



TC02326

Appeal number: TC/2012/3668

INCOME TAX – late payment surcharges – notification of change of address – reasonable excuse - sections 59B and 59C Taxes Management Act 1970

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ANTHONY DOWSON

Appellant

- and -

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

TRIBUNAL: JUDGE NICHOLAS ALEKSANDER

The Tribunal determined the appeal on 10 October 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 2 March 2012 (with enclosures), HMRC's Statement of Case submitted on 11 April 2012 (with enclosures)[and the Appellant's Reply dated 17 May 2012 (with enclosures).

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DECISION

1. This is an appeal by Mr Dowson against surcharges for late payment of income tax for the tax years 2008/09 of £304.02 and for 2009/10 for £79.24.

Background Facts

2. On the basis of the evidence before me, I find the background facts to be as follows.

3. During 2008/09 and 2009/10 Mr Dowson was serving as an officer at NATO Headquarters in Germany and paid income tax through PAYE. In August 2010, he relocated to Cyprus, where his spouse was stationed. He notified HMRC's South Wales office (which had been dealing with his tax affairs) of his relocation in July 2010, about a month before his move and gave them his new address. Mr Dowson also set up a forwarding contract with Deutsche Post for one year, which lasted from August 2010 until August 2011.

4. Included with HMRC's papers is a print-out from their computer records showing that Mr Dawson's address on their system was not updated to his Cyprus address until 7 June 2011. Nonetheless, for the reasons I give below, I am satisfied that Mr Dawson had notified HMRC of the change in address in July 2010.

5. Upon Mr Dawson's arrival in Cyprus, he was told that mail should be sent to him from the UK with the last line of the address being "BFPO 53 Cyprus", and not "Cyprus BFPO 53" (as he had been originally told before he left Germany). Mr Dawson has repeatedly asked HMRC to amend the address on their records to incorporate BFPO 53 at the start of the last line, but they have told him that this is not possible. Although this is a small change, it has critical consequences for the delivery of the post. Mail that would normally take between two and three weeks to arrive via the British Forces Postal Service will instead take as long as six weeks. On some occasions Mr Dawson has received mail with a response deadline that has already passed – so for example he has had problems registering for online self-assessment, as the relevant activation code would only reach him after it had already expired.

6. Insufficient tax had been deducted under PAYE from Mr Dawson's salary in the years 2008/09 and 2009/10. HMRC submit that they wrote to Mr Dawson to inform him of the underpayment. As the cumulative amount exceeded £1999.99, it could not be collected by adjusting Mr Dawson's PAYE code for the following year, and Mr Dawson was invited to make a voluntary payment to cover the liability. A copy of this letter is not included in HMRC's evidence, and there is no record produced by HMRC showing that the letter was sent, or the address to which it was sent.

7. As HMRC received no response to this letter, on 21 April 2011 HMRC's Leicestershire and Northamptonshire office issued Mr Dawson with tax returns for each of the tax years 2008/9 and 2009/10, with a filing and payment date of 28 July 2011. This was so that the underpayment of tax could be collected through self-

assessment. These were sent to his address in Germany, which was the address recorded on their computer system. HMRC keep records of returned mail, and say that their records show that the tax returns were not returned undelivered. It is not clear why they had not been forwarded by Deutsche Post.

5 8. It was only in early June 2011 that Mr Dawson received these tax returns in Cyprus. Mr Dawson kept photocopies of the returns, and included a copy of the front sheet in his evidence. His Cyprus address is handwritten onto the returns (in the form originally notified by him to HMRC in July 2010). The returns are dated 21/4/11, and handwritten across the top are the words “*Return Due Date 28/7/11*”

10 9. Mr Dawson completed and returned both tax returns on 16 June 2011, within a week of receipt. They are recorded as having been received by HMRC on 3 August 2011 (2008/09) and 27 July 2011 (2009/10).

