



TC03197

Appeal number: TC/2013/06577

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CAROLINE E PATTERSON

Appellant

- and -

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

Respondents

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

The Tribunal determined the appeal on 23 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 16 September 2013 with enclosures, and HMRC's Statement of Case received on 1 November 2013 with enclosures. The Tribunal wrote to the Appellant on 1 November 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 penalties totalling £204 levied by HMRC for the late payment of income tax of £1,363.76 for the year ending 5 April 2011.

2. Legislation

Finance Act 2009 Schedule 56

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

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3. Case law

Rowland v HMRC [2006] STC (SCD) 536

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

4. Facts

15 A notice to file a return for the year ending 5 April 2011 was sent by HMRC to the appellant on 6 April 2011. The filing date was 31 October 2011 for a paper tax return or 31 January 2012 for an electronic return.

5. An electronic return for the appellant was submitted on time on 31 January 2012.

20 6. HMRC say self-assessment of tax is based on voluntary compliance. Taxpayers who are within the self-assessment system must file their returns by the due date and pay the tax they owe by the date specified in law.

7. It is therefore important to establish the due date as specified in law, in this case in accordance with the Taxes Management Act 1970 Section 59B (4) the date is 31 January 2012.

25 8. The tax return submitted to HMRC showed that the tax due by the appellant was £2,585.28. At the deadline date of 31 January 2012 the appellant had paid some of this tax leaving £1,363.76 unpaid.

9. There are penalties for late submission of tax payments. These are to be found in paragraphs 1 and 3 of Schedule 56 of the Finance Act 2009. In brief these provide

30 i) After 30 days from the penalty date a penalty of 5% of any unpaid tax; and

ii) After 5 months from the penalty date a penalty of 5% of any unpaid tax; and

iii) After 11 months from the penalty date a penalty of 5% of any unpaid tax;

The penalty date is the date specified in the Taxes Management Act 1970 Section 59B (4) so in this case the date is 30 days from the day after 31 January 2012, that is 3 March 2012.

5 10. Paragraph 16 (1) of Schedule 56 states that liability for any of the above penalties does not arise if the taxpayer can establish they had reasonable excuse for the failure.

Paragraph 16 (2) provides that an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the person's control. It also provides that a person's reliance on another person to do anything, is not a reasonable excuse unless he/she took reasonable care to avoid the failure.

10 11. In accordance with the above on 15 May 2012 HMRC levied a first late payment penalty of £68 under paragraph 3 (2) of Schedule 56 of the Finance Act 2009

Also in accordance with the above on 18 September 2012 HMRC levied a second late payment penalty of £68 under paragraph 3 (3) of Schedule 56 of the Finance Act 2009

15 Also in accordance with the above on 19 March 2013 HMRC levied a third late payment penalty of £68 under paragraph 3 (4) of Schedule 56 of the Finance Act 2009

12. Schedule 55 of The Finance act 2009 provides penalties for the late submission of a tax return. In brief these provide a penalty of £100 if the return is not submitted by the due date and the following further penalties if the return remains unsubmitted:

20 i) After 3 months from the penalty date, a further penalty of £10 for each day the failure continues; and

ii) After 6 months from the penalty date a further penalty which is the greater of 5% of any liability to tax which would have been shown in the return, and £300;

iii) After 12 months from the penalty date a further penalty which is the greater of 5% of any liability to tax which would have been shown in the return, and £300;

25 The penalty date is the day after the filing date so in this case it is 1 February 2012.

13. Appellant's submissions

The appellant's submissions include the following:

A letter to HMRC dated 29 January 2013 reads as follows

30 "Tax return for year 2010/2011. With reference to your letter dated 21 January 2013 in reply to mine of 17th December 2012, it now appears that the tax return which was filed in my name, but without my knowledge or consent, was based upon the trading accounts "Mr & Mrs Patterson, T/A Corbett Engineering" for the year 2010/2011 which are stated and filed on 1 February 2012, but without any reference or agreement with me, of which I have finally received a copy upon my demand.

5 I must immediately point out that the “Approval Statement” attached as part of those accounts, was never agreed, nor signed by me (Mrs C E Patterson). The person who filed these accounts had no authority to do so without my agreement. I would also question whether perhaps the “Approval Statement” might have been completed by someone else in my name.

Therefore I would ask that the accounts as stated above be returned for correction, because only on the basis of the corrected accounts, can I complete a new tax return for the year 2010/2011”

14. A letter to HMRC dated 29 March 2013 states

10 “I am in receipt of your “notice of penalty assessment”, which I do not accept.

I wrote to H M Revenue and Customs (copy enclosed) on 29 January, by recorded delivery, but I am still awaiting a reply. As you can see I totally refute having received the income in question, and therefore have no liability to tax.”

15 15. On 2 May 2013 HMRC received an amendment to the partnership income from the appellant. They replied on 28 May 2013 saying

“I am unable to deal with your amendment as I need an amended partnership return from the nominated partner to confirm the amended partnership income for the year in concern,

20 I will be in a position to deal with your amendment on receipt of the amended partnership tax return and an individual amendment for each partner.”

