



TC02379

Appeal number: TC/11/05883

*Penalties – Late payment of PAYE instalments for 2010/11 – whether
“reasonable excuse” or other mitigating factors – No – Finance Act 2009,
Schedule 56 – Appeal disallowed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOHN LINDSAY (DUMBUCK) LTD

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE & CUSTOMS**

Respondents

**TRIBUNAL: JUDGE KENNETH MURE, QC
S A RAE, LLB, WS**

**Sitting in public at George House, 126 George Street, Edinburgh on
1 November 2012**

Mr D Lindsay, Director for the Appellant

Ms E McIntyre, for the Respondents

DECISION

Preliminary

1. This is an Appeal against the imposition of penalties totalling £3,635.11 for late
5 payment of PAYE for the Year 2010/11. The Appellant company which operates a
garage and car sales business with a Vauxhall dealership was represented by its
director, Mr Lindsay. He indicated that he did not dispute the late payment of
monthly PAYE or the calculation of the penalty. The issue for the Tribunal was
whether the penalties should be mitigated.

10 Submissions

2. Helpfully, on behalf of HMRC Ms McIntyre agreed to “open” the Hearing by
setting out the background to the imposition of the penalties. Payments were due on
the 19th of each month. The first late payment is ignored. Also, in light of the
15 decision in *Agar* (TC/2011/04910), any payment falling due after the end of the
relevant tax Year is ignored too. Consequently the original penalty total of £4,012.45
had been reduced to £3,635.11.

3. Ms McIntyre addressed the Grounds of Appeal set out in the correspondence.
Essentially, the absence of any forewarning of the imposition of a penalty was
complained of by the Appellant. Although HMRC was under no obligation to issue
20 such a warning, Ms McIntyre emphasised that repeated warnings had in fact been
given to the Appellant company. She noted pages 27-29 of the Bundle which record
HMRC’s issuing warnings and the form of a warning letter. In particular that
encourages a tardy taxpayer to contact HMRC to negotiate an agreement to pay any
overdue tax. Penalties thereafter can be suspended. In the present case the taxpayer
25 company had not contacted HMRC. Moreover, in addition to the warnings issued to
the taxpayer company, general advice had been issued publicising the penalty system
introduced by Finance Act 2009 (see pages 83 *et seq*).

4. The Tribunal referred Mr Lindsay to the Grounds of Appeal (page 5) and his
two letters, one dated 7 July 2011 and the other received during October 2011
30 (pages 21-22 and 26) and invited him to address us on the terms of these and elaborate
as appropriate. Having confirmed that he did not dispute the calculation of the
penalty, Mr Lindsay indicated that the essence of his complaint was that he had never
been forewarned of an actual penalty, far less its amount. Once he had received the
notice of penalties the company had never made late payment thereafter. Mr Lindsay
35 submitted there should be some system advising a taxpayer of the possible imposition
of a penalty and the amounts involved. A bill had been issued only after the end of
the tax Year. He had been surprised then by the amount of the penalty. He accepted
that he had not approached HMRC to negotiate a system of late payment.

5. The Tribunal invited Mr Lindsay to explain his reference to financial difficulties
40 (page 21). Apparently there is a special system of payment whereby Vauxhall pays
bi-monthly (on the 13th and 17th of each month) an extra payment to its dealers
depending on the number of vehicles sold. The actual sale of a vehicle by the
taxpayer to its customer is at a discount or loss, and this extra payment compensates

and produces a profit. There was, it seems, no change or unexpected factor affecting the system of payment at the material time, however. In response to Mr Lindsay's complaints, Ms McIntyre referred us to the UTT's decision in *Hok Limited* [2012] UKUT 363 (TCC), which suggests that the absence of a system of reminders is not in itself unfair.

Conclusion

6. We consider that Ms McIntyre's submissions were well-founded. We appreciate that there is some scope to modify such penalties where there is a "reasonable excuse" or "special circumstances" (see paras 16 and 9 of Schedule 56, Finance Act 2009), but we do not consider that the complained lack of a system of warnings meets this. In any event we would question whether there was any lack of forewarning in imposing the penalty in the present circumstances or any unfairness. Further, we do not consider that there were any exceptional financial circumstances which might give rise to a "reasonable excuse", although we are conscious of the cashflow problems which the system of payment by Vauxhall may cause.

7. For these reasons we dismiss the Appeal and confirm the penalties imposed.

8. 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 November 12