



**TC02599**

**Appeal number: TC/2012/02232**

*Income tax – surcharge- late payment of tax – reasonable excuse – lack of clarity in instructions to pay*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MARK STYLES**

**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

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1. Mr Styles appeals against a surcharge imposed under the Section 59 C(2) Taxes Management Act 1970 following his late payment of tax for year ended 5 April 2009.

2. It is not in dispute that the due date for filing the return and paying the tax was 13 September 2011. That, as regards payment, is the effect of Section 59 B(3).

10 3. Nor is it in dispute that the 28 day period before a surcharge is triggered ended on 9 October 2011.

4. In the present case Mr Style's return was with HMRC by 13 or 14 September. Payment of liability was made on 25 October and 7 November. Following the notification, to Mr Styles by HMRC, of his "Tax calculation" stating "Total Income  
15 Tax due" of £11,215.40.

5. The only question is whether there was a reasonable excuse on Mr Style's part for his late payment.

6. The circumstances that, collectively, caused the default on Mr Style's part were as follows:

20 (a) The circumstances of the original under payment of tax through the operation of the PAYE system coupled with the wording on the Tax Return for 2009 (issued to Mr Styles on 6 June 2011); and the wording of a letter accompanying the Self-assessment Tax calculation by HMRC dated 23 September 2011 stating that the "total Income Tax due" was  
25 £11,215.40

7. For many years Mr Styles had been employed by a company Pfizer. His income had been almost entirely taxed under Pfizer's PAYE system. At some time during the year 2008/09. Mr Styles was made redundant. As a consequence his taxable income for that year over-topped £100,000. It is not in dispute that Pfizer failed to operate a  
30 PAYE system properly. Mr Styles' income for his final year was taxed wholly at the basic rate of 20%. It transpired later that Pfizer had not deducted and accounted for tax at the marginal higher of 40%.

8. On 6 June 2011 Mr Styles received a letter from HMRC. This explained that he had been under taxed through the operation of the PAYE system. The letter continues  
35 as follows:

40 "It has therefore been necessary to bring you back within the self-assessment system and with this in mind I enclose a self-assessment tax return for year ended 5 April 2009. Please ensure that the completed Return is back with the Department by no later than 13 September 2011. You may be charged a penalty if the Return is received after this date."

The front page of the Tax Return 2009 contains the following paragraph

“Deadlines. We must receive your Tax Return by either:

- 3 months after the date this notice was given – if you send us a paper return, or
- 5       • The later of 31 January 2010 or three months after the date this notice was given – if you file online.
- You will be charge £100 penalty if your Tax Return is received after the appropriate deadline.
- 10       • You must pay any tax due by 31 January 2010. If you pay late you will be charged interest and possibly a surcharge.

9. Mr Styles, according to his grounds of appeal regarded it as impossible for him to pay the tax on 31 January 2010. A reasonable inference from the wording on the Tax Return is that the requirement to pay tax by 31 January 2010 applies if and only if the Return has been sent in time.

15 10. Mr Styles made contact with his previous employers. They admitted to him that he had been under taxed through the PAYE system. He therefore addresses the task of filling in his Tax Return. This Return, we understand, was the first Return that had been sent to him and it was sent because tax payers who have an annual income of £100,000 or more in the tax year are required to complete one.

20 11. Mr Styles did not compute the tax due from him. On 22 September 2011 HMRC issued a Tax Calculation identifying the total income tax due as £11,215.40. On 23 September 2011 a letter was sent to Mr Styles. This states, among other things, the following

25       “My calculation shows the tax due under Self-assessment for 2008-09 is £11,215.40, which was due by 31 January 2010. The above figures show the amount due from your Tax Return and do not take into account any payments you may have made towards amounts due on these dates or any other amounts which may be outstanding. Please note interest and surcharges will be charged on payments made after a due date. A due date has already passed. The above information will help you  
30 to decide how much you should pay now. Do not wait for the next Statement of Account.”

12. On 17 October 2011 a statement was issued. This specifies the amount overdue as 311,790.61. It goes on to say

“Amounts due by 11 November 2011 - £1,121.54”.

35 Mr Styles paid £1,121.54 on 25 October and the balance of £10,000 on 7 November 2011.

## Conclusions

13. The provision imposing the surcharge is Section 59 C(2). This reads

5 “Where any of the tax remains unpaid on the day following the expiry of 28 days from the due date, the tax payer should be liable to a surcharge equal to 5% of the unpaid tax.”

“due date” is specified by Section 59B (3) which reads

10 “in a case where the person – (a) gave the notice required by Section 7 of this Act within six months from the end of year of assessment, but (b) was not given notice under Section 8 or 8A of this Act until after 31 October next following that year, the difference shall be payable or repayable at the end of the period of three months beginning with the day on which the notice under Section 8 or 8A was given”

I assume that the subsection (3)(a) was at sometime fulfilled: Subsection (3) (b) clearly applies here.

15 14. The above provisions result in the due date being the date three months from the giving by HMRC of notice. HMRC have specified 13 September 2011 as the date for submission of the return: see the letter of 6 June 2011. The letter says nothing about the date for payment. That is found, if anywhere, in the Return itself (issued on 6 June 2011). The Return, as already noted, says only – “you must pay tax due by 31  
20 January 2010. If you pay late you will be charged interest and possibly a surcharge.” The Return is however, silent about what is to be done if the Return is, as here, issued late.

25 15. It is clear from the facts that Mr Styles, who is no way responsible for the under payment through the PAYE system, is wholly compliant. He obeyed later instructions (ie to pay £1,125 by 11 November) to the letter and more, by paying the whole £11,215.40 by that date. Apart from reading the relevant section of the Taxes Management Act, the only thing that might have alerted Mr Styles to the obligation to pay sooner was HMRC’s letter of 23 September 2011 which, with hindsight, shows  
30 that the £11,215 “was due by 31 January 2010” and which goes on to say “The above information will help you decide how much you should pay now”. The latter message conveys the information about how to determine “how much” to pay as Mr Styles’ current obligation. The word “now” does not, as I read it, denote a revised “due date”; the letter is too late to do that anyway.

35 16. Referring to the question whether “throughout the period of default” Mr Styles had a reasonable excuse for not paying the tax of £11,215 I think he has been let down by the imprecise instructions given by HMRC. The only references that give a clue to a due date are found in the Return (being 31 January 2010) and in HMRC’s letter of 23 September (which states the same date). Short of creating a conundrum, those messages do nothing to direct the manner or time of payment. The Tax Return in  
40 particular is Delphic. The later communications, particularly the Self Assessment Statements, indicate a payment date of 11 November. My conclusion is that Mr

5 Styles was, within reason, confused by HMRC's failure to communicate properly. Where, as here, a penalty is sought to be imposed, the particulars of the obligations to which it relates should be specified clearly and precisely. That has not been the case. Mr Styles had good reason for interpreting the communications from HMRC as leaving the due date unspecified until notification though the Self-Assessment Statement of 17 October 2011.

17. For the reasons given above, I allow the appeal.

10 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.

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**SIR STEPHEN OLIVER QC  
TRIBUNAL JUDGE**

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**RELEASE DATE: 11 March 2013**