



TC03482

Appeal number: TC/2014/00195

CAPITAL GAINS TAX - penalty for late payment of capital gains tax due upon self assessment – whether there was a “reasonable excuse” - no – whether there were special circumstances – no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

J W HALL

Appellant

- and -

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

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 25 March 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 07 January 2014, HMRC’s Statement of Case (with enclosures) acknowledged by the Tribunal on 03 February 2014 and the Appellant’s Reply dated 20 February 2014.

DECISION

The appeal

- 5 1. This is an appeal against a first late payment penalty of £1,667 imposed for the late payment of income tax due upon self assessment for the tax year 2011-12.

Late appeal

2. The penalty was imposed on 19 March 2013 and the application for review was refused on 30 September 2013. Mr Hall was given 30 days from the date of the
10 review to lodge his appeal against the penalty. However his appeal was not received by Tribunal until 07 January 2014.

3. In his appeal Mr Hall has not provided a specific reason for the delay in filing his appeal. However it is apparent from the correspondence that he did not fully appreciate the need to lodge his appeal in time and chose instead to correspond
15 directly with HMRC.

4. I am satisfied that it is in the interests of justice to allow the appeal to be made out of time because Mr Hall has challenged the penalty at an early stage but does not appear to have fully understood the mechanics of the appeal process.

The issues

- 20 5. Mr Hall appeals on the following grounds :
- (1) He is not liable to pay a penalty
 - (2) There was a reasonable excuse for the late payment.
 - (3) The appeal should be allowed on the grounds of special circumstances.
6. These matters are disputed by HMRC.

25 The facts

The agreed facts

7. Mr Hall is resident in remote area of Spain
8. The majority of the tax payable arose from capital gains tax payable on the sale of Dene Court Nursing home in Exeter.
- 30 9. The notice to file for the year ending 05 April 2012 was issued on 06 April 2012 and the return was filed on 31 January 2013. Mr Hall's tax liability was assessed to be £35,055.72.

10. On 03 March 2013 (the penalty date) there was an outstanding balance of £33,348.89. The penalty imposed mounted to £1,667 and was calculated at the rate of 5% of the unpaid tax.

11. The tax was paid in full on 13 March 2013.

5 *The contested facts*

12. Mr Hall states came to the UK to finalise his tax affairs before the due date. However he was unable to pay the tax at that time as his accountants were in active negotiations with HMRC regarding the application of entrepreneur's tax relief on the sale of Dene Court.

10 13. When he returned to Spain he was sent the revised payment figure of £33,512.12 together with the payment slip, which he duly paid. He states that the post can take some time to be delivered due to his remote location. Mr Hall has not provided any evidence from his accountants in support of his case.

15 14. HMRC state that Mr Hall's accountant's applied for entrepreneur's relief on 29 August 2012. The claim for relief was included in the tax return dated 31 January 2013. In support of their case they have provided the relevant page of the return showing the relief claimed.

Findings of fact

20 15. I am satisfied on the balance of probabilities that the claim for entrepreneurs' relief had been resolved before the due date because the claim for relief is contained on the copy of the tax return filed on 31 January and Mr Hall has not provided any evidence from his accountant to show that active negotiations were ongoing.

Liability for the penalty

The law

25 16. HMRC have the burden of proving that the taxpayer is liable to pay the penalty *Jussila v Finland (73053/01) [2006] ECHR 996*.

17. Section 8 Taxes Management Act ("TMA") requires the submission of a return on 31 January next following the year of assessment. Section 9 TMA provides that "every return shall include a self assessment".

30 18. Section 59B(3) TMA provides that the payment of income tax and capital gains tax "shall be payable ..on or before 31 January next following the year of assessment".

35 19. Schedule 56 Finance Act 2009 ("FA") Paragraph (1) (1) provides that "a penalty is payable by a person where he fails to pay an amount of tax payable 30 days after the [due] date".

20. Paragraph 3(2) Schedule 56 FA provides a person is liable to a penalty of five per cent of the unpaid tax.

Submissions

21. Mr Hall submits that he was not aware of his tax liability until he received HMRC's assessment and payslip dated 27 February 2013.

