

Company H -V- Comptroller of Taxes
Late Payment Surcharge
October 2022

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

OVERVIEW

The Appeal was heard by three commissioners. The Appeal concerned a late payment surcharge of £727.60 imposed on the Appellant by the Comptroller in respect to the 2019 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 to the appeal, together with an Agreed Statement of Facts, although this document was signed only by Revenue Jersey. The Commissioners carefully reviewed all of this documentation prior to the hearing taking place.

The Commissioners were addressed at the hearing by Ms Karen Larose of Revenue Jersey for the Comptroller and by “Mr Peters”, Company Secretary for Company H (the “Company”).

CONCLUSIONS

Article 41I of the Law states:

“41I Late payment surcharge^[198]

- 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 sub-paragraph (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 only issue was that of the late payment surcharge.

The Commissioners further noted that “Mr Peters” stated that in previous years Revenue Jersey had provided an estimate to the Company, in response to which the Company would send in its accounts and computations together with a cheque for the tax arising. He went on to state that the estimate had acted as a ‘nudge’ to the Company prompting it to then submit its tax documents and a cheque for the tax arising, and that the Company had not been aware of the changes to the tax law meaning that the onus rested on the Company to submit its tax return and payment, and that this, together with concerns that the beneficial owner of the Company had four family members in Italy and elsewhere who were then perceived to be at risk due to the developing Covid-19 pandemic, meant that the obligation to submit the tax payment had been overlooked.

“Mr Peters” submitted that such represented “grave and exceptional circumstances” pursuant to Article 41(2)(c) of the Law which justified a waiving of the late payment surcharge by the Comptroller.

Ms Larose submitted in response that there had always been a payment deadline, although the final submission date fell after the final date for payment, which was the wrong way round.

Whilst the Commissioners were sympathetic to the position of the Appellant given the position that he had set out, 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 circumstances set out for the Appellant were sufficient to constitute such a ‘grave and exceptional circumstance’ which had prevented payment by the specified time.

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.

DETERMINATION

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