



TC02597

Appeal number: TC/2012/07009

INCOME TAX - late payment penalty – reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ADRIAN MORRELL

Appellant

- and -

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

TRIBUNAL: SIR STEPHEN OLIVER QC

The Tribunal determined the appeal on 22 November 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 17 January 2012 and HMRC's Statement of Case.

DECISION

5

1. Mr Morrell appeals against a first late payment penalty imposed under paragraph 3(2) of Schedule 56 Finance Act 2009 in respect of the late payment of tax for the year ending 5 April 2011.

2. The tax was due to be paid on or before 31 January 2011. At the penalty date of 3 March 2012, a balance of £18,008.56 remained outstanding. HMRC issued a notice of penalty assessment on 18 April 2012 in the amount of £900 that is 5% of the tax unpaid at the penalty date.

3. There are, in essence, two grounds on which this appeal has been made. The first is that HMRC had failed in their “duty of care” by failing to issue statements and payslips to taxpayers of their liabilities on time. In this connection, it is said that Mr Morrell, the Appellant, had not received any statement from HMRC during the whole of 2011. Further, it is claimed, the penalising of tax payers who are a bit late is totally unacceptable. The second ground of appeal is that the legislation is “excessive” and that the charging of penalties is unjust and unfair. In this connection it is contended that HMRC’s penalty system and the interpretation of the word “reasonable” bears no sensible or credible analysis.

4. I am satisfied that Mr Morrell has been properly and fully informed about the regime to file returns and pay tax. I am further satisfied, from my examination of the facts and circumstances, that HMRC have properly applied the law enacted by Parliament.

5. I acknowledge that there is no statutory definition of reasonable excuse. What is reasonable depends on all the circumstances. HMRC are, in my view, correct in contending that a reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond the particular taxpayer’s control, and which prevents them from complying with an obligation to pay the tax liability on time. Thus, a combination of unexpected and unforeseeable events may, when taken together, amount to a reasonable excuse. In this connection HMRC are correct to contend that had the taxpayer in question reasonably foreseen the event, whether or not it was in his control, he would be expect to take steps to meet his obligation.

6. HMRC have, in my view, exercised their duty of care and management sufficiently in the context of the present penalty regime. The regime has been widely publicised on television, radio, newspapers and on HMRC’s own website. In the present case, the Notice to File issued to Mr Morrell on 6 April 2011 set out the filing responsibilities imposed on Mr Morrell; and it set out the filing and payment dates together advice about the charging of penalties.

7. I turn now to the question of whether Mr Morrell has demonstrated a reasonable excuse for his late payment. I note in this connection that the records of HMRC show

that Mr Morrell has been within the self assessment system since its inception in 1996 and that he has been submitting tax returns since 1996/97. As an experienced tax payer, Mr Morrell should be taken to be well aware of his filing responsibilities, particularly the relevant filing and payment dates. There is nothing in the grounds of appeal or relevant letters advanced for Mr Morrell that suggests that either he or his agent were unaware that a payment of tax may have been due by 31 January 2012. He registered his tax returns electronically. He or his agent could have checked the balance of the account at any time. Moreover, the responsibility on a taxpayer to pay his tax liability by the due date is not dependent upon him receiving separate statements from HMRC.

8. In the circumstances, I cannot see anything that could amount to a reasonable excuse on Mr Morrell's part. Nor do I consider that there are any special circumstances that would allow a reduction of the penalty.

9. In summary, I conclude that the late filing penalty charge has been made in accordance with the legislation and that there was no reasonable excuse for the late payment. I therefore direct that the appeal be dismissed and that £900 late filing penalty be confirmed.

10. 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.

**SIR STEPHEN OLIVER QC
TRIBUNAL JUDGE**

RELEASE DATE: 11 March 2013