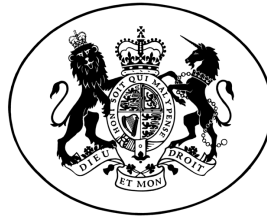


SUMMARY



TC03464

Appeal number: TC/2013/07532

PAYE – Failure to PAYE Returns and PAYE as due – penalties raised under Schedule 56 Finance Act 2009 – Reasonable Excuse – Appeal Dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BRENTHAM CLUB LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE IAN W. HUDDLESTON

Sitting at Bedford Square, London in public on 25 February 2014

Mrs Gloria Orimoloye, Officer, appeared on behalf of HMRC

Mr John Kinder, Chairman, appeared on behalf of the Appellant

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SUMMARY DECISION

Facts

- 5 1. This Appeal is against default surcharges levied under Schedule 56 of the Finance Act 2009 for the late filing of PAYE returns and payments of PAYE in the tax year ending 5 April 2012. The total penalty is £2,059.91.

Summary Decision

- 10 2. The decision of the Tribunal was announced at the Hearing and by the agreement of HMRC and the Appellant it was agreed that a summary decision would be issued.

The Appellant's Case

3. Brentham Club Limited, is a not for profit organisation, which has been set up to promote sport amongst young people.
4. The facts themselves are not in dispute (as the Appellant acknowledged) in that for the tax year in question there were, in fact, eleven breaches in terms of late filing and late payment of PAYE returns. This resulted in ten penalties issued under Schedule 56 of the Finance Act 2009 – the first penalty in that year having been ignored but prompting a warning letter to the Appellant.
- 15
5. The Appellant does not dispute those facts. The Appellant, however, asserts that it has a reasonable excuse in relation to each of the defaults and in support of that contention both in its appeal notice and in the oral evidence produced to the Tribunal asserted the following grounds as support of that argument:-
- 20

(1) that it is a voluntary organisation with limited resources available to it;

- 25 (2) that the Appellant had overreached itself in terms of undertaking an extension to Club premises in 2009 which resulted in on-going straightened financial circumstances leading it to be in financial difficulties meaning that in the year in question it was unable to discharge the PAYE payments;

(3) that it paid the PAYE liability as and when it could;

- 30 (4) that it felt that HMRC (through the contact which it had with both the officers of the Club) both in relation to PAYE and VAT payments, had failed to highlight that if the Club did not pay the tax and/or make the returns when due that it would face penalties.

HMRC's Case

- 35 6. HMRC's case was relatively straightforward. Simply put, on the facts, its case was that there was an acknowledgement by the Appellant of eleven late filings and delay in the payment of the resultant PAYE.

7. Both in the initial assessment and on review of that decision, HMRC determined that the grounds for reasonable excuse were not made out and specifically in response to the Appellant's arguments replied as follows:-

5 (1) regardless of whether or not a tax payer is a voluntary body it must comply with the tax code and make payments when they are due;

10 (2) that to the extent that the Club was facing financial difficulties arising out of a decision to make expenditure in 2009 that did not constitute a sudden or unexpected impact on the financial operation of the Club that could be brought into account in relation to the assessment of its alleged defence of reasonable excuse;

(3) that PAYE should be deducted from an employees salary and accounted for to the Revenue and certainly was not available to fund short term cash problems which the Club might face;

15 (4) that the Club was at all times aware of the statutory obligation to both file returns and pay PAYE and that it could not be said to have been led into a situation where it could rely on HMRC's general assertions to now argue reasonable excuse.

Decision

20 8. As indicated above the decision that the Appeal would be dismissed was announced to the parties at the Tribunal. In support of that conclusion this Tribunal makes the following findings:-

25 • as regards the nature of the Appellant's status as a voluntary body whilst one might have sympathy with the fact that a voluntary body may have limited resources nonetheless it would be unfair to other tax paying entities to treat it differently. As such, therefore, all voluntary bodies – where they are liable to account for PAYE – must adopt the same formula and approach as is expected from other "tax payers";

30 • whilst Mr Kinder explained very eloquently the impact which the investment decisions in 2009 had upon the Club's finances nonetheless we find it difficult to accept the argument that those circumstances should prevail and provide the grounds for a reasonable excuse in the tax year 2011/2012. Mr Kinder explained that the finances of the Club were such that Club subscriptions were paid in April/May of each year (at which point the Club received its main income for the year) and that it effectively had to "live off" that income for the next 12 month period – absent sporadic fund raising etc. From that we conclude that the Club was aware of the finances which were available to it and should have been responsible for maintaining payments of PAYE etc as and when they fall due throughout that year. This is something we find ought to have been encompassed within their financial projections and we agree with HMRC that it is not acceptable for the Club to effectively utilise PAYE deductions as short term financing. We did put it to both Mr Kinder and his colleague Ms Kowalska (who managed the Club) whether or not there were more and severe unexpected short

term funding crises in the year 2011/2012 but we received no evidence to that effect;

- as to the question as to whether or not HMRC misrepresented the position to the Appellant this clearly is something which falls outwith our jurisdiction. We do, however, find that there was no evidence to support the conclusion that representations were made to the Appellant that penalties would not ensue for late payment of PAYE. Rather it seems that HMRC appear to have accepted that there would be late payments but did not make any express comment as to the consequences which might ensue arising from those late payments. To argue that such dialogue (or absence of it) grounds a case for reasonable excuse is we think stretching the point.

8. As indicated above whilst we have sympathy with the Appellant and the position in which it finds itself nonetheless we do not find that the grounds for reasonable excuse have been made.

9. We did enquire as to whether time to pay arrangements had been negotiated and it was indicated to us that such arrangements had previously been entered into but had been breached by the Appellant. Whilst this is outwith our authority we do encourage HMRC, in the circumstances of this particular case, to negotiate with the Appellant in the hope that an amicable arrangement can be achieved whereby all outstanding tax liabilities can be paid over a period of time.

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.

**IAN HUDDLESTON
TRIBUNAL JUDGE**

RELEASE DATE: 2 April 2014