



TC03146

Appeal number: TC/2013/05364

INCOME TAX – whether late payment of income tax, Yes. Whether reasonable excuse for late payment - No.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PAUL STANLEY BRISTOW

Appellant

- and -

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

**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA
AII**

The Tribunal determined the appeal on 4 December 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 12 August 2013, and HMRC's Statement of Case submitted on 13 September 2013 with enclosures. The Tribunal wrote to the Appellant on 16 September 2013 indicating that if they wished to reply to HMRC's Statement of Case they should do so within 30 days. No reply was received by the Tribunal.

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DECISION

1. Introduction

5 This considers an appeal against a penalty of £199 levied by HMRC for the late payment of income tax of £3,992.50 for the year 2011-2012 due to be paid by 31 January 2013.

2. Legislation

Finance Act 2009 Schedule 56

10 Taxes Management Act 1970, in particular Sections 7, 8, 9, and 59B

3. Case law

Rowland v HMRC [2006] STC (SCD) 536

Anthony Wood trading as Propaye v HMRC [2011] UKFTT 136 TC 001010

15 4. Facts

Under the terms of The Taxes Management Act 1970 Section 59B (4) the due date for payment of the tax was 31 January 2013.

5. The appellant's tax return submitted electronically on 29 January 2013 showed a tax liability of £3,992.50. Payment of this tax was made on 9 April 2013.

20 A late payment penalty is chargeable where a taxpayer is late in paying tax due. The first penalty is calculated at 5% of all remaining tax unpaid after the expiry of 30 days from the due date in accordance with paragraphs 1(1), 1(4) and 3 (2) of Schedule 56 of the Finance Act 2009.

25 Thus in the case of the appellant a penalty of 5% of £3,992.50 is due. That is £199.62 which HMRC have rounded down to £199.

In respect of levying a penalty for late payment HMRC allow 30 days grace during which the penalty can be avoided by making payment. Thus if the appellant had made payment before 3 March 2013 no late payment penalty would have been levied.

6. Appellant's submissions

30 The appellant wrote to HMRC on 9 April 2013. The letter included the following:

“When I submitted my self assessment tax return I elected for HMRC to recover any outstanding money via an adjustment of my coding.

35 It follows that because I had made that decision I was not expecting any correspondence of significance as a result of submitting my tax return, this relevant because I moved out of Fowley Common Lane on the 3rd March 2013.

The reason for moving was the company I worked for was sold to An American organisation in early February 2013 and I have spent a great deal of time in America since February which explains why I was not aware of the letters from HMRC dated 7th March, 19th March and the most recent dated 28th March.

- 5 7. On 25 May 2013 the appellant wrote to HMRC Appeals unit. The letter included the following:

10 “I was astonished when my original appeal was rejected and the decision maker..... for reasons best known to herself chose to completely ignore the fact that in completing my online assessment I selected at the appropriate part in the process to have any under/overpayments made good by way of adjustment to my tax code.

As you will know, it’s only at the very end of the process is the under / over payment value calculated and this time round it calculated an under payment of £4003.98. As far as I was concerned that amount would be recovered via a tax adjustment and that was it.

15 I could not have at that point in time had any reasonable grounds to believe my selection of recovery via my tax code would not take place. The software accepted my selection and at the point that the calculation was made there was no warning or error code generated to flag up this amount was deemed to be too large to recover via my tax code...”

- 20 8. The letter of 15 May 2013 mentioned above was ultimately sent to the Tax Tribunal and was received on 12 August 2013 . I was taken as the Appellant’s Notice of Appeal .

9. HMRC’s Submissions

25 HMRC say the appellant’s electronic return for the year 2011-2012 was received on 29 January 2013. They say the appellant “chose to calculate his liability and therefore knew the sum to pay by the due date and filed online whereby the liability was automatically calculated.

30 10. HMRC say that they will try to collect any balancing payment and any outstanding payments on account totalling £2,999.99 or less through a tax code for a later tax year where a return is filed on line by 30 December following the end of the return year. In this instance the tax due for 2011-2012 could not be coded out because the appellant’s underpayment of tax for 2011-2012 was £3,992.50 and he did not file his return until 29 January 2013.