15 10. The 2008/09 return was processed by HMRC on 18 August 2011 and showed a tax liability for the year for £19,328.55. The 2009/10 return was processed on 10 August and showed a liability of £12,696.85. On telephoning HMRC to discuss the calculations, it became clear that Mr Dawson had omitted to include on his return details of the tax he had already paid under PAYE. Mr Dawson then re-submitted the returns, and revised calculations were issued on 10 October 2011, and the tax shown as due was paid on 17 November 2011.

20 11. HMRC submit that the surcharges have been properly charged, as Mr Dawson failed to pay his tax by the due date of 28 July 2011. The error in the calculation of tax due arose because Mr Dawson failed to complete the self-assessment calculation included in the tax return. Under s9(2) Taxes Management Act 1970, if a taxpayer wants HMRC to calculate the tax due, then s/he must file his tax return within two
25 months of the return being issued.

30 12. On the basis of the evidence before me, Mr Dawson has satisfied me that he had notified HMRC of his change of address to Cyprus in 2010. I note that HMRC eventually posted tax returns to Mr Dawson at his Cyprus address, and used the form of address as originally notified by him to them in July 2010. I therefore deduce (and find) that HMRC must have at some stage after having posted the original returns in April 2011 have become aware that Mr Dawson had moved, and have ascertained his new address. As the form of the address is the erroneous one (with the last line starting “Cyprus”) that he had originally notified to them, I am satisfied, and find that HMRC had been informed by Mr Dawson of his move in 2010. I also note that
35 highlighted across the top of the return in manuscript was the return date of 28 July 2011. This suggests to me (and I so find) that although the return was dated (in manuscript) 21/4/11, in fact the return was posted to Mr Dawson on a much later date. If these returns had been posted on the date appearing on the face, there would have been no need to highlight the due date in manuscript across the top.

40 13. I place no reliance on the fact that HMRC have no record of the original tax returns being returned undelivered. There is no evidence before me to suggest that overseas postal services return international mail to the sender if it cannot be

delivered. I am satisfied, and find, that the original tax returns had not been forwarded by Deutsche Post to Mr Dawson in Cyprus.

14. In the circumstances, HMRC cannot rely upon either section 115 Taxes Management Act 1970, nor section 7 Interpretation Act 1978. Section 115 provides that notices and forms may be sent by post if addressed to the person's usual or last known place of residence. Section 7 provides that, unless the contrary is proved, letters are deemed to have been served at the time they would normally have been delivered in the post (providing they have been properly addressed and the postage has been paid). As Mr Dawson had notified HMRC of his change of address in 2010, the returns had not been sent to his last known place of residence. Mr Dawson has also proved to my satisfaction that he had not received these original returns, and therefore section 7 Interpretation Act does not apply to deem service.

Conclusions

15. Accordingly, I find that Mr Dawson was only served notice to file tax returns no earlier than 9 July 2011. Under s9(2), Taxes Management Act 1970, Mr Dawson can require HMRC to calculate the tax that he owes providing he files the return within two months of the notice to file the return having been given (which would be 9 September 2011). The returns were both received by 3 August 2011, well before this deadline.

16. Although HMRC had details of Mr Dawson's PAYE payments (it was the undercollection of tax through PAYE that triggered this process in the first place), they did not take account of the PAYE paid in calculating the tax payable. Although the due date for payment of tax would have been 9 October 2011 (three months after the date of service of the notice to file), I find that Mr Dawson had a reasonable excuse for paying his tax late, as the tax calculation originally provided by HMRC had not taken account of the amounts already paid under PAYE. HMRC received the total tax due within one month of the revised calculation being issued, and I find that this is a reasonable amount of time for the payment to reach them taking account of the time it would have taken for the revised notices to have reached Mr Dawson in Cyprus, and for the cheques to have then reached HMRC given normal posting times between the UK and Cyprus.

17. I therefore allow the appeal and dismiss the surcharges.

18. 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.

**NICHOLAS ALEKSANDER
TRIBUNAL JUDGE**

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RELEASE DATE: 22 October 2012