



TC04834

Appeal number: TC/2015/02632

*INCOME TAX – late payment penalties – para 3 sch 56 FA 2009 - whether
a reasonable excuse for late payment*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Mr JOHN PEARSON

Appellant

- and -

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

**TRIBUNAL: Judge Peter Kempster
 Mr Ian Perry**

Sitting in public at Centre City Tower, Birmingham on 15 January 2016

Mr David Sharpe for the Appellant

Miss Pallavika Patel (HMRC Appeals Unit) for the Respondents

DECISION

1. By a notice of appeal filed on 6 March 2015 the Appellant (“Mr Pearson”) appeals against two late payment penalties issued by the Respondents (“HMRC”) in relation to his income tax liabilities for the tax year 2012-13, totalling £440.
2. Mr Pearson also has appeals before the Tribunal against late filing penalties (under Tribunal reference TC/2015/2116) which are currently stayed.

Facts

3. In the tax year 2012-13 Mr Pearson was employed by Petford Tools Limited (“the Employer”). On 17 June 2012 the Employer filed with HMRC a form P46(car) which erroneously stated that a company car previously provided to Mr Pearson was not provided in 2012-13. HMRC amended Mr Pearson’s PAYE Coding to remove the car benefit and fuel benefit. The new coding was notified to Mr Pearson and the Employer in June 2012.
4. Because the PAYE coding did not account for the car and fuel benefits, the PAYE deducted did not cover Mr Pearson’s income tax liability for 2012-13 and on 9 June 2013 HMRC issued a Form 800T (tax calculation) to Mr Pearson showing tax underpaid of £4,300.40. The P800 showed tax liabilities relating to medical insurance benefit, as well as the car and fuel benefits. On 4 July 2013 HMRC issued a voluntary payment letter to Mr Pearson, which referred to the P800 calculation; invited him to contact HMRC if he did not agree or did not understand the calculation; stated “we understand that you may not have known that you owe this tax”; asked for payment by 3 August 2013; advised as to the various possible methods of payment and what to do if he could not pay the full amount; and stated:

“We will do what we can to help but if you do not pay the amount that you owe ..., we will have to consider collecting the amount through the Self Assessment tax system. We prefer to keep the number of people who have to complete a Self Assessment to a minimum, but Self Assessment is our only way for collecting tax from individual taxpayers. If we need to use Self Assessment, you will have to fill in a Self Assessment tax return.”
5. On 5 July 2013 Mr Pearson telephoned HMRC to query the position, and said he would contact the Employer. The Employer told Mr Pearson that it would “sort things out” but HMRC’s records do not show any contact from the Employer, nor any further contact from Mr Pearson.
6. Mr Pearson then changed employment and in January 2014 was assigned to a project in China. Although the project was initially intended to be short-term, it developed into a longer assignment. Mr Pearson then moved to Hong Kong, where he is still resident. Mr Pearson made a home visit to the UK in September 2014.
7. On 15 January 2014 HMRC issued a notice to file a 2012-13 tax return to Mr Pearson. The due date for both filing and payment was 22 April 2014 (s 59B(3))

Taxes Management Act 1970 refers). The return was filed electronically on 2 October 2014 but no tax payment was made.

8. Around 7 October 2014 HMRC issued a first late payment penalty of 5% (para 3(2) sch 56 Finance Act 2009 refers) in the amount of £220. Around 4 November 5 2014 HMRC issued a second late payment penalty of 5% (para 3(3) sch 56 FA 2009 refers) in the amount of £220.

9. On 24 February 2015 HMRC completed a formal review of their decision to issue the late payment penalties, upholding the decision. On 6 March 2015 Mr Pearson appealed to the Tribunal and the appeal now comes before us.

10 **Law**

10. Paragraph 3 sch 56 Finance Act 2009 makes provision for penalties where income tax is paid late and provides (so far as relevant):

“(2) P is liable to a penalty of 5% of the unpaid tax.

15 (3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.”

11. Paragraph 13 sch 56 Finance Act 2009 provides a right of appeal to the Tribunal against para 3 penalties.

12. Paragraph 16 sch 56 Finance Act 2009 provides:

20 “(1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a payment if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of sub-paragraph (1)—

25 (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

30 (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.”

Appellant's case

35 13. For Mr Pearson, Mr Sharpe submitted as follows.

14. The Employer had made a mistake in stating to HMRC that the company car was not provided for 2012-13. That resulted in an incorrect PAYE coding. Employees were entitled to expect that employers and HMRC between them would

get the PAYE codings correct, so that the right amount of tax was deducted at source. Mr Pearson had received four different PAYE coding notices relating to 2012-13. The coding notices were not easy for taxpayers to understand.

