



TC04737

Appeal number: TC2015/02155

Income Tax - Penalties under Schedule 56 Finance Act (FA) 2009 for late payment of Income Tax – whether reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

	MR P GREENSLADE	Appellant
	- and -	
	HER MAJESTY'S REVENUE AND CUSTOMS	Respondents

TRIBUNAL: JUDGE Dr. K KHAN

The Tribunal determined this appeal on 30 September 2015 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 on 25 February 2015 and HMRC's Statement of Case submitted on 27 May 2015.

DECISION

Introduction

5 2010-2011

1. This is an appeal against a first late payment penalty imposed under Paragraph 3(2) of Schedule 56 Finance Act (FA) 2009 for the failure to pay tax on time for the year ending 5 April 2011.

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2. A second late penalty imposed under Paragraph 3(3) of Schedule 56 Finance Act (FA) 2009 for the failure to pay tax on time for the year ending 5 April 2011.

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3. A third late penalty imposed under Paragraph 3(4) of Schedule 56 Finance Act (FA) 2009 for the failure to pay tax on time for the year ending 5 April 2011.

2011-2012

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(1) This is an appeal against a first penalty imposed under Paragraph 3(2) of Schedule 56 Finance Act (FA) 2009 for the failure to pay tax on time for the year ending 5 April 2012

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(2) A second late penalty imposed under Paragraph 3(3) of Schedule 56 Finance Act (FA) 2009 for the failure to pay tax on time for the year ending 5 April 2012.

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(3) A third late penalty imposed under Paragraph 3(4) of Schedule 56 Finance Act (FA) 2009 for the failure to pay tax on time for the year ending 5 April 2012.

Appeal Details

Year/ Period	Type of Decision	Amount £
2010-2011	Self-Assessment 30 day Late Payment Penalty	171.00
2010-2011	Self-Assessment 6 months Late Payment Penalty	171.00
2010-2011	Self-Assessment 12 months Late Payment Penalty	170.00
2011-2012	Self-Assessment 30 day Late Payment Penalty	181.00
2011-2012	Self-Assessment 6 months Late Payment	181.00

	Penalty	
2011-2012	Self-Assessment 12 months Late Payment Penalty	181.00

Legislation

- 5 (1) The penalty legislation for both a failure to make returns and a failure to make payment on time is contained in FA 2009, Sch. 55 and Sch.56 respectively. It applies to tax years ending after 5 April 2010 and relates to Income Tax and Capital Gains Tax.
- 10 (2) Section 59(B) Taxes Management Act 1970 establishes the date of payment of Income Tax as being on or before 31 January next following the year of assessment.
- 15 (3) Schedule 56(1) FA 2009 provides for a penalty to be paid by a “person” who fails to pay an amount of tax by the due date. The legislation defines the date after which a penalty is incurred as being “the date falling 30 days after the date specified in S.59B (4) TMA 1970”. This means that the due date for payment of the tax in respect of the years under consideration is 31 January 2012 and the penalty date is 1 March 2012.
- 20 (4) Schedule 56(3) sub-paragraph (2) specifies the amount of penalty as being 5 % of the tax unpaid after 30 days. If the tax remains unpaid there are further penalties at 5 or 11 months after the penalty date.
- 25 (5) Under Schedule 56(10), a taxpayer may request HMRC before the due date to defer payment of an amount of tax and HMRC agrees that payment may be deferred for a period, the taxpayer will not be liable to a late penalty payment on that amount between the date of the request and the date of the deferral period.
- 30 (6) Schedule 56(11) requires HMRC to assess any late payment penalty which arises under Schedule 56 and the assessment is to be treated in the same way as an assessment to tax.
- 35 (7) Schedule 56(13) provides for a person to:
- (1) Appeal against a decision that a penalty is payable and/or to appeal against a decision as to the amount of a penalty.
- 40 (8) Schedule 56(15) provides for a Tribunal to;
- (1) On an appeal under Paragraph 13(1), to affirm or cancel HMRC’s Decision

