



TC02682

Appeal number: TC/2012/07359

*INCOME TAX – penalty for late payment of tax due under self-assessment
– whether reasonable excuse – appeal dismissed and penalty confirmed.*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOSEPH ROLLS

- and -

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

**TRIBUNAL: ANNE REDSTON (TRIBUNAL
PRESIDING MEMBER)**

The Tribunal determined the appeal on 2 January 2013 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 29 July 2012 (with enclosures), HMRC's Statement of Case submitted on 12 September 2012 (with enclosures) and the Appellant's Reply dated 6 October 2012 and his further letter of 17 October 2012.

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DECISION

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1. Mr Rolls appealed against a self-assessment (“SA”) late payment penalty for the tax year 2010-11.

2. The Tribunal dismissed the appeal and confirmed the penalty of £428.

10 3. A summary decision was issued to the parties in early January 2013. On 17
January 2013, Mr Rolls asked for permission to appeal the decision. However, under
the Tribunal Rules¹, a party who has received a summary decision, but who wishes to
appeal that decision, must first apply to the Tribunal for full written findings of fact
and reasons for the decision (a “full decision”). Mr Rolls’ letter was thus treated as an
15 application for a full decision, and this is that full decision.

Interest charges

4. Mr Rolls also sought to appeal two other amounts, of £20.43 and £21.73, totalling £42.16. These are interest charges which arose because his SA tax was paid after the due date of 31 January 2012.

20 5. The legislation does not give taxpayers a right to appeal interest charges, and thus they cannot be considered by the Tribunal.

Preliminary points

25 6. Mr Rolls’ letter to the Tribunals Service dated 17 October 2012 indicates that he may believe the Tribunal to be part of HMRC. It is not. It is an independent body and those who sit on the Tribunal are appointed by the Ministry of Justice.

30 7. In his Reply, Mr Rolls asks the Tribunal to answer two questions. The first arises from the fact that HMRC’s Statement of Case arrived 49 days after the date of the Tribunal’s letter instead of the 42 days which are prescribed: he asks whether this makes their Statement of Case “inadmissible”. The answer is that although the Tribunal Rules do allow the Tribunal to impose sanctions on HMRC and on taxpayers, these are exceptional and no such sanction was considered in relation to this delay.

8. The second question arises from the fact that twice in the Statement of Case (on page 5) HMRC refer to a Mr Hall. Mr Rolls says:

¹ Rule 35(4) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009

“I do not know who this Mr Hall is, are they referring to a different case? Have they got their facts wrong? Or could it be that HMRC have made a mistake?”

9. The Tribunal agrees that these two references appear to have been retained from an earlier HMRC document. However, their inclusion does not invalidate the other submissions made by HMRC, which are clearly and directly related to Mr Rolls.

10. Mr Rolls goes on to ask “surely one party should not be treated one way while the other receives very hefty fines.” The Tribunal understands him to be saying that if HMRC suffer no penalty when they are late or make mistakes, it is not fair to penalise taxpayers for minor delays or errors.

11. The Tribunal has been given the power by parliament to apply certain laws, including those charging penalties for late self-assessment returns. These laws do not allow a penalty to be reduced or eliminated because HMRC have been late, or made a mistake, when dealing with the same taxpayer. Mr Rolls clearly feels this is unfair, but his solution - taking the behaviour of both parties into account when considering penalties - is not an approach the Tribunal is allowed to apply.

The issue in the case

12. Mr Rolls did not dispute that the tax had been paid late. The issue was whether he had a reasonable excuse for the late payment.

The legislation

13. The legislation relevant to Mr Rolls’ case is summarised in this part of the decision notice. The full text is set out at HMRC’s Statement of Case, pages 6-10.

14. Taxes Management Act 1970 (“TMA”) s 8 states that a person issued with an SA return must return it to HMRC on or before 31 October after the end of the tax year in question (if it is filed on paper) or on or before 31 January after the end of the tax year in question (if it is filed electronically).

15. TMA s 9 states that a person who is required to complete an SA return must also complete “an assessment of the amount payable by him by way of income tax”. However, a person does not need to include this assessment with his SA return if he “makes and delivers” his SA return on or before 31 October after the end of the tax year. In other words, HMRC will calculate the tax liability for those who file their returns before 1 November, but those who file later must calculate the tax themselves – although, of course, if they file online they can use HMRC’s software to help them.

16. TMA s 59B(4) states that tax unpaid for a tax year must be paid on or before 31 January following the end of the tax year in question. As a result, tax for 2010-11 must be paid by 31 January 2012.

