



**TC03894**

**Appeal number: TC/2014/02371**

*PAYE – late payment of monthly PAYE– whether payments made late – Yes.  
Whether appellant had reasonable excuse for the failure, - No., Whether  
Special circumstances apply - No.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DAVID P GODDARD**

**Appellant**

**- and -**

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

**TRIBUNAL:    PRESIDING MEMBER  
                  PETER R. SHEPPARD FCIS FCIB CTA AIIT**

**The Tribunal determined the appeal on 7 August 2014 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 29 April 2014 with enclosures, and HMRC's undated Statement of Case submitted by 19 June 2014 with enclosures. The Tribunal wrote to the Appellant on 19 June 2014 indicating that if they wished to reply to HMRC's Statement of Case they should do so within 30 days. No reply was received.**

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## DECISION

### 1. Introduction

5 This considers an appeal against a penalty of £818.06 levied by the Respondents for the late payment of PAYE by the appellant in the tax year 2012-2013.

### 2. Legislation

Finance Act 2009 Schedule 56

The Finance (No.3) Act 2010 part 3 paragraph 27 and Schedule 11

10 The Finance (No.3) Act 2010, Schedule 11 (Appointed Day) Order 2011(S.I. 2011/132)

The Finance Act 2009, Schedule 56 (Appointed Day) and Consequential Provisions) Order 2010 (S.I. 2010/466)

The Finance (No. 3) Act 2010, Schedules 10 and 11 (Income Tax Self Assessment and Pension Schemes)(Appointed Days Order 2011 S.I. 2011/703

15 The Finance Act 2009, Schedules 55 and 56 (Income Tax Self Assessment and Pension Schemes)(Appointed Days) and Consequential and Savings Provisions) Order 2011 (S.I. 2011/702)

The Income Tax (Pay As You Earn) Regulations 2003 SI 2682 2003 reg 69

The Social Security (Contributions) Regulations 2001 SI 1004 2001 reg 67

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### 3. Case law

Dina Foods Ltd v HMRC [2011]UKFTT 709 (TC)

Rodney Warren & Co v HMRC [2012] UKFTT 57 (TC)

Agar Ltd v HMRC [2011] UKFTT 773 (TC).

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### 4. Facts

The Appellant makes PAYE payments electronically on a quarterly basis.

The Finance Act 2009 Schedule 56 provides for penalties to be levied when a person fails to submit PAYE payments by the due date.

30 In respect of the year 2012-2013 HMRC consider that the appellant failed to make full quarterly payments on time on at least 3 occasions. On 13 December 2013 HMRC sent the appellant a Penalty notice for late payment of PAYE. This charged a penalty of £818.06 for the tax year 2012-2013.

35 In a letter dated 20 December 2013 the appellant replied appealing against the penalty notice saying that in 2011/12 and 2012/13 there had been several queries regarding allocation by HMRC of his PAYE payments and this led to confusion as to whether or not he was in an underpayment situation. The appellant states "I feel strongly that this confusion on HMRC's own systems contributed to the late payment situation."

40 In a letter dated 27 January 2014 HMRC replied saying that they did not consider that the appellant had a reasonable excuse for making late payments and they did not

consider there were any special circumstances whereby the penalty may be reduced. The letter refers to the appellant being “unable to amend PAYPAL to show the correct payment period”

5 On 24 April 2014 the appellant wrote to HMRC requesting an internal review of the decision on the following grounds:

- Despite being assured the account was settled in full at one point I was then chased for payment. At this point it came to light there was still an underpayment on my account.
- 10 • Your letter also refers to PAYPAL – at no time during conversations with Sarah Forde did she mention this as a payment method, we have always submitted payment through the Santander Billpay method.
- By your own admission your systems had not been updated correctly with regards to FPS submission and incorrect information was still being given out quite recently regarding my payroll records for the current year.
- 15 • I would also point out that in your letter of 26<sup>th</sup> July 2013 you state you have written three times asking for the overdue amount – this was the first communication we received on the issue.

