

# JTC NEWSLINE

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## The new First Tier Tax Tribunal and appeals against loss of Gross Payment status

Many firms in construction have had their gross payment status threatened in the last year, most frequently because of failures to pay their PAYE/CIS on time. Many firms threatened with the loss of gross status appeal.

Last year such an appeal would have been heard by the General Commissioners. From now on all appeals go to the new First Tier Tax Tribunal. Because the tribunal system was new a considerable backlog of appeals built up in the period March to December 2009.

Suddenly there are a flood of judgements coming from these tribunals which indicate what a reasonable excuse for the late payment of tax might be in this context and what a firm threatened with removal of gross payment would have to show in its defence.

The first principle is that not having the money to pay is not a reasonable excuse in itself. The tribunal will attempt to establish why the business didn't foresee a cash flow crisis and borrow the money to pay their tax, or contact HMRC to manage the debts and stage payment.

A firm appealing would have to produce written evidence and witnesses to demonstrate that it had attempted to borrow money, or collect its debts, and had attempted to show 'reasonable foresight and due diligence and a proper regard for the fact that tax would become payable on the due dates'.

The firm would also have to show that the trading factors which led to the insufficiency of funds could not have been avoided by any competent businessman. The best case to date from the industry perspective is **Mutch v Revenue and Customs Commissioners TC 232**.

If you are contemplating appealing against the loss of gross status please **email Liz Bridge** for help. Cases are coming thick and fast and you will need to see some of the ground-breaking cases to do yourself justice. ■

## Key tax payment date this month – 28th February

The balancing payment for self-assessment tax was due on 31 January 2010.

If you have not yet made this payment and you do not make it by 28 February 2010 you will be charged an automatic 5% surcharge on top of the amount still owing. This will be in addition to any interest charged. ■

## Penalties for the late payment of PAYE/CIS

Penalties will be one of the big issues in tax for construction businesses in 2010 until the new system beds down. Under the old system (before 1 January 2010) if a monthly payment of PAYE was late there was no penalty. All businesses knew that PAYE had to be paid by the 19th of the following month but many firms paid late or paid something - but not enough. This could happen for many reasons; because they sent cheques and the post was delayed, because poor cash flow meant that they had to pay 'a bit late', because a bookkeeper was ill and everyone forgot etc.

There were no consequences for a late payment received one or two days late on one or two occasions in a year. *(A firm could have its gross payment status removed for a single payment that was over 14 days late, or for 4 payments late by a day or more – but many firms were in the position of having one or two payments that were a day or so over with no impact on their gross payment status.)*

In the new regime if a payment is received late, or the payment is on time but the amount paid is less than it should be, HMRC do not penalise the first late payment. However, if it occurs on a second occasion in a 12-month period, the penalty is 1% of the tax that is late (even if the payment is only one day late or there is only a small underpayment).

Consider for example a firm with 5 workers and a wages bill of £12000 a month. The tax on the wages bill will be approximately £2400 – the penalty for a late payment could be £24 for a PAYE payment made one day late. These penalties will quickly mount up for sloppy payers. **Take care.**

This penalty system is not without its advantages – firms will now get far more warning that their taxpaying history is coming unstuck and will be able to set things right without putting their gross status in jeopardy. ■

## Rebates made by suppliers for volume purchases

HMRC have published their view on the correct treatment of contingent discounts which normally take the form of lump sums payments between the supplier and their customer. They say that some customers invoice the supplier for these discounts, and that this is incorrect.

The correct procedure is for the supplier to issue a credit note to formally reduce the value of the supply and the VAT. However they go on to say that where both parties are fully taxable a credit note must still be issued but it is not essential for the VAT charged on the original supply to be reduced where both parties agree to the treatment. **Contact Liz Bridge for the full statement.** ■