



*INCOME TAX – partner payment notice – penalty – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**TC07207**

**Appeal number: TC/2018/01332**

**BETWEEN**

**AMIT PAU**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE DAVID BEDENHAM  
JOHN ROBINSON**

**Sitting in public at Taylor House, London on 8 May 2019**

**The Appellant appeared in person**

**Stephen Goulding, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents**

## DECISION

### INTRODUCTION

1. Mr Pau appeals against four penalties imposed by HMRC pursuant to s 226 of the Finance Act 2014 (“FA 2014”) for late payment of accelerated partner payments demanded in partner payment notices (“PPNs”) issued pursuant to Schedule 32 of the FA 2014.
2. Mr Pau submits that the penalties should not have been imposed because he had agreed to settle the underlying tax dispute (in relation to which the PPNs were issued) and, in any event, had been told by HMRC that so long as settlement discussions were ongoing and he could demonstrate a genuine intention to settle, no penalties would be payable. Mr Pau also said that he could not recollect when he had first received one of the PPNs and that he thought this would have been some considerable time after the date of the PPN.
3. The Tribunal directed that by 31 August 2018, each party was to send or deliver to the other party statements from all witnesses on whose evidence they intended to rely. Neither party served witness statements. At the hearing, Mr Pau made numerous factual assertions as part of his submissions. The Tribunal therefore invited Mr Pau to confirm these factual assertions from the witness box, which he did. HMRC cross examined Mr Pau.
4. In addition to the evidence given by Mr Pau, the Tribunal had before it a number of documents, including a number of letters and emails and HMRC’s telephone logs.

### HMRC’S CASE

5. In summary, HMRC submitted as follows:
  - (1) The PPNs were validly given to Mr Pau. In any event, this Tribunal cannot entertain a challenge to the underlying PPNs (relying on *Beadle v HMRC* [2019] UKUT 0101 (TC));
  - (2) Pending any settlement of the underlying tax dispute, Mr Pau was required to make the payments demanded in the PPNs;
  - (3) There was no settlement of the underlying tax dispute. Mr Pau did not return the relevant settlement deeds to HMRC before the settlement window closed;
  - (4) Mr Pau did not make the payments required by the PPNs by the end of the payment periods. Further, monies due under the PPNs remained outstanding 5 months after the day following the end of the payment periods. Accordingly, Mr Pau was liable to the penalties; and
  - (5) There was no “reasonable excuse” or “special circumstances”.

### MR PAU’S CASE

6. Mr Pau’s Grounds of Appeal stated:

“I invested in Ingenious Film Partners 2 & Ingenious Games...

...From memory, HMRC contacted me as an LP stating that if accepted their settlement then there would be no Accelerated Payment Charges and Interest.

From the outset – I engaged in a meaningful manner to settle. My major query was linked to the critical question ‘what happens if I settle with HMRC and HMRC loses its case with Ingenious’. Despite over 30 calls plus emails over 2 years, HMRC could not confirm the position. During my interactions, I stressed that my intent was to settle subject to clarification of a simple query.

During my calls, HMRC did confirm that I would not be charged APN and interest charges, as a result of this I continued with my intent to settle based on clarification of this simple request. I also requested clarification on how regulated entities can misrepresent investment schemes.

During this process, I was extremely disappointed with HMRC on a number of fronts. As my approach, I offered assistance to HMRC in areas such as

- a. proof that companies such as Google & Facebook are conducting tax evasion. Privately, a number of HMRC representatives agreed and stated their disgusted. Despite having proof, no attempt was made by HMRC to follow-up.
- b. fundamental break down in communication. Systems and processes within HMRC. This was agreed by HMRC, again no attempt to address this issues. Shocking that despite costing the tax payers a significant amount of money, HMRC continue with 'back ward' operations.
- c. HMRC employees breaking their rules and threatening me. Despite, being in dispute with HMRC which was acknowledged, a number of their team members were rude. Offensive, made threatening behaviour all of which was extremely stressful. Despite, being in dispute with HMRC, they threatened field action to recover my possessions. A field force agent called me, when we discussed my situation and he review my file. He apologised and confirmed that under dispute he should not have contacted me. During this process, he shared me highly confidential material 'which if I shared' would create significant bad PR HMRC's.
- d. when HMRC finally confirmed that if I settled with HMRC and they lost their case against Ingenious I would be fully refunded all monies. At this moment, I settled please see email below and me chasing HMRC for follow-up – yet again they did not follow up.

