



TC04313

Appeal number: TC/2014/05028

INCOME TAX - Schedule 56 Finance Act 2009 - Penalty for late payment of tax – whether a reasonable excuse or special circumstances - no - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CHUAN YI XU

Appellant

- and -

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

TRIBUNAL: JUDGE CHRISTOPHER STAKER

The Tribunal determined the appeal on 29 November 2014 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 10 September 2014 (with enclosures), HMRC's Statement of Case dated 9 October 2014 (with enclosures), the Appellant's reply dated 24 October 2014, and other papers in the case.

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DECISION

Introduction

1. The Appellant appeals against the imposition of first, second and third late payment penalties under paragraph 3(2), (3) and (4) of Schedule 56 to the Finance Act 2009, in respect of the late payment of income tax for tax year 2011-12.

Preliminary findings

2. The following facts do not appear to be in dispute. In any event, to the extent that there is any dispute, on the material before it the Tribunal makes the following findings of fact. On 6 April 2012, HMRC sent to the Appellant a notice to file a self-assessment tax return for 2011-12. The deadline for filing the return was 31 October 2012 for a non-electronic return, or 31 January 2013 for an electronic return. The due date for the payment of any tax due was 31 January 2013. The Appellant submitted an electronic return within the deadline on 29 January 2013. On the basis of the information in that tax return, the Appellant's tax liability for the year was £3,983.61. As at the date of preparation of the HMRC statement of case (9 October 2014), that tax liability remained unpaid.

3. The Tribunal finds that it follows from the above that the Appellant is liable to the late payment penalties that have been imposed, subject to the question of whether the Appellant has a reasonable excuse for the late payment (paragraph 16 of Schedule 56), and the question whether there are special circumstances justifying a reduction in the penalty (paragraph 9 of Schedule 56).

The Appellant's case

4. The Appellant's grounds of appeal contend that the Appellant is not an accounting professional and is originally from China and unfamiliar with the British tax system. It is claimed that she was guided through the British tax system by her previous agent who provided her with "less than satisfactory service".

5. In a letter to HMRC dated 7 July 2014, the Appellant's agent contends that "we are under the impression that the responsible party at [the Appellant's former agent] may be suffering from medical problems which would [have] impacted their ability to ensure that payment was made on time on behalf of their client. ... Mr Mark Webb who visited [the Appellant's former agent] may be able to confirm that the responsible party suffered from ill health and what may be considered a disability". The Appellant refers to four decisions of the Tribunal in support of this contention.

The HMRC case

6. The HMRC submissions included the following. No complex tax issue was involved in this case. The Appellant has been self-employed since 2007. This was simply an issue of filing dates and payment dates, which for most taxpayers remain

constant each year. It is reasonable to expect the Appellant to have the most basic knowledge of filing dates and payment dates.

The Tribunal's findings

5 7. The Tribunal is not persuaded that the claimed circumstances amount to a reasonable excuse or special circumstances. There are presumably a large number of taxpayers in this country who are unfamiliar with the tax system, and who rely on professional advice. In any event, an ordinary taxpayer who is not a tax specialist can be expected to know and to understand the due dates for filing tax returns and for paying any tax due. Such an ordinary taxpayer can also be expected to know the amount of tax that they are required to pay according to a tax return that has just been filed by them or on their behalf.

15 8. The Tribunal accepts that in cases where highly specialised advice is required, a taxpayer may have no choice but to rely on the advice of a specialist. However, in cases where no specialist advice is required, the Tribunal does not consider that a taxpayer can be absolved of personal responsibility to file returns and pay taxes on time through reliance on an agent. Any ordinary taxpayer can be expected to know the due dates for filing tax returns and paying tax. (See, for instance *Norris t/a Curzon Diner v Revenue & Customs* [2014] UKFTT 718 (TC) at [27]-[29]; *Harasoft Technologies Ltd v Revenue & Customs* [2014] UKFTT 717 (TC) at [44]-[46]).