The appellant then asserts that the confusion within HMRC systems meant he was unable to ascertain the correct situation with regards to underpayments on his account.

20 The result of HMRC’s review dated 1 April 2014 was that the penalty was upheld. HMRC say that they have no record of advising that the account was settled in full prior to the letter advising of the underpaid amount. HMRC accepted that the reference to PAYPAL was inaccurate. They also said that what was said about their systems not updating for FPS correctly was incorrect. In fact on investigation there  
25 was no error on their systems. HMRC quote 18 June 2013, 17 July 2013 and 26 July 2013 as the dates of the three letters and none were returned undelivered. The appellant then appealed to the Tribunal.

### 5. Appellant’s submissions

In the Notice of Appeal dated 26 June 2013 the appellant makes the following points:

- 30 • During telephone conversations with Sarah Forde on several occasions HMRC’s accounts offices were in a state of confusion regarding payments made. This was the second year running that conversations had taken place between Sarah Forde and HMRC regarding HMRC’s allocations of my PAYE liability.
- 35 • Because of the Issues with the previous year Ms Forde did not feel HMRC had allocated payments correctly in the 12/13 financial year and had perhaps mis-recorded payments which had been made leading to the possibility that I may not be in an underpayment situation. This information was relayed on to me by Ms Forde and I had to take her word for it that HMRC may have made a

mistake. Given the situation the previous year that would not have been an unreasonable assumption on either her part or mine.

- My letter of 24<sup>th</sup> February refers to an FPS (Faster Payments System) submission which was incorrectly advised as outstanding. I was not referring to month 7 as is stated in HMRC's letter of 1<sup>st</sup> April 2014 I was in fact referring to the FPS for the first quarter of 13/14 year. In a telephone conversation with HMRC I was clearly told that this was not received and yet my payroll agents did make this submission and have confirmation that it was received by HMRC. This again leads me to believe that HMRC's systems are in disarray.
- Ms Forde has made my PAYE payments online for some time – occasionally the amounts involved are such that separate payments have to be made as my bank will not allow large amounts to be paid online and thus they stop payments going through. Ms Forde believed that as long as all payments were received by 19 May 2013 (the P35 deadline date) then no penalty would be levied. We believed that all payments due for the 2012/13 financial year were made by 17<sup>th</sup> May. I had no reason that this was not the case.

## 6. HMRC Submissions

HMRC state that the appellant made late payments in the tax year 2012/13. In respect of the period covered by the penalty they submitted the following table:

Tax quarter	Date payment due	Date payments made	Amount not paid on time	Number of days late
1	22 Jul 2012	17 Aug 2012 2 Aug 2012 21 Aug 2012	£20,000.00* £20,000.00* £ 2,058.60*	26 29 30
2	22 Oct 2012	15 Oct 2012 26 Oct 2012 29 Oct 2012 30 Oct 2012 31 Oct 2012 1 Nov 2012 2 Nov 2012	£10,000.00 £10,000.00 £10,000.00 £10,000.00 £10,000.00 £10,000.00 £ 2,465.40	0 4 7 8 9 10 11
3	22 Jan 2013	22 Jan 2013 23 Jan 2013 1 Feb 2013	£10,000.00 £19,341.23	0 1 10
4	22Apr 2013	24 Apr 2013 26 Apr 2013	£10,000.00** £10,000.00**	2 4

		2 May 2013	£10,000.00**	10
		15 May 2013	£10,000.00**	23
		20 May 2013	£10,000.00**	28
		21 May 2013	£ 5,542.19**	29

\*Paragraph 6(3) Schedule 56 of the Finance Act 2009 determines that the first failure to pay on time for that tax year does not count as a default for that year..

5 \*\* Following the case of *Agar Ltd v HMRC* the payment due on 22 April 2013 should not be treated, for the purpose of late payment penalties as a default during the tax year 2012-2013.

