



**TC02447**

**Appeal number: TC/2011/06545**

*PAYE- appeal against the penalty imposed for the late payment of PAYE-  
Schedule 56 Finance Act 2009-PAYE payments late each month – were  
postal delays a reasonable excuse –no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PANTHER PARCELS & COURIER LIMITED                      Appellant**

**- and -**

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

**TRIBUNAL: JUDGE SANDY RADFORD**

**The Tribunal determined the appeal on 14 August 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 5 August 2011(with enclosures), HMRC's Statement of Case submitted on 6 July 2012(with enclosures) and the Appellant's Reply dated 8 August 2012.**

## DECISION

- 5 1. This is an appeal against the penalty of £7,888.70 imposed for the late payment of PAYE for months 1 to 11 for the tax year 2010/11.

### The Legislation

2. Penalties for the late payment of monthly PAYE amounts were first introduced for the tax year 2010/11. The legislation is contained in Schedule 56 to the Finance Act 2009 (“Schedule 56”). Schedule 56 covers penalties for non- and late payment of  
10 many taxes: paragraph 1(1) (which applies to all taxes) states that a penalty is payable where the taxpayer fails to pay the tax due on or before the due date.

3. Paragraph 6 (which relates only to employer taxes such as PAYE) states that the penalty due in such a case is based on the number of defaults in the tax year, though  
15 the first default is ignored. The amount of the penalty varies as provided by subparagraphs (4) to (7):

(4) If P makes 1, 2 or 3 defaults during the tax year, the amount of the penalty is 1% of the amount of tax comprised in the total of those defaults.

- 20 (5) If P makes 4, 5 or 6 defaults during the tax year, the amount of the penalty is 2% of the amount of tax comprised in the total amount of those defaults.

(6) If P makes 7, 8 or 9 defaults during the tax year, the amount of the penalty is 3% of the amount of tax comprised in the total amount of those defaults.

(7) If P makes 10 or more defaults during the tax year, the amount of the penalty is 4% of the amount of tax comprised in those defaults.

- 25 In this and other paragraphs of Schedule 56 “P” means a person liable to make payments.

4. Under paragraph 11 of Schedule 56 HMRC is given no discretion over levying a penalty:

- 30 11(1) Where P is liable to a penalty under any paragraph of this Schedule HMRC must –

(a) assess the penalty,

(b) notify P, and

(c) state in the notice the period in respect of which the penalty is assessed.

- 35 (3) An assessment of a penalty under any paragraph of this Schedule—

- (a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule),
- (b) may be enforced as if it were an assessment to tax, and
- (c) may be combined with an assessment to tax.

5 5. Paragraphs 13 to 15 of Schedule 56 deal with appeals. Paragraph 13(1) allows an appeal against the HMRC decision that a penalty is payable and paragraph 13(2) allows for an appeal against the amount of the penalty. Paragraph 15 provides the Tribunal's powers in relation to an appeal which is brought before it:

10 (1) On an appeal under paragraph 13(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 13(2) that is notified to the tribunal, the tribunal may-

- (a) affirm HMRC's decision, or
- (b) substitute for HMRC's decision another decision that HMRC had the power to make.

15 (3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 9-

- (a) to the same extent as HMRC...[...],or
- (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 9 was flawed.

20 6. Paragraph 9 (referred to in paragraph 15) states:

(1) If HMRC think it right because of special circumstances, they may reduce the penalty under any paragraph of this Schedule.

(2) In sub-paragraph (1) "special circumstances" does not include –

- (a) ability to pay, or
- (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to-

- (a) staying a penalty, and
- (b) agreeing a compromise in relation to proceedings for a penalty.

35 7. Paragraph 16 contains a defence of reasonable excuse, but an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control. Nor is it such an excuse where P relies on another person to do anything unless P took reasonable care to avoid the failure; and where P had a reasonable excuse for the

failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse has ceased.

### **Background and Facts**

- 5 8. The appellant paid its PAYE by cheque each month and posted it to HMRC.
9. The appellant's PAYE payments were received late for each month of the tax year 2010/11.
10. Since 2006/07 the appellant had a history of paying late each month and it continued to do so during tax year 2011/12.
- 10 11. The appellant had been warned by HMRC twice by telephone during the tax year in question concerning the payment dates and a late payment default warning letter was issued on 28 May 2010.
12. HMRC spoke to Mr Wilson Barratt on 1 June 2010 to chase up the payment due on 19 May 2010 and Mr Barratt stated that the payment was late due to the holidays.
- 15 Mr Barratt agreed to send future payments on time and to look at alternative payment methods. However the payments continued to be made late.
13. On 1 March 2011 HMRC again spoke to Mr Barratt, reminded him of the payment dates and warned him about penalties.

### **Appellant's Submissions**

- 20 14. The appellant submitted that its payments had been posted in a timely fashion and any delay in their receipt by HMRC was due to delays in the postal service.
15. In reply to HMRC's statement of case the appellant's agent submitted that in accordance with HMRC's manual at DMBM210120 HMRC are at liberty to reallocate payments at the customer's request at any point up to when HMRC communicates the allocation of payments to them. As there had been no communication from HMRC regarding the allocation the agent submitted that HMRC were required to allocate the payments as requested by the appellant.
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16. As the appellant had made the payments without a specific monthly reference the agent submitted that HMRC ought to have allocated the payments in the most favourable way for the appellant.
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### **HMRC's Submissions**

17. HMRC submitted that the appellant had no reasonable excuse for the late payments. It was up to the appellant to ensure that the payment reached HMRC before the 19th of each month. To allow for postage delays or where the 19th fell on a weekend or bank holiday the appellant should have allowed at least three working days for the payment to reach HMRC.
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18. HMRC submitted that the penalty had been charged in accordance with the legislation and the appellant had been adequately warned about the new regime.

19. The appellant's agent's submission on the appellant's behalf regarding reallocation of the payments was made subsequent to its appeal and HMRC's statement of case therefore HMRC had no chance to respond.

### **Findings**

20. I found that the appellant had regularly posted its payments late. In respect of month 1 Mr Barratt admitted on 1 June 2010 that the PAYE had not yet been sent due to the holidays.

21. I found that despite the warning the appellant continued to post its PAYE without allowing the necessary three working days for the payment to reach HMRC.

22. I found that the appellant had no reasonable excuse for the late payment of its PAYE.

23. I found that had the appellant wished to claim that the payments should have been reallocated by HMRC it should have done so at the latest when it was notified of the allocations made by HMRC in the penalty notice dated 17 June 2011 but it did not do so nor did it do so when it made its appeal on 5 August 2011.

24. The Tribunal found that there was neither a special circumstance nor a reasonable excuse for the continual late payment.

### **Decision**

25. The appeal is dismissed and the penalty is hereby confirmed.

26. 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.

**SANDY RADFORD  
TRIBUNAL JUDGE**

**RELEASE DATE: 26 November 2012**