



**TC03993**

**Appeal number: TC/2013/06225**

*Income Tax – penalty for late self assessment payment – was penalty due? –  
Yes – was there a reasonable excuse for late payment? - No – appeal  
dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**JOHN PALMER**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE ALISON MCKENNA  
                  MR IAN MENZIES-CONACHER FCA**

**Sitting in public at Bedford Square on 29 July 2014**

**The Appellant appeared in person**

**Sarah Bentley of HMRC for the Respondents**

## DECISION

1. The Appellant appealed to the Tribunal against HMRC's decision of 2 August  
5 2013. By a letter of that date, HMRC upheld on review its earlier decision of 19  
March 2013 to impose a late payment penalty of £195 in respect of the underpayment  
of income tax for the year 2011 – 2012.

2. The Appellant's grounds of appeal raise issues as to the perceived unfairness of  
HMRC's decision to impose a penalty in the particular circumstances of this case.  
10 The Appellant had changed jobs during the year, his new employer had apparently  
mislaid his P45 and he was placed on an emergency tax code which resulted in an  
underpayment of tax. The underpayment of tax was revealed by the Appellant's own  
figures on his self assessment return.

3. The Appellant had asked HMRC to exercise its discretion to withdraw the  
15 penalty as the underpayment had been due to a PAYE error by his employer and was  
not attributable to his own default. He provided HMRC and the Tribunal with details  
of a colleague's case, in which HMRC had withdrawn the penalty in similar  
circumstances to his own. He argued that HMRC should take a consistent approach  
to the resolution of such problems.

4. The Tribunal explained that its role was to hear the appeal against the decision  
20 of 2 August 2013, which is the decision specified in the Appellant's application to the  
Tribunal. That was the reviewed decision to impose the late payment penalty.  
Accordingly, the Tribunal's role in this appeal was to determine whether the tax had  
been paid late and, if so, whether there was a reasonable excuse for the late payment  
25 and to uphold or set aside the penalty. The Tribunal explained that it has no remit in  
relation to the exercise by HMRC of non-statutory concessions. Ms Bentley asked the  
Tribunal to strike out this aspect of the Appellant's case but the Tribunal concluded  
that this was unnecessary because the Tribunal was not seized of the Appellant's  
complaint relating to procedural fairness in any event. His case was, as a matter of  
30 procedure, limited to an appeal against the decision he had specified in the Notice of  
Appeal which decision concerned the late payment penalty only.

5. HMRC's case was that the due date for the balancing payment of the income tax  
was 31 January 2013 but the tax was paid in April and June 2014. Schedule 56 to the  
35 Finance Act 2009 permits HMRC to charge a penalty of 5% of outstanding tax after  
30 days. The penalty amounted to £195 in this case. HMRC submitted that the  
penalty was lawfully imposed and that the Appellant had not advanced a reasonable  
excuse for the late payment so the appeal should therefore be dismissed.

6. Mr Palmer gave evidence to the Tribunal. He accepted that the tax had been  
40 due and that it had been paid late. He explained that this had been due to his new  
employer's error. He said that once he was made aware of the error in his self  
assessment statement, he had made a concerted effort to resolve matters. However, he  
accepted that prior to that he had not checked his payslips so was unaware that the  
wrong PAYE code had been applied and he had not spotted that his take-home pay

5 was more than he was entitled to because he had expected his take-home pay to be higher in his new job. He accepted that HMRC had written to him asking if he was in between jobs and he had not responded. In short he agreed that, with the benefit of hindsight, he had not paid sufficiently close attention to his tax affairs at the relevant time.

10 7. The Tribunal concluded that the appeal should be dismissed. We were satisfied that the tax had been paid late, that the penalty had been lawfully imposed and that the Appellant did not have a reasonable excuse for the late payment. We were satisfied that the Appellant should have paid attention to his pay slips and the tax code shown on them and corrected his employer's mistake straight away. We advised the Appellant that he may be able to pursue his complaint about inconsistent treatment with HMRC's Adjudicator's Office.

15 8. 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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**ALISON MCKENNA  
TRIBUNAL JUDGE**

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**RELEASE DATE: 9 September 2014**