



**TC03703**

**Appeal number: TC/2012/09856**

*INCOME TAX – relocation benefits – no change in residence due to cessation of employment – does relief apply - penalties and surcharges for late payment of income tax and late filing of tax returns – section 271 ITEPA 2003 – s59C and s93 TMA 1970*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PETER FIGG**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE NICHOLAS ALEKSANDER  
MR DEREK SPELLER**

**Sitting in public at Brighton on 14 October 2013**

**The Appellant in person**

**Ms G Orymoye, an officer of HM Revenue and Customs, for the Respondents**

## DECISION

5 1. Mr Figg appeals against penalties and surcharges levied by HMRC on the late submission of his income tax return for 2009/10 and the late payment of the tax shown as due on that return. In addition Mr Figg contends that amounts paid to him by his former employer in respect of a relocation package are not taxable, and that he is entitled to deduct £350 of accountancy costs incurred by him in computing his tax liability.

10 2. HMRC contend that they have not yet made any decision as to the taxation of the relocation package, and that therefore his appeal on these points should be struck out.

15 3. Mr Figg represented himself and Ms Orymoloye represented HMRC. We heard evidence from Mr Figg, and in addition a bundle of evidence was produced. Following the hearing we gave directions for further written submissions by the parties.

20 4. By way of background we note that this appeal originally came on for hearing before a differently constituted tribunal on 4 February 2013 in the absence of Mr Figg. The decision of the Tribunal was set aside, and the appeal was then reheard before us.

### Background Facts

5. We find the background facts to be as follows:

6. Mr Figg's tax returns were filed online and on time by his agent for the years 2007/08 and 2008/09.

25 7. Mr Figg lives in Horsham in Sussex. He accepted an offer of employment with BG International Limited ("BG") at some point in the tax year 2009/10. The new job was in Reading in Berkshire. Mr Figg was offered a relocation package to move from Sussex to Berkshire. The package included his moving costs, temporary accommodation, travelling and subsistence expenses and the use of a relocation agent. 30 BG informed Mr Figg that the benefit of the relocation package was not subject to tax.

8. However, the job with BG was not as it had been described to him at the time he was recruited. This was acknowledged by BG at a very early stage, but it took considerable time until BG and Mr Figg signed a formal agreement addressing the misdescription. In the meantime Mr Figg continued to be employed by BG and 35 continue to be paid his salary and benefits (including the payments under the relocation package), but BG acknowledged that Mr Figg was looking for new employment. In January 2011 Mr Figg and BG entered into a compromise agreement, pursuant to which it was agreed that Mr Figg's employment would terminate by mutual consent on 31 October 2011. Under the agreement Mr Figg was

paid £30,000 by way of compensation for loss of employment, and was paid an amount in respect of accrued holiday entitlement

9. It is not in dispute that the £30,000 is free from tax pursuant to ss401 to 404 Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”).

5 10. BG issued a P11D to Mr Figg’s in June 2010. This included taxable benefits of £4498 in respect of the costs of temporary accommodation under the relocation package.

11. Mr Figg wanted to file his 2009/10 tax return on line himself. The filing date for 2009/10 is 31 January 2011 for online filing. He telephoned HMRC for a  
10 password on 17 January 2011. Mr Figg registered online to use Government online services on 18 January 2011.

12. Between 17 January 2011 and 24 January 2011, Mr Figg telephoned the HMRC helpline to enquire when the PIN will be issued. He was placed on hold for extended periods, and when he eventually gets through to speak to someone, they were unable  
15 to provide him with any information as to when the PIN will be issued. The PIN is sent through the post, and is required to activate the online service.

13. On 24 January Mr Figg wrote to HMRC stating that it was impossible for him to meet the filing deadline as he has not received the PIN in time.

14. Mr Figg enrolled online to use HMRC’s online self-assessment service on 1  
20 February 2011. At the end of the enrolment process, HMRC’s website is programmed to inform the taxpayer (in this case Mr Figg) that an activation code (PIN) will be sent to him in the post in around seven working days.

15. On 18 February 2011 Mr Figg activated HMRC’s online self-assessment service, so by then he must have received his activation code (PIN). This is  
25 consistent with Mr Figg’s oral evidence, that the PIN number for the online filing was received by him around the end of January or beginning of February. He told us that he did not file his tax return at that time because he needed to clarify the taxability of the relocation package.

