



**TC02131**

**Appeal number: TC/2011/06008**

*TYPE OF TAX – In-year penalties for late payment of PAYE – whether reasonable excuse for late payments – held no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ROLA-TRAC LIMITED**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JOHN WALTERS QC  
SONIA GABLE**

**Sitting in public at Norwich on 19 June 2012**

**The Appellant did not appear and was not represented  
P Osborne, for the Respondents**

## DECISION

1. When this appeal was called on for hearing there was no appearance by or on behalf of the Appellant, Rola-Trac Limited (“Rola-Trac”). The Tribunal decided to hear the appeal in the absence of Rola-Trac, being satisfied that Rola-Trac’s representative, Richard Day of Price Bailey, had been notified of the hearing and that it was in the interests of justice to proceed with the hearing (rule 33 of the Tribunals Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 refers).

2. Rola-Trac appealed against a PAYE late payment penalty imposed for the tax year 2010-11 pursuant to Schedule 56, Finance Act 2009, originally in the amount of £6,891.86, but amended following the tribunal decision in the appeal of *Agar* (TC/2011/04910) to the lower amount of £6,240.54.

3. We had before us a bundle of documents. From this evidence we find the following facts.

4. In the tax year ended 5 April 2011, Rola-Trac was obliged to make 11 monthly payments of PAYE relative to that tax year. They were all made late.

5. In the case of each monthly payment (except that due on 19 December 2010) Rola-Trac contacted the Commissioners (“HMRC”) requesting permission to defer the payment. However in the case of each monthly payment except that due on 19 September 2010, this was after the due payment date. In the case of the payment due on 19 September 2010, successive later dates for payment were agreed between Rola-Trac and HMRC but they were not kept to and payment was eventually made on 2 November 2010 after a date of 28 October 2010 had been agreed.

6. In its notice of appeal, Rola-Trac bases its case on the fact that ‘Business Payment Support’ – i.e. application to make late payments – was ‘notified prior to late payments’. However, as noted above, the notification was not generally before the due date, and when it was, the agreed deferred payment dates were not adhered to.

7. Mr Osborne told us that as a matter of practice HMRC will not charge penalties where a deferred payment date is agreed before the due payment date and where payment is made on the deferred date agreed. These conditions were not fulfilled in this case.

8. Rola-Trac also says that although the payments were made late, they were all made in full. HMRC does not dispute this, but it does not rank as a reasonable excuse for late payment.

9. The Tribunal was satisfied that the penalties had been correctly calculated.

10. We cannot accept that Rola-Trac had a reasonable excuse for any late payments of PAYE pursuant to paragraph 16, Schedule 56, Finance Act 2009. Nor can we make any finding that the penalties are disproportionate or unenforceable.

11. For these reasons we dismiss the appeal.

12. 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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**JOHN WALTERS QC  
TRIBUNAL JUDGE**

**RELEASE DATE: 12 July 2012**