- (2) On an appeal under Paragraph 13(2)
 - (a) Affirm HMRC’s decision, or
 - 5 (b) Substitute for HMRC’s decision another decision that HMRC had power to make

- 10 (9) Schedule 56(9) sub-paragraph 1 provides for HMRC to reduce any late payment penalty because of “special circumstances”. Sub-paragraph 2(a) specifies that “special circumstances does not include inability to pay”

- 15 (10) Where a taxpayer has a reasonable excuse, having regard to all the circumstances of the case, then a penalty may be waived. Schedule 56(16) sub-paragraph (1) provides that liability to a late payment penalty does not arise where the taxpayer satisfies HMRC or on appeal the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure. For the purposes of sub-paragraph (1), conditions at sub-paragraph (2) state:
 - 20 (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person’s control
 - (b) reliance on another person to do anything is not a reasonable excuse unless the person took reasonable care to avoid a failure
 - 25 (c) where the person had a reasonable excuse for the failure but that excuse has ceased, they are treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

30 **Background facts**

2010-2011

- 35 (1) The return for the year ending 5 April 2011 was issued to the taxpayer on 6 April 2011. The filing date was 31 October 2011 for a non-electronic return or 31 January 2012 for an electronic return. The taxpayer filed an electronic return for the year 2011 which was received on 11 July 2013. It was therefore approximately 9 months late. The tax liability for the year was £4367.32 and the tax was due to be paid on or before 31 January 2012. At the penalty date of 40 3 March 2012, 31 days after the due date the tax liability remained unpaid. Five months after the penalty date of 3 March 2012 the tax liability remained unpaid. Eleven months after the penalty date of 3 March 2012, the penalty continued to remain unpaid.
- 45 (2) The tax liability was finally paid on 11 March 2015 some three years after the due date.

- 5 (3) For this period there were three Notices of penalty assessment. The first Notice of Penalty Assessment was issued on 16 July 2013 in the amount of £171.00 being 5% of the unpaid tax at the penalty date. A further Penalty Assessment was issued at around the same date in the amount of £171.00 being 5% of the tax unpaid five months after the penalty date. A third Penalty Assessment was issued around 16 July 2013 in the amount of £170.00 being 5% of the tax unpaid eleven months after the penalty date.

10 **2011-2012**

- 15 (1) The return for the year ending 5 April 2012 was issued to the taxpayer on 6 April 2012. The filing date was 31 October 2012 for non-electronic returns and 31 January 2013 for an electronic return. The taxpayer submitted an electronic return for the year 2012 which was received on 11 July 2013. The tax liability for the year was £3624.17 and the tax was due to be paid on or before 31 January 2012 and 31 July 2012.

- 20 (2) At the penalty date of 3 March 2012, 31 days after the due date the tax remained unpaid. Five months after the penalty date of 3 March 2012 the tax remained unpaid and eleven months after the penalty date of 3 March 2012 the tax continued to remain unpaid.

- 25 (3) The taxpayer's tax liability for the year ending 5 April 2012 remains unpaid up to the present time.

- 30 (4) There were three Notices of Penalty Assessment. The first was on 16 July 2013 in the amount of £181 being 5% of the tax unpaid at the penalty date. A further Notice of Penalty Assessment was issued around 14 August 2014 in the amount of £181 being 5% of the tax unpaid at the penalty date and a final Notice of Penalty Assessment was issued on or around 25 February 2014 in the amount of £181 being 5% of the tax paid eleven months after the penalty date.

35 **Appellant's submissions**

- 40 (1) The taxpayer appealed against the payment penalties for 2010-2011 and 2011-2012 tax years on the grounds that he had lost two close family members, had mental health issues and heart problems in the three year period.

