



TC03079

Appeal number: TC/2013/01345

PAYE – returns and payments - penalties – reasonable excuse.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CROWNFOLD LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE RICHARD BARLOW
WARREN SNOWDON**

Sitting in public at North Shields on 22 October 2013

Alan Oliver finance director for the Appellant

Rosalind Oliver, presenting officer, for the Respondents

DECISION

5 1. This appeal concerns default penalties under the PAYE regime amounting to a total of £8,852.95. The calculation of the penalties was not in dispute. The penalties arose because of delays in making payments to HMRC over the period between 5 June 2011 and 5 February 2012. The delays were for short periods only but the appellant does not deny that there were delays.

10 2. The appellant sought to rely upon evidence of conversations between officials of HMRC and a Mr Jenney who is a director of the appellant company but deals with production issues rather than finance. We noted that Mr Jenney was not present and Mr Oliver said he had decided to proceed without calling him to give evidence and would report to us what Mr Jenney had told him. We warned Mr Oliver that hearsay evidence is likely to be given as much weight as direct evidence and asked if Mr
15 Oliver wanted to apply for an adjournment, which incidentally Mrs Oliver said she would not oppose, but Mr Oliver declined to make an application and we proceeded with the hearing.

20 3. The appellant contends that it has a reasonable excuse for the delays. It was said that during its previous trading history HMRC have often allowed it extensions of time for making payments without applying penalties for the late payments. The excuse put forward at best amounts to a suggestion that somehow the forbearance of HMRC in the past had lulled the appellant into a false sense of security about late payments but we reject that as a reasonable excuse. The appellant was under an obligation to pay its tax and cannot reasonably expect to be excused from penalties
25 just because HMRC had not imposed them in the past.

4. Mr Oliver asserted that on at least some of the relevant occasions Mr Jenney had spoken to officials of HMRC and had understood that time to pay had been allowed. Mrs Oliver had checked the commissioners record of telephone calls and HMRC deny that time to pay had been allowed.

30 5. We find that the appellant has not proved that time to pay was agreed on any relevant occasion and so that does not provide a reasonable excuse. We would add that even if time to pay had been granted that in itself would not provide defence to the penalties unless the appellant had also been informed that penalties would not be imposed if the time to pay agreement was complied with.

35 6. Mr Oliver also argued that HMRC were at fault in speaking to Mr Jenney rather than a member of the finance team. The appellant is a large company and had an annual turnover of approximately seven million pounds at the relevant time and had several staff who dealt with finance. We do not think that HMRC can be faulted for having spoken to a director who apparently did not ask them to speak to a finance
40 officer and who took it upon himself to discuss the issues that arose. There is no evidence that Mr Jenney was reluctant to deal with the issues.

7. Mr Oliver frankly admitted that had the appellant realised penalties would be imposed it would have arranged to pay on time. That precludes any excuse based on an unexpected event causing an inability to pay.

5 8. In correspondence the appellant had put forward cash-flow difficulties as a reason for late payment on one occasion and that on two occasions it had said a payment had been overlooked and on one that the late payment was a result of a staff member's holiday. Not only do those facts, if true, not amount to a reasonable excuse but also they further undermine the factual basis for any of the excuses unsuccessfully put forward at the hearing.

10 9. The appeal is dismissed.

15 10. 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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**RICHARD BARLOW
TRIBUNAL JUDGE**

RELEASE DATE: 25 November 2013

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