7. HMRC say it is not enough for payment to be made in full eventually, in order to avoid a penalty payment must be made on time.

10 8. In response to the appellants grounds for reasonable excuse HMRC say that Ms Forde telephoned them on 22 June 2012 to ask for reallocation of £9,700.18 from 2012/13 to 2011/12. She said that she had put the wrong payment period on the payment reference. HMRC had allocated the payment as originally requested, then re-allocated the payment on Ms Forde's instructions. There was no HMRC error, misallocation or confusion. This was also a payment to cover the 2011/12 underpayment and has nothing to do with the 2012/13 payments.

15 9. HMRC note that the quarterly payments were so large that the appellant had to make them in instalments but this was nothing new or unexpected. It is the appellant's responsibility to pay on time and in full so he should have started to pay the instalments earlier so they would be completed by the due date.

20 10. HMRC issued a penalty warning letter to the appellant on 30 July 2012. This was on the occasion of the first late payment. They say that had the appellant paid on time since then no penalty would be due.

11. In support of their submissions HMRC refer to the decisions of the First-tier Tribunal in the cases of *Dina Foods Ltd v HMRC* and *Rodney Warren & Co v HMRC*.

25 **12. Tribunal's Observations**

30 The inaccuracies concerning both PAYPAL and concerning the updating of HMRC systems are regrettable but in the Tribunal's view these were not so serious as to affect the appellant's ability to make full payment of PAYE on time. The Tribunal considers that it is the responsibility of a taxpayer to ensure that he has made full payment on time. He should have his own record of how much is due and how much he has paid. If he knows he has paid the full amount by the due date any misallocation of a payment can be adjusted and any apparent shortfall rectified and no penalty should be levied. He should not rely on HMRC to notify him if there has been an underpayment.

13. The Tribunal observes that the penalty has been levied for late payments made in the tax year 2012/13. Therefore both the reallocation of £9,700.18 to 2011/12 at the taxpayer's request and whether or not HMRC received the payment by FPS for the first quarter of 2013/14 on time and accounted for it correctly is not relevant to considering whether the appellant had reasonable excuse for failing to make payments on time in the year 2012/13.

14. The Tribunal agrees with HMRC that the large quarterly payments were not new or unexpected. The appellant should have made arrangements to ensure that the payments by instalment were made so that full payment had been completed by the due date

15. The level of the penalties has been laid down by parliament. The only other consideration that falls within the jurisdiction of the First-tier Tribunal is whether or not the appellant has reasonable excuse for his failure as contemplated by The Finance Act 2009 Schedule 56 paragraph 16.

16. The Tribunal considers that none of the points advanced by the appellant constitute a reasonable excuse for the late PAYE payments. The penalties for late PAYE payments as well as penalties for late tax payments and late tax returns have all been well publicised and the appellant must have been aware of his obligations in this respect.

17. The respondents have applied the legislation correctly and calculated the amount of the penalties accurately for the period 2012-13. No penalty is levied for the first default. In accordance with The Finance Act 2009 Schedule 56 paragraph 6 (6) the following two defaults give rise to a penalty rate of 1% levied on the tax due on those defaults. The tax due on the defaults totals £81,806.63. Therefore the penalty is 1% of £81,806.63 which is £818.06.

18. The Finance Act 2009 Schedule 56 paragraph 16 provides that a penalty for a period may be set aside if the appellant has reasonable excuse for the failure. The appellant has not established a reasonable excuse for any of the late PAYE payments. Therefore the appeal is dismissed.

19. Paragraph 9 of Schedule 56 of the Finance Act 2009 (Special Reduction) provides HMRC with discretion to reduce any penalty if they think it right to do so because of special circumstances. On the information held in this case HMRC did not consider there were any special circumstances which would allow them to reduce the penalty. The Tribunal sees no reason to disagree with that decision.

20. 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.

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**PETER R. SHEPPARD  
TRIBUNAL PRESIDING MEMBER**

**RELEASE DATE: 8 August 2014**

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