

TAXING MATTERS

LATE SELF ASSESSMENT - LATE RETURN PENALTIES Reasonable excuse – HMRC view – Emotional distress

For many there has been the last minute scurry to submit their Self Assessment online. Those doing the old paper return had to do so by 31 October 2011.

If the return was not submitted on time, a new penalty system has come into play. If you have not yet submitted your 2011 return, then this needs to be addressed immediately to reduce the penalties that grow by the day.

However, all is not lost, because there has always been the right to appeal against any penalty, if there has been a reasonable excuse!

Your right of appeal

HMRC will write to you with their decision about your Self Assessment tax return or payment. They will always make it clear if you have the right of appeal. For example you have the right of appeal against a penalty for:

- sending in your tax return late or paying tax late
 - not paying enough tax
 - failing to keep a adequate records
- Other examples of Self Assessment decisions you can appeal against include:
- tax assessments made by HMRC if you haven't paid enough tax
 - amendments made by HMRC, following a check into your tax return

So, what constitutes a reasonable excuse?

There are no hard and fast rules, but some examples where HMRC may agree you have a reasonable excuse are:

- life-threatening illness, for example a heart attack that prevents you dealing with your tax affairs
- the death of a partner shortly before a payment or tax return deadline
- unexpected or unforeseeable postal delays
- important documents lost, through theft, fire or flood, that can't be replaced in time
- late receipt of your online Activation Code, User ID or password even though you asked for them before the tax return deadline

Examples of unacceptable excuses:

HMRC will not usually accept you have a reasonable excuse if:

- you don't have enough money to pay the tax due
- you relied on another person to send your return and they didn't
- you didn't receive a reminder for your tax return or payment
- you didn't get your online Activation Code, User ID or password in time, but you didn't ask for them until after the tax return deadline

So what has recently changed?

We have mentioned above, that everyone has a right to appeal. Human nature is that we all generally think

our reason is special. However, from another person's point of view, they may not agree. HMRC are like anyone else. They are guided by law; HMRC individuals have opinions like anyone else. Sometimes you have to point HMRC in the direction of decisions made in the past, whether recent or a long time ago. To challenge any HMRC decision is any individual's right. The ultimate challenge is to take HMRC opinion or decisions to court. This means the case is looked at through the tribunal system and ultimately the courts. Once it gets to the highest level, the decision that is reached becomes the benchmark for that particular appeal and subject matter. HMRC then, unless they appeal against that decision, will abide by the decision.

Emotional stress

One such recent case heard in November 2011 concerned 'emotional distress'. A woman raising two children whose salary fell by half after separat-

ing from her alcoholic husband won an appeal against a late tax payment surcharge.

The first-tier tribunal (Sarah Cornes v HMRC [TC01701], heard in November 2011) ruled that the hardship and emotional distress of Ms Cornes and that she had made all reasonable attempts to arrange a time to pay agreement (TTP) with HMRC before the deadline for a surcharge, constituted a reasonable excuse for late payment of tax.

The tribunal heard that Cornes, a partner in a small legal firm, had taken a 50 per cent pay cut for the previous two years as a result of the recession. Her husband was an alcoholic who had lost his livelihood three times in the previous three years.

The couple had debts of £85,000 which were being repaid under a debt management plan. The couple separated in April 2011, but throughout this period Ms Cornes made all efforts possible to manage the separation and look after her two children while working full time and controlling the debt.

Cornes was unable to pay the tax owed, which was due by 31 January 2011, and HMRC imposed a five per cent surcharge.

HMRC argued that there was no reasonable excuse for the failure to pay on time and its representative told the tribunal that hardship or distress was not a consideration that HMRC could take into account. HMRC argued that she should have had an agreed TTP arrangement in place before 28 February 2011, the trigger date for the surcharge.

Cornes had made a request for TTP on 23 February 2011 and was told that HMRC would contact her for further discussion. HMRC did not contact her until 29 March 2011 when she was not available. HMRC sent Cornes a letter asking her to call back in seven days. On 23 May 2011 Ms Cornes contacted HMRC and agreed a monthly payment plan which began on 2 June 2011.

Ruling in favour of Ms Cornes, Judge Blewitt said: "The tribunal finds as a fact that the appellant made all reasonable attempts to arrange a time to pay agreement prior to the trigger date and cannot be held accountable for the delay in HMRC attempting to contact her when she had been told that HMRC would contact her to discuss the matter."

The separation of Cornes and her husband, taken together with her husband's alcoholism, constituted a reasonable excuse for late payment of tax, the judge also said.

Overview

Whilst one's circumstances do not have to mirror that of Sarah Cornes, if your circumstances are that of emotional stress, there is now a precedent to refer to. Best policy is to ensure you have a system in place that will enable you to avoid all of this stress, by being in a position to submit your return, or have someone do it for you as soon as possible after the 6 April each year. Why leave it to the bitter end! There is no advantage to be gained whatsoever. Ignore the 'know it alls' who say otherwise!

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01202 583688



Fax 01202 583680 Email info@headleyinsurance.com
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