16. In the Notice of Appeal dated 16 September 2013 the appellant writes

25 “HMRC say the taxes and penalties due are from my husband’s business in which he named me as a partner for tax purposes only. We are no longer together and in the midst of divorce proceedings. If any tax or penalties are due they should be paid solely by my estranged husband’s bill. I have never completed self-assessment forms and nor did I authorise anyone else to do so on my behalf. My estranged husband previously agreed to discharge these and I enclose copy proof of his written agreement to do so. I sustained a very serious accident in Sept 2010 which has rendered me incapable of work and therefore I should not have been subject to self-
30 assessment as I was not earning. I strongly believe I should not be liable for taxes or penalties related to same for monies which I did not receive. I attach copy communications between myself and my husband’s accountants the content of which is self explanatory.”

35 17. Unfortunately no direct proof of the appellant’s husband’s written agreement to discharge the tax and penalties due by the appellant was provided to the Tribunal. A letter from McMillan and Ervine (the appellant’s solicitors) to HMRC dated 3 July 2013 includes the following. “We have lodged an application to the Legal Services Commission seeking legal aid to commence divorce proceedings and we understand that you have previously been furnished with correspondence between the parties

which clearly show that Mr. Patterson was accepting responsibility for any monies owing to HMRC on account of his business dealings.”

No such correspondence between the parties was provided to the Tribunal.

5 The letter also includes “We advise that in September 2010 Ms Patterson was involved in a very serious cycling accident” which left her hospitalised for some time and left her incapable of dealing with her affairs. She required a lengthy period of recovery and indeed has been incapable of work since the accident thereby supporting our client’s instruction that she should not have been subject to assessment as she was not earning.

10 18. The correspondence between the advisers repeats much of the information set out above. A letter from McMillan and Ervine to Garvin, Danby & Co (the partnership’s accountants) dated 25 July 2013 includes

“Our client has made it clear to you that she received £4,200 in the year in question....”

15 **19. HMRC’s Submissions**

HMRC submit that in respect of the tax year ending 5 April 2011 they issued a notice to file a return to the appellant on 6 April 2011.

In their statement of case HMRC contend that the tax was due to be paid on or before 31 January 2012 in accordance with Section 59B (4) TMA 1970.

20 HMRC say that throughout her appeal the appellant has maintained that she should not have been required to submit a tax return and that she has no tax liability and that if any tax or penalties are due then they should be paid by her estranged husband.

25 HMRC say that in support of her case the appellant has asked the Tribunal to consider correspondence between the respective agents. HMRC say they are unable to agree with the appellant’s interpretation of this information. Whilst HMRC accept there is ongoing discussion between the parties it contends that the evidence shows that a partnership did exist and that the appellant was a partner.

HMRC point to a page from the partnership’s 2010/11 tax return naming the appellant as a partner and that the partnership traded from 6 April 2008 to 31 March 2011.

30 HMRC quote from a letter from Garvin, Danby & Co dated 4 July 2013 to the appellant which states

“Mr. Patterson has stated that there are no inaccuracies in the profit ratio as shown in the 2010/2011 partnership tax return and no amendments are therefore required.”

35 A similar message is made in a subsequent letter dated 8 August 2013 to the appellant’s solicitors McMillan & Ervine.

HMRC say that their records show that the appellant's self-assessment account was set up on 25 March 2008 and this was in response to receipt of forms CWF (registration for self-employment) and 64-8 (agent's authorisation mandate).

5 As a consequence of this registration the appellant was subsequently issued with tax returns or notices to file for 2007/08, 2008/09 and 2009/10. These three tax returns were filed and HMRC have exhibited the three tax calculation summaries issued following their receipt of them.

10 HMRC therefore contends that the evidence in this case shows that the appellant was correctly served with a tax return for 2010/11 and did have a tax liability that needs to be accounted for.

20. The Tribunals Observations

The guidance notes provided to the parties by the Tribunal prior to an appeal advise parties to submit any evidence that is relevant to support the contentions they make. Unfortunately the appellant has only taken heed of this to a very limited extent.

15 21. The appellant was sent a notice to file a tax return for the year 6 April 2010 to 5 April 2011 on 6 April 2011. The filing date was 31 October 2011 for paper returns and 31 January 2012 for submission electronically. The Tribunal notes that there is no evidence to show that the appellant raised any objection to having received this return at the time. The objections seem to start in 2013.

20 22. The Tribunal notes that for the three years 2007/08, 2008/09 and 2009/10 tax returns were submitted on time and the relative tax payments were made on time. In respect of these returns the appellant had appointed an agent to complete her returns. The following year the appellant and her husband had marital difficulties and were separated. However there is no evidence that the appointment of the agent to act for
25 the appellant has been rescinded.

