

[2020] UKFTT 00212 (TC)



TC07698

Appeal number: TC/2019/08955

INCOME TAX – Whether reasonable excuse for late payment - mother’s illness and expenses of an unexpected nature – yes – whether late appeal accepted – yes – reasonable excuse – yes – Appeal allowed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MARC CATCHPOLE

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE DR K KHAN

MS GILL HUNTER - MEMBER

Sitting in public at Taylor House, 88 Rosebery Avenue, London, EC1R 4QU on 3 March 2020 (by video)

The Appellant in person. Olivia Donovan, Presenting Officer, HMRC for the Respondents

DECISION

Introduction

Mr Marc Catchpole appeals against penalties imposed under Schedule 56 FA 2009 in relation to the late payment of his tax liability for the year 2014-2015 which includes 30-day, 6 month and 12-month penalties.

Under Schedule 56 penalties are imposed as follows: late payment penalty 30 days late 5% of tax due, 6 months late 5% of tax outstanding at that date and 12 months late 5% of tax outstanding at that date.

Schedule 56 FA 2009 provides for an appeal providing:

1. The taxpayer has 30 days to lodge an appeal with HMRC against a tax penalty.
2. A late appeal may be accepted at the discretion of HMRC or the tribunal judge.

The following penalties have been levied correctly on Mr Catchpole and were appealed:

Under Schedule 56 penalties for failure to make payment on time are as follows:

1. 30-day Late Payment Penalty £322 (interest £36.75) total £358.75
2. 6-month Late Payment Penalty £322 (interest £32.86) total £354.86
3. 12-month Late Payment Penalty £322 (interest £28.18) total £350.18

Findings of Fact

1. The penalties relate to the tax year 2014 /2015 on income of £37,320 and tax and NI of £8,106.76 while the Appellant held a consultancy position. He has paid his tax in full and on time previously though there was a corrected late payment in 2009.
2. In December 2015 his elderly mother (81) suffered a stroke which rendered her unable to be independent and needing 24-hour care. She is without mental and physical capacity.
3. She was placed in a nursing home at a monthly cost of £5,243 against income of £3,300 giving a shortfall of £1,943.
4. The Appellant had to relocate to help look after his mother and then lost his job in 2016. In order to meet rental costs and costs of care for his mother, he used some of the money put aside to pay his taxes. He was unable to find employment due to his age (55) and took a reduced salary as a delivery driver.
5. The Appellant did not get support from his siblings and had to bring an action with the Court of Protection and the Office of the Public Guardian to obtain a Power of Attorney registered in his name. This allowed him to have more control of his mother's affairs and assets.

6. The Appellant had to deal with criminal justice issues relating to his daughter at the same time.
7. The deadline to pay the income tax for 2014/ 2015 pursuant to section 59B (4) TMA1970 was 31 January 2016.
8. On 15 March 2016, a 30-day late penalty was imposed. The Appellant became liable to pay a penalty of 5% of the unpaid tax under FA 2009, Schedule 56, paragraph 3(2).
9. On the 12 August 2016, a six months late penalty was imposed. The Appellant became liable to pay an additional penalty of 5% of the unpaid tax under FA 2009 Schedule, 56 paragraph 3(3).
10. On the 21 February 2017, a 12 months late penalty payment was applied. The appellant became liable to an additional penalty of 5% of the unpaid tax under FA 2009, Schedule 56 paragraph 3(4).
11. The Appellant was keen to meet the payment and filing deadlines. He made contact with HMRC and indicated on 5 March 2016 that he had problems with depression. He agreed in June 2017 with Debt Management to pay £50 per month against outstanding liabilities. He explained in 2017 that he had financial difficulties resulting from having to support his mother's care. The Appellant gave evidence that he contacted HMRC several times to discuss payment arrangements but did not receive a call back. The tribunal accepted this evidence. While his appeal was late, he made a real effort to pay his tax and contacted HMRC in the period before appealing. He was trying to sort things out without resort to the tribunal.
12. The Appellant appealed to HMRC on 17 July 2017 which was a late appeal.

Grounds of Appeal

13. The Appellant's main argument revolves around personal and family difficulties. He was under enormous stress in dealing with his mother's stroke and her mental and physical incapacity and used some money he had allocated to pay his tax to meet a nursing home shortfall for his mother's expenses. He also says that he was unable to connect with the person at HMRC in the right office to assist with his payment problems and this increased his stress.
14. He says that his mother's stroke and need for 24-hour care and losing his job put enormous pressure on his finances and lifestyle. There were several difficulties which arose at the same time including meeting the financial cost shortfall for her care, moving back to be near her home in 2016, renting and fitting out a flat to live and finding new employment, which proved difficult given his age. He did finally take a lesser paid job as a driver. He said many of these events were unforeseen and unexpected.
15. He was subsequently off work with stress related anxiety which has not helped his financial position since he was on Statutory Sick Pay. Dealing with HMRC proved difficult in this period since he was threatened with bankruptcy and bailiffs for non-payment of tax.