[extracts from two emails from Mr Pau to HMRC omitted – but included later in this decision]

- e. amazingly post this confirmation, a different team member of HMRC contradicted the above. During this process they not only contradicted official confirmation which I accepted, they confirmed the incompetencies of HMRC and then where extremely aggressive, threatening as a result their mistakes.
- f. Despite sharing the inconsistent information from HMRC and the fact that I clearly demonstrated to HMRC that I was actively engaged in settling with HMRC they decided to charge APN and interest – despite stating the opposite.

...

7. At the hearing, Mr Pau made the following submissions:

(1) He always intended to settle the underlying tax dispute. This was made clear to HMRC throughout his dealings with them. However, before he could finalise the settlement there were three questions that he wanted answers to. These three questions were:

- (a) When did HMRC notify Ingenious of their on-going review?;
- (b) How can the FCA, a Government entity have approved a product which apparently is a misrepresentation/unclear?; and

(c) What happens if I settle and then HMRC loses its case against Ingenious? This was the most important question for Mr Pau.

(2) HMRC did not properly respond in relation to the first two questions and, in relation to the third question, HMRC provided Mr Pau with contradictory advice. It was also very difficult to speak with HMRC as phones would often ring out and then go to voicemail or disconnect. HMRC's systems do not properly record all of the occasions on which Mr Pau spoke with HMRC.

(3) HMRC told Mr Pau that so long as he had a genuine intention to settle and there was ongoing settlement discussions, no penalties would be payable for failing to make the payments due under the PPNs,

(4) Mr Pau posted the signed settlement deeds back to HMRC on 28 May 2015. On the same date, he confirmed by email to HMRC that he agreed to settle the underlying tax dispute.

(5) He did not recollect receiving one of the PPNs.

#### THE LAW

8. The circumstances in which a PPN may be given are set out in paragraph 3 of Schedule 32 of the Finance Act 2014 ("Schedule 32").

9. There is no right to appeal to this Tribunal against HMRC's decision to issue a PPN.

10. Paragraph 5 of Schedule 32 entitles a person that receives a PPN to make representations to HMRC objecting to the PPN. Any such representations must be made within 90 days of the date the PPN was given. HMRC must consider any representations made and make a determination on them.

11. Paragraph 6 of Schedule 32 imposes the obligation to make the accelerated partner payment. That payment must be made before the end of the "payment period" which is defined in paragraph 6(5) of Schedule 32 as follows:

"(5) 'the payment period' means –

(a) if the relevant partner made no representations under paragraph 5, the period of 90 days beginning with the day on which the partner payment notice is given;

(b) if the relevant partner made such representations, whichever of the following ends later –

(i) the 90 day period mentioned in paragraph (a);

(ii) the period of 30 days beginning with the day on which the relevant partner is notified under paragraph 5 of HMRC's determination."

12. Paragraph 7 of Schedule 32 provides for penalties for failure to comply with a PPN. This is achieved by the application to PPNs of s 226 of the FA 2014. Section 226 provides in relevant part:

"...

(2) If any amount of the accelerated payment is unpaid at the end of the payment period, P is liable to a penalty of 5% of that amount.

(3) If any amount of the accelerated payment is unpaid after the end of the period of 5 months beginning with the penalty day, P is liable to a penalty of 5% of that amount.

(4) If any amount of the accelerated payment is unpaid after the end of the period of 11 months beginning with the penalty day, P is liable to a penalty of 5% of that amount.

(5) “*The penalty day*” means the day immediately following the end of the payment period.

...”

13. The combined effect of paragraph 7 of Schedule 32 and s 226 of the FA 2014 is that paragraphs 9 to 18 (other than paragraph 11(5) of Schedule 56 to the Finance Act 2009 (“Schedule 56”)) apply to penalties imposed for failure to comply with a PPN.

14. Paragraph 13(1) of Schedule 56 provides a right of appeal to this Tribunal against a penalty imposed for a failure to comply with a PPN. Paragraph 13(2) provides a right of appeal to this Tribunal against the amount of such a penalty.

