

Company C -v- Comptroller of Taxes
Late Payment Surcharge
July 2022

For the purpose of anonymisation, the true name of any individual or company mentioned below has been fictionalised.

OVERVIEW

The Appeal concerned a late payment surcharge of £920.96 imposed on the Appellant by the Comptroller in respect to the 2020 assessment year. The charge was imposed under the provisions of Article 41I of the Income Tax (Jersey) Law 1961, as amended (the “Law”).

The Commissioners were provided with a bundle of relevant documentation and correspondence between the parties concerning the subject the appeal, together with an Agreed Statement of Facts signed by the parties, all of which they carefully reviewed prior to the hearing taking place.

The Commissioners were addressed at the hearing by Ms Karen Larose for Revenue Jersey and the acting agent for Company C.

CONCLUSIONS

Article 41I of the Law states:

41I Late payment surcharge¹⁹⁸

- (1) In this Article, “specified time” means, in relation to the year of assessment 2019 and ensuing years –
 - (a) midnight on 30th November of the year immediately following the year of assessment, except in a case such as specified in subparagraph (b);
 - (b) in the case of a large company within the meaning of Article 41AB(7), midnight on 30th September of the year immediately following the year of assessment.¹⁹⁹
- (2) If a person in relation to whom this Article applies does not pay in full, before the specified time, the tax chargeable for a year of assessment on

that person, the person shall be liable, whether or not an assessment has been served on the person, to pay an additional amount (the “surcharge”) equal to 10% of such tax as remains unpaid at the specified time.

Provided that the Comptroller may waive payment of the surcharge –

- (a) if it amounts to £50 or less for any year of assessment;
 - (b) where failure to pay the tax by the specified day is caused by the action of a person, in accordance with Article 3A, not connected with the person liable to the surcharge and the failure is remedied without unnecessary delay; or
 - (c) the Comptroller is satisfied that death, serious illness or other grave and exceptional circumstance prevented payment by the specified time.²⁰⁰
- (3) Paragraph (2) does not apply in respect of a person who is required to pay an instalment under Article 41A (Duty to pay instalments (taxpayers other than companies)) if –
- (a) the person’s income for the year before the year of assessment to which the instalment relates included earnings; and
 - (b) the person has paid 70% or more of the required instalment by the specified date.²⁰¹
- (4) The Comptroller shall issue a written notice to a person of his or her liability under paragraph (2).
- (5) A person may, within 40 days of the issue of a notice under paragraph (4), apply to the Comptroller in writing for a waiver under paragraph (2).
- (6) Where a person applies under paragraph (5), the Comptroller shall give notice to the person of whether or not he or she has waived the person’s liability.
- (7) A person aggrieved by the Comptroller’s refusal to waive liability under paragraph (2) may appeal to the Commissioners, on giving notice in writing to the Comptroller within 40 days of the issue of notice of refusal.
- (8) Part 6 applies, with the necessary modifications, to an appeal under paragraph (7) as if it were an appeal against an assessment.²⁰²
- (9) ²⁰³
- (10) This Article does not apply in relation to an individual person if more than 25% of the person’s total income for the year before the year of assessment consists of earnings.²⁰⁴

The Commissioners noted that the Agent for the Appellant stated at the outset of her submissions that the appeal was not brought on a principle of law but rather on the ground of reasonableness.

The Commissioners also noted that their jurisdiction is purely statutory in nature, and that they do not exercise any inherent jurisdiction. Any decision made by the Commissioners must be limited to analysis and application of the law to an Appeal.

Whilst the Commissioners were sympathetic to the position of the Appellant given the long delay prior to provision of the Tax Assessment to its agent by Revenue Jersey, they considered that the provisions of Article 41(2) were clear: “ If a person in relation to whom this Article applies does not pay in full, before the specified time, the tax chargeable for a year of assessment on that person, the person shall be liable, whether or not an assessment has been served on the person, to pay an additional amount (the “surcharge”) equal to 10% of such tax as remains unpaid at the specified time.” [emphasis added].

The Appellant had not paid in full before the specified time, and accordingly became liable to the surcharge of 10% of the tax that remained unpaid at that time, unless the Appellant fell within the provisions of Article 41(2)(a)-(c), when the Comptroller may waive the payment of the surcharge. On

the basis of the submissions made to them and their consideration of the case only sub-article (c) may have been applicable, and of that only if “other grave and exceptional circumstance prevented payment by the specified time”. The Commissioners did not consider that the delay by Revenue Jersey in providing the assessment to the Appellant’s agent was sufficient to constitute such a ‘grave and exceptional circumstance’ which had prevented payment by the specified time, particularly given that the Appellant’s agent had completed financial statements and submitted an assessment of tax payable, and accordingly knew the amount of the tax that it accepted should have been paid, and that the provisions of Article 41(2) specified that the surcharge was payable “whether or not an assessment has been served on the person”.

DETERMINATION

The Commissioners accordingly determined the Appeal in favour of the Comptroller of Taxes and upheld the imposition of the surcharge.