17. Finance Act (“FA”) 2009, Sch 56, para 1 says that if a person fails to pay the tax due within 30 days following 31 January a penalty is payable. In the 2012 year, this means that a penalty is due if the tax is not paid by 2 March: “the penalty date”.

5 18. FA 2009, Sch 56, para 3 sets the amount of the penalty at 5% of the tax unpaid by the penalty date.

19. FA 2009, Sch 56, para 9 allows the penalty to be reduced “if HMRC think it right because of special circumstances”.

20. If a person is liable to a penalty HMRC “must assess the penalty” (FA 2009, Sch 56, para 11).

10 21. If a person appeals on the grounds that no penalty is payable, the tribunal can “affirm or cancel” HMRC’s decision; if he appeals on the basis that the penalty is too much, then the tribunal can either affirm the decision, or replace it with another decision “HMRC had power to make.” If the tribunal takes the latter course, then it can only change an HMRC decision about “special circumstances” if it thinks that it was “flawed” in a judicial review sense (FA 2009, Sch 56, paras 13 and 15).

22. There is no liability to a penalty if the person satisfies the tribunal there is a reasonable excuse for the failure (FA 2009, Sch 56, para 16).

The evidence

23. The Tribunal was provided with the following evidence:

- 20 (1) The correspondence between the parties.
- (2) An email message headed “successful receipt of online submission for Reference []” and addressed to Mr Rolls from noreply@HMRC.gov.uk.
- (3) A copy of a page from Mr Rolls’ bank statement for the period 3 October 2011 to 17 Feb 2012 and another page from 4 June 2012 to 27 September 2012.
- 25 (4) Extracts from HMRC’s online tax calculation process, showing certain steps in that process.
- (5) Extracts from HMRC’s online filing guidance.
- (6) HMRC’s SA computer record for Mr Rolls showing that it was “set up” on 31 October 1996.
- 30 (7) HMRC’s computer record for Mr Rolls, showing two interest charges.

The facts

24. On the basis of the evidence provided, the Tribunal found the following facts.

25. HMRC’s online guidance includes the following pages:

- (1) Under the heading “deadlines for paying your tax” it reads

5 “you must pay any tax you owe by 31 January following the end of the tax year. For example, for the tax year 2011-12 (ending on 5 April 2012) you must pay any tax you owe by 31 January 2013. The payment deadline is the same for both paper and online returns...HMRC will usually send you a ‘Self-Assessment Statement’ that shows how much you owe. If you don’t receive this, you’ll need to work out the tax due yourself. You can use your tax calculation and previous statements or log in to HMRC Online Services and use the ‘View Account’ Option.”

10 (2) Under the heading “Interest and penalties if you don’t pay your tax on time”, the guidance states that a payment which is 30 days late suffers a penalty of “5% of the tax you owe at that date”.

15 26. Mr Rolls was in SA from its inception in 1996 until 2002-03. He re-entered SA in 2010-11 because he made a capital gain. In previous years he filed a paper return and always paid his tax on time.

27. On 29 January 2012 Mr Rolls completed his 2010-11 tax return online. The return was successfully filed. However, he did not establish from the online filing process, how much tax he had to pay.

28. On 31 January 2012 the balance in Mr Rolls’ savings account was £12,271.

20 29. By notice dated 29 February 2012, HMRC informed him that he owed tax of £8,572.50 plus an interest charge. This notice arrived when Mr Rolls was on holiday.

30. On 16 March 2012 HMRC issued another statement, showing the same tax and interest charge.

25 31. On receipt of the second statement Mr Rolls called HMRC. He said that the person to whom he spoke “couldn’t verify where I should have found the instruction to pay my tax.” HMRC have not commented on this call, or provided any evidence to rebut it, and the Tribunal thus accepts it as a fact.

32. On 31 March 2012 Mr Rolls paid the tax.

30 33. On or around 10 April 2012, a penalty assessment of £428 was issued. This is 5% of the tax paid after the penalty date of 2 March 2012.

Mr Rolls’ submissions

35 34. Mr Rolls says that when he finished his online return, the “successful receipt of online submission” email from the HMRC system told him that the return “was successfully received on [date and time] and is being processed”. From this wording he inferred that the amount he needed to pay was not yet available but was “being processed.”

35. He says “I was given no further notice of how I should receive my calculation” and “the communication from HMRC was misleading and unclear.” It was, he says,

“only natural...to await instructions as to the next steps or at least confirmation that [his] tax was calculated and ready for payment.”

36. He acknowledges that he had looked at the online calculation during the filing process, but had not appreciated that this was the final version.

5 37. In the past, when Mr Rolls completed a paper return, he paid the tax following receipt of his SA Statement of Account showing him how much he had to pay. Because the Statement of Account for 2010-11 was not received until the end of February (and came when he was on holiday) his payment was delayed.

