



**TC02025**

**Appeal number: TC/2011/9176**

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

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ANIKA JETHWA SHORT**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MICHAEL TILDESLEY OBE**

**The Tribunal determined the appeal on 8 May 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 9 August 2011, HMRC's Statement of Case submitted on 11 January 2012 and the Appellant's reply received 28 February 2012.**

## DECISION

1. The Appellant appealed against the imposition of a surcharge issued on 31 March 2011 in the amount of £1,070.64 for the late payment of the tax due for the year ending 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 26 January 2011 containing a self calculation of the tax due, £43,767.13, of which £22,354.20 was paid before 31 January 2011. A sum of which £21,412.93 remained outstanding at the surcharge trigger date of 28 February 2011. The Appellant paid the balance of the tax due on 31 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, fixed at five per cent of £21,412.93 which equated to £1,070.64.

3. The Appellant stated that she spoke to HMRC on the telephone before 28 February 2012 about settling the outstanding debt. The Appellant said that she made an offer of £15,000 part payment which was accepted and received by HMRC on 7 March 2012. The Appellant contended that she was not advised at that time to make a formal payment proposal. The Appellant contacted HMRC again on 29 March 2012 after she received a letter warning her of the consequences of non-payment of the outstanding tax. She agreed with HMRC a time to pay agreement for the whole amount of two monthly instalments of £15,000 on 8 April 2011, and £14,596.92 on 8 May 2011. The Appellant in fact made another payment of £15,000 received by HMRC on 31 March 2011 which with her payment on 7 March 2011 cleared the outstanding tax. The Appellant believed that she was not liable to pay the surcharge because she was not advised on her first phone call about the time to pay facility.

4. HMRC argued that under self assessment it was the Appellant's responsibility to ensure that her tax affairs were dealt with correctly and on time by paying the tax due by 31 January 2011 or by making payment proposals which led to an acceptable time to pay arrangement on or before the surcharge trigger date of 28 February 2011. The Appellant bore the obligation to request a time to pay arrangement. HMRC makes available on its website information on the steps that taxpayers can take to pay their outstanding tax. HMRC argued that it was not required to prompt or remind the Appellant about time to pay arrangements.

5. HMRC held no record of the Appellant's first telephone conversation before the 28 February 2012. HMRC questioned whether the Appellant actually made the call, particularly as she reached an agreement to pay the full amount on her telephone conversation with HMRC of the 29 March 2012. The Appellant insisted that the first telephone call took place but had been unable to provide details of her telephone records on account of dilatoriness on the part of her telecommunications provider.

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.

5 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.

10 8. Section 108 of the Finance Act 2009 also enables a tax payer to avoid a surcharge if the tax payer and HMRC agree a formal time to pay arrangement on or before the first surcharge trigger date of 28 February 2011 and the tax payer, thereafter, keeps to the agreement.

15 9. The conflict between the parties about whether the first telephone call took place is in one respect immaterial to the dispute before the Tribunal. The Appellant accepts for whatever reason that she did not agree a formal time to pay agreement on or before 28 February 2011, in which case the provisions of section 108 of the 2009 Act have no application and cannot be relied on.

20 10. The Tribunal considers that the Appellant has no reasonable excuse even on her version of events. A prudent tax payer exercising reasonable foresight and due diligence would have contacted HMRC earlier about the payment difficulties and been aware of the possible options to deal with those difficulties. The Appellant accepts that she contacted HMRC near the end date of 28 February 2011 and relied entirely on the Officer for information. Her actions were not those of a prudent tax  
25 payer exercising reasonable foresight and due diligence and having proper regard for her responsibilities under the Taxes Acts.

11. The Tribunal, therefore, finds that the Appellant did not have a reasonable excuse for not paying the tax by the trigger date of 28 February 2011. The Tribunal dismisses the Appeal and upholds the surcharge in the sum of £1,070.64.

30 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  
35 “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: 15 May 2012**

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