



TC02448

Appeal number: TC/2012/06973

INCOME TAX - Late filing penalty – reasonable excuse-appeal allowed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOHN BARRY JACKSON

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this Appeal on 30 November 2012 without a hearing and under the provisions of Rule 26 of the Tribunal Procedure First-tier Tribunal (Tax Chamber) Rules 2009 (default paper cases) after first having read the Notice of Appeal of 25 April 2012 and the HMRC Statement of Case of 21 August 2012

DECISION

Appeal

- 5 1. A late payment penalty imposed under paragraph 3(2) of Schedule 56 FA 2009 for the failure to pay tax on time for the year ending 5 April 2011.

Relevant facts

2. The return for the year ending 5 April 2011 was issued on 3 November 2011. The return was filed on line 9 January 2012.
- 10 3. The Appellant filed online where the tax liability was automatically calculated. The liability for the year was £13,841.87.
4. On 10 April 2012 HMRC issued a Notice of Penalty in the amount of £692 being 5% of the balance outstanding.
- 15 5. On 20 July 2012 the return was amended reducing the liability for the year ending 5 April 2011 to £10,816.64. As a consequence, the late payment penalty was reduced to £540.000.

The Law

- 20 6. Under Section 59 (B) Taxes Management Act (TMA) 1970 the due date for payment was 10 February 2012. The taxpayer becomes liable to a late payment penalty where they are late in paying tax due.
7. The penalty is calculated at 5% of all tax remaining unpaid after an expiry of 30 days from the date in accordance with paragraph 3(2) Schedule 56 FA 2009.
8. In accordance with paragraph 16 (1) Schedule 56 FA 2009, an appeal against a late payment penalty will be successful if the taxpayer shows there is a reasonable
25 excuse for paying late.

Appellant's submissions

9. The Appellant in an well-articulated and logical letter dated 25 April 2012 made the following points
- 30 (1) I retired from my job at the University of Birmingham in September 2010 until then my tax was paid through the University from my monthly salary.
- (2) I received a letter from you (HMRC) dated 2 November 2011 asking me to complete a self assessment tax return for the year 2010/11. Your letter stated that the return should be sent within three months. I therefore filed my return online on 9 January 2012. At that point I thought that my tax payments through
35 the University were in order.

(3) On 29 February 2012 I received a Demand from you (HMRC) for a “balancing payment” of £13,863.48 and a “payment on account” of £6,931.73. I had no idea what these amounts were for.

5 (4) The following day I spoke to Paul Ramkin in your offices on the phone. He told me that the £13,863.48 arose from unpaid tax on severance pay awarded to me by the university when I retired. I declared the severance pay on my tax return but it turns out that the university had paid tax (on my behalf) at 20% rate when it should have been paid at the 40% rate. I had known nothing about this until that moment. Mr Ramkin said he would confirm the details in a letter
10 which he duly sent to me on 16 March 2012. In his letter I could see that he was correct. I therefore sent you the £13,863.48 online on 23 March 2012. You drew it from my bank account on 26 March 2012. That was a full payment (including your request for £21.61 interest). The payment on account was waived given that no further severance payment would become due.

15 (5) He explained that he was shocked to receive a demand for £692.00 as a penalty.

(6) This was his first time filing his returns online.

Respondents’ submission

20 10. HMRC stated that the Appellant was at no time informed that the under payment of tax had arisen as a result of employer error. He was advised that he had paid 20% on his termination payment but was now liable to tax at the higher rate of 40% on part of the same.

25 11. A late payment is not imposed until after the expiry of 30 days from the due date, which in this instance was 10 February 2012. The penalty date was 12 March 2012. The tax liability was paid on 23 March 2012. A late payment penalty would have not have been imposed if the Appellant had paid the due tax before 12 March 2012; therefore it was not shown on the Statement of Account issued to him on 29 February 2012. HMRC maintain that any lack of information regarding delayed payment penalty did not prevent the Appellant from making payment before the due
30 date of 10 February 2012 or the penalty date of 12 March 2012.

Conclusion and Discussion

12. The appeal is allowed.

35 13. In this case, the Appellant believed that the appropriate tax had been deducted by his employer under the PAYE provisions and he was not on notice that there was any further payment to be made. The tax which he owed on the severance payments were to be paid on or before 10 February 2012 but the Appellant only found out about the liability on 1 March 2012.

40 14. The employee stated that he believed all necessary tax had been paid as a deduction by his employer and the Tribunal believes this to be correct since he was an employee. The payment of the severance pay meant that his employers, the University

of Birmingham, would have deducted tax at the basic rate of the payment. However the higher rate amount was still due. It was his genuine and honest belief that he had paid all his taxes. He had no reason to believe that his tax would not have been deducted by his employer as it was during his career.

5 15. The Tribunal must look carefully at all the circumstances of the case and not apply the law in a literal way.

10 16. One would have expected his employers to advise him or at least bring to his attention that he may have an additional amount of tax to pay on his termination payment and that he should speak to HMRC or personal advisors about that matter. If the employers were charged with deducting tax from his salary and to deduct tax at the basic rate on the severance payment, it would seem reasonable for them to say to the taxpayer, in writing, that his basic rate of tax liability had been met but his higher rate liability was still outstanding. They should also have provided a calculation of what was deducted so the taxpayer can verify that the correct amount was paid. This would be a reasonable and prudent thing to do especially with regards to termination and severance payments with a taxpayer who had relied on his employers to both calculate and pay his tax.

15 17. As it turns out, on his own initiative, Mr Jackson was able to find out details of what he owed and how it should be paid. He was late. He paid as soon as he was able to finalise the arrangements with HMRC and clearly did not have a problem paying the outstanding tax.

20 18. Taxpayers such as Mr Jackson, who are honest but unfamiliar with online filing and payment and who have a reasonable explanation for their action, should not be penalised by the imposition of a late payment penalty. At no point did he not accept his responsibility to pay his taxes.

25 19. The Tribunal should therefore be sympathetic in exercising its discretion in reasonable excuse cases where people who have acted reasonably and who had an honest belief that all their taxes had been paid later find that they have both a liability and a late payment penalty. Where taxpayers choose to litigate small penalties, it is fair to assume that, in some cases, they feel aggrieved and unfairly treated. We must guard against such unfairness.

30 20. Accordingly, the appeal is allowed.

35 21. 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.

**DR K KHAN
TRIBUNAL JUDGE**

5

RELEASE DATE: 8 December 2012