



Neutral Citation: [2025] UKFTT 00068 (TC)

Case Number: TC09413

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing]

Appeal reference: TC/2016/03770

LATE PAYMENT PENALTIES – Non-payment of APN – Whether HMRC’s conclusion letters amount to “determinations” for the purposes of s 222(4) Finance Act 2014 – Whether reasonable excuse/special circumstances – Appeal dismissed

Heard on: 20 January 2025
Judgment date: 22 January 2025

Before

TRIBUNAL JUDGE BROOKS

Between

NICHOLAS HOMEWOOD

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: In Person

For the Respondents: Ashleigh Lafaurie, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. With their consent, the form of the hearing was, for the convenience of the parties, held remotely by video using Microsoft Teams. I was referred to an electronic hearing bundle and supplementary hearing bundle comprising 1,092 and 136 pages respectively.
2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.
3. The Appellant, Mr Nicholas Homewood represented himself. HM Revenue and Customs (“HMRC”) were represented by Ms Ashleigh Lafaurie, a litigator of HMRC’s Solicitor’s Office. I was very much assisted by their clear submissions and have taken all of these into account (including those to which I have not specifically referred in this decision).

BACKGROUND

4. Mr Homewood appeals against nine Late Payment Penalties (“LPPs”), totalling £6,215.73, as shown in the table below:

Year	Date Issued	Penalties	£
2005-06	21/06/16	First LPP	865.85
2005-06	28/09/16	Second LPP	865.85
2005-06	23/03/17	Third LPP	865.85
2006-07	21/06/16	First LPP	799.25
2006-07	28/09/16	Second LPP	799.25
2006-07	23/03/17	Third LPP	799.25
2007-08	02/03/16	First LPP	406.81
2007-08	19/08/16	Second LPP	406.81
2007-08	16/03/17	Third LPP	406.81
		Total	6,215.73

5. These LPPs were imposed by HMRC as a result of Mr Homewood’s non-payment of Accelerated Payment Notices (“APNs”) that had been issued to him by HMRC as a result of his participation in what HMRC described as “various tax avoidance arrangements” that had been marketed by Penfolds Limited.
6. There are two issues before the Tribunal, namely:
 - (1) Whether the conclusion letters issued by HMRC, on 15 January 2016 for the 2007-08 APN; on 10 March 2016 for the 2005-06 APN; and on 10 March 2016 for the 2006-7 APN, were “determinations” for the purposes of the “payment period” in s 223(5) of the Finance Act 2014 (“FA 2014”); and
 - (2) Whether Mr Homewood has a reasonable excuse for non-payment of the APNs.
7. In addition it is necessary to consider whether there are any “special circumstances” that could merit a reduction in the LPPs.

WHETHER ‘DETERMINATIONS’

8. It is not disputed that, in the present case, that HMRC were entitled to issue APNs to Mr Homewood under s 219 FA 2014.

9. Although there is no right of appeal against an APN, under s 222 FA 2014 a person given an APN may send written representations to HMRC objecting to it on the grounds that the conditions for issuing it were not met or objecting to the amount specified in the APN. Such representations must be sent to HMRC within 90 days of the APN being issued (see s 222(1) FA 2014).

10. Where such representations are received, HMRC must consider them (see s 222(3) FA 2014) and, having done so must, under s 222(4) FA 2014:

... determine whether a different amount (or no amount) ought to have been specified ... and then—

- (i) confirm the amount specified in the notice, or
- (ii) amend the notice to specify a different amount,

and notify P accordingly.

11. If HMRC confirm the amount specified in the APN, the person to whom it was given must pay the amount stated on it by the later of 90 days when the APN was given or within 30 days “beginning on the day in which P is notified of HMRC’s determination under s 222 FA 2014 (see s 223 FA 2014).

12. Section 226 FA 2014 provides that a failure to pay the amount specified in the APN within that time limit will result in a penalty of 5% of that amount. Another liability of 5% of that amount arises if not paid within five months and a further liability to a penalty, again of 5% of the APN amount, if it is not paid after 11 months. Section 226(7) FA 2014 provides that the penalty provisions in schedule 56 to Finance Act 2009 apply in such cases.

13. In this case, HMRC issued Mr Homewood with APNs (under s 219 FA 2014) on 28 July 2015 for 2007-08 and 30 July 2015 for 2005-06 and 2006-07.

14. It is common ground that, following receipt of the APNs, Mr Homewood did send written representations to HMRC. These were contained in two letters, both dated 19 August 2015, in which he objected to the amounts specified in the APNs. On 16 October 2015, Mr Homewood wrote again to HMRC making representations under s 222 FA 2014. That letter referred to and attached a copy of the letter of 19 August 2015. It also attached copies of Mr Homewood’s P11Ds.

15. HMRC acknowledged Mr Homewood’s letters of 16 October 2015 on 26 October 2015. HMRC’s letter explained that Mr Homewood’s letters:

“... are all with the team which considers representations against Accelerated Payment Notices [APNs] and you should wait to hear from them in due course. You need take no action in the interim.”

16. On 15 January 2016, HMRC wrote to Mr Homewood. The letter, which was headed “Representation in respect of Accelerated Payment Notice for the year ended 5 April 2008 - Isle of Man EBT and Loans also known as Penfolds Ltd”, explained that HMRC had considered Mr Homewood’s representations and had reviewed information provided in the “letter received on 19 August 2015 and HMRC records” to come “to my conclusion.”

17. That conclusion amended the amount under the APN to £8,136.38 for 2007-08. The letter also set out the “Next Steps”. This was to explain that the amount confirmed as payable “must be paid before the end of the payment period, which ends on 19 February 2016.