16. In fact, Mr Figg does not file his 2009/10 tax return online himself, and does not  
30 log into the HMRC online service himself again.

17. On 3 March 2011 HMRC write to Mr Figg apologising for the problems experienced when phoning the helpline, but noting that Mr Figg has not filed his tax return. He is advised to do so as soon as possible. The letter informs Mr Figg that a penalty has been charged for the late submission of the tax return, and Mr Figg may  
35 appeal against this penalty if he has a reasonable excuse for the late submission, although the appeal will not be considered until after the return has been submitted.

18. On 6 April 2011, Mr Figg writes to HMRC appealing against the late filing surcharge.

19. On 20 January 2012, Mr Figg's tax returns for 2009/10 and 2010/11 are filed online by a tax agent.

20. On 11 March 2012, Mr Figg writes to HMRC appealing against the penalty and interest, and to recover fines and other charges that HMRC have forced him to pay.

5 Mr Figg states that the reason that he paid his tax late was as a result of poor communications from HMRC, and that because of the poor communications, he was unaware of the shortfall in his tax payable. Mr Figg also states that his previous employer had wrongly classified relocation expenses paid to him as a taxable benefit which they had declared on his P11D for the year. Finally, Mr Figg states that he had  
10 to pay an accountant £350 to file his tax return online (through online filing system for tax agents), as HMRC's online system for individual taxpayers was not working.

21. Mr Figg writes again to HMRC on 26 March 2012 to complain about HMRC's poor communications, and that it has been impossible to communicate with HMRC either on the telephone or by post. Mr Figg notes that he has called the HMRC  
15 helpline, but no one that he spoke to was able to assist him, and even though HMRC promised to call him back, no one ever did.

22. On 6 July 2012 HMRC write to Mr Figg in response to his appeal against the late filing penalty, stating that the surcharge is upheld, as Mr Figg did not have a reasonable excuse for the late filing. This was because Mr Figg was notified on 6  
20 April 2010 that he would need to file a tax return for 2009/10, and he had plenty of time between then and the filing deadline of 31 January 2011 to register online – and that if Mr Figg was experiencing difficulties dealing with the online system, he could have requested and filed a paper return. As regards Mr Figg's complaints, the letter notes that these have been referred to HMRC's complaints unit, and would be dealt  
25 with separately and the issue relating to Mr Figg's P11D and the benefits shown on it should be taken up by Mr Figg with his former employer.

23. On 13 July 2012, Mr Figg writes to HMRC rejecting their decision and requesting a review. HMRC's review conclusion letter is dated 30 August 2012 upholds the decision reached in the 6 July 2012 letter. There is further  
30 correspondence between Mr Figg and HMRC, and Mr Figg is advised that his next step should be to appeal to this Tribunal.

24. On 26 September 2012 Mr Figg makes an overpayment relief claim in respect of tax paid on the relocation package.

25. On 19 October 2012, Mr Figg appeals to this Tribunal.

35 26. On 6 February 2013, HMRC write to Mr Figg with a request for further information in respect of his claim for repayment of tax on the relocation package.

### **Late submission of tax returns and payment of tax**

27. The law in relation to late submissions of tax returns and payment of tax is straightforward and contained in the Taxes Management Act 1970. Section 59C deals

with surcharges for unpaid income tax, and section 93 deals with penalties for failures to file tax returns on time.. It is not disputed that Mr Figg submitted his tax returns and paid tax due in respect of the 2009/10 tax year after the respective due dates. In the circumstances of this case, the only basis on which Mr Figg can successfully  
5 appeal against the surcharges and penalties levied in respect of the late payment and filing is if he had a “reasonable excuse” for his defaults, and that the reasonable excuse exists throughout the “period of default”. The period of default only ends on the day before the date on which payment is made (or the relevant return is filed).

28. Mr Figg gave no explanation why he only applied to file online in January 2011,  
10 very close to the filing deadline, and why he did not chose to register to file online at an earlier date. And while we can perhaps understand his frustration in dealing with the HMRC telephone helpdesk in early 2011, he gives no explanation as to why it than takes until January 2012 for him to file his tax return.