16. He had a difficult situation with his daughter at the same time who had to appear in court to answer criminal charges at the same time.

17. The Appellant says that, taken together, his circumstances were both unpredictable and unusual and extremely difficult.

HMRC submissions

18. HMRC submitted that insufficiency of funds is not a reasonable excuse. Further they say that the Appellant did not make contact with HMRC until 2019 to deal with penalties arising in 2016.

19. Lack of funds is not a reasonable excuse unless attributable to something outside the Appellant's control. The Appellant made a decision to use the money allocated for tax to pay for third party expenses and this cannot be a reasonable excuse. Further the circumstances are not exceptional and where a person chooses to spend money destined for the Revenue, they cannot then say there is a reasonable excuse. In any event, the taxpayer filed the returns on time and should have communicated in a timely manner about his affairs.

Statutory provisions

20. Section 7(1) of the Taxes Management Act 1970 ('TMA') provides as follows:

"Notice of liability to income tax and capital gains tax every person who is chargeable to income tax or capital gains tax for any year of assessment, and... within the notification period, gives notice to an officer of the Board that he is so chargeable."

21. Section 59B of TMA provides for the payment (or repayment) of any outstanding liability (or overpayment) in relation to income tax and capital gains tax for a relevant year. Under sub-s 59B (4), the time limit for making such adjustment is 'on or before the 31st January next following the year of assessment'.

22. In relation to the late payment penalties, paragraph 16 of Sch. 56 to FA 2009 provides the defence of 'reasonable excuse' on an appeal to HMRC or the Tribunal.

23. In the absence of a reasonable excuse, a penalty can be reduced if there are 'special circumstances' under paragraph 16 of Sch. 55, and paragraph 9 of Sch. 56.

24. The tribunal's jurisdiction is under paragraph 15 of Sch. 56, which provides that the tribunal has the power to: (1) affirm or cancel the penalty imposed by HMRC; and (2) to substitute for HMRC's decision another decision that HMRC had power to make.

Discussion

25. The first issue which has to be decided is whether the appeal can be heard late.

This is a balancing act where the consequences to either party of an extension of time limits must be considered in light of our assessment of the merits of the substantive appeal. The Respondents are entitled to some finality in properly administering the SA tax regime and the time limits have been imposed by statute to provide that finality. We must also consider whether the Appellant would be prejudiced by a refusal to extend the time limits.

In considering the application for permission to appeal out of time, pursuant to *Data Select Ltd v HMRC [2012] UKUT 187 (TCC)* we have considered:

- a) The length of the delay;
- b) Whether there is a good explanation for that delay;
- c) The consequences of permission to appeal;
- d) The consequences of refusal of permission.

26. The Appellant has been late but there is a good explanation which is that he was ill and dealing with the chronic illness of his mother. Further, he made several efforts to contact HMRC and to pay his tax. He agreed a payment amount with Debt Management. He was trying to sort matters out without resorting to the tribunal. Taken as a whole, he acted reasonably. On review of the papers the tribunal found that there was an arguable case which deserved to be fully explained at a hearing. There were no adverse consequences for HMRC in a matter where costs were kept to a minimum given the parties consented to a video hearing. It was therefore decided, in the interest of justice, to allow the late appeal.

27. There is no statutory definition of “reasonable excuse”. Whether or not a person had a reasonable excuse is an objective test and “is a matter to be considered in the light of all the circumstances of the particular case” (*Rowland v HMRC (2006) STC (SCD) 536 at paragraph 18*).

28. The actions of the taxpayer should be considered from the perspective of a prudent taxpayer acting with foresight and exercising due diligence. At the same time, he must have a proper regard to his responsibilities under the Taxes Acts. The decision depends upon the particular circumstances in which the failure occurred and the particular circumstances and abilities of the person who failed to pay their tax on time. The test is to determine what a reasonable taxpayer, in the position of the taxpayer, would have done in those circumstances and by reference to that test to determine whether the conduct of the taxpayer can be regarded as conforming to that standard.

29. HMRC have argued that a reasonable excuse should be limited to exceptional and unforeseen events. In taking this approach, HMRC was relying on the words 'unforeseeable or inescapable events' used by Scott LJ in the judgement of *Stepto* [1992] STC 757. However, Scott LJ was a dissenting Judge with Nolan LF and Lord Donaldson taking a different approach.