15. Paragraph 16 of Schedule 56 provides:

“(1) If P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for a failure to make a payment—

(a) liability to a penalty under any paragraph of this Schedule does not arise in relation to that failure, and

(b) the failure does not count as a default for the purposes of paragraphs 6, 8B, 8C, 8G and 8H.

(2) For the purposes of sub-paragraph (1)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.”

16. Paragraph 9 of Schedule 56 provides:

“(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.

(2) In sub-paragraph (1) ‘special circumstances’ does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) above the reference to reducing a penalty includes a reference to –

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.”

17. Paragraph 10 of Schedule 56 provides:

“(1) This paragraph applies if –

(a) P fails to pay an amount of tax when it becomes due and payable,

(b) P makes a request to HMRC that payment of the amount of tax be deferred, and

(c) HMRC agrees that payment of that amount may be deferred for a period ('the deferral period')

(2) if P would (apart from this sub-paragraph) become liable, between the date on which P makes the request and the end of the deferral period, to a penalty under any paragraph of this Schedule for failing to pay that amount, P is not liable to that penalty..."

18. Paragraph 15 of Schedule 56 provides:

“(1) On an appeal under paragraph 13(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC’s decision.

(2) On an appeal under paragraph 13(2) that is notified to the tribunal, the tribunal may –

(a) affirm HMRC’s decision, or

(b) substitute for HMRC’s decision another decision that HMRC had power to make.

(3) If the tribunal substitutes its decision for HMRC’s, the tribunal may rely on paragraph 9 –

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC’s decision in respect of the application of paragraph 9 was flawed.

(4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.

(5) In this paragraph ‘tribunal’ means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 14(1)).”

#### **EVIDENCE AND FINDINGS FACTS**

19. The following facts were clear on the face of the documents and were not, unless stated otherwise, in dispute:

(1) Mr Pau’s 2005/2006 Self-Assessment Tax Return (“SATR”) was received by HMRC on 30 October 2006. The SATR included a declaration of Mr Pau’s share of a loss in respect of his participation in a marketed tax avoidance scheme, Ingenious Games LLP. The loss claimed was £332,548. The SATR also included a declaration of his share of a loss in respect of his participation in a further marketed tax avoidance scheme, Ingenious Film Partners 2 LLP. The loss claimed was £852,202.

(2) On 20 February 2007, HMRC opened an enquiry into the 2005/2006 Partnership SATR in respect of Ingenious Games LLP.

(3) On 18 June 2007, HMRC opened an enquiry into the 2005/2006 Partnership SATR in respect of Ingenious Film Partners 2 LLP.

(4) On 9 February 2012, HMRC closed the enquiry into the 2005/2006 Partnership SATR in respect of Ingenious Games LLP.

(5) On 1 March 2012, HMRC received an appeal against the closure notice to the enquiry into the 2005/2006 Partnership SATR in respect of Ingenious Games LLP.

(6) On 30 November 2012, HMRC closed the enquiry into the 2005/2006 Partnership SATR in respect of Ingenious Film Partners 2 LLP.

(7) On 2 December 2012, HMRC received an appeal against the closure notice to the enquiry into the 2005/2006 Partnership SATR in respect of Ingenious Film Partners 2 LLP.

(8) On 14 November 2014, HMRC wrote to Mr Pau in respect of Ingenious Film Partners 2 LLP. In relevant part that letter stated:

“We are writing to tell you that you will soon need to make a payment of the amount that relates to your share of the partnership’s use of the tax avoidance scheme shown in this letter.

...

The legislation means that those who have used a tax avoidance scheme may have to pay the amount that relates to their use of the scheme before the final amount has been agreed or determined by a tribunal or court. Such payments are known as ‘accelerated payments’. There is more information about this in the enclosed factsheet CC/FS24.

...

In the next 2 to 4 weeks, we will send you a partner payment notice showing the amount that we believe relates to your share of the partnership’s use of the scheme...

Once you receive the notice, you will be legally required to pay the amount shown on it within 90 days of the date that you receive it. That date may change if you make representations objecting to the notice...”

(9) The 14 November 2014 letter enclosed Factsheet CC/FS24 which states in relevant part:

**“Penalties for not paying the accelerated partner payment on time**

If you do not pay the full amount shown in your partner payment notice by the date it is due, you will be liable to a penalty. If we charge you a penalty, you will have to pay it as well as the accelerated partner payment...”

