



TC01446

Appeal number: TC/2010/05356

Appeal against default surcharges for periods 07/09 and 01/10 – taxpayer company falling into payment on account regime for first time in relation to 07/09 – confused concerning prior payments some of which were overpayments and returned – history of confusion and inadequate efforts to resolve this – was there a reasonable excuse – no – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

CLARANET LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDITH POWELL (TRIBUNAL JUDGE)
SONIA GABLE (MEMBER)**

Sitting in public at 45 Bedford Square, London WC1 on 26 August 2010

Ms Vita Davies, Finance Director and Mr Robert Eeles FC represented the Appellant

Mrs Crinnion for the Respondents

DECISION

1. This is an appeal against default surcharges concerning the periods 07/09, 10/09 and 01/10. The appeal was late and we first heard an application for it to be heard
5 out of time which we granted.

2. The appeal is brought against the surcharges imposed in respect of the 07/09 and 01/10 periods; the Appellant does not argue it had a reasonable excuse for late payment in respect of the period 10/09 but if the Appellant succeeds in showing a reasonable excuse for the period 07/09 the amount of surcharge for the following
10 period would be reduced as a consequence.

3. Neither of the individuals appearing for the Appellant was employed by that company during the relevant periods. Mr Robert Eeles is now the Finance Controller of the Appellant Company and Mrs Vita Davies is the Finance Director responsible for employing him. Mr Eeles has drawn his conclusions from the papers that the
15 VAT affairs of the Company were confused at the time of the 07/09 payment dates; there was evidence of confusion in the papers shown to the tribunal.

4. The Appellant had been paying its VAT in stages since April 2007 apparently in order to deal with outstanding amounts due. Mrs Crillion for HMRC explained that when payments are made this way the payment is allocated to reduce the debt and any
20 amounts overpaid may not be retained by HMRC but have to be returned to the taxpayer. At the time the payments for 07/09 were due the person within the Appellant Company who organised the VAT payment was Ms Tracey Primack also referred to as Ms Tracey Taylor in some of the papers. There is an impression from the papers that she had inherited the stage payment position when she joined the
25 Appellant Company in 2007 but she has left the Company and did not give evidence.

5. In relation to the period 07/09 the Appellant Company received a letter from HMRC dated 21 April 2009. This letter informed the company that it now fell within the payment on account regime which applies to larger VAT payers. The letter informed the Company that it was now considered to fall into the regime. The
30 monthly payments the Appellant became due to make were listed in that letter and the first payment of £86116 was due by 30 June 2009. Details of ensuing monthly payment amounts were set out for the months to end of May 2010. Each payment was due at the end of each month – not always on the last day but certainly in the last few days of each month. This was the first time the Appellant had fallen into the
35 payment on account regime.

6. On 8 May 2009 the Appellant paid HMRC £202,000 and on 8 June made two further payments of £100,000 and £101,294 respectively. These were part of the stage payments in respect of liabilities for earlier periods and at the time there was an outstanding VAT return. By 22 June when the outstanding return had been submitted
40 there was a posting on the ledger showing that, at that date, the Appellant owed a total of £322,536 and had thus overpaid £80,757.03. This was repaid by HMRC; for some reason it was repaid in two amounts made up of £36,566 – paid on 22 June - and £44,190.93 – paid on 6 July 2009. HMRC was unable to explain why the repayment

was made in two stages. The taxpayer had certainly received the repayment by the end of the first week in July.

5 7. The Appellant paid the first and second instalments together on 4 August 2009 and so both instalments were paid late since the second instalment was due to be paid on 31 July 2009. The balancing payment due to be paid on 28 August 2009 was not paid until 11 September (part) and 22 January (the remainder). The return for 07/09 was also submitted late. The repayments made at the end of June and beginning of July might have created some confusion over the first payment of account due on 30 June 2009 although there was a telephone discussion between the person then in charge of VAT matters at the Appellant company (Ms Tracey Primack also referred to as Ms Tracey Taylor) and HMRC before the due date and the extent of the confusion is not absolutely clear. Ms Primack was unfortunately not available to give evidence. Correspondence from Ms Primack suggests that she had inherited a legacy of confusion about the way in which the company was meeting its VAT obligations when she joined the company in 2007. In any event, if there was any confusion it was certainly resolved by the due date for the second payment.

20 8. As far as the second period under appeal is concerned (the period 01/10) the notice of appeal referred to a payment being delayed as a result of the BACS system but the Appellants withdrew this argument at the hearing and also informed the tribunal that they did not wish to pursue an argument about the proportionality of the surcharge which had also been raised at a preliminary stage. They did not add anything further about this period at the time of the hearing other than to mention the still ongoing confusion brought forward from the earlier periods.

25 9. The Appellant said there was confusion caused by the repayment of part of its stage payments in June and July 2009 and this took time to resolve; if the Appellant company has a reasonable excuse for its failure to pay and submit its return on time the appeal will be allowed but if the Appellant cannot show this the appeal for this period will be dismissed. Although no one involved in the payment process was available to give evidence the correspondence shows that the person then dealing with matters was confused. There is reference to frequent calls between Ms Primack and HMRC; HMRC say this would have left the Appellant in no doubt it remained liable to make the stage payments. It is difficult to see that the Appellant could have misunderstood the need to make stage payments. We accept the refund might have led to some confusion but there is no evidence of the Appellant making an effort to resolve this confusion at an early stage. There is reference to a letter from HMRC that the Company was not in fact liable to make the payments on account but no correspondence to this effect can be found within HMRC papers and nothing to this effect was produced by the Appellant and Ms Primack may have been confused by a later event when the Company did fall outside the payment on account regime because its turnover reduced. There is no evidence of an early attempt to reconcile the payments made with the payments due. There are letters sending details of the payments to Ms Primack but this was in response to a request made by her in late September 2009 by which time the payments were already late. We cannot conclude that the Appellant had a reasonable excuse for the late payment and dismiss the appeal against the surcharge for 07/09. As we can find no reasonable excuse for the 07/09

period and the same excuse is relied upon for the 01/10 period when the Appellant had a far longer time to familiarise itself with its obligations we find no reasonable excuse for the 01/10 period and dismiss the appeal for that period as well.

5 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)”
10 which accompanies and forms part of this decision notice.

15 **TRIBUNAL JUDGE**
RELEASE DATE: 15 SEPTEMBER 2011