



TC02074

Appeal number: TC/2011/07756

Income tax –self-assessment – surcharge for late payment of tax – appeal based on assertion that tax for previous year overpaid - failure to follow procedures for that previous year – whether assertion provides Appellant with a reasonable excuse – no - appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOCELYN PATRICK

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: ANNE REDSTON
TRIBUNAL PRESIDING MEMBER**

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 27 August 2011(with enclosures) and HMRC’s Statement of Case submitted on 8 November 2011 (with enclosures).

DECISION

5 1. This is Mr Patrick's appeal against the imposition of a 5% surcharge following his failure to pay his self-assessment ("SA") tax liability for 2009-10 by the surcharge trigger date of 28 February 2011.

2. The tax due was £2,543.56 and the surcharge thereon is £127.17.

3. The Tribunal dismissed the appeal and confirmed the surcharge.

10 4. A summary decision was issued to the parties on 4 April 2012. On 4 May 2012, Mr Patrick asked for permission to appeal the decision. However, under the Tribunal Rules¹, a party who has received a summary decision, but who wishes to appeal that decision, must first apply to the Tribunal for full written findings of fact and reasons for the decision (a "full decision"). Mr Patrick's letter was thus treated as an application for a full decision, and this is that full decision.

15 **The issue in the case**

5. There is no dispute that the tax was paid late. The issue in the case is whether Mr Patrick had a reasonable excuse for the late payment.

The law

20 6. The statutory provisions relating to the imposition of surcharges are at Taxes Management Act s 59C. So far as relevant to this Appeal, they are as follows:

Surcharges on unpaid income tax and capital gains tax

(1) This section applies in relation to any income tax or capital gains tax which has become payable by a person (the taxpayer) in accordance with section 55 or 59B of this Act.

25 (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.

(3)-(5) ...

30 (6) A surcharge imposed under subsection (2)...above shall carry interest at the rate applicable under section 178 of the Finance Act 1989 from the end of the period of 30 days beginning with the day on which the surcharge is imposed until payment.

¹ Rule 35(4) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009

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

5 (8) Subject to subsection (9) below, the provisions of this Act relating to appeals shall have effect in relation to an appeal under subsection (7) above as they have effect in relation to an appeal against an assessment to tax.

(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—

10 (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...

15 **The facts and submissions**

The previous year – 2008-09

7. Mr Patrick submitted his 2008-09 return on paper. As with all paper returns, the information was transcribed by HMRC. Mr Patrick subsequently corresponded with HMRC, saying that the information had been incorrectly transcribed, and appealing
20 the surcharge relating to that year.

8. Although limited information about 2008-09 was provided to the Tribunal, it appears that Mr Patrick wants to amend the SA return for that year so that it shows him receiving expenses from his employment of £60,000, and a matching deduction of exactly the same amount, on the basis that the entire sum was allowable for tax
25 purposes, and that in consequence he had no employment income for that year.

9. On 13 October 2011, HMRC referred to recent correspondence and informed Mr Patrick that “HMRC’s appeal review period has now ended”. As a result, Mr Patrick would have to appeal to the Tribunal if he wished to continue with his appeal.

10. Mr Patrick did not notify his appeal to the Tribunal and by letter dated 3
30 February 2011, HMRC wrote to Mr Patrick saying that the appeal had been treated as settled and the surcharge released for collection.

11. On 14 June 2011, Mr Brierley of HMRC Cardiff advised Mr Patrick that if he wanted to amend the 2008-09 return, this had to be by way of an “overpayment relief claim”, as the time limit for amending the return had passed. A partially completed
35 claim form was sent to Mr Patrick but was not returned to HMRC.

The current year – 2009-10

12. Mr Patrick says that he was unable to complete his 2009-10 return online because of:

5 “the danger of the previous year’s incorrect on-line copy pages (which were not completed by me) being incorrectly validated by my submitting any ‘on-line’ return for 2010, before HMRC had corrected the anomaly ‘on-line’ which HMRC had copied to me and had been clearly repeatedly told by me was incorrect.”

10 13. On 31 January 2011, Mr Patrick’s paper return was received by HMRC. It did not include a self-assessment. It was processed on 9 February 2011. It showed a tax liability of £2,543.56.

14. Mr Patrick did not pay the 2009-10 tax which was calculated to be due and, as at the date HMRC sent in their Statement of Case to this Tribunal, had still not paid the tax.

15 15. On or around 1 April 2011, HMRC issued a surcharge of £127.17, being 5% of the SA liability for 2009-10.

16. HMRC say that Mr Patrick has no reasonable excuse for the late payment; Mr Patrick says that HMRC should waive the penalty because of the overpayment for the previous year.

20 **Discussion and decision**

17. Mr Patrick says that he had to send in a paper return because of his worries about the previous year’s online return.

25 18. This surcharge did not arise because he sent in a paper return². It is clear from page 2 of Mr Patrick’s Notice of Appeal to the Tribunal that he is appealing £127.17, which is the surcharge.

19. The surcharge was imposed because Mr Patrick had not paid the 2009-10 SA tax of £2,543.56. This is the tax which HMRC calculated was due, based on Mr the SA return which Mr Patrick had submitted. Had Mr Patrick paid this tax by 28 February 2011, there would have been no surcharge.

30 20. As the Tribunal understands Mr Patrick’s case, he is not disputing the liability for 2009-10, but says that the tax charged should be offset against that incorrectly levied for the previous year.

35 21. As Mr Brierley advised, in his helpful letter of 14 June 2011, if Mr Patrick wants to make a claim for his 2008-09 return to be amended in this way, he must do so by filling in the correct form. He will also need to provide detailed evidence as to

² Mr Patrick may have made a separate appeal against a late filing penalty charged for this reason, but if so, it is not an issue which has been appealed to this Tribunal.

what the expenses were, so that HMRC can see whether they agree that they were, in fact, allowable for tax.

22. However, Mr Patrick has not returned the claim form, asking for the 2008-09 figures to be reduced, and he did not appeal the 2008-09 surcharge.

5 23. Under TMA s 59C(9), quoted earlier in this Decision, the Tribunal only has power to cancel the surcharge if Mr Patrick has a reasonable excuse for not paying his tax on time.

10 24. I do not accept that Mr Patrick's assertion that he overpaid his 2008-09 tax provides him with a reasonable excuse for not paying his 2009-10 tax on time. In the absence of a reasonable excuse for the late payment, the surcharge has been correctly charged.

25. It is not in dispute that the tax due for 2009-10 is that on his self-assessment return for that year. Had Mr Patrick wanted to change the figures for 2008-09, he should have followed the correct procedures. He has not done this.

15 26. I dismiss Mr Patrick's appeal and confirm the surcharge.

27. 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.

25

**ANNE REDSTON
TRIBUNAL PRESIDING MEMBER**

30

RELEASE DATE: 14 June 2012