(10) On 28 November 2014, HMRC issued to Mr Pau a PPN in respect of Ingenious Film Partners 2 LLP (“the first PPN”). This required Mr Pau to pay £340,904.14 by 3 March 2015. Mr Pau says he did not receive a copy of the first PPN in late November/early December 2014 (when it would have been expected to have been delivered to him, it having been sent out on 28 November 2014). Mr Pau says he cannot now recollect when he received the first PPN. The first PPN incorrectly referred to “surcharges” (rather than a penalty) “if you do not pay in full and on time”.

(11) On 7 January 2015, Mr Pau called HMRC in response to a voice message that HMRC had earlier left for him. HMRC explained that the reason for the earlier call was to confirm Mr Pau had received the first PPN. Mr Pau stated he had not received it. HMRC offered to issue a duplicate. It was unclear on the evidence before us whether Mr Pau requested a duplicate and/or whether HMRC ever issued a duplicate.

(12) On 9 January 2015, HMRC wrote to the Mr Pau in respect of Ingenious Games LLP. In relevant part that letter stated:

“We are writing to tell you that you will soon need to make a payment of the amount that relates to your share of the partnership’s use of the tax avoidance scheme shown in this letter.

...

The legislation means that those who have used a tax avoidance scheme may have to pay the amount that relates to their use of the scheme before the final amount has been agreed or determined by a tribunal or court. Such payments are known as ‘accelerated payments’. There is more information about this in the enclosed factsheet CC/FS24.

...

In the next 2 to 4 weeks, we will send you a partner payment notice showing the amount that we believe relates to your share of the partnership’s use of the scheme...

Once you receive the notice, you will be legally required to pay the amount shown on it within 90 days of the date that you receive it. That date may change if you make representations objecting to the notice...”

(13) The 9 January 2015 letter enclosed a further copy of Factsheet CC/FS24.

(14) On 14 January 2015, HMRC wrote to Mr Pau “to remind you that you will soon need to pay the amount that we believe relates to you in respect of the partnership’s use of the tax avoidance scheme [Ingenious Film Partnership 2 LLP].” The letter repeated that the due date for payment was 3 March 2015. The amount due was said to be £34,904.14. This was an error. The amount due was actually £340,904.14. The 14 January 2015 letter went on to say that “if you do not pay in full and on time, you will be liable to penalties. Any such penalties would be payable in addition to the amount due”. The letter then explained when penalties would become payable and how the penalty amount would be calculated.

(15) On 23 January 2015, HMRC issued to Mr Pau a PPN in respect of Ingenious Games LLP (“the second PPN”). This required Mr Pau to pay £133,019.20 by 28 April 2015. The second PPN incorrectly referred to “surcharges” (rather than a penalty) “if you do not pay in full and on time”.

(16) On 26 January 2015, HMRC wrote to Mr Pau on a “without prejudice” basis. In relevant part the 26 January 2015 letter stated:

Thank you for expressing an interest in resolving your tax affairs following your investment in Ingenious Games LLP and Ingenious Film Partners 2 LLP...

You will now find attached:

- A calculation explaining how much you will need to pay to take advantage of the settlement opportunity.
- Two copies of a Deed of Settlement which we will need you to sign and return to us to formally bring this matter to a conclusion (see below)

Your total liability under the terms of this opportunity is £402,832.90.

**What you need to do now**

...

If you wish to resolve this issue now under the settlement opportunity for the tax years that are set out in the Deed then you should arrange for both copies of the Deed to be **signed and witnessed**...[and] returned by post to the address above...

...

You must submit your completed Deeds within **30 days** of the date of this letter if you want to take advantage of this opportunity. If we have not received the signed Deeds by 25 February 2015 then we will assume that you have chosen not to resolve this issue and the settlement opportunity will no longer be available to you.

...”

(17) On 14 March 2015, HMRC wrote to Mr Pau “to remind you that you will soon need to pay the amount that we believe relates to you in respect of the partnership’s use of the tax avoidance scheme [Ingenious Games LLP].” The letter repeated that the due date for payment was 28 April 2015 and the amount due was £133,019.20. The 14 March 2015 letter went on to say that “if you do not pay in full and on time, you will be liable to penalties. Any such penalties would be payable in addition to the amount due”. The letter then explained when penalties would become payable and how the penalty amount would be calculated.

