



**TC02551**

**Appeal number: TC/2012/06320**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**INCOME TAX - Penalties – Late payment of PAYE – Reasonable excuse –  
Appeal allowed in part.**

**THE PARTNERSHIP (UK) LTD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE LADY JUDITH MITTING  
MRS BEVERLEY TANNER**

**Sitting in public at Birmingham on 9 October 2012**

**The Appellant was not represented.**

**Mr Ian Birtles, Officer of HMRC, for the Respondents.**

## DECISION

1. Under appeal was the Commissioners' decision to assess the Appellant to a penalty for late payment of PAYE for the tax year 2010/11. The Appellant notified the Tribunal on the morning of the hearing both by telephone and by email that it would not be attending or be represented at the hearing. We therefore proceeded to hear the case in the absence of the Appellant.

2. On 16 August 2011, the Commissioners issued a penalty notice for late PAYE payment for the year 2010/11, having identified late payment in all months except month 6 (the October payment). The penalty was set at the percentage rate set out in Schedule 56 Finance Act 2009 and was in the sum of £7,877.03. There followed extensive correspondence between the parties and the penalty was later adjusted to £5,242.48 notified by letter dated 17 May 2012 and was further reduced to £1,942.32 notified by letter dated 24 May 2012. It was this penalty which was the subject of the appeal before us, relating to month 3 (July), 4 (August), 7 (November), 9 (January), and 10 (February). On being notified of the second reduction, the Appellant wrote to the Commissioners in the following terms;

“While this leaves a much reduced penalty to pay, I am still not satisfied that the remaining penalty claimed is fair and wish to exercise my right to place this with the Tribunal Service. This is based on our knowledge that in the majority (if not all) of the cases still in question, we know that phonecalls were made to agree that we could make these payments late (only ever one week in any specific case).

My office manager has confirmed to me that phonecalls were made and it seems inequitable that the onus is upon us to prove that a call was made and agreement given”

3. In its Notice of Appeal, the Appellant expanded upon its grounds of appeal. It was pointed out that in Months 3, 4 and 9 the payments left the Appellant's bank account only one working day late. The Appellant stated that it did not know why these payments were made late – “it could have been a failure of the electronic banking system or illness of the member of staff that is responsible for making the payment”. The Appellant accepted that it would not have made any contact with the Commissioners in these three months and the appeal was stated to be based purely on the fact that in all three cases, payment was only one working day late. In months 7 and 10, the Appellant maintained in its Notice of Appeal that it would have contacted the Commissioners to obtain an agreement to deferral and it was in no doubt that the late payments were agreed. The Appellant went on to criticise the size of the penalty in the context of a small business committing a minor indiscretion.

4. We look first at the months 3, 4 and 9. Each of these payments was received by the Commissioners five days late i.e. that was the date on which the payments were received into the Commissioners' bank account. The information literature sent out repeatedly to tax payers advising them of the new penalty regime was quite

explicit about how and when payments should be made. All these payments left the Appellant's bank account after the due date and could therefore never have been received on time. The legislation gives no leeway, a payment which is received late is a late payment regardless of how late it is made. We can find no reasonable excuse in any of these periods.

5. In months 7 and 10, the Appellant asserts that telephone agreement was reached for late payment. In relation to month 7 there is no evidence whatsoever of any telephone call. The Appellant provided no evidence in relation to either period and the Commissioners had no record of any call for month 7. In the light of this absence of any evidence, we are unable to find that a time to pay agreement was in place and we find no reasonable excuse for this period.

6. In relation to period 10, the Commissioners did produce a note of a telephone call dated 1 March 2011. This clearly post dated the due date and was in effect an explanation for late payment rather than any attempt to reach an agreement for deferment. However the note of the telephone call contained the following sentence;

“She advised that late due to software problem”

It is unfortunate that this was never expanded upon by the Appellant and that as there was no representation before the Tribunal, it could not be explored further. If it is the case that there was an unexpected problem with the Appellant's computers which prevented them from making a payment which would otherwise have been on time, then that could, of course, constitute a reasonable excuse for late payment in that period. Normally, before the Tribunal could make such a finding, substantially more evidence of the “software problem” would be needed. We canvassed this with Mr Birtles as it was our view that possibly the Appellant did not realise the significance of the point it was making in the phonecall and Mr Birtles accepted that the Commissioners could and should have followed this up with the Appellant. In the light of both these points, we are prepared to find that the Appellant did have a reasonable excuse for the late payment in month 10 – namely the failure of its computer system.

7. In summary therefore we find that the Appellant had no reasonable excuse in months 3, 4, 7 and 9 but did have a reasonable excuse in month 10 and the Appeal is allowed in part. We leave it to the Commissioners to recalculate and issue a further penalty notice.

3. 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.

**LADY JUDITH MITTING  
TRIBUNAL JUDGE**

**RELEASE DATE: 30 October 2012**