- 45 (2) HMRC sent the taxpayer a decision letter on 18 September 2014 rejecting his appeal against the late payment penalties and offered a review. On 19 December 2014 the taxpayer requested a review making the following points;

- 5 (1) "I did not do my returns until 2013, once done I 'phoned HMRC for a time to pay and made some payments.
- (2) The money I had set aside I had to use because of the time I was recovering.
- (3) Did not seek medical help because I did not know what to do. Only when I had the heart attack I realised what I was going through.
- 10 (4) Spoke to HMRC in July who gave me a final bill and informed me that I may receive a letter, but to ignore it because I told them I was stressed.
- (5) The first letter I opened from HMRC was the one dated 12 November 2014.
- 15 (6) I have written to the Data Protection Act call retrieval team for a recording of the conversation we had in July".
- 20 (3) HMRC carried out the review and issued a conclusion on 30 January 2015 where they upheld HMRC's decision.
- (4) They explained that not having funds to pay is not a reasonable excuse. For illness to be considered as a reasonable excuse the illness must be so serious that it prevented the taxpayer from controlling their business and private affairs immediately before the deadline to the date of submission of the tax return. It was felt that the illness as reported by the taxpayer did not present a reasonable excuse.
- 25 (5) On 25 February 2015 the taxpayer appealed to the Tribunal. He stated that in late 2009 his father had passed away and this was a very difficult time in his life. Further in 2012 he had a heart attack and had a heart bypass and was off work for eight months and then returned only part time for 6 months. And lastly that in 2013 his mother-in-law became ill with cancer and passed away and that had an effect on both him and his family and their ability to cope.
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HMRC's submissions

- 40 (1) HMRC accepts that there is a reasonable excuse for the late filing penalties for 2010 – 2011 and 2011 - 2012 but not for the late payment. In the first instance they say that the late filing of the returns cannot in itself be deemed a reasonable excuse for the late payment of the tax liability. The payment of the tax liability doesn't depend on the tax return having been filed or a bill for the tax liability or reminder having been received from HMRC. HMRC pointed out that reminders were sent to the taxpayer.
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- 5 (2) Payment must be either in a full or timely manner and while HMRC sympathises with the taxpayer's position, the illness was not ongoing or involved lengthy stay in hospital or convalescence. In any event the taxpayer should have made the necessary arrangements for dealing with payments by the due date.
- 10 (3) HMRC has the view that the reason that the payments were not made was because of the shortage of funds which according to the legislation does not give rise to a reasonable excuse.
- 15 (4) The HMRC also state that there are no special reductions pursuant to Paragraph 9 Schedule 56 FA 2009. They do not consider illness or lack of funds an exceptional or abnormal or unusual or something out of the ordinary run of events. They therefore ask that the appeal is dismissed and the penalties of £512.00 for 2010-2011 and £543.00 for 2011-2012 are confirmed.

