



## FIELD COURT TAX CHAMBERS

### **Reasonable excuse and insufficiency of funds<sup>1</sup>**

*Some tribunals appear more sympathetic than others*

It is always interesting to read about reasonable excuses, and there have been two recent (and strangely contrasting) cases on the subject.

In *N Crossley v HMRC* [2016] UKFTT 810 (TC), the taxpayer persuaded the tribunal that he had a reasonable excuse for not paying his tax on time because he did not have the money. That was impressive when you consider that FA 2009 Sch 56 para 16 specifically states:

“An insufficiency of funds is not a reasonable excuse, unless attributable to events outside the person’s control”.

The facts were unusual, and they clearly struck a sympathetic chord with the tribunal.

Mr Crossley had some properties which were funded by bank borrowings. He sold one property at a profit but the bank insisted on receiving all the sale proceeds before they would release their charge. So Mr Crossley ended up with no money, but he still had a capital gains tax bill.

The tribunal found that he could only conclude the sale if he could give clean title – which required all the sale proceeds to go to the bank. Accordingly, the absence of the funds to pay the tax was attributable to an event outside his control.

They concluded that Mr Crossley did the best he could in this unfortunate situation. He therefore had a reasonable excuse and should be relieved from the penalty imposed by HMRC.

In contrast, we have the case of *W Coomber v HMRC* [2016] UKFTT 809 (TC). Mr Coomber was also late paying his tax and claimed to have a reasonable excuse from the resultant surcharge.

Mr Coomber sent a cheque to HMRC for the tax, but it was dishonoured by the bank. There was no reason given why the cheque bounced as there were adequate funds in the account to meet the cheque. When Mr Coomber found out about this, he sent another cheque to HMRC which was duly paid. Unfortunately, this was more than 28 days after the due date and a 5% surcharge arose.

Mr Coomber said that he did not know the bank had dishonoured his cheque – and there was no reason for them to do so – and it was certainly not his fault that payment was delayed beyond the surcharge date.

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The tribunal said that it was Mr Coomber's responsibility to pay his tax on time. He had chosen to pay the tax by cheque rather than by electronic means and he was therefore taking a risk that if anything went wrong, the clock for penalties would start to run against him.

Mr Coomber said that he could not be expected to telephone the bank on a regular basis to see if cheques had cleared. (Indeed, his agent had spoken to HMRC who told him that the tax had been paid). The tribunal disagreed. In their view, a reasonable taxpayer would have telephoned the bank to find out whether the tax cheque had cleared. His failure to do so was unreasonable and the surcharge was upheld.

Goodness me, that looks harsh. A few weeks ago, millions of people will have sent cheques to HMRC expecting them to arrive in the normal course of post. Providing they had funds in their account to meet the payment, they may feel it is reasonable to believe that the cheque will arrive and the payment will be made.

Is it reasonable to expect all those millions of people to have made millions of telephone calls to their banks to make sure their cheques have cleared? (They would not have been able to get through of course, but never mind that). Furthermore, what is the taxpayer then supposed to do. He calls the bank and they tell him that the cheque has not cleared. So what then: does he send another one? He may not have sufficient funds to pay the tax twice. He could cancel the first cheque, but that would mean that the cheque which was sent on time (which might just be about to clear) would certainly not be paid, thereby giving rise to a penalty.

One might have hoped that both HMRC and the tribunal would have felt that the quality of mercy would not have been too strained by a more sympathetic approach.

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