18. On 12 February 2016, Mr Homewood wrote to HMRC regarding the 2005-06 and 2006-07 APNs (which had been issued on 30 July 2015). The letter stated that HMRC’s

letter of 15 January had referred to his letter of 19 August 2015 but not his letter of 16 October 2015 enclosing the P11Ds and stated that he assumed that HMRC were:

“... still in the process of considering my letter of 16 October 2015 and the P11D figures and that you will be responding to them in due course in order for me to decide whether or not to pay an amended APN amount. If this assumption is incorrect please provide a full explanation.”

19. Despite this request, the next Mr Homewood heard from HMRC was a letter dated 10 March 2016, in regard to the APNs for 2005-06 and 2006-7. This letter amended the APNs by varying the amounts to £17,317.16 for 2005-06 and £15,985.06 for 2006-07. It is these amounts and the £8,136.38 for 2007-08, on which the calculation of the penalties in this appeal are based. Under “Next Steps”, the letter states that the amounts “payable must be paid before the end of the payment period, which ends on 15 April 2016.”

20. However, as Mr Homewood correctly points out, the words “determine” or “determination” do not appear in either HMRC’s letter of 15 January 2016 or the letter of 10 March 2016. Neither letter refers to s 222 FA 2014 or any statutory provision.

21. Mr Homewood contends that as a result, HMRC’s letters do not meet the formal requirements of s 222(4) FA 2014 and are therefore not “determinations”. As such, no payment date has been sent and it therefore follows, he argues, that time did not begin to run so as to issue the LPPs and, therefore, no penalties are due. Mr Homewood also referred to other areas of tax, eg under PAYE, where determinations are clearly headed as such.

22. While Mr Homewood is correct, that there is no reference to a “determination” or statutory reference in these letters, there is nothing within them to indicate that HMRC have failed to consider all of his submissions. There is also nothing in the legislation requiring the use of the term “determination” by HMRC when giving notification confirming an APN.

23. In this case, it is clear from HMRC’s letters of 15 January 2016 and 10 March 2016 that the APNs had been determined in an amount which was clearly stated. Provided the notices specify and confirm the amount due under the APNs, which they do, they are, in my judgment valid and in conformity with the intent and meaning of the legislation.

24. However, even if I am wrong on this, it is clear from s 114(1) of the Taxes Management Act 1970 that HMRC’s letters, confirming the APNs, do not become invalid because of the omission of the term “determination”. Section 114(1) provides:

An assessment or determination, warrant or other proceeding which purports to be made in pursuance of any provision of the Taxes Acts **shall not be quashed, or deemed to be void or voidable, for want of form**, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts, and if the person or property charged or intended to be charged or affected thereby is designated therein according to common intent and understanding. (emphasis added)

25. It therefore follows that as the letters confirming the APNs are valid, the LPPs became due as a result of the non-payment of the amounts in the APNs.

REASONABLE EXCUSE

26. As stated above (at paragraph 12) the penalty provisions in schedule 56 to the Finance Act 2009 apply in relation to an LPP. So far as relevant, these provide (with references to paragraphs below being those of schedule 56):

- (1) HMRC may (under paragraph 9) apply a special reduction to the penalty where there are special circumstances which justify a lower amount; but special circumstances do not include an inability to pay;
- (2) The imposition of the penalty is subject to a right of appeal (paragraph 13);
- (3) On an appeal concerning HMRC's power to grant a special reduction the Tribunal's jurisdiction is limited to considering if HMRC's decision is flawed (paragraph 15);
- (4) No liability to a penalty arises where the taxpayer establishes to the satisfaction of HMRC or the Tribunal that they had a reasonable excuse for non-payment. Insufficiency of funds and reliance on a third party do not represent reasonable excuses. Where a reasonable excuse comes to an end, payment is required to be made within a reasonable period of the excuse ending (paragraph 16).

27. Mr Homewood contends that he has a reasonable excuse for non-payment of the LPPs, namely his objectively reasonably held belief that HMRC's letters of 15 January and 10 March 2016 failed to meet the formal requirements of s 222(4) FA 2014 and that as a result time did not begin to run against him. He also relies on the confusion arising as a result of HMRC's letters not making it clear that determinations had been made.

28. However, as Ms Lafaurie submits, and as confirmed by the Upper Tribunal in *Exclusive Promotions Limited v HMRC* [2023] UKUT 269 (TC) at [42], the judgment of the Court of Appeal in *Beadle v HMRC* [2020] EWCA Civ 562 ("*Beadle*") is the "correct starting point".

29. In *Beadle*, Simler LJ, as she then was (with whom Ryder and Moylan LJJs agreed) said, at [57]:

"... In my judgment the FTT was correct to hold that the invalidity or alleged invalidity of PPNs are not matters that could properly be considered in the context of a reasonable excuse defence to penalties for non-compliance with PPNs or in the context of a claim for a reduction of penalty by reason of "special circumstances"; and the UT was accordingly correct to uphold that decision."

30. Although that case concerned PPNs, Partner Payment Notices, it is equally applicable to APNs. As such, no matter how reasonable or otherwise Mr Homewood's belief that the notices confirming the APNs in this case were invalid, it must follow that it cannot properly be considered in the context of a reasonable excuse for non-compliance with the APNs or in the context of a claim for a reduction of penalty by reason of "special circumstances".

CONCLUSION

31. Therefore, for the reasons above the appeal is dismissed and penalties confirmed in the sums stated in the table at paragraph 4, above.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

32. 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.

Release date: 22nd JANUARY 2025