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TC 04354

Appeal number: TC/2014/06409

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*INCOME TAX and CAPITAL GAINS TAX – whether late payment of tax,
Yes. Whether reasonable excuse for late payment - Yes.*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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JOHN CRANGLE

Appellant

- and -

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

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**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA
AII**

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The Tribunal determined the appeal on 1 April 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 1 December 2014, and HMRC's Statement of Case submitted on 28 January 2015 with enclosures. The Tribunal wrote to the Appellant on 29 January 2015 indicating that if they wished to reply to HMRC's Statement of Case they should do so within 30 days. No reply to HMRC's statement of case was received.

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DECISION

1. Introduction

5 This considers an appeal dated 1 December 2014 against amounts totalling £86.38 levied by HMRC for the late payment of tax of £1,442.02 for the year ending 5 April 2013 which they consider was due to be paid by 31 January 2014.

2. Legislation

Finance Act 2009 Schedule 56

10 Taxes Management Act 1970 (TMA 1970), in particular Sections 7,8,9 and 59B

3. Authorities

Rowland v HMRC [2006] STC (SCD) 536

Anthony Wood trading as Propaye v HMRC [2011] UKFTT 136 TC 001010

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4. Facts

HMRC issued a notice to file a return for the year ended 5 April 2013 to the appellant on 6 April 2013. The filing date was 31 October 2013 for a non-electronic return or 31 January 2014 for an electronic return.

20 The appellant completed an electronic return which was received by HMRC on 20 December 2013. HMRC processed this return on 20 December 2013. It showed a tax liability of £1,442.02 of which £1,440 was Capital gains tax. In accordance with Section 59B (4) of the TMA 1970 HMRC expected this to be paid by 31 January 2014. However in the tax return the appellant requested that any outstanding tax be
25 collected through his tax code. .

HMRC say they issued a First Late Payment penalty of £71 but no copy of this document was with the papers. It is recorded on one internal document as issued on 18 March 2014 but on a statement of account dated 20 January 2015 its date is recorded as being 24 April 2014.

30 HMRC internal "SA notes" records the following

"25/03/14 Ltr dated 11/3/14, rec 13/3/14 asking for clarification of why tax due was not coded – fwded to PT OPS – T/P thinks it is because ESTPAY figure used is too low.

35 01/04/14 POST DOR 13/03/2014 REQ WHY 2013 BP NOT CODED OUT LETTER TO T/P TO EXPLAIN DUE TO LEVEL OF INCOME....."

Payment of the tax was not made until 10 June 2014.

HMRC say they issued a late payment interest penalty of £15.38 but no copy of this document was with the papers. It is recorded on a statement of account dated 20 January 2015

5. Appellant's submissions.

5 In the Notice of Appeal the Appellant states "Appeal was sent by post. However spoke with HMRC who informed me that the tax would be collected through tax coding notice in a phone call. I was also sent form SA634 by HMRC which was submitted however I was advised in their letter of 13 November 2014 that this was not appropriate to my case and they sent this in error.

10 Tax return was filed on time requesting that the tax would be collected through the PAYE system. . HMRC informed me that they couldn't collect the liability through the tax coding even though the process had started. However payment was made immediately in full when they wouldn't accept payment through the PAYE system, at which time they then issued a late payment penalty.

15 6. HMRC Submissions

HMRC submit that the Appellant submitted his electronic return in time on 20 December 2013. In their statement of case they accept that the Appellant requested them to collect the tax by adjustment of his PAYE tax code.

7. HMRC state that self-assessment of tax is based on voluntary compliance.
20 Taxpayers who are within the self-assessment system must file their returns by the due date and pay the tax they owe by the date specified in law.

8. Payment is due in accordance with Section 59B Taxes Management Act 1970 and in the case of the appellant the due date was 31 January 2014.

9. In their Statement of case HMRC say they issued a Form SA359 Self Assessment:
25 Final Reminder on 17 February 2013 but do not provide a copy of the form. They point to a copy of their SA notes which confirms the date of 17 February 2013.

