



**TC02143**

**Appeal number: TC/2011/07940 & TC/2011/07942**

*Tax - Income Tax – Appeal against Default Surcharges – S59C TMA 1970  
– Reasonable Excise not established – Appeal Dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ROBERT DOUDS AND MARGARET DOUDS                      Appellant**

**- and -**

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

**TRIBUNAL: JUDGE IAN HUDDLESTON**

**Sitting in public in Belfast on 26 March 2012**

**Mr. Pascal Donnelly, HMRC Officer, for the Respondents**

**Mr. Robert Douds, on behalf of the Appellants**

## DECISION

### *Appeal*

- 5 1. This is an appeal against default surcharges imposed under Section 59C of the Taxes Management Act 1970 (“TMA”) following the Appellants’ late payment of tax for the year ended 5 April 2010.

### *Facts of the Case*

- 10 2. The default surcharges arise out of the late disclosure of a capital gains tax liability for each of the Appellants.
3. Mr. and Mrs. Douds owned a property in Portstewart in their joint names. The property was sold in 2009.
4. In circumstances where a capital gain is realised, the taxpayer must notify that gain within six months from the relevant year end (Section 8 TMA).
- 15 5. In the present case, therefore, the Appellant would have been required to notify the gain to HMRC by no later than the 5 October 2010. Tax on the gain would then have been due on 31 January 2011.
6. In the events which occurred, the Appellants did not notify HMRC until the 7 March 2011.
- 20 7. After notification, tax returns for both Mr. and Mrs. Douds were despatched to them on or about the 14 March 2011.
8. Mr. Douds completed a paper return in respect of the liability, and submitted it on or about the 21 March 2011, but because he had included his wife’s chargeable gain on his own return (as opposed to each of them submitting separate returns) it was not  
25 until the 6 June 2011 that completed tax returns for both Appellants were lodged with HMRC.
9. HMRC’s case is that the tax on the gain arising ought to have been paid by no later than the 31 January 2011. The relevant surcharge liability trigger date in relation to the failure to make payment on that date was the 28 February 2011 and that as the  
30 tax had not been paid by that date that surcharges arose.
10. Payment of the tax was made on account by the Appellants on the 23 March 2011.
11. In relation to that payment, HMRC contend that it was not clear that it was made on account of both Mr. and Mrs. Douds’ liability. Accordingly it was applied solely  
35 against Mr. Douds’ liability and the balance was returned to him by inter bank transfer (he having completed the repayment details on his original tax return).

12. As against that factual matrix, the Appellant feels that the default surcharges which have been levied are unreasonable and has appealed their imposition on the grounds of reasonable excuse.

*The Appellant's Case*

5 13. The Appellant represented himself and gave an explanation of the events which occurred.

14. Evidence was given that it had been quite some time since the Appellant had been required to submit a tax return, he having been previously a PAYE employee who had retired at approximately the age of 60.

10 15. It appeared that upon selling the house in Portstewart that the Appellants had been advised that whilst capital gains tax would arise in respect of the sale of the property, that it would not be payable by them until the 6 April 2011.

16. That plainly was incorrect. As Mr. Douds now accepts the tax liability arising was due for payment on the 31 January 2011.

15 17. In the course of the appeal, Mr. Douds also accepted that he had misunderstood that a single tax return would be sufficient. It has long been the case that a husband and wife must account for their own respective tax liabilities. Two tax returns were despatched after Mr. Douds' initial telephone call on the 7 March 2011, and again it was accepted by the Appellants that they each should have been completed and  
20 submitted.

18. What clearly goaded the Appellants is the manner in which they felt they were treated by HMRC in terms of the ongoing administrative process.

19. Mr. Douds was clearly of the view that HMRC, firstly, could have done more to assist him in relation to the rectification of any errors on his part and, secondly, could  
25 more speedily have dealt with matters "on their side", such as pointing out the inaccuracies in his initial return (ie. the one which he submitted on behalf of he and his wife) and in their failure to apply the tax refund to his wife's liability (as opposed to returning it to his bank account in accordance with the repayment claim which he had included in his own tax return).

30 20. The Tribunal certainly had sympathy with Mr. Douds' experience, which hardly appears to have been satisfactory.

*Decision*

21. Whilst, as I have said, the Tribunal has sympathy with the experience of the taxpayers, nonetheless for their appeal to be successful they must establish that they  
35 had "reasonable excuse" for the late payment of their tax liability.

22. Section 59 TMA does not define what constitutes "reasonable excuse", but there is a plethora of case law which establishes that it must exist to explain a failure to pay tax liability by the relevant due date and that it must have continued throughout the whole period when payment was overdue.

23. What is clear is that ignorance of the requirement to submit a tax return and/or to pay tax by a certain due date does not constitute reasonable excuse.

24. In addition, Section 59C(10) TMA 1970 specifically says that inability to pay is specifically excluded as a ground for reasonable excuse.

5 25. Whilst, therefore, I might have sympathy with the experiences which Mr. and Mrs. Douds have had in connection with their own affairs, regrettably I do not consider that they constitute a sufficient ground to find that they had a reasonable excuse for the delay in this case.

10 26. Rather, it seems to me, that they were under the mistaken apprehension that the payment of tax was not due until April 2011. That was a misapprehension on their part and arose in circumstances where they could easily have checked the position – either by contacting HMRC or through professional advisers – where they would have found that notification had to have been made by the 5 October 2010 and that payment of the tax would have been required by 31 January 2011.

15 27. As their first contact with HMRC was not until 7 March 2011, it is quite clear that as a matter of fact that tax was inevitably going to be paid late, ie. after the 31 January 2011.

20 28. In the circumstances, therefore, where the payment of tax was not made until the 23 March 2011, it was plain that a default surcharge would arise – the trigger date for that being the 28 February 2011 (Section 59C(2) TMA 1970 being applied).

29. Notwithstanding the evident frustration of the taxpayers, therefore, the Tribunal concludes that reasonable excuse has not been established and therefore dismisses the appeal.

25 30. 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)”  
30 which accompanies and forms part of this decision notice.

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**IAN HUDDLESTON  
TRIBUNAL JUDGE**

**RELEASE DATE: 23 July 2012**

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