22. HMRC submit that the self assessment return was due on 31 January 2013 together with the tax payable. The liability to pay the tax arose from the self-assessment and does not depend upon calculations provided by HMRC.

Reasons for decision

23. I am satisfied that the self assessment return for the year 2011-12 was due on 31 January 2013 and the tax was payable on the same date in accordance with S8 and S9 TMA and S59B(3) FA. I am further satisfied that the tax remained unpaid 30 days after the due date and the penalty has been correctly imposed by HMRC in accordance with Schedule 56 FA.

Reasonable excuse

The Law

24. The taxpayer has the burden of proving that there was a reasonable excuse for the late payment.

25. Paragraph 16 (1) FA provides that "Liability to a penalty does not arise ... if the person satisfies the Tribunal that there is a reasonable excuse for the failure".

26. Para 16(2) (b) FA provides "where the person relies on any other person to do anything that is not a reasonable excuse unless he took reasonable care to avoid the failure".

27. There is no statutory definition of the term reasonable excuse. Case law has established that a reasonable excuse is "a matter to be considered in the light of all the circumstances of the particular case". *Rowland v HMRC [2006] STC (SCD) 536*.

The submissions

28. Mr Hall submits that there is a reasonable excuse for the late payment because :

(1) his accountants were unaware of his tax liability before the due date because there were ongoing negotiations and

(2) he did not become aware of his liability until he received the tax computation and pay slip on 27 February. He asserts that until this final computation was provided it would not have been practically possible for him to have paid the tax due.

29. HMRC submit that the tax due was calculated by Mr Hall's agents when the return was submitted. Mr Hall would have been aware of his tax liability at that stage and was not entitled to wait for the payment notice from HMRC before making payment.

5 *Reasons for Decision*

30. I do not find that it was reasonable to delay payment due to active negotiations regarding entrepreneur's relief because I find as a fact that the relief had been claimed on the return and the tax liability was clear.

10 31. I accept that Mr Hall may have assumed that he was not liable to pay the tax until he received HMRC's written notice. However the tax liability would have been known to him when the return was filed on 31 January and the tax could have been paid at that time without the need to await provision of the payment slip. If in doubt Mr Hall could have sought clarification from HMRC or his accountants however there is no evidence to suggest that he did so. I accept that Mr Hall lives in Spain however
15 this did not prevent him from remaining in contact with the UK or making payment.

32. I accept that Mr Hall may have relied upon his accountants to inform him of the payment deadlines. However the mere fact of reliance on a third party does not amount to a reasonable excuse and there is no evidence to show that he took reasonable steps to monitor the actions they took on his behalf.

20 33. For these reasons I do not find that there is a reasonable excuse for the late payment.

Special circumstances

The Law

25 34. In so far as it is relevant to this appeal the relevant law in relation to special circumstances is as follows:-

35. Para 9 (1) Schedule 56 FA provides "If HMRC think it right because of special circumstances they may reduce the penalty".

30 36. Para 15 (3) Schedule 56 FA provides that the Tribunal may substitute a different decision "if the Tribunal thinks that HMRC's decision in respect of the application of paragraph 9 was flawed".

37. Para 15 (4) Schedule 56 FA defines the term "flawed" as "flawed when considered in the light of the principles applicable in proceedings for judicial review".

38. In the case of *Crabtree V Hinchcliffe (inspector of Taxes) [1971] 3 All ER 967* established that the word "special ..must mean unusual or uncommon".

Submissions

39. Mr Hall submits that he has no history of late payments and considers that he has been unfairly penalised.

5 40. HMRC do not consider that there are any special circumstances which would cause them to reduce or cancel the penalty.

Reasons for decision

10 41. HMRC have decided not to exercise their discretion to cancel or reduce this penalty. I do not find that this amounts to a flawed decision because there are no unusual or uncommon features of the case. In forming this view I take into account paragraphs 30-32 above.

Decision

42. The appellant is liable for the penalty.

43. There is no reasonable excuse for the late payment.

15 44. There are no special circumstances which would enable the Tribunal to cancel or reduce the penalty.

45. The appeal against the late payment penalties amounting to £1,667, is dismissed.

Rights of appeal

20 46. 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.

30 **JOANNA LYONS
TRIBUNAL JUDGE**

RELEASE DATE: 9 April 2014