



TC02219

Appeal number: TC/2011/06068

***FAILURE TO MAKE PAYE PAYMENTS ON TIME – Penalty – Reasonable
excuse – FA 2009 Sch 56***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

STILL SECURITY LTD

Appellant

- and -

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

TRIBUNAL: JUDGE SIR STEPHEN OLIVER QC

Sitting in public in Theale on 11 July 2012

No representative for the Appellant

Jack Lloyd for the Respondents

DECISION

1. Still Security Ltd appeals against a PAYE “late payment” penalty of £3,629.17 for the year 2010/11 imposed under Schedule 56 Finance Act 2009.

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2. Prior to the start of the hearing the Tribunal clerk called Still Security to ask why no one was present to represent the company. He was told that no one would attend the hearing. I therefore decided to go ahead with the hearing on the basis of correspondence and points made in writing by Ashfield Accountancy Service, Still Security’s accountancy adviser.

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3. No challenges were made to the calculation of the penalty. It related to nine defaults on the part of Still Security in relation to its obligation to make monthly payments of PAYE for the year 2010/11. In June 2011 HMRC identified nine such defaults. The payments had in fact all been made, but were late by between three and six days.

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The reasonable excuse defence

4. It was argued in correspondence for Still Security that it had received the bulk of its funds monthly from one particular client who did not make payment until after the PAYE due date. That, it was said, constituted a reasonable excuse.

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5. Paragraph 16(2) of Schedule 56 excludes from the scope of the “reasonable excuse” defence “an insufficiency of funds ... unless attributable to events outside [the taxpayer’s] control”. Still Security relies upon the “insufficiency of funds” defence. No explanation was given in the course of correspondence as to why that should have been outside Still Security’s control. Had a director from Still Security attended the hearing, light might have been thrown on the reason why payment arrangements for Still Security’s services were outside its control. There would also have been an opportunity to test the evidence as to that reason. Still Security, as the taxpayer, has to satisfy the Tribunal that its insufficiency of funds was outside its control. The fact that no one has attended the hearing and given evidence, makes it impossible for the Tribunal to accept the defence. (The Tribunal notes that, had Still Security arranged to make the tax payments by electronic means, some if not all of the payments might have been received by the due dates. It was within the control of Still Security to make such arrangements. The fact that it chose to pay by cheque, and pay late, has no effect on, and does not assist, its reliance on the reasonable excuse defence.)

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Did Still Security receive the default warning letter?

6. It was asserted in correspondence for Still Security that it had not received the warning letter that had been issued on 28 May 2010. The Tribunal understands that on that date warning letters were sent out to all similar defaulters by HMRC. These were sent to the taxpayer/employer’s normal address. I cannot accept Still Security’s defence on this point without hearing evidence. I note that four late payment notices

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had been issued in August, September, October and November 2010. HMRC acknowledged that the sending out of a “warning notice” is something required by standards of good administration. They do not, however, accept that no warning notice had been sent to Still Security on 28 May 2010. I do not think that Still Security can rely on this defence. I have, in this connection, looked at the Employer Bulletin released by HMRC and other material published on its website. It is up to the taxpayer to keep up the date with requirements relating to compliance with PAYE obligations. In the circumstances I do not think that Still Security can rely on this as a reasonable excuse.

Is the penalty “severely disproportionate”?

7. I do not consider that the penalty is disproportionate. The quantum of the penalty and the rate both depend on the number of defaults that the taxpayer/employer has made. It is a targeted penalty and it has the purpose of encouraging proper compliance. It is correct to say, as Still Security does, that the penalty is equivalent to interest at over 100%. That, in my view, is beside the point. It is not designed as a means of recovering interest on outstanding amounts due to HMRC. It is designed as a targeted penalty. For that reason I cannot accept Still Security’s argument.

Conclusion

8. For the reasons given above I dismiss the appeal.

9. 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.

**SIR STEPHEN OLIVER QC
TRIBUNAL JUDGE**

RELEASE DATE: 22 August 2012