



WHAT IS A “REASONABLE EXCUSE”?

Everyone likes to think they are “reasonable”, but I suspect we all have a different idea of what “reasonable” means – this is certainly the case with HMRC.

In many situations, tax legislation prescribes penalties for those who fail to do what the law requires them to do, or who do it after the deadlines imposed by the legislation.

For example, the 31 July deadline for paying self assessment income tax payments on account has just passed and I have no doubt that some payments will be received late by HMRC for one reason or another. There is a surcharge for payments more than 28 days late, initially of 5% of the tax overdue, but this is not chargeable if one has a ‘reasonable excuse’ for being late.

HMRC always maintain that in order to claim a ‘reasonable excuse’ you have to show that something exceptional prevented you from complying with the rules, such as unexpected serious illness. Their own instructions say that “A reasonable excuse is normally an exceptional and unforeseeable event that is beyond the person’s control” – which is tantamount to saying that you have to show that wholly unexpected circumstances made it absolutely impossible to comply with the law.

This goes completely against a number of judgements by the courts on the meaning of the words ‘reasonable excuse’ and leads to unfair penalties being imposed where they should not be.

To take just one example, HMRC state categorically that ‘shortage of funds is not a reasonable excuse’, when there is in fact a judgement by the Tax Tribunal which specifically allows insufficiency of funds as a defence in certain circumstances.

HMRC are currently trying to impose a surcharge on one of my clients in a situation where it is actually illegal for them to do so. That is going to go to appeal if they do not back down and I am confident that the Tribunal will find in our favour.

One of the other problems with disputes over “reasonable excuses” is that the HMRC staff who deal with these comparatively minor penalties are poorly trained and lack the experience and judgement to form an opinion – they merely rely on their written instructions. The Tax Tribunals have, however, frequently ruled that this guidance is incorrect.

People should not be afraid to challenge HMRC over ‘reasonable excuse’. They are frequently wrong in the way they interpret the legislation and the meaning of ‘reasonable excuse’ is a particularly striking example of this.

The first remedy for someone who believes they have a reasonable excuse is to appeal against the penalty and ask for an internal review - and it is important to insist that this is carried out in another office to the one which imposed the penalty, by someone trained in such reviews.

If this does not produce a satisfactory result, the next step is to ask for the appeal against the penalty to be considered by the “First Tier Tribunal”, an independent review body.

People are afraid that the costs of going to the tax tribunal will be prohibitive but in the case of appeals against penalties like these the case is decided on the basis of written submissions by HMRC and by the taxpayer and there is no need for a day in court (which can be extremely expensive!).

Anyone charged a penalty or a surcharge should consider carefully whether (in their own commonsense view rather than HMRC’s unduly restrictive one) they have a ‘reasonable excuse’ and should not be afraid to challenge HMRC if they believe they have.

This article by James Bailey first appeared in Tax Insider magazine (www.taxinsider.co.uk)