



TC03050

Appeal number: TC/2012/09546

*INCOME TAX – PAYE – late payment penalties – whether reasonable excuse
– NO – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LAGENES UK LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: DR K KHAN
SONIA GABLE**

Sitting in public at Bedford Square, London on 1 July 2013

Lee Knight, Tax Professional, RSM Tenon, for the Appellant

**Kevin McMahon, Presenting Officer, instructed by the General Counsel and
Solicitor to HM Revenue and Customs, for the Respondents**

DECISION

Issue

1. This is an appeal against a penalty for the late payment of PAYE. The penalty is for £11,242.92 arising from 10 defaults during the tax year 2010/2011, the total default payment is £281,073.12. The default penalty rate is 4% of that amount and is charged under paragraph 6, Schedule 56 Finance Act 2009.

Background facts

2. The chart below shows the payment and penalty history of the transactions involved. The penalty itself has been reduced from £12,501.76 to £11,242.92. The reduction was due to the payments on 19 or 22 April 2011 which should not be treated, for the purposes of late payment penalties, as a default during the tax year 2010-11.

Month	Tax	NIC	Electronic payment	Due date	Date paid	Paid late?	Monthly penalty defaulted?	Monthly Penalty charged
1	£11,998.87	£8,985.51	N	19/05/2010	25/05/2010	6 Late	Y	£0.00
2	£10,900.92	£8,163.29	N	19/06/2010	24/06/2010	5 Late	Y	£762.57
3	£12,226.89	£9,156.27	N	19/07/2010	24/07/2010	5 Late	Y	£855.33
4	£15,734.47	£11,782.96	N	19/08/2010	25/08/2010	6 Late	Y	£1,100.70
5	£12,886.22	£9,650.01	N	19/09/2010	22/09/2010	3 Late	Y	£901.45
6	£13,788.93	£10,326.02	N	19/10/2010	26/10/2010	7 Late	Y	£964.60
7	£17,958.68	£13,448.59	N	19/11/2010	25/11/2010	6 Late	Y	£1,256.29
8	£17,898.03	£13,403.18	N	19/12/2010	08/01/2011	Late	Y	£1,252.05
9	£16,042.92	£12,013.95	N	19/01/2011	02/04/2011	Late	Y	£1,222.27
10	£14,183.95	£30,956.09	N	19/02/2011	07/05/2011	Late	Y	£1,805.60
11	£9,600.01	£20,951.74	N	19/03/2011	13/05/2011	Late	Y	£1,222.07
12	£9,571.05	£20,888.56	N	19/04/2011	21/05/2011	Late	Y	£1,218.38
12	£41,958.55	£670.93	N	19/04/2011	06/08/2011	Late	Y	£1,705.18
12	-£41,618.15	£0.00	N	19/04/2011	06/08/2011	Late	Y	£1,664.73

3. The first default also does not carry a penalty.

Appellant's submission

4. The Appellants say that four payments of PAYE were made on time as shown by their records but HMRC's record showed that they were received late. The relevant payments and dates are:
- (1) PAYE and NICs for April 2010 – cheque sent to HMRC 16 May 2010. Cheque received by HMRC on 25 May 2010. Due by 19 May 2010.
 - (2) PAYE and NICs for June 2010 – cheque sent to HMRC on 16 July 2010. Cheque received by HMRC on 24 July 2010. Due by 19 July 2010.
 - (3) PAYE and NICs for 17 September 2010 – cheque sent to HMRC on 17 September 2010. Cheque received by HMRC 22 September 2010. Due by 19 September 2010.

(4) PAYE and NICs for September 2010 – cheque sent to HMRC on 16 October 2010. Cheque received by HMRC on 26 October 2010. Due by 19 October 2010.

5 5. They say that these cheque payments were sent to HMRC by first class post and the dates of the cheques to HMRC are confirmed by their cash book and cheque stubs. The delivery aim for first class post as stated on the Post Office website is one day. Even factoring in weekends, it was reasonable to believe that the cheques would be received by HMRC on time.

10 6. A penalty of £11,242.92 is unfair and completely disproportionate to the offence of minor late payments.

