



**TC02581**

**Appeal number: TC/12/07158**

*PAYE – Penalties for late payment – whether “reasonable excuse” or other basis for mitigation – No – whether penalties due – Yes – Appeal refused*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ANDREW MCKINNON t/a AMK SELF DRIVE                      Appellant**

**- and -**

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

**TRIBUNAL: JUDGE KENNETH MURE, QC  
HELEN M DUNN, LLB**

**Sitting in public at Wellington House, Glasgow on Friday 8 February 2013**

**Mr Andrew McKinnon, the Appellant**

**Ms E McIntyre (with Ms S McMullen), HMRC Officer, for the Respondents**

## DECISION

1. This Appeal relates to the imposition of penalties for late payment of PAYE for  
5 2010/11. As revised these total £3,567.55, having excluded any liability for the first  
late payment and (following on the decision in *Agar v HMRC* [2011] UKFTT 773  
(TC)) ignoring the last late payment as falling outwith the tax Year.

2. In effect there are ten failures in respect of which penalties have been imposed.  
Accordingly the rate of penalty applicable is 4%.

10 3. It was agreed that Ms McIntyre for HMRC should “lead” and so outline her  
argument for Mr McKinnon to consider before he addressed the Tribunal. We  
explained to Mr McKinnon that he, as Appellant, would additionally have “the last  
word” at the conclusion of the hearing.

15 4. Ms McIntyre explained the basis of calculation of the penalties as now shown  
on p7 of the Bundle of Documents. She indicated that after the first late payment a  
computer generated warning letter was sent to the taxpayer on 28 May 2010. The  
record of this is at p30 and the style used at p59. While Mr McKinnon disputes  
receiving this, it was, according to Ms McIntyre, correctly addressed and not returned  
20 to HMRC. Further, on 24 December 2010 Ms McIntyre claimed that HMRC had  
phoned the Appellant to complain of the delay (see p34). Mr McKinnon insisted that  
he had not received this call which bore to be dated after receipt of the relevant  
payment by HMRC.

25 5. Ms McIntyre explained that the due date for receipt by HMRC of payments  
made by post was the 19<sup>th</sup> of the month (or the immediately preceding business day).  
Even one day’s delay resulted in the imposition of a penalty. (This would be  
increased after a delay of six months.) Mr McKinnon produced a typed schedule of  
payments which he adopted in evidence. On one occasion, the August holiday period,  
the payment was admittedly nine days late. Otherwise they were only one or two  
days’ late, he claimed.

30 6. Ms McIntyre explained that HMRC encouraged electronic payment (which  
Mr McKinnon has since adopted) to obviate the risk of late payment. The penalty  
provisions which were introduced for the Year 2010/11 had been widely publicised,  
with official notification being sent to all employers and other parties involved in the  
PAYE system.

35 7. Finally, Ms McIntyre submitted, there was not a *reasonable excuse* in the whole  
circumstances which might excuse late payment, and, further, the decision in *Hok Ltd*  
[2012] UKUT 363 (TCC) laid down that this Tribunal has no discretion or power to  
mitigate penalties. Accordingly she invited us to dismiss the Appeal.

40 8. In reply Mr McKinnon explained that he first became aware of the imposition of  
penalties only in June 2011 ie after the end of the tax Year. He disputed receiving  
HMRC’s “warning” letter of 28 May 2010 and the phone call on 24 December 2010.

He explained that he has an office manager but ultimately he manages the business personally and he alone was on duty on 24 December.

5 9. He referred us to and emphasised the short periods of delay noted in the schedule produced. He did accept that in respect of the August payment there had been a more significant delay of nine days but otherwise the payments were late only marginally. He referred us to the terms of his letter of 21 May 2012 (p10) in which he had explained the basis for his appealing against the imposition of penalties.

10 10. We have considerable sympathy for Mr McKinnon. The payments were only two or three days late, sometimes after a weekend, apart from the one payment, admittedly nine days late, during the August holiday period. It may be that Mr McKinnon did not receive the warning letter in May or the telephone call in December, but in any event, the responsibility for ensuring prompt payment rests with him in terms of the relevant legislation. *Hok* makes it clear that this Tribunal has no discretion, however deserving the circumstances, to mitigate or waive these penalties.  
15 The new Regulations were widely publicised and it is the responsibility of the individual taxpayer to familiarise himself with these. Moreover, we do not consider that the circumstances disclose a *reasonable excuse*. We discussed with Mr McKinnon the circumstances of late payment generally and whether particularly there might have been some involvement by a third party. However, no basis for an  
20 argument of *reasonable excuse* emerged.

11. For these reasons we dismiss the Appeal.

12. Finally, we would thank both Mr McKinnon and Ms McIntyre for their helpful and well-directed arguments.

25 13. 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  
30 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

35 **KENNETH MURE, QC**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 5 March 2013**