



**TC03126**

**Appeal number: TC/2013/02337**

***INCOME TAX – PAYE – Penalty for late payments- Whether reasonable excuse shown? - No on the facts***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ACCESS SOLUTIONS SCAFFOLDING LIMITED      Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE ADRIAN SHIPWRIGHT  
                  CAROLINE de ALBUQUERQUE**

**Sitting in public at Bedford Square, London WC1B 3DN on 13 November 2013**

**Jennifer Carter of Simia Farra & co, Accountants for the Appellant**

**David Wilson of HM Revenue and Customs, for the Respondents**

## DECISION

1. This decision concerns an appeal by Access Solutions Scaffolding Limited (“the Taxpayer”) against the imposition of a penalty under Schedule 56 FA 2009 for late payment of PAYE.
2. The penalty appealed against was in the sum of £11,400.64. The penalty notice was issued on 5 June, 2013. It related to seven late payments in the year and the penalty was charged at 3 per cent as required by the Act.
3. A penalty in a higher amount had been imposed in October 2012 but was reduced on the basis that there was a reasonable excuse for the period in which the Taxpayer moved premises.
4. The decision to impose a penalty was reviewed. The imposition of the penalty was upheld on review. This was notified to the Taxpayer on 26 February, 2013.
5. It was accepted by the Taxpayer that the payments had been received late by HMRC. Accordingly, the Taxpayer can only succeed if the Taxpayer can discharge the onus of showing that there was a reasonable excuse or special circumstances within the meaning of the legislation.
6. We heard oral evidence from Mr Kenneth Steward.
7. We understand that Mr Steward became unwell in February 2013 and had to undergo surgery. We extend our sympathy and wish him well in this respect.
8. From the documentation and oral evidence we understand that the Taxpayer had to move premises and suffered the often associated difficulties of moving to different business premises. HMRC recognised this by accepting that it constituted a reasonable excuse for some of the period in question.
9. Mr Steward was the director of the Taxpayer. His sister, Mrs Lynn Ayiotis, was the Office Manager and Bookkeeper of the Company.
10. Mrs Jose Steward, the mother of Mr Steward and Mrs Ayiotis was diagnosed with Parkinson’s disease in 2009. Her health deteriorated and she went to live with Mrs Ayiotis so that she could care for her. This presented its own difficulties including issues when dealing with the various agencies involved.
11. We were also told that the Taxpayer had problems discounting invoices during that period. We accept that this was the case.
12. Mr Steward summarised the position as
13. “...both the situation in 2011 concerning my mother and the move had a direct effect on our ability to maintain the pressure required to get customers to pay their bills... The difficulties on when the funds became available to the Company (cash flow) for each month concerned and the problems in relation to my mother and the move, in essence were the underlying reason for the lateness of the payments”.
14. There were no “time to pay agreements” in place.
15. The Taxpayer contended that it had discharged the onus of proof to show that there was a reasonable excuse for each default and/or a special reduction should apply within the meaning of the statute.
16. Although the original grounds of appeal were wide at the hearing the Taxpayer, having accepted the late payment position, argued that, in the circumstances, there was a reasonable excuse.

17. We consider that although the circumstances were unfortunate they do not amount to a reasonable excuse for the failure to make the payments on time. This was essentially for cash flow reasons as Mr Steward said in evidence.

18. Paragraph 16 of Schedule 56 provides that an insufficiency of funds is not a reasonable excuse. The Taxpayer has raised, as HMRC pointed out, several common causes of cash flow difficulties inherent in the construction industry. These were not unique to the Taxpayer and are no more than hazards of that particular trade. Payments have been made late on a number of occasions in prior years and no different pattern is disclosed here. It is hard to see that this was unexpected.

19. For there to be special circumstances they need to be exceptional, unusual or uncommon circumstances peculiar to the particular employer which is not the case here.

20. Accordingly, we find that there were no special circumstances and that the onus of showing that there was a reasonable excuse has not been discharged.

21. As a statutory body the Tribunal can only act within the jurisdiction given to it by Parliament. The Upper Tier Tribunal has recently confirmed that there is no inherent jurisdiction in the First-Tier Tribunal as to fairness (see *Hok* and *Total*). Whilst we are sympathetic to the position of the individuals on the evidence before us they do not amount to a reasonable excuse or special circumstances within the meaning of the statute which is all we can concern ourselves with.

22. We find:

(1) The return was filed late; and

(2) The Company has failed to discharge the onus of proof of showing that there was a reasonable excuse within the statutory meaning.

23. Accordingly, the appeal is dismissed.

24. 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.

**ADRIAN SHIPWRIGHT  
TRIBUNAL JUDGE**

**RELEASE DATE: 11 December 2013**