

Delivery by post

Last September, the Tax Tribunal considered the case of *Browns CTP Limited v HMRC* TC 2244, where the issue was whether the taxpayer had a reasonable excuse for late payment of tax where his cheque was delayed in the post. Payment was due on the 19th of each month and cheques were regularly sent on the 18th of each month. Some cheques did not arrive the next day and HMRC charged a penalty.

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The view of HMRC, set out in its manuals was: "If paying by post, your cheque payment must be posted early enough to reach HMRC no later than the 19th of the month. To allow for postal delays for which we are not responsible, please allow at least three working days for the payment to reach us."

This was an expression of HMRC's view, but with no authority. The Interpretation Act 1978 says that in connection with service by post, service is deemed to be effected at the time when a properly addressed letter will be delivered in the ordinary course of post. Interestingly, in *Browns CTP Limited*, HMRC accepted that the ordinary course of first class post is delivery next day.

Accordingly, if you send a cheque the day before the due date (and HMRC accepts that you can reasonably expect it to be delivered in the ordinary course of post on the due date) you would think that you would have a reasonable excuse if it did not arrive in time. However, HMRC said this was wrong but without giving any reason. Its position was hardly enhanced by its published practice that cheques sent in payment of VAT one working day before the due date are accepted as being posted in time.

The tribunal said that, providing the taxpayer had a reasonable expectation that the payment would be received on or before the due date, then he will have a reasonable excuse for non-payment if it is not received. He clearly did have such a reasonable expectation (and this was obviously accepted by HMRC) so he had a reasonable excuse and no penalty was payable.

The matter has recently resurfaced in *Panther Parcels and Courier Limited v HMRC* TC 2247. In this case, the taxpayer claimed he had posted the cheques in a timely fashion and that any delay was the fault of the postal service. The tribunal did not accept this and found, as a fact, that the taxpayer had regularly posted its payments late. Accordingly, there was no defence to any penalty which was properly charged by HMRC. Fair enough. End of story.

However, the following finding by the tribunal may raise some eyebrows: "I found that despite the warning, the appellant continued to post its PAYE without allowing the necessary three working days for the payment to reach to HMRC."

Where does this "necessary three working days" come from? It comes from the submission by HMRC that to allow for postal delays the appellant should have allowed at least three working days for the payment to reach HMRC.

As there is no authority for this "necessary" three-day requirement and that the tribunal in *Browns CTP Limited* had decided that the taxpayer had a reasonable expectation of cheques being delivered the following day. As HMRC has acknowledged that next day delivery can be reasonably expected, as well as its published position on VAT payments, this looks seriously tough. It may be that this tribunal simply disagreed with the tribunal in *Browns CTP Limited* (and that decision was not binding) but they did not say so.

You would have thought that if HMRC was advancing an argument which had been shown to be wrong in another very recent case, somebody might have mentioned it.

Worse, perhaps is the real possibility that when the tribunal found that the appellant had regularly posted its payments late, it meant that they were posted "without allowing the necessary three working days". If that is the case, there is scope for some genuine grievance.

There has been yet another case, *Trustees of the de Britton Settlement v HMRC* TC 2524, in which HMRC claimed a tax return was late. However, it adduced no evidence regarding the date of delivery so it is hardly a surprise that it lost. The tribunal confirmed that the Interpretation Act 1978 applied so that the return would anyway have been treated as arriving on time, but without any specific reference to *Browns CTP* or to *Panther Parcels*. I think we are in urgent need of clarification here.

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Peter Vaines

E peter.vaines@squiresanders.com

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