10 38. He states that he had the money ready to pay the tax: his bank statement showing a balance in excess of £20,000. He says he had “no financial gain” from the delay.

HMRC’s submissions

39. HMRC say that Mr Rolls is experienced in SA and familiar with the deadlines and due dates.

15 40. They provided the Tribunal with screenshots of the online filing process. This demonstrates that after Step 4 the taxpayer is given the option of looking at his calculation. The calculation page states:

20 “Your calculation is worked out automatically for you based on the information you provided in your tax return. Depending on your circumstances this summary screen will show tax, National Insurance and student loan payments due...”

25 41. The taxpayer is told that he can “print a copy for [his] records”. The calculation page also shows the payment due date. HMRC say that the computer system would not allow Mr Rolls to have progressed to submission without him having first clicked on this calculation page.

42. The final screen is headed “submit your tax return”. It says “you’ll get a submission receipt reference number for your tax return when it has been submitted successfully.”

30 43. HMRC refer to their online guidance and say that “someone acting in a reasonable manner to ensure that they adhered to their legal obligations would have become aware of such information and acted accordingly.”

35 44. Finally, they say that they have considered the legislation on special circumstances and they do not consider that there are any circumstances which are out of the ordinary run of events” – the definition given to the phrase “special circumstances” in *Clarks of Hove v Bakers’ Union* [1978] 1 WLR 1207 (“*Baker’s Union*”).

Discussion and decision

45. The legislation does not define a reasonable excuse. This Tribunal has held that “an excuse is likely to be reasonable where the taxpayer acts in the same way as someone who seriously intends to honour their tax liabilities and obligations would
5 act.” *B&J Shopfitting Services v R&C Commrs* [2010] UKFTT 78 (TC) at [14].

46. Mr Rolls had filed self-assessment returns for many years. As HMRC say, he can thus be expected to be aware that the deadline for the payment of tax was 31 January after the end of the tax year in question.

47. In the past he had relied on HMRC to calculate his tax. For 2010-11 he used the
10 HMRC online system, submitting his return only two days before the filing and payment deadline

48. Mr Rolls says that he did not realise that the calculation he had seen on screen was the final version. The Tribunal accepts that this was his understanding, but notes that the page invites the user to print off and keep the calculation for his records. This
15 is an indicator that the calculation is final. Although Mr Rolls says that he was expecting to be told the amount to pay, there is nothing on the final page of the HMRC online filing page which would have encouraged him in this belief.

49. The Tribunal finds that a reasonable taxpayer, even one who expected to receive an email from HMRC telling him the amount to pay, would have made contact with
20 HMRC by phone before the due date, because he would be aware that there was tax to pay, and he would have known that the deadline was 31 January. Mr Rolls did not do this. He waited for a further email, which never arrived.

50. He also says that the Statement of Account came too late for him to pay the tax on time. If, however, he had filed his return a month or so earlier, he would have had
25 the Statement of Account earlier. It was not reasonable of him to expect that a return filed on Sunday 29 January 2011 would generate a postal communication in time for him to make payment on 31 January 2011.

51. The Tribunal also notes that HMRC make the payment date clear in their online guidance, and although they say that an SA Statement of Account will normally be
30 sent out, they explicitly say that if it has not been received, the taxpayer will need either to calculate his own tax, or look at his Online Account to see how much he owes.

52. Mr Rolls could have accessed his Online Account before 2 March, and it would have shown the amount of tax he had to pay. In the Tribunal’s judgment, it would
35 have been reasonable for Mr Rolls to have checked his self-assessment position online and not simply waited to receive an email.

53. In coming to these conclusions, the Tribunal takes into account the fact that Mr Rolls was a novice at online filing, but he nevertheless had access to the extensive online guidance provided by HMRC.

54. In summary, the Tribunal finds that Mr Roll's mistake – that he was to await a calculation from HMRC – does not constitute a reasonable excuse. He knew that the payment deadline was 31 January 2011 and he should have taken action much sooner when he did not receive the information he was expecting.

5 **Special circumstances**

55. HMRC have considered whether there are “special circumstances” in this case, and decided that there are not.

56. In my judgment, applying the normal principles of judicial review, the HMRC decision is not flawed. Even were it to be flawed, so that I were able to consider the “special circumstances” rules, I would have found, on the facts of this case, that there were no grounds for a reduction under those provisions.

Decision

57. As a result of the foregoing analysis, I dismiss the appeal and confirm the penalty.

15 **Appeal rights**

58. 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.

59. 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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**ANNE REDSTON
TRIBUNAL PRESIDING MEMBER**

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RELEASE DATE: 30th April 2013