



TC01716

Appeal number: TC/2011/06312

PAYE – penalty for late payment – reasonable excuse? - no – proportionality? – appeal stood over as to that issue.

FIRST-TIER TRIBUNAL

TAX

COMPASS ROYSTON TRAVEL LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: Judge Richard Barlow

Sitting in public at North Shields on 24 November 2011

Mr Dunning, accountant Kenneth Beasley & Co, for the Appellant

Mrs Oliver of HM Revenue and Customs, for the Respondents

DECISION

1. The appellant appeals against penalties totalling £14,930.23 in respect of late payment of PAYE to HMRC which were notified by a letter dated 14 June 2011. The penalties relate to the twelve months beginning April 2010 and ending March 2011.

2. The appellant contends that all the penalties are disproportionate and asked that the question of proportionality should be adjourned to await the outcome of the litigation in the *Energysys* case which is currently under appeal. Mrs Oliver agreed to that course and both parties asked me to decide a separate issue of a reasonable excuse the appellant claims to have in respect of the months of May, June and July 2010 only and to issue a part decision in respect of that issue at this stage. This is that part decision.

3. The reasonable excuse put forward is that during the months of May, June and July 2010 the appellant had incurred input tax claimed in its VAT returns which in due course led to repayments but that the respondents had delayed in making the payments with the consequence that the appellant's cash flow was affected in such a way as to delay the payments of PAYE.

4. Mrs Oliver pointed out that there is no particular period specified for repayments of VAT to be processed and that a taxpayer cannot complain if they are delayed for a short time. The VAT re-payments relevant to this case were paid on 23 June, 21 July and 6 September. Those repayments were fourteen, sixteen and twenty-seven days after HMRC had received the relevant VAT returns and so were, on any view, made before a delay would have given rise to a re-payment supplement; though I should also note that any such supplement is only payable if the Commissioners were not making reasonable enquiries and a repayment can be made after a longer delay than that where it can be so justified.

5. The appellant's case was that the re-payments of VAT were usually made more quickly and that it should therefore be excused the penalties as the delay in re-payment had adversely affected its cash flow. However, as the appellant had made PAYE payments late in all the months in which no such excuse is put forward as well as those for which that excuse is put forward, I hold that it had no reasonable excuse as any delay was not shown to be causative of the late payments. I make no finding as to whether a reasonable expectation of a re-payment of VAT could, in principle, amount to an excuse but as the evidence does not prove that the late payments were caused by the allegedly delayed re-payment; I hold that there was no reasonable excuse. Any such excuse must at least be causative of the late payment before it can be an excuse at all.

6. The appeal is stood over to a date to be fixed when the proportionality question is finally resolved.

7. This document contains full findings of fact and reasons for the part decision. Any party dissatisfied with this part 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.

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RICHARD BARLOW

TRIBUNAL JUDGE

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RELEASE DATE: 5 January 2012