



TC05185

Appeal number: TC/2013/02261

INCOME TAX – late payment penalty – whether reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RIDWAN O ORENIWA

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE DR. K KHAN

The Tribunal determined the appeal on 23 March 2016 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 17 March 2013 and HMRC's Statement of Case submitted on 9 December 2015.

DECISION

Introduction and Background

- 5 1. This is an appeal against three Surcharge Penalties imposed under Section 59C (2) Taxes Management Act (TMA) 1970 following the late payment of tax for the year ending 5 April 2010 and 5 April 2011.
2. On the penalty date of 2 March 2012 £1,239.60 of the tax liability remained unpaid.
10 Five months after the penalty date of 2 March 2012, £1,239.60 of the tax liability remained unpaid. Eleven months after the penalty date £1,239.60 of the tax liability remained unpaid.
3. The tax liability was finally paid in full on 14 February 2014.
- 15 4. HMRC issued Notice of Penalty Assessments as follows:
- a. / On 26 February 2013 in the amount of £61.00 being 5% of the unpaid tax.
- 20 b. / On 26 February 2013 in the amount of £61.00 being 5% of the unpaid tax 5 months after the penalty date.
- c. / On 26 February 2013 in the amount of £61.00 being 5% of the unpaid tax 11 months after the penalty date.
- 25 5. On the 2 March 2013 a Time to Pay Agreement was entered into between the Appellant and HMRC whereby he could make £100 monthly contributions by direct debit over the period 15 April 2013 to 15 October 2017 to satisfy his outstanding tax liability. The Appellant defaulted on the Time to Pay Agreement in July 2015. The
30 late payment penalties had already risen before the Appellant asked for the Time to Pay Agreement.

Conclusion

- 35 6. Under Paragraph 16(1) Schedule 56, Finance Act 2009, an appeal against a late payment penalty would be successful where the taxpayer shows there is a reasonable excuse for paying late. While there is no statutory definition of a reasonable excuse, the Tribunal will consider all of the facts and circumstances of the case. A reasonable
40 excuse would normally be an unexpected or unusual event that is either unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their obligations to pay on time. The action of the taxpayer should be considered from the perspective of a prudent person, exercising reasonable foresight and due diligence, having proper regard to their responsibilities under the Taxes Act.
- 45 7. In this case, the Appellant has provided no reasonable excuse as to why the tax payments were late. He has previously explained that he had not received certain information and returns from HMRC and the Late Filing Penalties for 2009/10 and

2010/11 were removed on 27 July 2015. Duplicate returns were sent to the Taxpayer. However, his taxes remained unpaid.

5 8. The Appellant paid his outstanding taxes out of time and did not comply with a Time to Pay Arrangement which required £100 per month by direct debit over the period 15 April 2013 to 15 October 2017. He ceased payments in July 2015. The Late Payment Penalties had already arisen before the Appellant asked for a Time to Pay Arrangement and therefore the penalties continue to apply.

10 9. It would appear that the only argument used by the Appellant is that he should not be charged penalties. This does not constitute a reasonable excuse.

10. HMRC considered whether there were special circumstances which would give rise to a reduction of the liability and concluded that there were none.

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11. In the circumstances, the appeal is dismissed and the penalties imposed by HMRC are upheld.

20 12. 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)”
25 which accompanies and forms part of this decision notice.

**DR K KHAN
TRIBUNAL JUDGE**

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RELEASE DATE: 17 JUNE 2016