23. The appellant claims that her tax return for 2010/11 was filed without her knowledge or consent. Whilst it might be true that the return was filed without her knowledge it appears she had overlooked that she had appointed an agent to deal with her tax affairs and had never cancelled that arrangement. Therefore the return was
30 filed with her consent. The Tribunal notes that if the appellant believed that she had not filed a return herself and had not given consent to a return being submitted for her then she is has failed to provide a tax return by the deadline advised in the notice sent to her. Even if she believes that no tax is due she is still obliged to submit the return. Failure to do so can give rise to penalties. These penalties which are set out in
35 paragraph 12 above have been avoided by the submission by someone, presumably her appointed agent, of the appellant's return on the latest date possible without giving rise to a penalty. The Tribunal comments more on this below.

24. As the remainder of the tax due had not been paid by 22 October 2013 there is little doubt that the tax has not been paid on time. If the appellant has not received her
40 share of the partnership profits that is a matter for her to pursue through her advisers. It does not mean that she should withhold payment of tax.

25. As noted at paragraph 10. above Paragraph 16 (2) of Schedule 56 of the Finance Act 2009 gives circumstances which cannot be regarded as giving a reasonable excuse for a late payment of tax.

5 In this respect the Tribunal has received little evidence to suggest that the appellant had insufficient funds. The appellant says she has not received some of her share of the partnership profits but makes no other contentions nor submitted any evidence that suggest that she did not have the funds to pay the outstanding amount of £1,363.76.

10 It is clear that the appellant expected either her agent or her estranged husband to pay the outstanding amount for her, presumably out of her share of partnership profits. This is reliance on another. There is no evidence before the Tribunal of what steps, if any, the appellant took to ensure timely payment was made. If there is a marital dispute it is for the parties to resolve who should pay HMRC and make payment on or before the deadline date in order for penalties to be avoided.

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26. The onus is on the appellant to establish that she had reasonable excuse for the failure to make the payment due by the deadline date. The Tribunal notes that all the correspondence before it from the appellant and the respective agents is dated 2013. There is no evidence provided that is dated before the due date for payment of the tax on 31 January 2012. Therefore there is nothing to suggest that the appellant would have any difficulty meeting the deadline for payment. The appellant and her solicitors refer to a serious cycling accident that the appellant sustained in September 2010 which she says rendered her incapable of work. Whilst the Tribunal has no reason to doubt that the accident occurred it is most unfortunate that no medical evidence has been produced to assist the Tribunal in understanding the seriousness of the injuries sustained and whether they could provide the appellant with a reasonable excuse for the late submission of payment due under her tax return over sixteen months later. There is reference to a written agreement by the appellant's husband to pay any taxes due to HMRC on account of his business dealings. No documents setting out the terms of this agreement and whether they cover the appellant's liabilities have been provided to the Tribunal. There is no evidence to show what discussions were held, if any, to resolve the matter of the tax payable by the appellant and who should pay it. There is no correspondence dated 2012 from the appellant or the respective parties' agents in the papers provided to the Tribunal. There is no evidence that the appellant contacted HMRC before the deadline date or within the following 12 months to advise that she would have difficulty in making the payment.

15 In respect of the cycling accident in September 2010 the Tribunal does not accept that this means that the appellant should not have been subject to assessment. The Notice to file sent to the appellant covered the period 6 April 2010 to 5 April 2011. In the period from 6 April 2010 to her accident in September 2010 it is clear that the appellant was capable of earning and therefore a Notice to file a return was entirely appropriate.

45 27. After considering all the above in the Tribunal's view the appellant has not established that she had reasonable excuse for the late payment of the tax due.

28. Paragraph 9 of Schedule 56 of the Finance Act 2009 (Special Reduction) provides 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.
5 The Tribunal finds no reason to disagree with that decision.

29. HMRC have levied the three penalties each of £68 and totalling £204 in accordance with the legislation. The appellant has established no reasonable excuse for the late payment of the tax due on her self-assessment return. There are no special circumstances that apply. For all the above reasons the appeal is dismissed.

10 30. The Tribunal makes the following additional observation. If the contents of the appellant's letter of 29 January 2013 and her Notice of Appeal dated 16 September 2013 were to be accepted as accurate by HMRC the Tribunal suggests that this may create something of a problem for the appellant. It is clear that the appellant is adamant that she has not submitted a return herself and objects to the return which has
15 been submitted on time on her behalf but which was submitted by someone she considers does not have her authority to do so.

31. In the light of this it would be possible for HMRC to argue that no valid return has been submitted by or on behalf of the appellant and therefore they should levy penalties on the appellant for her failure to submit a tax return by the deadline date of
20 31 January 2012. As the return will have been outstanding for over a year the minimum total of penalties will be £1,600. That is firstly £100 for the initial failure; secondly £900 being £10 a day for the first three months - 90 days (1 Feb 2012 to 30 April 2012); thirdly a minimum of £300 for a failure for 6 months; and fourthly a minimum of £300 for a failure for 12 months.

25 32. Those penalties have not been levied and therefore it is not appropriate for the Tribunal to consider the matter any further. However the Tribunal thought it might be helpful to make this observation should the appellant be considering taking further the matters mentioned in her letter of 29 January 2013 and her Notice of Appeal dated 16 September 2013.

30 33. 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
35 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

40 | **PETER R SHEPPARD**
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 7 January 2014