10. HMRC submit that they have levied the penalties in accordance with The Finance Act 2009 Schedule 56. A late payment penalty is chargeable where a taxpayer is late in paying tax due. The first penalty is calculated at 5% of all remaining tax unpaid
30 after the expiry of 30 days from the due date in accordance with paragraph 3 (2) Schedule 56 of the Finance Act 2009. Thus the appellant had a credit balance of £2.16 at the start of the period so after deduction of £1,442.02 of tax was due to pay a first late payment penalty of 5% of £1439.86 i.e. £71.99 which HMRC rounded down to £71.00. On 11 June 2014 HMRC assessed interest of £15.38 on the late payment

35 11. The total of the penalties and interest levied is therefore £86.38 and after taking account of the £2.16 credit balance HMRC say that £84.22 remains outstanding..

12. HMRC say that a late payment penalty of £71 was issued to the appellant on 18 March 2014 and provide an internal document dated 21 January 2015 in support.

However they also provide a self-assessment statement which suggests the date that penalty was created was 18 March 2014 but was dated 24 April 2014

13. The Tribunals Observations

5 The level of the penalties has been laid down by parliament and the legislation relating to penalties has been properly and accurately applied by HMRC. The only other consideration that falls within the jurisdiction of the First-tier Tribunal is whether or not the appellant has reasonable excuse for the late payment.

10 14. The Tribunal considers that the chronology of events is important in determining this case. It is clear that at the payment due date of 31 January 2014 the Appellant was expecting HMRC to deduct the outstanding tax by means of his PAYE tax coding as he had requested them to do. In fact HMRC did not act on that request but did not advise the Appellant that they would not be taking the tax by adjustment of his tax code nor did they explain why apparently until a letter dated 1 April 2014. The terms of that letter are unclear because the Tribunal was not provided with a copy. Thus
15 although the Appellant was ignorant of it HMRC were thus were expecting the appellant to pay on the due date of 31 January 2014.

15 15. The date HMRC issued a form SA359 Self Assessment: Final Reminder is stated as 17 February 2013 in both HMRC's statement of case and in their internal SA Notes. This date is before the end of the tax year in question and could relate to the
20 previous tax year. Without a copy of the actual reminder the Tribunal cannot accept these as evidence in respect of the payment due on 31 January 2014.

15 16. It is unclear from the evidence on what date the penalty notice for £71 was issued. It is possible that the penalty date was 18 March 2014 but it was not notified until 24 April 2014. There is no evidence in respect of the interest assessment other than a Self
25 Assessment statement of account which gives a date of 11 June 2014.

30 17. The first PAYE deduction would have been made in April 2014 so it is quite understandable why the taxpayer made no payment. In fact the taxpayer contacted HMRC on 11 March 2014 asking for clarification of the position. The receipt of the letter of 1 April 2014 followed by the penalty notice of 24 April 2014 alerted the appellant that payment was not being made by adjustment to his tax code. He clearly was confused by these responses so appointed an agent who on 3 June 2014 telephoned HMRC to query why the tax was not being collected by adjustment of the PAYE coding. The agent was told that there was not enough PAYE income to collect the tax. The Appellant paid the outstanding tax on 10 June 2014.

35 18. This whole problem could have been avoided if HMRC had notified the appellant that they would not be collecting the tax by PAYE code adjustment. They processed the taxpayer's return on 20 December 2013 so had ample time before 31 January 2014 to notify him

40 19. Paragraph 9 of Schedule 56 of the Finance Act 2009 (Special Reduction) provides HMRC with discretion to reduce any penalty if they think it right to do so because of

special circumstances. On the information held in this case HMRC did not consider there were any special circumstances which would allow them to reduce the penalty.

20. Whilst HMRC applied the legislation correctly and calculated the amount of the penalties accurately as detailed in paragraph 10 above the Tribunal has not been
5 provided with copies of the assessments so it is unable to ascertain whether they were issued or addressed correctly. That aside in The Tribunal's view HMRC should have answered the Appellant's request and notified the Appellant before the due date of 31 January 2014 that they would not be collecting the tax by means of adjusting his PAYE tax code and that they expected full payment to be made by the due date. The
10 Appellant was confused by HMRC's inaction in respect of his request and then by their explanation in their letter of 1 April 2014 and penalty notice of 24 April 2014. He therefore sought advice and duly paid the tax due promptly after that. In the Tribunal's view the appellant's actions were those of a reasonably diligent man wishing to comply with his tax obligations. He therefore has established a reasonable
15 excuse for the late payment of the tax due. Therefore the appeal is allowed in full and the penalty and interest should be set aside. In view of this decision the Tribunal does not need to decide whether special circumstances apply.

21. 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
20 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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PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

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RELEASE DATE: 15 April 2015