



TC03998

Appeal number: TC/2013/06777

INCOME TAX – taxpayer claiming benefit of an extra-statutory concession under which HMRC will in certain circumstances give up arrears of tax – whether the Tribunal has jurisdiction to determine this issue – held, no – penalty for late payment of tax- whether taxpayer had a reasonable excuse for late payment – held, no – the appeal in relation to the application of the concession struck out – the appeal in relation to the penalty dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SIMON TAHANEY

Appellant

- and -

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

**TRIBUNAL: JUDGE JOHN WALTERS QC
MRS LESLEY STALKER**

Sitting in public at Bedford Square, London on 3 June 2014

The Appellant did not appear and was not represented

Sarah Bentley, HMRC, for the Respondents

DECISION

5 1. The appellant, Mr Tahaney, appeals against the decision of the Respondents (“HMRC”) to recover additional income tax in respect of the tax year 2010-11 by reason of his not being entitled to a personal allowance because his income for that year was more than £100,000. He was originally given the benefit of the personal allowance through his coding for PAYE purposes and HMRC have decided to recover from him tax equivalent to the amount of that benefit (£5,946). He also appeals
10 against a late payment penalty imposed for the tax year 2010-11.

2. The Tribunal received a letter dated 14 April 2014 from Mann Accountancy Services of Croydon, acting for Mr Tahaney, including a request that the Tribunal decide the matter in their absence.

15 3. In the absence of Mr Tahaney and any representative acting for him, we decided to proceed with the hearing, being satisfied, in terms of rule 33 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 that Mr Tahaney had been notified of the hearing and considering that it was in the interests of justice to proceed with the hearing.

20 4. The Tribunal had also received a letter dated 28 May 2014 from Mann Accountancy Services giving a full response to HMRC’s skeleton argument and documents – which were also before us. In the light of this, we are confident that we can deal with the points advanced on behalf of Mr Tahaney.

25 5. Mr Tahaney started to receive rental income in the tax year 2010-11, but even disregarding the rental income, his total income from employment exceeded £100,000 in that year. The tax deducted from his employment income through the PAYE system, however, was calculated on the basis that he was entitled to a personal allowance.

30 6. Mr Tahaney had paid the additional income tax due for the tax year 2010-11 in respect of his rental income. As we understand the position, the tax in dispute is solely related to his not being entitled to a personal allowance.

35 7. Mr Tahaney complains that the tax was not collected in the right amount through the PAYE system. A claim was made on his behalf that HMRC should apply an extra-statutory concession (A 19) in his favour – this deals with circumstances in which HMRC’s policy is to give up arrears of income tax or capital gains tax if they result from the department’s failure to make proper and timely use of information supplied by a taxpayer or his employer.

40 8. Mann Accountancy Services have experience of another individual client of theirs, a colleague of Mr Tahaney, working for the same employer with the same problem. They say that HMRC has given up the arrears of income tax, and cancelled the associated penalty, in the case of the other client. Mann Accountancy Services

complain that Mr Tahaney has not been given the benefit of comparable treatment by HMRC.

5 9. Furthermore, Mann Accountancy Services state that HMRC based Mr Tahaney's coding for the tax year 2010-11 on his income in the tax year 2008-9, when his income was below £100,000, and not on his income in the tax year 2009-10, when it was above £100,000. HMRC had held the information that Mr Tahaney's income was above £100,000 in 2009-10 since May 2010.

10 10. We were told by Miss Bentley that HMRC had suggested to Mr Tahaney that his grievance should be addressed by the Adjudicator, but that Mr Tahaney had rejected this suggestion and insisted that the matter be brought before the Tribunal.

15 11. No argument was advanced to the effect that as a matter of law Mr Tahaney was not liable to pay the tax which HMRC were seeking to recover. Indeed, the burden of Mr Tahaney's case was that that tax should have been recovered through the PAYE system. The main issue was therefore simply whether HMRC should have applied an extra-statutory concession in Mr Tahaney's favour. We agree with Ms Bentley that it is entirely clear that our jurisdiction, which is statute based, is confined to a consideration of what tax is lawfully charged and does not extend to a quasi-judicial review function of considering whether or not a refusal by HMRC to apply an extra-statutory concession in favour of any particular taxpayer is lawful or not. HMRC
20 cited the decision of the Tax Chamber President, Judge Colin Bishopp, in *Prince and Others v HMRC* TC01852, in which this principle is plainly stated.

12. Mr Tahaney's appeal on this point must therefore be struck out for want of jurisdiction.

25 13. There remains the question of the penalty charged for late payment of tax, which Mr Tahaney also appeals against. Here, it is clear that we have the necessary jurisdiction.

30 14. The penalties sought to be levied are the aggregate of: (1) £156, being 5% of the balance of tax outstanding (£3,131.15) which was unpaid 30 days after the due date for payment (21 May 2012); (2) £156, being 5% of the balance of tax outstanding (£3,131.15) which was unpaid 6 months after the due date for payment; and £101, being 5% of the balance outstanding (£2,025.55) which was unpaid 12 months after the due date for payment. (There had been a payment of £1,126.75 made on 26 January 2013 which had been taken into account.)

35 15. The penalties are sought to be levied pursuant to paragraph 3, Schedule 56, Finance Act 2009.

16. We are asked to determine whether Mr Tahaney had a reasonable excuse for the late payment of tax.

40 17. There is a letter dated 23 February 2014 in the papers before us from Mann Accountancy Services to HMRC in which an underpayment of tax for the year 2010-11 of £3,152.10 is noted and application of the extra-statutory concession is applied

for. This was responded to by HMRC by a letter dated 2 April 2012, with the decision that the extra-statutory concession would not be applied.

18. We hold that Mr Tahaney had a reasonable excuse for the late payment – namely a reasonable expectation that the extra-statutory concession would apply to him – until, say, 5 April 2012 (the approximate time of receipt by Mann Accountancy Services of HMRC’s letter dated 2 April 2012) – but that that reasonable excuse expired at that time. It follows that we uphold the penalties charged and the appeal on this point 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 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.

JOHN WALTERS QC
TRIBUNAL JUDGE

RELEASE DATE: 10 September 2014