(18) On 25 March 2015, HMRC wrote to Mr Pau “We have tried to contact you to ask you to pay the above amount [£340,904.14], but you have still not paid. If you do not pay within the next few days, we will start enforcement proceedings...”

(19) On 22 April 2015, HMRC (Chris Hetherington, Inspector of Taxes) wrote to Mr Pau stating in relevant part:

“I write further to our recent telephone conversations. As we keep missing each other, it seems best to write to you to set out the current position so that you can decide what you wish to do now.

#### Chronology

28.11.2014: HMRC issued a Partner Payment Notice (PPN) to you in respect of Ingenious Film Partners 2 LLP. Amount due £340,904.14.

23.01.2015: HMRC issued a Partner Payment Notice (PPN) to you in respect of Ingenious Games LLP. Amount due £133,019.20

26.1.2015: HMRC wrote to you, enclosing a Settlement Deed, offering you the opportunity to settle your involvement in both partnerships under the Autumn Statement Settlement Opportunity (ASSO). The letter asked you to return the completed Deeds to HMRC by 25 February 2015, if you wished to take up the Settlement Opportunity.

#### Present Position

You expressed interest in settling under the Settlement Opportunity but you wished to consider the matter in depth before completing the Deeds and you have spoken with Sian Craig, Declan O’Hara and myself with queries about the partnerships and HMRC’s enquiries into them.

At today’s date HMRC has not received payment of the Partner Payment Notices.

#### What happens now

The new Accelerated Payments legislation (under which the Partner Payment Notices were issued) and the ASSO are two entirely discrete processes which give two entirely different outcomes. The ASSO allows for certainty and closes the issue (the case is currently at Tribunal and so settlement means that the outcome of the litigation will not affect partners who have settled).

The Partner Payment Notice is merely a 'payment on account' and the matter remains open until the Tribunal process has been exhausted, which may take some years.

It is important to note that the Accelerated Payments process continues quite separately from the ASSO. In other words, the amounts due under the PPNs remain enforceable even if the partner is looking to settle under the ASSO. Only when settlement under the ASSO has been concluded i.e. HMRC has received the partner's correctly completed Deed, can the Accelerated Payments process be set aside. If the partner settles under the ASSO after he/she has paid the PPN, the PPN is set aside and the amount paid against the PPN can then be set against the ASSO settlement amount and (if appropriate) a repayment may be made.

Please note that HMRC cannot postpone the Accelerated Payments process while a partner is deciding whether or not to settle.

If you do wish to settle, please return the completed Deeds as soon as possible. It is not possible to keep the ASSO open indefinitely, so please let me know how you wish to proceed."

(20) On 1 May 2015, HMRC (Chris Hetherington, Inspector of Taxes) wrote to Mr Pau stating in relevant part:

"I write further to my letter of 22 April 2015.

As we continue to miss each other on the telephone, it once again seems best to write to you to set out the current position so that you can decide what you wish to do now.

As I said in my letter of 22 April, it is not possible to keep the Autumn Statement Settlement Opportunity (ASSO) open to you indefinitely and I write now to ask you how you wish to proceed.

...

There is nothing more that I can add to my letter of 22 April about the current state of HMRC's enquiries into the Ingenious Partnerships....I write now to confirm that if we do not receive your signed Deeds by Friday 29 May 2015 then the opportunity to settle under the terms of the ASSO will close on that date.

Finally, as we continue to miss one another on the telephone, I suggest that from now on, we communicate by email and post."

(21) On 27 May 2015, HMRC issued Mr Pau with a late payment penalty in respect of the first PPN. The amount of the penalty was £16,844 – this amounted to 5% of the accelerated payment outstanding at 3 March 2015 (and took into account a £4,023.58 set-off against the PPN from an overpayment arising from Mr Pau's 2014 Self-Assessment).

(22) At 17:26 on 28 May 2015, Mr Pau sent to Ian Sykes of HMRC's Accelerated Payments team an email as follows:

"Thank you for your time this afternoon and previous calls.

As you are aware, Chris Hetherington and I have been exchanging emails & voicemails. He had been professional, thus my comment is not critical of him but the HMRC system.

