



TC01855

Appeal number TC/2011/03480

Value Added Tax – Default surcharge – Late appeal – Accepted - Late payment of tax due to slowness of transmission by bank – Whether reasonable excuse - No

**FIRST-TIER TRIBUNAL
TAX**

MAKESPACE ARCHITECTS LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: PHILIP GILLETT FCA
JUDGE PETER KEMPSTER**

Sitting in public at 45 Bedford Square, London WC1 on 18 July 2011

Shahed Saleem, Director, for the Appellant

Bruce Robinson (HMRC Appeals Unit) for the Respondents

DECISION

1. This is an appeal against a series of default surcharges charged pursuant to s 59 VAT Act 1994, originally in the amount of £2,396.58, in respect of the VAT accounting periods to 31 January 2006, 31 July 2006, 31 January 2007, 31 October 2007 and 31 July 2008. These surcharges were reviewed by HMRC prior to this appeal hearing and, on 8 July 2011, HMRC wrote to the Appellant accepting that there was a reasonable excuse in respect of the first default. This had the consequential effect of reducing the remaining surcharges to a total of £1,598.64, £627.82 in respect of the VAT accounting period to 31 October 2007 and £970.82 in respect of the VAT accounting period to 31 July 2008.

2. As a result of HMRC's decision that the first default surcharge, in respect of the period to 31 January 2006, should be withdrawn, the subsequent two penalties then fell below the £400 limit, below which HMRC do not levy a penalty (VAT Notice 700). However, due to those earlier defaults, the rate of surcharge applicable for the period to 31 October 2007 was 10% and the rate applicable for the period to 31 July 2008 was 15%.

Late Appeal

3. The notice of appeal was received on 2 May 2011, which was more than 30 days after the conclusion of the HMRC review on 15 February 2011. Mr Saleem explained that the reasons for the late appeal were that he and his wife had had a second baby, born at the end of January who had been unwell and required admission to hospital for a period of a week soon after its birth. Mr Saleem was therefore preoccupied with his child's illness, looking after his elder child and running the business, and then had to travel to South Africa to attend to family matters and was out of the country for most of April.

4. Mr Robinson, for HMRC, said that they had no objections to accepting the late appeal. We therefore decided, pursuant to s 83G(6) VAT Act 1994, to permit the late appeal and hear the substantive case.

Default Surcharge

5. Mr Saleem confirmed that he accepted the facts as set out in HMRC's Skeleton Argument in that the VAT payments had been late, as stated, in respect of the VAT accounting periods to 30 April 2006, 31 July 2006, 31 October 2007 and 31 July 2008.

6. Mr Saleem accepted the default surcharge amounting to £627.82 in respect of the VAT accounting period to 31 October 2007 but explained that in respect of the VAT due for the accounting period to 31 July 2008 he had given instructions to the bank to make the payment, by BACS, on Thursday 4 September 2008. He had recently changed banks and believed that his new bank, HSBC, would make the payment more quickly than his previous bank, although he did not obtain any specific confirmation of this from HSBC. Because the due date, 7 September 2008, fell on a Sunday, the

VAT should have reached HMRC by Friday 5 September 2008 but in practice was not received until Monday 8 September 2008. Mr Saleem however felt that he had shown a clear intention to pay before the due date and that the default surcharge should therefore be withdrawn.

- 5 7. Mr Robinson, for HMRC, contended that this did not amount to a reasonable excuse for the late payment of VAT and asked that the appeal should be dismissed.

Conclusion

8. Having considered the evidence we decided that the reasons put forward by Mr Saleem did not constitute a reasonable excuse for the late payment of VAT and that
10 the default surcharges should stand in the amounts of £627.82 and £970.82. The appeal is therefore DISMISSED.

9. 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
15 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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**PHILIP GILLETT FCA
PRESIDING MEMBER**

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RELEASE DATE: 24 February 2012

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