15. The underpayment had come as a surprise when Mr Pearson received the P800.
5 He had contacted HMRC but could not get a satisfactory explanation. He had also contacted the Employer and had been assured by the Employer that they would look into the matter and sort it out; when he heard nothing further he assumed it was all resolved satisfactorily. Mr Pearson was a conscientious taxpayer and accepted that it was his responsibility to deal with his tax affairs. As soon as he became aware on his
10 return trip to the UK in September 2104 of the notice to file a tax return, he instructed Mr Sharpe to file the return and this was done rapidly on 2 October 2014.

16. While in China Mr Pearson had not had a permanent address, as he was moving around the country. Mr Pearson's wife dealt generally with his correspondence during his absence abroad, but did not open items from HMRC that were addressed
15 personally to Mr Pearson. When Mr Pearson handed the letters to Mr Sharpe in September 2014, many were still unopened.

17. Mr Pearson was not in a position to be aware of the filing notice until his return trip to the UK in September 2104, and as soon as he did become so aware he took action to file the return.

20 18. Mr Pearson overpaid tax in the tax years 2013-14 and 2014-15 – again as a result of PAYE coding errors – and those more than covered the 2012-13 liability, so that there had been a net repayment.

19. HMRC had unaccountably written to Mr Pearson's wife concerning Mr Pearson's liabilities, which had distressed her as she misunderstood that HMRC may
25 be attempting to make recovery of the tax from her.

20. There was a reasonable excuse for the late payment, and that subsisted throughout the period.

Respondents' case

21. For HMRC, Miss Patel submitted as follows.

30 22. The underpayment arose because the Employer had notified to HMRC withdrawal of a car and fuel benefit. HMRC had actioned that information and issued a revised PAYE coding. The PAYE coding notice advised taxpayers to check the notice and ensure their coding was correct, and to contact HMRC if it was wrong. HMRC have no record of Mr Pearson contacting HMRC to query the PAYE coding.

35 23. HMRC have no record of Mr Pearson contacting HMRC to notify a change of address or other contact details during his absence from the UK from January 2014.

24. Although Mr Pearson had income tax repayments for tax years 2013-14 and 2014-15, those related to tax years different from that giving rise to the late payment

penalties – a fact which had been highlighted in HMRC’s review decision. HMRC could not carry forward an underpayment on the chance that there may be an overpayment of tax in future years. HMRC had subsequently offset the 2012-13 liability against those overpayments so that there was now no outstanding liability.

5 25. HMRC had considered whether there were any “special circumstances” in this case (para 9 sch 56 FA 2009 refers) and had concluded that there was nothing exceptional, abnormal or unusual. Similarly, there were no grounds for a special reduction.

10 26. As stated in the review decision, HMRC considered there was no reasonable excuse for the late payment. Mr Pearson was aware of his tax liability before leaving the UK. A prudent taxpayer would have taken steps to ensure they met their payment obligations despite their absence from the UK.

Consideration and Conclusions

15 27. We must determine whether Mr Pearson had a reasonable excuse – within the meaning of para 16 sch 56 FA 2009 – for the late payment of the income tax liability due on 22 April 2014.

20 28. We are sympathetic that Mr Pearson encountered an unexpected tax liability because of misinformation provided by the Employer to HMRC. However, Mr Pearson was clearly aware of that liability before he departed to China in January 2014. Although the Employer had undertaken to sort out matters, Mr Pearson was not entitled to leave the problem in the hands of the Employer – and we understand that Mr Pearson correctly accepts that it remained his responsibility to resolve the matter and not abdicate it to the Employer.

25 29. When Mr Pearson went to China he should have made appropriate arrangements for official post to be forwarded to him or dealt with promptly in his absence – whether by his wife or another agent. His failure to do so is the reason why he was unaware of the notice to file and the payment deadline of 22 April 2014.

30 30. For those reasons we do not accept that Mr Pearson had a reasonable excuse – within the meaning of para 16 sch 56 FA 2009 – for the late payment of the income tax liability.

Decision

31. As communicated to the parties at the conclusion of the hearing, the appeal is DISMISSED.

35 32. For the avoidance of doubt, this decision notice does not determine Mr Pearson’s appeals against late filing penalties (under Tribunal reference TC/2015/2116) which are currently stayed.

33. 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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PETER KEMPSTER

TRIBUNAL JUDGE

RELEASE DATE: 19 JANUARY 2016