29. The requirement of the legislation is that any excuse must subsist from the due  
15 date until the return is filed (or the tax is paid, as the case may be). Whilst it might be the case that problems with HMRC’s online system might give grounds for a reasonable excuse for so long as the problems subsist, it is not clear that in this case that any problems with the system prevented Mr Figg from filing and paying his tax on time. Even if there were problems with Mr Figg’s PIN (and it is not clear to us  
20 that there were), he has not satisfied us that these problems subsisted from 31 January 2011 until 20 January 2012, when the return was eventually filed. In any event, problems with the online tax return system would not provide an excuse for failure to pay tax on time.

30. We understand that Mr Figg wanted to discuss the taxability of his relocation  
25 package with HMRC before finalising his tax return. Unreasonably long delays by HMRC in responding to questions might be an excuse not only for filing a tax return late, but also in calculating (and therefore paying) tax. However, for the excuse to be reasonable, the issues must have been raised by the taxpayer with HMRC sufficiently in advance of the filing deadline to give HMRC a reasonable opportunity to respond.  
30 And of course if HMRC do not respond in time, it is always open to a taxpayer to file his return on the basis that he or she believes is correct, and to note the potential uncertainty (and the fact that the issue has been raised with HMRC) in the “white space” on the tax return (or the equivalent field in the electronic version).

31. However in Mr Figg’s case, although he received the P11D in June 2010, he  
35 told us that he first raised the issue with HMRC on the telephone in March 2011, and did not raise it in writing until March 2012 – both well after the filing and payment date of 31 January 2011. As he did not raise this as an issue with HMRC until after the filing date for his tax return had passed, any delay by HMRC in responding to his questions cannot be the basis for a reasonable excuse for Mr Figg’s failure to file his  
40 tax return and pay his tax by the due date.

32. We therefore find that Mr Figg did not have any reasonable excuse for filing his tax return after the due date, or for paying his tax after the due date. We therefore dismiss the appeal against the surcharges and penalties.

### **Accountant's fees**

33. Mr Figg has made a claim in respect of £350 accountants' fees that he claims that he had to incur as he was unable himself to file his tax return online.

5 34. Expenses are only allowed against employment income if they are wholly, exclusively and necessarily incurred for the purposes of the employment (Section 336 ITEPA). This is a very stringent test. And although we can understand that Mr Figg might have found an accountant to be helpful, we find that it was not a necessary part of Mr Figg's employment with BG that he engage an accountant. The accountant's fees are therefore not deductible as an expense of the employment.

10 35. Whilst we can appreciate Mr Figg's frustration with HMRC, if he found the online system impossible to deal with, it was always open to him to file a paper tax return. There was never any necessity for him to engage an accountant.

### **Interest**

15 36. For completeness, we note that there is no right of appeal to this Tribunal in respect of interest. Payment of interest is automatic for tax paid after the due date, irrespective of whether or not there is a reasonable excuse for the delay.

### **Relocation package**

20 37. Mr Figg applied for a tax refund in respect of his relocation package on 26 September 2012. On 9 February 2013, HMRC wrote to him seeking confirmation about certain aspects of the relocation arrangements. As HMRC have not reached a decision in respect of Mr Figg's repayment claim, there is nothing (as yet) against which Mr Figg can appeal.

25 38. We therefore are required to strike out Mr Figg's appeal insofar as it relates to the relocation package under Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 as the Tribunal does not have jurisdiction in relation to these proceedings.

30 39. However, as we heard argument from the parties in respect of the relocation package (or in case it turns out that we were wrong in our finding that HMRC's letter of 9 February 2013 was not appealable), we set out below our views on the taxability of the package, as it may be helpful to the parties in reaching a decision in respect of the repayment claim.

35 40. Broadly, where an employer meets the relocation costs of an employee, those costs (and certain other benefits) are taxable in the hands of the employee. However, sections 271 and 287, ITEPA apply to exempt the first £8000 of those benefits subject to certain conditions.

41. The relief applies to eligible relocation benefits provided in connection with a change of the employee's residence which meets the conditions in section 273

ITEPA. Eligible benefits include the provision of temporary living accommodation and travelling and subsistence costs.

42. For the tax relief to apply, the conditions in section 273 ITEPA must be met. These are (so far as is relevant to this case) that:

- 5 (1) The change in residence must result from the employee becoming employed (in other words, starting a new job with a new employer);
- (2) The change in residence is made wholly or mainly to allow the employee to reside within reasonable daily travelling distance of his new employment location; and
- 10 (3) The employee's current residence is not within reasonable daily travelling distance of his new employment location

43. The relocation benefits provided by BG were below the £8500 threshold and HMRC do not dispute that the benefits were potentially eligible for relief, being provision of temporary living accommodation and travelling and subsistence costs.

