



TC03620

Appeal number: TC/2013/06123

INCOME TAX – Penalty for late filing – Allegation of “unlawful actions taken by this ... government in 2011” which amounted to a reasonable excuse – not proved – no reasonable excuse shown – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KEITH ALLEN

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ADRIAN SHIPWRIGHT

The Tribunal determined the appeal on 22 November 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 having first read the Notice of Appeal dated 24 August 2013 and all the other documentation provided.

This is a full decision following a request from the Appellant for a full decision. It was not clear that the request was in time but it was decided to produce a full decision at any rate.

Summary

1. The Tribunal decided that the payment was made late and no reasonable excuse within the meaning of the statute had been shown, the onus being on the Taxpayer, the appeal was dismissed. There was no other issue in the case. An allegation of "unlawful actions taken by this ... government in 2011" which was not substantiated is not a reasonable excuse. Accordingly the appeal was dismissed.
2. The decision is essentially a fact based one. The Appellant did not show a reasonable excuse within the meaning of the legislation. The burden of proof was not discharged by the Appellant. Accordingly, the Appellant could not succeed in his appeal. There was no significant point of law involved

Introduction

2. This is an appeal by Keith Allen are ("the Taxpayer") against penalties for late payment of tax of 2011-12.
3. The penalties were imposed under paragraph 3 Schedule 56 FA 2009 and amounted to £144.00.
4. The tax should have been paid on or before 31 January, 2012. The tax was unpaid on that date. The tax had not been paid in full by October 2013.

Legislation

5. Paragraph 3 of Schedule 56 FA 2009 provides:
"3 (1) This paragraph applies in the case of—
(a) a payment of tax falling within any of items 1, 3 and 7 to 24 in the Table,
(b) a payment of tax falling within item 2 or 4 which relates to a period of 6 months or more, and
(c) a payment of tax falling within item 2 which is payable under regulations under section 688A of ITEPA 2003 (recovery from other persons of amounts due from managed service companies).
(2) P is liable to a penalty of 5% of the unpaid tax.
(3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.
(4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.
6. The Table provides (inter alia):

| <i>Tax to which payment relates</i> | <i>Amount of tax payable</i> | <i>Date after which penalty is incurred</i> |
|-------------------------------------|------------------------------|---|
|-------------------------------------|------------------------------|---|

PRINCIPAL AMOUNTS

- | | | | |
|---|---------------------------------|---|---|
| 1 | Income tax or capital gains tax | Amount payable under section 59B(3) or (4) of TMA 1970 | The date falling 30 days after the date specified in section 59B(3) or (4) of TMA 1970 as the date by which the amount must be paid |
| 2 | Income tax | Amount payable under PAYE regulations (except an amount falling | The date determined by or under PAYE regulations as the date by which the amount must be paid |

within item 20)

| | | | |
|---|------------|--|---|
| 3 | Income tax | Amount shown in return under section 254(1) of FA 2004 | The date falling 30 days after the date specified in section 254(5) of FA 2004 as the date by which the amount must be paid |
|---|------------|--|---|

Background

7. Notice to file a tax return for 2011-12 was issued to the Taxpayer on 6 April, 2012.
8. The filing date was 31 October 2012 for a paper return and 31 January, 2013 for an electronic return.
9. The Taxpayer's electronic return was received on 30 January, 2013.
10. No payment was received with the return. The taxpayer did not dispute this. I find as a fact that the payment was not received.
11. The first penalty notice was issued on 19 March, 2013 for £72. 00 (which is five per cent of the unpaid tax).
12. A second penalty notice was issued on 14 August, 2013 as the tax had remained unpaid again for £72. 00 (which is five per cent of the unpaid tax).
13. The Taxpayer asked for a review of the imposition of the penalties.
14. The imposition of penalties was upheld on review.
15. The Taxpayer does not dispute the late payment of the tax. It would have been hard to do otherwise in the circumstances.
16. I find as a matter of fact that the tax was paid late.
17. I also find that the tax had not been paid by the time that the first penalty notice was issued and further find that the tax had not been paid by the time that the second penalty notice was issued.

Issue to be determined

18. Accordingly the only question in this appeal becomes did the Taxpayer have a reasonable excuse for the late payments within the statutory meaning.
19. The onus is on the Taxpayer to show that there was a reasonable excuse by admissible evidence. If the Taxpayer fails to discharge this onus the penalty stands.

Discussion

20. The Taxpayer, in essence, argued that his "...business... had been virtually destroyed by the unlawful actions taken by this ... government in 2011".
21. There was no evidence before me other than his assertion to substantiate this. I find that this has not been established.
22. The Taxpayer described this as unforeseen and out of his control. He says it follows that he has a reasonable excuse as described in HMRC manuals.
23. Whilst sympathetic to the Taxpayer I reject his argument. A change of government policy does not amount to a reasonable excuse in the circumstances before me. He had received the payment from clients on which tax was due. That those receipts were used for other purposes may be a reason why the Taxpayer did not pay the tax due but is not a reasonable excuse. Payment of tax is not an optional matter in these circumstances.
24. The Taxpayer's argument does not show that there was a reasonable excuse within the statutory meaning. Even if this were the proper construction of the HMRC manuals they are not a matter of law and are not binding on the Tribunal. HMRC do not consider that this is the proper construction of their Manuals.

25. The Taxpayer had made a profit in the year – hence the tax liability. Accordingly under the self-assessment system he had to file and pay on time. He did not.
26. Shortage or reduction of funds is not a reasonable excuse. The Taxpayer may not have received as much money as he would have liked in the circumstances but that does not amount to a reasonable excuse within the statutory definition.
27. The Government action or inaction is not a reasonable excuse in the circumstances before me.
28. There was nothing before me to suggest that the Government action or inaction was “unlawful”. I find that the Taxpayer has not established this.
29. The legislation specifically provides that insufficiency of funds is not a reasonable excuse.
30. I have carefully considered all the information before me to see if it shows any other grounds for finding that there was a reasonable excuse. I have found nothing to show that there was a reasonable excuse within the statutory meaning on the documentation before me.
31. The Tribunal is only concerned with matters of law and does not have any inherent fairness jurisdiction. The *Total* and *Hok* decisions which are binding on me and with which I respectfully agree confirm this. There was no specific issue of proportionality raised before me and I do not consider the penalty to be disproportionate in the context and on the information before us.
32. The Tribunal can only proceed on the basis as set out in the statutory provisions.
33. I have found that:
 - a. the payment was late: and
 - b. no reasonable excuse has been shown (the onus being on the Taxpayer).Accordingly, the appeal is dismissed.
34. 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.

**ADRIAN SHIPWRIGHT
TRIBUNAL JUDGE**

RELEASE DATE: 21 May 2014