As you are aware following our call last week, I reached out to Chris to finalise my settlement agreement. I have called a number of times and the line is not available. You too have experienced this issue.

I was looking for him to confirm your feedback that by me accepting the settlement agreement, that if HMRC does in future lose the case against Ingenious Media my settlement amount will be returned in full. Thank you for confirming this. As discussed I will accept the settlement on this basis and please accept email as confirmation.

As discussed, could you send over the bank details for payment. I will make a payment of c£50k tomorrow. If the appropriate representative from settlements or another team can call me....so that we can agree the exact amounts plus a time line. As I do have questions outstanding, which you acknowledged is fair.”

(23) On 18 June 2015, HMRC issued Mr Pau with a late payment penalty in respect of the second PPN. The amount of the penalty was £6,650.56 – this amounted to 5% of the accelerated payment outstanding at 28 April 2015.

(24) On 19 October 2015, HMRC issued Mr Pau with a further late payment penalty in respect of the first PPN. The amount of the penalty was £10,594.02 – this amounted to 5% of the accelerated payment outstanding at 3 August 2015 (and took into account £125,000 paid by Mr Pau against the first PPN between 27 May 2015 and 3 August 2015).

(25) On 26 October 2015, HMRC issued Mr Pau with a further late payment penalty in respect of the second PPN. The amount of the penalty was £6,650 – this amounted to 5% of the accelerated payment outstanding at 28 September 2015.

20. Mr Pau gave the following evidence:

(1) He had always intended to settle the underlying tax dispute. The reason settlement had not been progressed more quickly was because HMRC had failed to answer his questions and/or had provided contradictory answers.

(2) He had numerous telephone phone calls with HMRC officers. A number of these are not recorded in HMRC’s log. Further, on numerous occasions, he was told by HMRC that he would receive a call back but did not.

(3) HMRC made clear to him that whilst settlement discussion were ongoing, provided he could demonstrate a genuine intention to settle, no penalties would be applied.

(4) On 28 May 2015, he spoke with Ian Sykes of HMRC who advised him that if he settled the underlying tax dispute and HMRC subsequently lost the Ingenious litigation, HMRC would refund all monies back to him. He then proceeded to send the settlement deeds (which he had signed at an earlier date) to HMRC by way of first class post. He then spoke with Ian Sykes again to confirm he had posted the deeds. He then emailed Ian Sykes to confirm that he agreed to settle the underlying tax dispute. He believes this to be the correct order of events but cannot be sure of the exact sequence.

(5) He did not keep a copy of the signed settlement deed.

(6) His signature on the deeds had been witnessed by a GP during a routine doctor’s appointment. He could not remember the date on which the deeds were signed or which doctor witnessed his signature but could find the doctor’s name out if need be.

(7) In correspondence with HMRC post 28 May 2015, he referred to having settled the underlying tax dispute and yet HMRC never said that they had not received his signed settlement deeds.

(8) On 1 June 2015, HMRC contacted him to say that he should not have been told that if he settled and HMRC subsequently lost the Ingenious litigation, HMRC would refund all monies back to him.

(9) He had not received the first PPN as at 7 January 2015. He told HMRC this. He does not know when he first saw the first PPN.

21. We make the following findings of fact:

(1) Mr Pau received the first PPN at the end of November/start of December 2014, and the second PPN shortly after 23 January 2015.

In relation to the first PPN, we reach our conclusion because the first PPN was dated 28 November 2014 and we were told that HMRC would have posted this to Mr Pau on or just after that date. Section 115 of the Taxes Management Act 1970 provides:

“(1) A notice or form which is to be served under the Taxes Acts on a person may be either delivered to him or left at his usual or last known place of residence:

(2) Any notice or other document to be given, sent, served or delivered under the Taxes Acts may be served by post, and, if to be given, sent, served or delivered to or on any person by HMRC may be so served addressed to that person—

(a) at his usual or last known place of residence, or his place of business or employment

...”

and s 7 of the Interpretation Act 1978 provides:

“Where an Act authorises or requires any document to be served by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

