



TC01507

Appeal number: TC2011/03450

VAT – Default surcharges – Whether penalties suspended during currency of agreement for deferred payment – Section 108 Finance Act 2009 – Appeal dismissed

FIRST-TIER TRIBUNAL

TAX

KEY RECRUITMENT (UK) LTD

Appellant

- and -

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

Respondents

TRIBUNAL: LADY MITTING (TRIBUNAL JUDGE)

Sitting in public at 14-22 The Parsonage, Manchester on 26 September 2011

The Appellant did not appear and was not represented

Ian Birtles, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. The Appellant was appealing against default surcharges for periods 09/08, 12/08,
5 03/09, 06/09, 09/09, 12/09, 06/10 and 12/10. The only appeal which was lodged in
time was that for 12/10, the Notice of Appeal having encompassed the earlier periods.
Leave to appeal out of time for the earlier periods had never been sought or given but
the Respondents had, throughout, treated all periods as being under appeal and the
Tribunal will treat this appeal as being in respect of all the above listed periods.

10 2. The Appellant had been professionally represented by a firm of VAT Consultants
but by letter dated 21 September 2011, they advised the Tribunal that they were not in
receipt of current instructions and would not be attending. As the Hearing Notice had
been served on the representatives, I sought and obtained telephone confirmation from
the former representatives that the Appellant was aware of the hearing date.
15 Notwithstanding its non attendance, I therefore concluded that the company was aware
of the hearing and it would be in the interests of justice that the case should proceed.

3. The Appellant Company had for a long time been in difficulties with payment of its
VAT with, over a substantial period, part payments being made periodically and returns
lodged sometimes by the due date and sometimes late. The company had entered into
20 'time to pay' arrangements with the Respondents but these had all been breached. The
most recent one to which I was referred was dated 29 May 2009 and was an
arrangement for payment in the total sum of £185,593.44 covering periods 9/08, 12/08
and 03/09. This agreement was breached and winding up action was threatened on the
14 September 2009. As the payment of tax fell further and further behind, default
25 surcharges were issued period after period. No appeal was lodged against any of them
until the appeal against period 12/10, as referred to in paragraph 1.

4. The Notice of Appeal gives two grounds, namely:

30 "1. For a period of approximately two years from 2009 to 2011, round sum
payments were being made by the Appellant with the agreement of the
Respondents to cover both VAT and PAYE. It is the incorrect allocation of these
payments by the Respondents that has resulted in the disputed surcharges.

2. Additionally it is understood that it is normal practice to suspend the imposition
of default surcharges while agreed payment arrangements of this sort are in place."

5. Section 108 Finance Act 2009 applies to the suspension of penalties during the
35 currency of an agreement for deferred payment. The section, in summary, provides that
if the taxpayer has reached an agreement with HMRC for the deferral of payment for
any given period, he shall not be liable for a default surcharge for that period.
However, the section goes on to provide that if the taxpayer breaches the agreement
then the taxpayer would no longer be immune from a surcharge. Importantly in relation
40 to this case, any suspension of penalties only relates to periods for which there is a
deferred payment agreement in place. The suspension of penalties does not therefore

automatically run over into subsequent periods and nor does it mean that HMRC will forego surcharges for subsequent periods.

5 6. The Appellant Company had reached a deferred payment agreement with the Respondents for periods 09/08, 12/08 and 03/09. However, as soon as the agreement was breached, the suspension of penalties no longer held good and it did not in any event relate to other periods for which there was no deferred payment agreement in place.

10 7. Having no further evidence from the Appellant before me, I find that there was no reason for the Respondents not to raise surcharges for all the periods in question and I have no evidence that there is a reasonable excuse in relation to any period. The appeal is therefore dismissed.

15 8. 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.

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TRIBUNAL JUDGE

RELEASE DATE: 13 October 2011

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