



**TC02440**

**Appeal number: TC/2012/06473**

*PAYE – default penalty for late payment - reasonable excuse - no*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**HARDINGS BAR & CATERING SERVICES LIMITED      Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE ALISON MCKENNA**

**The Tribunal determined the appeal on 10 December 2012 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 14 June 2012 (with enclosures), HMRC's Statement of Case submitted on 26 July 2012 (with enclosures) and the Appellant's Reply dated 16 August 2012.**

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## DECISION

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1. This matter concerns the revised default penalty of £700 imposed on the Appellant company due to the late payment of its PAYE for months 7 and 9 of the tax year 2010 – 2011.

### The Facts

10 2. The company made late payments of PAYE to HMRC during the tax year 2010 – 2011. A penalty was issued pursuant to schedule 56 of the Finance Act 2009. The penalty was later revised downwards to take account of the Tribunal's decision in *HMRC v Agar* and to discount the late payment in month 12 of the tax year. The penalty presently stands at £700.

### The Law

15 3. Paragraph 6(4) of Schedule 56 to the Finance Act 2009 imposes a default penalty for late payment of PAYE, calculated at 1% of the amounts paid late.

4. Paragraph 16 of the Schedule provides that an appeal may be successful where the Tribunal is satisfied that there is a reasonable excuse for the late filing but  
20 paragraph 16 (2) (a) provides that an insufficiency of funds is not a reasonable excuse unless attributable to events outside the tax payer's control.

### The Grounds of Appeal

5. The grounds of appeal are that, firstly, the Appellant's main customer delayed making payment to it so that it had cash flow difficulties; secondly, that the Appellant  
25 was unaware that he could have asked for time to pay and entered into an agreement with HMRC to this effect; thirdly, that HMRC had agreed a payment plan with the Appellant in relation to VAT so that it was inconsistent to apply a penalty in relation to PAYE.

### HMRC's Response

30 6. In its Statement of Case, HMRC pointed out that the tax payer has a legal obligation to pay on time and that PAYE payments are legally the property of HMRC and not a legitimate means of financing a business; secondly that tax payers have been made aware of the existence of Business Payment Support Service through bulletins and on the web site; and thirdly that the Appellant had entered into a time to pay  
35 agreement regarding his VAT and his cash flow difficulties had not been regarded as a reasonable excuse for late payment.

7. HMRC further points out that the Appellant was sent a warning letter prior to the penalty being imposed but that it did not take any action in relation to that letter;

also that the Appellant has a history of non-compliance (this was evidenced in a schedule). HMRC also alleges that the Appellant delayed arrangement of an overdraft, however the Appellant denies this assertion and I have seen no evidence to support it.

5 **Conclusion**

8. Having considered the papers carefully in this matter I accept that the Appellant company was experiencing cash flow problems and this was the reason it delayed paying its PAYE. I do not find that the Appellant company deliberately delayed arranging an overdraft and accept that there were difficulties with it arranging loan  
10 finance in the current climate.

9. However, I find that the penalty was imposed in accordance with the legislation and that the Appellant company has not advanced a reasonable excuse, within the meaning of the law, for late payment of PAYE. Insufficiency of funds is expressly provided by the legislation not to constitute a reasonable excuse unless due to  
15 circumstances outside the tax payer's control. I consider that cash flow difficulties are not an exceptional circumstance outside the tax payer's control in the ordinary course of business and that, once it was realised that PAYE could not be paid, the company should have contacted HMRC to ask for time to pay. I am sympathetic to the Appellant company's trading difficulties but in all the circumstances, I must  
20 dismiss this appeal and confirm the £700 penalty.

10. 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  
25 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.

30 **ALISON MCKENNA**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 18 December 2012**

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