35 11. HMRC say that the coding out limit and the coding out deadline are shown in the “Fill in your return” section of the online filing process so the appellant should have been aware on 29 January 2013 that his 2011-2012 tax liability could not be coded out in a later tax year as it exceeded the coding out limit of £2999.99 and that his return was being filed after the coding out deadline of 30 December.

12. The Self assessment Online Service allows taxpayers to monitor their Self Assessment account by showing the up to date position of tax due, the due date for payment and any amounts due which have been included in a PAYE tax code for a later year. HMRC contend that a perfunctory check of his Self Assessment on line account would have alerted the appellant to the fact that his 2011-2012 liability had not been included in his PAYE tax code for a later year and was therefore due by 31 January 2013.

13. The Tribunals Observations

This appeal concerns a penalty for late payment of tax. The level of the penalties has been laid down by parliament and the legislation relating to penalties has been properly and accurately applied by HMRC. The only other consideration that falls within the jurisdiction of the First-tier Tribunal is whether or not the appellant has reasonable excuse for the late payment.

14. The Tribunal notes that the first document that the appellant received in connection with completing a tax return for the year 6 April 2011 to 5 April 2012 was a Notice headed "Self Assessment, Notice to complete a tax return". The second paragraph on the front page (Page 1) of this document is headed "Deadlines for sending your tax return" It states as follows

You must make sure we receive your tax return by

- 31 October 2012 if you use paper (or three months after the date of this letter if that's later)
- 31 January 2013 if you file online (or three months after the date of this letter if that's later). If you owe less than £3,000 tax for 2011-12 we will try to collect it through your 2013-14 PAYE tax code if you have one. If you want us to do this you must file online by 30 December 2012.

15. These guidelines are repeated in the "Fill in your return" section of the online filing process.

16. The appellant has accused the decision maker from HMRC of completely ignoring the selection for payment he had made. The decision maker had no choice because unfortunately the appellant, for reasons best known to himself, had completely ignored the important guidelines which were clearly advised to him both on the front page of the Self Assessment Notice to complete a tax return and during the online filing process. The first guideline the appellant failed to notice was that in order for tax to be collected by code adjustment in the next tax year the return should be filed online by 30 December 2012, the appellant did not file his return online until 29 January 2013 so he should have known that having missed the deadline for the coding adjustment he would therefore have to pay the tax by 31 January 2013. The second guideline the appellant missed was that the coding option is only available "if you owe less than £3,000 for 2011-2012" As the appellant's online submission showed an underpayment well in excess of that figure he should have realised that he would have

to make a payment. The appellant had therefore been given reasonable grounds to believe his selection of payment by adjustment of his tax code would not take place. The appellant could also have checked his up to date position by using the Self assessment Online Service described above. The deadline date for payment of 31
5 January 2013 was before the appellant left for America so his absence abroad during February 2013 cannot be an excuse for the failure to pay by that date. In the circumstances the Tribunal cannot accept that the appellant had a reasonable excuse for failing to pay the tax by the due date.

17. Paragraph 9 of Schedule 56 of the Finance Act 2009 (Special Reduction) provides
10 HMRC with discretion to reduce any penalty if they think it right to do so because of special circumstances. On the information held in this case HMRC did not consider there were any special circumstances which would allow them to reduce the penalty. The tribunal has not found that there are any special circumstances that might apply in this case therefore the Tribunal finds no reason to overturn that decision.

15 18. HMRC applied the legislation correctly and calculated the amount of the penalties accurately as £199 (rounded down to the nearest pound) being 5% of the tax of £3,992.50 for the period 6 April 2011 to 5 April 2012 which remained unpaid at 31 January 2013. In the Tribunal's view the appellant has not established that he had
20 reasonable excuse for the late payment of the tax due. Therefore the appeal is dismissed.

19. 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
25 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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PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 20 December 2013