15 7. HMRC did not notify the Appellants of the late payments. Under the system operating in 2010/11 HMRC did not notify taxpayers of the quantum of late payment penalties until after the end of the tax year. This means that the penalties are allowed to build up during the year without being accurately notified to the Appellant. This is against the common law principle of fairness.

Evidence of Appellant

20 8. The Tribunal gave the Appellant further time to present evidence with regard to the posting of the cheques on time. A witness statement was provided by Aissa Rice-Tagon, a former employee of the Appellant, who was partly responsible for making the PAYE and NIC payments to HMRC. She made the following points:

- (1) The cheques were prepared by either herself or another senior colleague.
- (2) Once the cheques were prepared they were taken to the company director to be checked against a payment schedule which was prepared for that week and were signed.
- 25 (3) The cheques were sent to HMRC on the Friday before the due date.
- (4) If there was chance that payments may be made late then a Recorded Delivery was arranged.

Submissions by HMRC

9. HMRC makes the following points:
- 30 (1) The Appellant has a history of late payments.
 - (2) HMRC's system for recording when the cheques were received and the processing date for the cheques shows that they were received late which is to say, after the 19th day of each month.
 - 35 (3) The Appellant does not have a reasonable excuse for the late payment. A reasonable excuse is normally an unexpected or unusual event, either

unforeseeable or beyond their control, that prevented the payment being made on time. Lack of funds is not a reasonable excuse.

- 5 (4) HMRC need to be in possession of the cheques by the 19th of each month. HMRC's internal records show that the cheques were not received by the due date. The Appellant had various warning letters which stated that they may incur a penalty and the penalty regime was very well publicised in the press and in correspondence with employers.
- (5) The penalties are imposed on a statutory basis implemented after proper consultation and are not unfair or disproportionate.

10 **Conclusion**

10. The Tribunal's jurisdiction in these matters is limited. It is limited to determining whether or not the payments were late as a matter of fact and if so whether there is a reasonable excuse for the lateness. It has considered the submissions of both parties which were made after the hearing.

15 11. While the Appellant says that their records show that four payments of PAYE were made on time, there were no records provided by the Appellant to support that position. The only evidence presented was that of a former employee, Ms Aissa Rice-Tagon, who would occasionally prepare the cheques for signature. She was employed by the Appellants from 13 December 2010 to 5 February 2013 and was not an
20 employee at the time of the disputed four months, the last of which was October 2010.

12. The person who had the main responsibility for calculating the PAYE and for the cheques was Hanna Newbury, the Financial Controller, who has not provided a witness statement. The cheques were due by the 19th of each month yet on three occasions the disputed cheques are in fact dated the 19th with one cheque dated the
25 17th. The Witness Statement states that the cheques would be sent on the Friday before the payment date was due or earlier to avoid late payment. Of the four disputed payments only two had been sent on a Friday with the other two being sent on a Saturday and a Sunday. There is no evidence that the witness worked on Saturday or Sunday or of the special delivery mailing of cheques. The Appellant
30 indicated that the "general rule" was that payment would be sent on the Friday before 5 pm to arrive on time. This is contradicted by the fact that only two payments were made on a Friday. It may well have been a coincidence that those two payments were made on a Friday since they were made late and to that extent the Witness Statement cannot be construed to be reliable in this respect. Further the Respondents provided
35 evidence to show that the witness was not an employee of the company at the relevant time (she left in October 2012 and the relevant period was Dec 2010 –February 2013) and therefore she could not have any knowledge of the payment system operating during the disputed period. The Witness Statement does not provide convincing evidence for the Appellant's case and does not support their submissions that there is
40 a reasonable excuse.

13. The penalty regime is statutory and imposed after proper consultation. It provides an important framework for compliance and encourages the timely submission of returns. There are helplines and publicly available information to assist taxpayers with difficult questions. It is not an unfair system and it is applied to all taxpayers in a similar manner. There is no evidence of unfairness with the penalty regime.

14. For the reasons given, the Appeal is dismissed.

15. 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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DR K KHAN
TRIBUNAL JUDGE

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