharge aside where the taxpayer had a reasonable excuse for not paying the tax throughout the period of default. The surcharge is calculated at 5% of the sum due and which remains unpaid 28 days after the due date.

10 10. Section 59C (12) defines the period of default to include the period starting with the due date and ending with the day before the tax due was paid. The period of default is thus 63 days in this case. It should be noted that the Tribunal has no discretion to reduce the surcharge. It may only either confirm it or set it aside.

15 11. The tax legislation does not define what constitutes a "reasonable excuse". The Revenue considers that any such reason would have to be something exceptional or not within the Appellant's control. These criteria whilst not exhaustive, do in the view of the tribunal, represent a reasonable starting position for considering what is and what is not a "reasonable excuse" The words "reasonable excuse" are however words which in the absence of any special or technical meaning or definition are to be construed according to their usual and ordinary meaning. This may give rise to a wider interpretation than that accorded to it by the Revenue.

The Tribunal's consideration of the appeal and its decision

25 12. From the correspondence between Mr Frankel and the Revenue it is apparent that Mr Frankel feels that some concession ought properly be extended to him by reason of his lack of intent in the matter, his age and the fact that he has been careful over many years in the observance of his tax obligations. He feels also that had the Revenue taken note of the change of accountants and issued the 12 December 2010 statement to his new accountants they would have alerted him to the need to make payment of the tax due. The Tribunal accepts that this may be so.. The Revenue has stated that it is under no obligation to send out statements and that the matter of paying tax when it falls due is the responsibility of the taxpayer. The Tribunal accepts that this is correct as a statement of the legal position. The question remains whether these matters taken either individually or together constitute a reasonable excuse for the delay.

35 13. In the finding of the Tribunal these matters whilst fully acknowledged cannot be considered as being of an exceptional nature. It was within Mr Frankel's competence to attend to the payment of his tax before embarking on his USA visit. As a gentleman with a substantial taxable income he must have been aware of the significance of the critical payment dates relating to personal taxation (31 January and 31 July in each year). The Tribunal fully accepts that this matter may simply have slipped his memory. Indeed that is what, in terms, Mr Frankel has stated.

14. The reasons advanced by Mr Frankel for late payment cannot in the finding of the Tribunal excuse his delay and accordingly the surcharge is confirmed.

15. 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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CHRISTOPHER HACKING

TRIBUNAL JUDGE

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RELEASE DATE: 01 May 2012

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