



**TC03477**

**Appeal number: TC/2013/07490**

*Late penalty imposed for late payment of tax - reasonable excuse – appeal dismissed and penalty upheld*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SUSAN BANKS**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE PETER PETHERBRIDGE**

**The Tribunal determined the appeal on the 13 February 2014 without a Hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated the 29 October 2013 (with enclosures), HMRC's Statement of Case submitted on the 11 January 2014 (with enclosures).**

**The Appellant has requested full written findings and reasons, which are now provided.**

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## DECISION

1.

2. The Tribunal decided that a first late payment penalty imposed under paragraph 3 (2) of Schedule 56 Finance Act ("FA") 2009 and a second late payment penalty imposed under paragraph 3 (3) of Schedule 56 FA 2009 for the failure to pay tax on time for the year ending the 05 April 2011 should be upheld.

### The Facts

3. The Notice to File for the year ending the 05 April 2011 was issued to the Appellant on the 06 April 2011. The filing date was the 31 October 2011 for a non-electronic Return or 31 January 2012 for an electronic Return.

4. The electronic Return for the year 2011 was received on the 23 January 2012.

5. The Appellant chose to calculate her liability and, therefore, knew the sum to pay by the due date and filed on line.

6. The tax liability for the year was £18,138.20 and the tax was due to paid on or before the 31 January 2012 in accordance with Section 59B (4) Taxes Management Act 1970.

7. At the penalty date of 02 March 2012, the tax liability remained unpaid.

8. Five months after the penalty date of 02 March 2012, £1,362.24 of the tax liability remained unpaid.

9. The tax liability was finally paid in full on the 22 January 2013.

10. HMRC issued a Notice of Penalty Assessment on the 18 April 2012 in the amount of £906 being 5% of the tax unpaid at the first penalty date.

11. HMRC issued a Notice of Penalty Assessment on the 18 December 2012 in the sum of £68 being 5% of the tax unpaid 5 months after the penalty date.

### The Appellant's appeal

12. On the 13 July 2012, the Appellant appealed against the penalty notification issued on the 18 April 2012 in the sum of £906 stating that there was a delay in transferring the funds to meet her liability, but that she had paid all the money owed for the year ended 2011 by the end of March 2012. The Appellant said that she paid £17,000 as she was on a limited income and the penalty of £906 would cause her difficulties.

13. On the 23 January 2013, HMRC received an appeal against the penalty notification issued on the 18 December 2012 in the sum of £68 stating in her grounds of appeal that she had a Time to Pay agreement on the 20 July 2012 with a payment plan, which would be reviewed on the 15 December 2012. She said that she was unable to pay the agreed amount

but continued to reduce the debt each month and by the time HMRC received her appeal letter the balance would be reduced to £391.

5 14. On the 17 July 2012, the Appellant was advised by HMRC that the first 30-day penalty in the sum of £906 was due and payable. There was no request for a review of the decision of the 30 January 2012 as of the 24 July 2013.

#### The Tribunal's decision

15. The Tribunal noted that the Appellant had been making self-assessment Returns since 1996/1997 and copies of her Returns filed in the years 1996-1997 to 2009-2010 were within the submission.

10 16. The Appellant has been the subject of surcharges as a consequence of late payment of her tax liability in a number of previous years. The Tribunal consider that the Appellant would have been fully aware of the consequences of late payment.

17. HMRC's computer records for the Appellant showing the late payment surcharges imposed in previous years is at folio 18 of the submission.

15 18. Proposals made by the Appellant after the first late payment penalty trigger date, but by 30 days plus 5 months from the due date, could have avoided only the second and third late payment penalties. Similarly, proposals made after the second late payment trigger date, but by 30 days plus 11 months from the due date, can avoid only the third late payment penalty.

20 19. The appellant did not present HMRC with a payment proposal until the 13 July 2012, which was some 133 days after the first payment penalty date of 02 March 2012. That penalty in the amount of £906 remained due and payable.

25 20. Even if the Appellant included a payment proposal in an appeal made in April/May 2012 that was after the penalty date of the 02 March 2012 and her subsequent failure to adhere to the terms of an agreed Time to Pay arrangement, would have rendered any such proposal null and void.

21. The Appellant's tax return for 2010-2011 was filed on line on the 31 January 2012 and included a self-calculation of the tax due for that year.

30 22. The Tribunal is satisfied that the Appellant would have been aware of both the due date for payment the liability due for the tax year 2010-2011 well in advance of the 02 March 2012 penalty date.

23. However, the Appellant did not contact HMRC to request a Time to Pay arrangement until the 13 July 2012.

35 24. The Tribunal acknowledge that a Time to Pay arrangement was agreed on the 20 July 2012 and under that arrangement, the Appellant was required to make a first payment of £344 on the 15 August 2012 with monthly payments of £344 per month thereafter. That arrangement was to be reviewed on the 15 December 2012 and HMRC would have received the last monthly payment due in accordance with that arrangement on the 15 March 2013.

25. The Appellant made a payment of £344 on the 14 August 2012, but she failed to make the agreed payment in subsequent months.

26. HMRC reviewed the Time to Pay arrangement in December 2012 and the Appellant was issued with a letter on the 30 January 2013 requesting an immediate payment of the sum due. The Time to Pay arrangement was withdrawn on the 20 February 2013.

27. As the Appellant failed to make the agreed payments, the penalty concession that otherwise would have applied ceases to do so and penalties are imposed as if there had been no Time to Pay arrangement.

28. The Tribunal accept that HMRC had no record of an appeal by the Appellant at any time prior to the 13 July 2012. The Appellant herself chose not to adhere to the terms of the Time to Pay arrangement agreed on the 20 July 2012.

29. HMRC provided the Appellant with statements of account issued to her on the 03 July 2012 and 13 December 2012 and both the first and second late payment penalties were shown on the statement of account issued to her on the 11 March 2013.

30. The Tribunal find no basis upon which the Appellant could have reasonably believed that the penalties had been waived.

31. The Tribunal find that the tax that was charged for the fiscal year 2010-2011 was statutorily due and the Appellant failed to make payment of the tax due by the 31 January 2012, the penalty date or the date on which the second penalty arose. Furthermore, the Tribunal find that a Time to Pay arrangement in respect of the 2010-2011 liability was not agreed until the 20 July 2012 and that the Appellant failed to adhere to the terms of that arrangement, as she did not pay her full tax liability due for the tax year 2010-2011 until the 22 February 2013.

32. The Tribunal find, therefore, that the late payment penalties for 2010-2011 had been correctly imposed.

33. The Tribunal do not find that the Appellant had a “*reasonable excuse*” for her failure to pay her tax on time nor by the date that each penalty arose. Also, the Tribunal consider there are no special circumstances which would allow the penalties to be reduced and, therefore, the Appellant’s appeal is dismissed and the £974 due in respect of the late payment penalties is confirmed.

34. The Appellant has a right to apply for permission to appeal against this decision pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. 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.

**P M PETHERBRIDGE**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 9 April 2014**

