



TC02432

Appeal number: TC/2012/08266

INCOME TAX - Penalty. Reasonableness of. Allocation of payments to debt yet to accrue due.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

VOICENET SOLUTIONS LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE GERAINT JONES Q. C.
DAVID WILLIAMS ESQ CTA**

Sitting in public at 45 Bedford Square, London WC1 on 09 November 2012.

Mr. Humphreys for the Appellant

Mrs Weare, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

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DECISION

1. The appellant, Voicenet Solutions Ltd, received an assessment for a penalty in the sum of £15,105.11 based upon it, paying its PAYE and NI sums due to the respondent, late on eleven occasions in the fiscal year ended 5 April 2011. By reason of the ratchet mechanism applicable to such penalties it means that a penalty has been charged at the rate of 4% of the total sum due and payable throughout those months, pursuant to paragraph 6 of schedule 56, Finance Act 2009.
2. This is an appeal against that total penalty sum in which the appellant contends that the penalty is disproportionate and unfair. Whether we agree with that proposition, simply does not matter. Parliament has not seen fit to vest this Tribunal with jurisdiction to decide what is fair and reasonable even if the facts point to attenuating circumstances.
3. This is not a case where the appellant contends that there has been a "reasonable excuse" for the lateness of the payments generally or of any of them in particular.
4. The appellant's complaint is that it was late in making payments in each of the eleven months, by a matter of only a few days. The appellant points out that the penalty is no greater for somebody who pays many months later, as opposed to somebody who is merely a few days late. That observation is entirely correct but the degree of lateness was obviously, albeit surprisingly and perhaps unjustly, something which Parliament did not consider relevant to the magnitude of the penalty. The scheme in force has obvious potential for creating unfairness and leaving some taxpayers with a justifiable sense of grievance.
5. As Mrs Weare submitted, the scheme is laid down by statute and we cannot depart from it except in two circumstances. The first is where, as a matter of fact, the Tribunal finds that the payments (or one or more of them) were not late. The second is where the appellant makes out a reasonable excuse for lateness generally or in some instances.
6. As we are unable to look at anything other than whether the payments were late and whether the penalty has been calculated in accordance with the statutory scheme, it follows that the appeal must fail.
7. However, we should mention that the appellant raised a subsidiary point, which was that the respondent should have allocated the payments that it received in the manner most favourable to the appellant. That is the respondent's published position. In fact, in this case, in the absence of any specific request by the appellant to do otherwise, the respondent simply allocated payments in priority to the oldest PAYE debt, then any balance to the next oldest, and so on. The appellant, however, claimed that the respondent should have allocated payments in such a way that only the oldest month with unpaid liabilities was covered by those payments, with the balance being set against months not yet in accrued. The ratchet mechanism referred to above would then have operated in the appellant's favour by minimising the degree of lateness for penalty purposes. Mrs Weare conceded that if such an allocation had been requested it

would have been implemented by the respondent, but argued that an appellant cannot “have a second bite at the cherry” in this respect. Without expressing any opinion on the issue of whether the respondent has such a duty as the appellant contends, we observe that in this case, allocating payments in the most favourable manner would have meant the respondent allocating payments not to sums accrued due, but to sums yet to accrue due. We can understand a creditor allocating payments to debts presently outstanding in the manner most favourable to the debtor, but do not understand there to be any principle that requires somebody who will become a creditor in respect of a sum yet to accrue due, to allocate a payment presently received to the sum yet to become due.

8. 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.

Decision.

Appeal dismissed. The penalty is upheld in the sum assessed.

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GERAINT JONES Q. C.
TRIBUNAL JUDGE

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RELEASE DATE: 17 December 2012

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