Mr Pau has not proved that he did not receive the first PPN shortly after 28 November 2014, and therefore the statutory presumption contained in s 7 of the Interpretation Act 1978 has not been rebutted. Mr Pau acknowledged that he had received the first PPN *at some point* but he could not say when. We note that on 7 January 2015, Mr Pau did tell an HMRC telephone operator that he had not received the first PPN as at that date. However, on balance, we consider that the Mr Pau *had* received the first PPN before that date, and that his statement to HMRC on 7 January 2015 was inaccurate. This conclusion is supported by the fact that on 14 January 2015, HMRC wrote to Mr Pau “to remind you that you will soon need to pay the amount that we believe relates to you in respect of the partnership’s use of the tax avoidance scheme [Ingenious Games LLP]” and specifically referred to “the partner payment notice that we sent to you on 28 November 2014”. Mr Pau is not someone that was reluctant to contact HMRC as shown by the emails and telephone logs that were before the Tribunal. Had he not received the first PPN or had he received it considerably later than 28 November 2014, we are confident that Mr Pau would have specifically raised this with HMRC in response to the 14 January 2015 letter. He did not. Further, we have formed the view (from the telephone logs, emails and, importantly, having heard Mr Pau give evidence) that Mr Pau was, in the early months of 2015, attempting to “keep all of his options open” (both with regards to the PPNs and

settlement of the underlying tax dispute) and we consider that his inaccurate assertion on 7 January 2015 that the first PPN had not yet been received was made as part of this attempt.

Mr Pau did not dispute receiving the second PPN.

(2) It was made clear to Mr Pau that if the PPNs were not paid by the due date, penalties would be charged (see Factsheet CC/FS24 enclosed with the letters to Mr Pau dated 14 November 2014 and 9 January 2015; the 28 November 2014 and 23 January 2015 PPNs - albeit using the language of “surcharges” rather than “penalties”; the 14 January 2015 and 14 March 2015 reminder letters which clearly stated “if you do not pay in full and on time, you will be liable to penalties”) and that the PPNs continued in force unless and until Mr Pau settled the underlying tax dispute by providing HMRC with the signed settlement deeds (see 22 April 2015 letter which stated “It is important to note that the Accelerated Payments process continues quite separately from the ASSO, in other words, the amounts due under the PPNs remain enforceable even if the partner is looking to settle under the ASSO. Only when settlement under the ASSO has been concluded i.e. HMRC has received the partner’s correctly completed Deed, can the Accelerated Payments process be set aside. If the partner settles under the ASSO after he/she has paid the PPN, the PPN is set aside and the amount paid against the PPN can then be set against the ASSO settlement amount and (if appropriate) a repayment may be made.”) We reject Mr Pau’s claim that he was told that penalties would not be charged so long as settlement discussions were ongoing and he had a genuine intention to settle. Mr Pau’s claim in this regard is not consistent with the correspondence we have seen (as detailed above) and is not reflected in the telephone logs. We do not accept Mr Pau’s claim that such representations were made to him but not recorded.

(3) Mr Pau wanted to keep all of his options open. He was only willing to settle if HMRC confirmed that, should it lose the Ingenious litigation, it would return all settlement monies to Mr Pau. HMRC did not confirm this. Rather, HMRC specifically told Mr Pau in the 22 April 2015 letter that the “ASSO allows for certainty and closes the issue (the case is currently at Tribunal and *so settlement means that the outcome of the litigation will not affect partners who have settled*)” (emphasis supplied).

(4) Mr Pau clearly found it frustrating that the undertaking he sought in relation to return of the settlement monies (i.e. that if he settled and HMRC lost the Ingenious litigation, HMRC would refund the settlement monies to him) was not forthcoming. Mr Pau also found it frustrating that HMRC would not engage with his other questions (relating to the role of the FCA in the Ingenious schemes and the date that HMRC notified Ingenious of the “on-going review”). However, even if Mr Pau felt frustration and was of the view that HMRC had not adequately answered his questions, it remains the case that he had been told in clear terms that the PPNs continued in force unless and until he settled the underlying tax dispute by providing HMRC with the signed settlement deeds, and had been told in clear terms that penalties were payable if the PPNs were not complied with.

