



TC02192

Appeal number: TC/2012/04019

Late payment of income tax –surcharge – reasonable excuse - no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOHN DAVIS

Appellant

- and -

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

TRIBUNAL: JUDGE ALISON MCKENNA

The Tribunal determined the appeal on 7 August 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 3 March 2012 (with enclosures), HMRC's Statement of Case submitted on 25 April 2012 (with enclosures) and the Appellant not having submitted a Reply.

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DECISION

1. This appeal concerns the second surcharge imposed on Mr Davis following the late payment of tax for the year ended 5 April 2010.

The Facts

2. The notice to file a return was issued in April 2010 with a filing date of 31 October 2010 for a paper return and 31 January 2011 for an electronic return. In this case, the return was made on line by the due date and the tax liability calculated at £50, 233.29.

3. The tax was due to be paid by 31 January 2011 but at the second surcharge trigger date of 31 July 2011, the sum of £40,670.53 remained outstanding. HMRC issued a surcharge notice on 19 August 2011 in the sum of £2033.52, being 5% of the outstanding balance as at the trigger date.

The Law

4. Payment of tax due is required to be paid by the due date in accordance with s 59B of the Taxes Management Act 1970. A taxpayer becomes liable to a surcharge at 5% of tax outstanding after 28 days from the due date (s 59C (2) TMA 1970). A second surcharge is triggered at 5% after six months (s 59C (3) TMA 1970).

5. Section 59C (9) provides that a surcharge may be set aside by the Tribunal where it is satisfied that there is a reasonable excuse for the late payment. A reasonable excuse is generally interpreted to be one that involves events outside the taxpayer's control.

6. s. 108 of the Finance Act 2009 permits HMRC to enter into a "time to pay" agreement with the taxpayer, which, if adhered to, will allow the tax payer to avoid surcharges on the outstanding sums.

The Grounds of Appeal

7. The Appellant's agent submitted that the Appellant was under the impression he had negotiated a time to pay agreement with HMRC at the relevant time and so asked for the surcharge to be withdrawn. He produced a copy of a letter from HMRC Debt Management and Enforcement dated 1 August 2011 which refers to deferment of VAT, income tax and surcharge payments.

HMRC's Statement of Case

8. HMRC disputes that a formal time to pay agreement justifying the cancellation of the surcharge was entered into. The 1 August letter refers to a deferment of payments on certain terms in order to prevent bankruptcy proceedings being issued. It

submits that it is not reasonable for the Appellant to state that he thought this was a formal time to pay agreement.

5 9. HMRC submits that Mr Davis has entered into formal time to pay agreements in the past, so would be aware of the difference between a formal and informal agreement with HMRC. HMRC also points out that the Appellant has been surcharged for late payment of tax in the years ended 1997, 1998, 2000, 2001 and 2002 and so was aware of the consequences of late payment of tax.

10 10. HMRC submits that it was Mr Davis' responsibility either to pay the tax due by 31 January 2011 or to have entered into a formal time to pay agreement before 31 July 2011. Further, that no reasonable excuse for the late payment has been provided and it asks the Tribunal to uphold the surcharge and dismiss the appeal.

Conclusion

15 11. It does not seem to me that the reasonable taxpayer would have regarded the 1 August letter as a formal time to pay agreement and accordingly I do not regard this alleged misunderstanding as constituting a reasonable excuse for late payment. I note that the agreement of 1 August was made after the second trigger date in any event. Having considered these matters very carefully I conclude that no reasonable excuse for the late payment has been provided by the Appellant.

20 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 "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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**ALISON MCKENNA
TRIBUNAL JUDGE**

RELEASE DATE: 13 August 2012

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