20 9. If the Appellant thought that she had been provided with less than satisfactory service by her former agent, that might entitle her to some recourse against the former agent. It was also open to her to engage a new agent (which it appears she has done). If she considered that there are errors in the tax return that was submitted, it was also open to her to submit an amended tax return (it does not appear that she has done this). However, unless and until an amended return was submitted, the Appellant remained liable to pay the amount of tax due according to her tax return by the deadline for so doing.

10. As to the four cases relied upon by the Appellant, the Tribunal finds as follows.

30 11. First, the Appellant refers to *Collins v Revenue & Customs* [2014] UKFTT 479 (TC). In that case it was held that illness of an agent may provide a reasonable excuse for late filing of a PAYE return, where the agent was relied on to prepare the return.

35 12. Secondly, the Appellant refers to *Maxwell v Revenue & Customs* [2013] UKFTT 459 (TC). In that case it was held that illness of an agent may be grounds for allowing a claim for special relief under Schedule 1AB (Section 3A) Taxes Management Act 1970, where the appellant considered that the agent was competently managing his tax affairs.

40 13. Thirdly, the Appellant refers to *Murphy v Revenue & Customs* [2014] UKFTT 734 (TC). In that case it was held that the appellant's failure to pay Class 2 National Insurance contributions was not due to his failure to exercise due care and diligence in circumstances where he was relying on the advice of a professional agent.

14. Fourthly, the Appellant refers to *Laithwaite v Revenue & Customs* [2014] UKFTT 759 (TC). In that case it was held that the appellant had a reasonable excuse for not submitting returns under the Construction Industry Scheme in circumstances where he had acted on his accountant's advice.

5 15. However, the Tribunal finds that these cases turned on their specific facts. The
burden is on the Appellant to present to the Tribunal sufficient evidence to establish
the existence of facts on which a ground of appeal is based, on a balance of
probability. In order to rely on the cases referred to by the Appellant, it would be
10 necessary for the Appellant to establish, on a balance of probability, for instance, that
the Appellant was reasonably relying on her former agent to pay the amount of tax
due by 31 January 2013. For instance, if the Appellant could demonstrate by
evidence that within sufficient time she sent sufficient funds to her former agent with
instructions to pay the tax to HMRC by the deadline, and that the former agent failed
15 to do so due to an illness of which the Appellant was unaware, then the cases cited
might be argued to be analogous. However, there is no evidence in this case that such
circumstances existed. Such circumstances are not established on a balance of
probability by speculative statements by the Appellant's agent to the effect that "we
are under the impression that the responsible party at [the Appellant's former agent]
20 may be suffering from medical problems which would [have] impacted their ability to
ensure that payment was made on time on behalf of their client". Indeed, this does
not even amount to a positive statement that the Appellant was relying on the former
agent to make the actual payment of the tax to HMRC.

16. The Appellant also contends that there have been "oversights and carelessness"
by HMRC in addressing correspondence to the Appellant's agents or the Appellant.
25 In support of this argument, the Appellant refers to *South v Revenue & Customs*
[2014] UKFTT 807 (TC). In that case it was held that the appellant had a reasonable
excuse for failing to submit a tax return on time in circumstances where the Appellant
did not receive the notice to file. The Tribunal found that the notice may not have
been received by the Appellant because there was a slight inaccuracy in the postal
30 address for the Appellant held by HMRC.

17. The Tribunal considers that the relevance of this case has not been established.
A tax return was submitted on behalf of the Appellant. The Appellant should have
known the amount of her tax liability according to that tax return, and should have
known that she was required to pay the amount of that tax liability by 31 January
35 2013. The Appellant has not explained how any misaddressed correspondence from
HMRC could have prevented her from meeting that obligation. If the Appellant failed
to receive a penalty notice, that might explain a failure to pay a penalty, but it would
not in the present case explain a failure to pay tax on time. Furthermore, the
Appellant should have been aware that she had failed to pay her tax, whether or not
40 she received any penalty notices.

Conclusion

18. The Tribunal therefore finds that the Appellant has not established a reasonable
excuse or the existence of special circumstances, and the appeal 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.

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**DR CHRISTOPHER STAKER
TRIBUNAL JUDGE**

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