(5) Mr Pau did not send the signed settlement deeds to HMRC by 29 May 2015. In reaching this conclusion we place particular weight on the following:

- (a) HMRC have no record of receiving the signed deed;
- (b) At 17:26 on 28 May 2015, in an email to Ian Sykes, Mr Pau stated “...following our call last week, I reached out to Chris to finalise my settlement agreement...I was looking for him to confirm your feedback that if HMRC does in future lose the case against Ingenious Media my settlement amount will be returned

in full. Thank you for confirming this. As discussed, I will accept the settlement on this basis and please accept email as confirmation.” In his evidence to the Tribunal, Mr Pau said that this email was sent *after* he had posted the signed deed to HMRC. However, had the signed deed already been posted we would have expected Mr Pau to say as much in his email to Ian Sykes. Further, the language used in the email “I will accept the settlement on this basis and please accept email as confirmation” is not consistent with Mr Pau having sent to HMRC a signed deed of settlement (given, if the signed deed had been sent, there would be no need to ask HMRC to “accept email as confirmation”);

(c) On 1 June 2015, Mr Pau spoke on the telephone with HMRC and said he was still in talks with the settlements team. Such a comment would make no sense if he has posted the settlement deeds;

(d) During the 1 June 2015 telephone call with HMRC, Mr Pau asked whether any monies paid against the PPNs would be refunded if HMRC lost the litigation. Such a question would have been unnecessary and irrelevant if Mr Pau has already settled the underlying tax dispute by providing HMRC with the signed settlement deeds. We note that at this point HMRC said that it wanted “proof that he did in fact send the [signed deeds to HMRC]”. Mr Pau said he would fax HMRC the following day as “all the papers were at home”. Mr Pau’s submission that HMRC has never challenged his assertion that he posted the settlement deeds is therefore incorrect;

(e) On 2 June 2015, in response to HMRC saying that the date for receipt of the signed settlement deeds had passed, Mr Pau stated that he had posted the signed deeds on 27 May 2015. This is inconsistent with his evidence that he gave to the Tribunal that he posted the deeds on 28 May 2015;

(f) Mr Pau was not able to produce a copy of the signed deeds (he said he did not keep one) and did not adduce any evidence from the GP that he said witnessed his signature; and

(g) Having seen the emails and telephone logs and having heard Mr Pau give evidence, we concluded that Mr Pau was, at the end of May 2015, still trying to keep all of his options open. He was only willing to settle the underlying tax dispute if HMRC gave him a clear undertaking that any settlement monies paid would be refunded if HMRC lost the Ingenious litigation. No such undertaking was provided by HMRC, but Mr Pau seems to have sought to imply such an undertaking from his 28 May 2015 telephone call with Ian Sykes. That is why Mr Pau was willing to say in the 28 May 2015 email “I will accept the settlement *on this basis...*” (which he would later be able to resile from if HMRC did not agree to give the undertaking he wanted in relation to the return of the settlement monies) but was not willing to send to HMRC signed deeds (which would have been much more difficult to resile from).

## CONCLUSION

22. We have found that Mr Pau received the PPNs. He did not pay them by the end of the payment periods. He is therefore liable to a penalty in relation to each of the PPNs. Further, monies due under the PPNs remained outstanding 5 months after the day following the end of the payment periods. Mr Pau was therefore liable to a further penalty in relation to each of the PPNs.

23. We have found:
- (1) it was made clear to Mr Pau that, unless and until the signed deeds of settlement were received by HMRC, the PPNs remained due for payment;
  - (2) it was made clear to Mr Pau that late payment of the PPNs would result in penalties being charged;
  - (3) Mr Pau was not told that so long as settlement discussion were ongoing, he would not be charged penalties if he failed to make the payments due under the PPNs; and
  - (4) Mr Pau did not settle the underlying tax dispute by providing HMRC with signed deeds of settlement by 29 May 2015.
24. In all the circumstances, we do not accept that Mr Pau has a reasonable excuse for not paying the monies due under the PPNs.
25. No challenge is made by Mr Pau in relation to the amount of the penalties but, for the sake of completeness, we record that we are satisfied that the penalties were issued in the correct amounts. Further, we conclude that HMRC's view that there were no special circumstances justifying a reduction in the penalty amount cannot be said to be flawed in any way.
26. Mr Pau's appeal is dismissed.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

27. 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.

**DAVID BEDENHAM  
TRIBUNAL JUDGE**

**RELEASE DATE: 18 JUNE 2019**