30. Parliament has provided that the penalty will not be due if an appellant can show a “reasonable excuse” not exceptional circumstances. The phrase “reasonable excuse” uses ordinary English words in everyday usage which must be given their plain and ordinary meaning.

31. Although reasonable excuse is a broad concept, it is not open-ended. On a statutory appeal, the tribunal's jurisdiction is to apply the statutory words 'reasonable excuse' to the facts in question. Each case depends upon the circumstances in which the failure occurred and the circumstances and abilities of the taxpayer in question, as discussed in the context of the Upper Tribunal's decision in *Perrin* below. What is therefore a reasonable excuse in one person's circumstances may not be a reasonable excuse for another person in different circumstances.

32. The Upper Tribunal in *Christine Perrin v HMRC [2018] UKUT 156 (TCC)* observed at [71]:

*“In deciding whether the excuse put forward is, viewed objectively, sufficient to amount to a reasonable excuse, the tribunal should bear in mind all relevant circumstances; because the issue is whether the particular taxpayer has a reasonable excuse, the experience, knowledge and other attributes of the particular taxpayer should be taken into account, as well as the situation in which that taxpayer was at the relevant time or times (in accordance with the decisions in *The Clean Car Co* and *Coales*.)”*

33. The relevant question “was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?”

34. The Appellant had clearly gone through a prolonged period of difficulty and it was understandable that during this period the Appellant omitted to give proper attention to his tax affairs.

35. The Appellant had to look after his mother who was mentally and physically incapacitated, lost his job, found difficulty finding employment given his age, relocated to the area where his mother lived while struggling financially to meet his costs and then living on benefits. He had a difficult family situation with his siblings and daughter which led to his depression. He explained to HMRC that he was suffering from depression in 2015 and made attempts to contact HMRC to agree a time to pay arrangement which was eventually agreed. This would have been a physically and mentally exhausting period. It is understandable that the Appellant, in this period, would have used funds allocated to meet the costs of his tax payments not least because, at the time he did so, he expected to be able to replenish his tax account from his consultancy earnings. He is now in a position to settle all his tax payments.

36. The Appellant continued to work and to look for work after being made redundant. This is a clear sign of wanting to replenish the tax reserve fund and to pay his way. His track record on tax payments suggests that he did pay his tax on time and acted as a responsible taxpayer for several years. The fact that money had been set aside to pay his taxes is the sign of a taxpayer who is acting reasonably, with foresight and thinking ahead. Further, the Appellant completed and submitted his tax returns on time which showed that priority was given to being up to date with his tax affairs.

37. We need to look behind the reason for the non-payment or insufficiency of funds. In this case there was a mental health issue and this, on its own, can be a reasonable excuse. In this case, it is possible to say that alternative arrangements or funding should have been put in place but where it is not possible to foresee events such as a stroke and attendant financial

obligations followed by the loss of a job, it is not unreasonable that such arrangements were not put in place.

39. The tribunal takes the view that these were difficult and traumatic situations which were unexpected. They were definitely unforeseeable and unexpected and outside of the Appellant's control.

39. The facts which the Appellant asserts have been established. We have seen evidence about his mother and documentation from the Court of Protection. When the facts are viewed objectively, they do indeed amount to a reasonable excuse. A taxpayer in this situation would have objectively acted in the same way. There was a lot on his plate with family and financial matters. Each person reacts differently but it is clear that the taxpayer wanted to do the right thing. He filed his returns, made arrangements later to pay what he could afford, made contact, albeit a little late, with HMRC all in a period of great difficulty. Once out of the situation and in a better financial position he sought to regularise his affairs with HMRC. This is entirely reasonable and shows good intention. While his appeal was late in the period before making the actual appeal, he made great efforts to engage with HMRC and debt management to pay his taxes. It appears that only when threatened with bankruptcy did, he see fit to make an appeal. We have therefore considered the efforts made in the period before the actual appeal to be reasonable efforts of a person in a similar situation.

40. Paragraph 16 (1) of *Schedule 55 Finance Act 2009* allows HMRC to reduce the penalty to a minimum if they think there are special circumstances. In this case, the tribunal finds that there is a reasonable excuse for the failure to pay on time but should this be found to be wrong; the tribunal would have found that there are special circumstances and it would have reduced the penalty to nil. There are no issues of proportionality raised in this matter.

Conclusion

41. The appeal is allowed. The late payment penalties relating to the tax year 2014-2015 are cancelled.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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.

TRIBUNAL JUDGE: DR KAMEEL KHAN

RELEASE DATE: 5 MAY 2020