



**TC01343**

**Appeal number: TC/2010/07194**

*First and second surcharges imposed under S.59(C) TMA 1970 – Appellant unable to pay due to difficult trading conditions – says may have been able to pay had he known a surcharge would be imposed – whether reasonable excuse – no – surcharges confirmed.*

**FIRST-TIER TRIBUNAL**

**TAX**

**MR JONATHAN WESTWOOD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)**

**The Tribunal determined the appeal on 28 April 2011 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 14 September 2010, HMRC's Statement of Case submitted on 20 October 2010 and the Appellant's Reply dated 12 November 2010.**

## DECISION

1. This is an appeal against the first and second surcharges imposed by HMRC because of the late payment of tax due for the year ending 05 April 2008.

5 2. Payment of the Appellant's self-assessment liability was due on 31 January 2009. Liability for the year was £223,241.24. The liability was paid on 12 March 2010.

3. When a balancing payment or payment on account is still unpaid more than 28 from the due date a surcharge automatically arises under s.59C(2) TMA1970. This initial surcharge is equal to 5% of the tax unpaid at that date. A further 5% surcharge  
10 applies where payment remains unpaid for more than 6 months after the due date under s.59C(3) TMA1970. The first surcharge notice was issued on or around 01.04.09 and the second surcharge notice was issued on or around 11.08.09.

4. Mr Westwood appealed the surcharges, saying that he had a large outstanding tax position which he was endeavouring to deal with and pay in affordable amounts. He  
15 indicated that his business had gone through a very difficult trading position, that it was his intention to meet his tax obligations and that he had been in regular contact with HMRC regarding settlement of outstanding tax due. He says that at no time during that period had HMRC advised him that he would incur surcharges for late  
20 payment and that, had HMRC done so, it might have been possible for him to bring payments forward. He had submitted various proposals for stage payments and, had he realised that surcharges would be imposed, he might have been able to deal with things differently rather than await a response to his proposals.

5. The period of default in this case was 405 days, being the period from 31 January 2009 to 11 March 2010. The Appellant has been making self-assessment returns and  
25 accounting for tax due to HMRC since the introduction of self-assessment and therefore is to be considered experienced with the self-assessment system. A tax return contains a warning notice that interest and surcharges may be charged if tax is paid late. Legislation places the responsibility of paying tax on the due date firmly on the taxpayer. A taxpayer also has the opportunity of discussing 'time to pay'  
30 arrangements with HMRC.

6. The Appellant had self-calculated his tax liability and filed his tax return online. He therefore knew the amount of tax to pay and when it was due for payment. Legislation specifically states that insufficiency of funds is not a reasonable excuse –  
35 Section 59(C)(10) TMA1970. Legislation obliges the taxpayer to discharge his tax liabilities in full by the due date unless it can be demonstrated that to do so would cause hardship, in which case a payment plan can be arranged. In this case there is no evidence that the Appellant notified HMRC of any hardship or requested a payment plan prior to the first surcharge trigger date. Furthermore, it appears that, despite entering into a 'time to pay' arrangement in April 2009, the Appellant failed to adhere  
40 to the agreement and that consequently the arrangement was cancelled prior to the second surcharge trigger date.

7. Under Section 59(C)(19) TMA1970, if it appears to the Tribunal that the taxpayer had a reasonable excuse for not paying the tax throughout the default period, they may set aside the imposition of the surcharge. The Tribunal shares HMRC's sympathy with the financial difficulties the Appellant encountered because of extremely difficult trading conditions. However, that does not amount to something exceptional which prevented the Appellant from discharging his obligations and submitting the tax payment by the due date.

8. Taking all the circumstances into account, the Tribunal concludes that the Appellant has not shown a reasonable excuse throughout the period of default for the late payment of tax for the year ending 05 April 2008.

9. The Tribunal dismisses the appeal and determines the first and second surcharges totalling £22,324.12.

10. 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.

**MICHAEL S CONNELL**

**TRIBUNAL JUDGE**  
**RELEASE DATE: 25 JULY 2011**