



**TC02849**

**Appeal number: TC/2013/00331**

**Income Tax – Special relief under Sch 1AB TMA 1970 – unconscionable – illness and death of previous accountant**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**WILLIAM MAXWELL**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ALASTAIR J RANKIN  
TONY HENNESSEY**

**Sitting in public at Tribunals Unit, 3<sup>rd</sup> floor, Bedford House, 16-22 Bedford Street, Belfast, BT2 7DS on 7 August 2013**

**Mr Brian Short of Brian Short & Co, Accountants for the Appellant**

**Mr John Corbett of HM Revenue and Customs, for the Respondents**

## DECISION

1. The Appellant is appealing against the decision of HMRC to refuse a claim for Special Relief under Schedule 1AB (Section 3A) Taxes Management Act 1970. On 15 September 2009 HMRC issued determinations for 2006/7 of £4,090.81 and for 5 2007/8 of £4,847.72. However the Tax Returns when submitted showed tax liabilities of £3,446.00 for 2006/7 and of £403.74 for 2007/8. Thus the Appellant is seeking Special Relief payments of £644.81 for 2006/7 and of £4,443.98 for 2007/8 including penalties and interest.

### **The Facts**

10 2. A claim for Special relief dated 13 August 2012 was submitted to HMRC. The Appellant's tax returns for the years ended 5 April 2007 and 5 April 2008 were issued on 6 April 2007 and 6 April 2008 with filing dates of 31 January 2008 and 31 January 2009 respectively. They should have been completed and submitted no later than 31 15 January 2011 for the year 2006-7 and 31 January 2012 for the year 2007-8 in order to displace self assessment determinations raised by HMRC on 15 September 2009. The returns were eventually received on 16 July 2012.

3. The Appellant instructed his previous accountant to complete his tax returns as his agent. Unfortunately the agent became unwell and subsequently died. The Appellant was unaware that his previous accountant was unwell. Every time he 20 received correspondence from HMRC he took it to his previous accountant who assured him on each occasion that everything was in order and under control and that the Appellant had nothing to worry about.

### **The Appeal**

4. The Appellant appealed on the grounds that his previous accountant assured him 25 that his tax returns would be dealt with; that his previous accountant was ill, in hospital and subsequently died; that the determinations were excessive in relation to the tax due; that he is entitled to an equitable assessment; that he is a pensioner and is in no position to allow such excessive determinations to stay; and that other clients of his previous accountant have had penalties lifted in similar circumstances.

### **The Law**

5. Paragraph 3A(4) of Schedule 1AB Taxes Management Act 1970 allows a claim for relief to be made where in the opinion of [HMRC] it would be unconscionable for [HMRC] to seek to recover the amount or to withhold repayment of tax if it has 35 already been paid (Condition A). The Appellant's affairs must otherwise be up to date (Condition B) and the Appellant must not have relied on this paragraph on a previous occasion (Condition C).

### **The Evidence**

6. Mr Short advised the Tribunal that the Appellant left school with little formal education. All during his working life he took all documents which he received from

HMRC to his previous accountant. Every time his previous accountant assured the Appellant that his tax affairs were being dealt with and that he had nothing to worry about. In the past all his tax affairs had been adequately dealt with and the Appellant had no reason to believe otherwise.

5 7. The bundle of papers prepared for the Tribunal included a letter from the  
General Practitioner of the previous accountant which stated that the previous  
accountant had been admitted to hospital in November 2007 and again in May and  
June 2011. When the General Practitioner saw the previous accountant in September  
10 2011 his condition gave rise to concern with episodes of confusion which  
subsequently came more to the fore. The General Practitioner concluded his report by  
stating: 'While clearly from May 2011 his medical condition would have severely  
impaired his ability to work, his longstanding health problems potentially would have  
reduced his capacity to undertake his duties for some time prior to this.' The previous  
accountant died in June 2012.

15 8. Mr Short advised the Tribunal that the previous accountant had practised on his  
own with only a part-time bookkeeper. The previous accountant's daughter  
approached Mr Short in January 2012 to see if he could assist in dealing with her  
father's clients during his last illness. Subsequently Mr Short acquired the practice.

19 9. The Appellant confirmed that he always dealt with his previous accountant in  
20 person. He was not aware that he was ill and his death came as a great shock to the  
Appellant.

24 10. Mr Short referred to a similar case involving another client of the previous  
accountant for whom Mr Short now acted. HMRC, taking into account the specific  
facts of that client's case, had decided on review that it would be unconscionable for  
25 HMRC to seek to recover the amounts as determined for the tax years 2006/7 and  
2007/8.

11. Mr Corbett responded by stating that HMRC decided each case on its merits.  
HMRC was quite happy with the decision to refuse relief for the Appellant and to  
allow the relief for the other client.

30 12. Mr Corbett advised the Tribunal that the Appellant was well aware that his tax  
affairs were in arrear as he received eight penalty notices between February 2008 and  
August 2011. These penalties would have appeared on HMRC statements until 2012.  
The Appellant also received the determinations in September 2009 and distraint  
warning letters in November 2009 and October 2010.

35 **Decision**

13. Special relief is a form of overpayment relief that can only apply to amounts  
charged in HMRC determinations for income tax self-assessment..... where no other  
statutory remedy is available. Special Relief is a final and exceptional remedy where  
it would be unconscionable for HMRC to either pursue tax that is due or to withhold a  
40 repayment. Unconscionable means "completely unreasonable" or "unreasonably  
excessive" and in so considering HMRC must assess the behaviour of the Appellant

as to whether it is what might be expected from any reasonable person in a similar situation. The Tribunal must be satisfied that the Appellant has fulfilled the three conditions which determine whether the relief is appropriate. The Tribunal is satisfied that the Appellant had acted appropriately in relation to his tax affairs. He had  
5 engaged an agent whom he believed to be handling his affairs in a correct manner. The Tribunal is satisfied that the Appellant was unaware of his agent's serious medical condition and accept that this fulfils Condition A of Paragraph 3A(4). The Tribunal also accepts that the Appellant has satisfied Conditions B and C and thus allows the appeal against both determinations.

10 14. 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  
15 "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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**ALASTAIR J RANKIN**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 27 August 2013**