



**TC02140**

**Appeal number: TC/2011/06519**

*PAYE – Penalties under Schedule 56 Finance Act 2009 – whether reasonable excuse in terms of para 16 thereof – No - penalty confirmed – Appeal disallowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**G L RESIDENTIAL LTD**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S    Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE KENNETH MURE, QC  
CHARLOTTE BARBOUR, CA, ATII**

**Sitting in public at George House, 126 George Street, Edinburgh on 17 July 2012**

**Mr Lees appeared for the Appellant**

**Ms Cowan appeared for HM Revenue & Customs**

## DECISION

1. The Appeal is against penalties of £3,182.44 imposed for late payment of PAYE in the Year 2010-11.
2. It was agreed that Ms Cowan should address the Tribunal first, and that the “last word” should be given to Mr Lees.
3. The factual background did not seem to be contentious. The penalties had been recalculated in line with the recent decision in *Agar Ltd* [2011] UK FTT 773 (TC). There had been ten late payments of tax in 2010-11, and accordingly in terms of Schedule 56 para 6(7), Finance Act 2009 a penalty at 4% was due. This calculation was not disputed.
4. The individual payments and the dates of payment are set out in a table at Folio A, page 4. All sums were paid, and the Tribunal observed that the delays were short, varying between 11 and 29 days. The record in that table was not in dispute.
5. Ms Cowan explained that HMRC had a Business Support Scheme to which taxpayers experiencing financial difficulties could refer, with a view to negotiating (possibly) a revised payment schedule. In the present case no approach had been made by the taxpayer or his agents. Had such an initiative been taken, it might have been possible to avoid the imposition of penalties. She observed that HMRC by telephone calls and in correspondence had alerted the taxpayer to the risk of penalties being incurred.
6. We were referred to the Grounds of Appeal, which are set out in an expanded form in Folio 3A. In his evidence Mr Lees explained that his company, while profitable, was dependent on support from its Bank. It had incurred substantial loans on the purchase of land for building purposes, and its financial affairs were monitored – very strictly – by a third party procedure securing the Bank’s interest. Loan and credit facilities were not available “on tap” to the company. Annual and monthly budget controls were in force. Monthly valuations of assets, work-in-progress etc were required before monies could be released.
7. Mr Lees referred tax matters relating to the company to a professional firm of bookkeepers. He accepted that he had not been in contact on any regular basis with HMRC to discuss the financial administration of the company. He had not approached the Business Support Scheme, apparently entrusting all matters of tax compliance to his professional advisers.
8. The issue for the Tribunal was whether in these circumstances the Appellant company had a “reasonable excuse” for the purposes of para 16 of Schedule 56 for late payment. An insufficiency of funds does not qualify. On the other hand some exceptional or unforeseen factor might be sufficient. The Tribunal had a degree of sympathy for the Appellant. The delays were all fairly short, and all monies due were paid. The company traded in the building industry, and it is common knowledge that at the relevant time, it was beset with economic difficulties. The Appellant company did have a plan in place with its Bank for funding expenditure. While there seems to have been little flexibility in its operation, that, it appears, was at the insistence of the Bank.

9. Unfortunately the Tribunal did not consider that any exceptional factors arose which could justify a “reasonable excuse”. It is unfortunate that neither Mr Lees nor his advisers contacted HMRC’s Business Support Scheme about the company’s financial position. Also, there does not appear to have been any approach made to the Bank to, say, advance an enhanced sum in a particular month to enable in that month an increased payment to be made and so obviate the fairly short delays in the subsequent months.

10. Incidentally no reference was made in the course of the hearing to “special circumstances” for the purposes of para 9 of Schedule 56 as being relevant.

11. For the reasons stated the Appeal is disallowed.

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

**KENNETH MURE, QC  
TRIBUNAL JUDGE**

**RELEASE DATE: 20 July 2012**