15 44. The difficulty in this case is that Mr Figg did not relocate permanently. Soon after starting the job, he found that it had been misrepresented to him. BG and Mr Figg reached an agreement that Mr Figg would cease to be employed by BG by mutual consent, but that he could continue to work for BG until 31 October 2011 while he looked for and found new employment.

20 45. Mr Figg did not change his residence; he remained resident in Sussex, and only ever had temporary accommodation in Berkshire. HMRC submit that because Mr Figg never relocated to Berkshire, the requirements for the tax relief were never met, and the benefits are taxable in full.

25 46. HMRC's submissions have considerable merit in cases where an employment continues, but the employee never permanently relocates. In such cases, the relocation benefit would be, in reality, a subsidy for long distance commuting.

30 47. However difficulties arise when the employment relationship terminates before the individual concerned has been able to move. If, for example, the employee died before she or he was able to permanently relocate, we consider that the legislation would allow tax relief for eligible relocation benefits – as there was always the intention on the part of both the employer and the employee that the employee would permanently relocate – even though the employment relationship terminated before any move could take place.

35 48. Of course the reason why Mr Figg did not change his residence was because the job had been misdescribed to him, and he and BG reached the conclusion that Mr Figg would only continue working for BG until he found new employment.

49. Mr Figg's oral evidence was that BG acknowledged the misdescription of his job very shortly after his employment commenced, even though a formal compromise agreement was not concluded until January 2011. From the point that Mr Figg and

5 BG reached the conclusion that his employment with BG was temporary (pending finding a new job), any relocation benefits provided to him were no longer provided wholly or mainly to allow Mr Figg to reside within reasonable daily travelling distance of his new employment location; there was no longer any intention on the part of Mr Figg or BG that he move permanently to Berkshire to be within reasonable daily travelling distance of BG's Reading office. We find that the benefits were now being provided either in anticipation of, or as part of, his overall termination package, allowing Mr Figg to continue to work for BG whilst he looked for new employment. We find that the benefits were no longer being provided in connection with a change in residence of the employee, and so cease to qualify for the tax relief for relocation benefits. The benefits therefore become taxable (Mr Figg having received the maximum "tax free" compensation of £30,000 for loss of employment).

15 50. We therefore would find that the relocation benefits provided by BG to Mr Figg would be eligible for tax relief from the start of Mr Figg's employment until the date on which it became certain that Mr Figg's employment with BG was no longer permanent. The evidence before us in relation to this was limited, but we would expect this date to be the date on which Mr Figg and BG reached agreement that the job had been misdescribed, that BG were in breach of the terms of their employment contract with him, and that Mr Figg would only continue in employment with BG pending finding a new job. At the very latest, this would be the date on which the compromise agreement had been signed, but we anticipate that in practice the date would be very much earlier, as the evidence was that there was a considerable period of time between BG acknowledging the misdescription, and the signing of the compromise agreement.

25 51. Any relocation benefits provided after that date would not be eligible for tax relief.

### Conclusions

30 52. We find that Mr Figg did not have a reasonable excuse for his failure to file his tax returns and pay his tax by the due date. We therefore dismiss his appeal in respect of late payment and filing surcharges and penalties

53. We find that the accountancy fees incurred by Mr Figg were not a deductible expense against his employment income, and dismiss his appeal in respect of these.

35 54. We find that we have no jurisdiction in respect of Mr Figg's appeal in respect of interest on late paid tax. We therefore are required to strike out Mr Figg's appeal insofar as it relates to interest under Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 as the Tribunal does not have jurisdiction in relation to the proceedings.

40 55. We find that HMRC has made no decision in respect of Mr Figg's claim for a refund of tax in respect of the BG relocation package. We therefore are required to strike out Mr Figg's appeal insofar as it relates to the relocation package under Rule

8(2)(a) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 as the Tribunal does not have jurisdiction in relation to the proceedings.

56. 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.

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**NICHOLAS ALEKSANDER  
TRIBUNAL JUDGE**

**RELEASE DATE: 16 June 2014**