Conclusion

- 20 (1) The Tribunal understands that for illness to be treated as a reasonable excuse it must generally be so serious that it prevented the customer from dealing with their tax affairs before the deadline and from that date to the time the payments or completed returns were sent in. In the HMRC's own guidelines (CISR81050) examples of illnesses which would give rise to a reasonable excuse would include a coma, a major heart attack, a stroke, and any serious or life threatening illness. If an illness involves a lengthy stay in hospital the taxpayer is expected to have made arrangements for completing and sending in any payments due completing relevant returns.
- 25 (2) It is also required that one look at the particular circumstances of the taxpayer. A serious illness of a close relative or partner may also be a reasonable excuse if the duration took a great deal of the customer's time and attention and steps had been taken to have payments and returns ready on time.
- 30 (3) Where a person appeals against a penalty they are required to have a reasonable excuse if the penalty is to be waived. There is no definition in law for reasonable excuse; it is a matter which has to be considered in the light of all circumstances of a particular case. A reasonable excuse is normally an unexpected or unusual event either unforeseeable or beyond a persons control which prevents them complying with their statutory obligations. The reasonable excuse must exist throughout the entire period and where the excuse had ceased, they are treated as continuing to have the excuse if "the failure is remedied without unreasonable delay after the excuse has ceased". It is therefore necessary to consider carefully the point at which a reasonable excuse ends and the actions the person took after that time took to deal with the payment.
- 35 (4) The onus is on the taxpayer to show that there is a reasonable excuse. The taxpayer did not provide any documentary evidence confirming the dates of his illness
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other than to say that he had a heart attack in 2012 and was out of work for eight months with six months part-time. In his tax calculations for the year 2010-2011 with a year end of 5 April 2011 the income received by the taxpayer from self-employment was £26,209.00 and for the year 2011-2012 with the year end 5 April 2012 income from self-employment was £26, 198.00. It appears to the Tribunal that the taxpayer, for those periods, was fit enough to be self-employed and to be earning a salary which fits within the UK average salary range. Even if the taxpayer worked part-time in 2012 there appears to be no reason why he should not have been able to send a cheque to HMRC for the payment of his tax, a relatively simple task. Indeed his tax for the year 2011-2012 remains unpaid up to the present time. This would suggest that even after the taxpayer has recovered from his illness he did not take steps to remedy the unreasonable delay in meeting his tax liability.

(5) The payment for the year 2010-2011 was not made in full until 11 March 2015 and at today's date there is still £2961.89 outstanding against his 2011-2012 tax liability.

(6) While the Tax Tribunal sympathises with the Appellant's position, it does seem that there is an unreasonable delay in making payments of his tax liability.

(7) Self-assessment places a great deal of responsibility on the taxpayer to deal correctly with their tax affairs. It is understandable where close relatives die and a person suffers ill health that this would ordinarily give rise to a reasonable excuse if it's of a serious nature. However, in this case the payment date for the 2010-2011 tax was 31 July 2012 and the tax was paid some three years later on 11 March 2015. In the case of 2011-2012 year the payment date was 31 January 2012 and 31 July 2012 and to date the payments have not been made fully.

(8) There appears to be no real reason why these payments have not been made over a three year period other than, as the taxpayer himself pointed out, the money which had been set aside had been used because he was recovering from his illness. If that is the case, then there can be no reasonable excuse due to an insufficiency of funds as this is clearly not allowed to be a reasonable excuse under the legislation.

(9) We must look at the taxpayer as a prudent person who intends to meet his tax obligations. In his favour is that he did contact HMRC on 18 July 2014 and agreed a time to pay arrangement. However the time to pay arrangement was cancelled on 21 November 2014 as payments were not made pursuant to that time to pay arrangement. The taxpayer was also in regular contact with HMRC from 17 October 2013. He clearly wanted to deal with his tax affairs in a proper manner and entered into discussions with HMRC for this purpose. It is not clear why he would not have made the payments due by the due date since he felt in sufficiently good health to have a discussion with HMRC about his tax affairs. He discussed and agreed a time to pay arrangement in 2014 and agreed to make payments by the due date of 31 January 2015. He was written to by HMRC regarding this agreement but it appears that he didn't open the letter posted in July 2014 until November 2014 which meant that he did not keep up with his time to pay arrangement which was cancelled on 21

November 2014. These are not the actions of a person who is acting in a reasonable way and who intends to meet their obligations.

5 (10) The Tribunal accepts that the taxpayer and his family did suffer from their tragic losses and from the taxpayers own illnesses. However the actions of the taxpayer in this case do not suggest that he acted reasonably nor indeed that there is a reasonable excuse for his late payment.

10 (11) In the circumstances therefore the appeal is dismissed and the penalties are upheld.

15 (12) This document contains full findings of facts and reasons for the decision. Any party dissatisfied with the 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 the Tribunal not later than fifty six days after this decision is sent to that party. The parties are referred to “Guideline to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**TRIBUNAL JUDGE
K KHAN
RELEASE DATE: 26 NOVEMBER 2015**