



**TC01976**

**Appeal number: TC/2011/7439**

*VAT – Default Surcharge – Genuine misunderstanding of due date -  
Whether reasonable excuse for late payment? – No – Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PAINT FINISH LIMITED**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S    Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL:    JUDGE PETER KEMPSTER  
                  Mrs MARYVONNE HANDS**

**Sitting in public at Nottingham on 7 February 2012**

**Mr Lee Daley (Director) for the Appellant**

**Mr Martin Foster (HMRC Appeals Unit) for the Respondents**

## DECISION

1. The Appellant (“the Company”) was due to pay its VAT for the VAT period 05/11 no later than 30 June 2011 (or 7 July 2011 if paid electronically) but payment was not received by the Respondents (“HMRC”) until 21 July 2011. HMRC levied a default surcharge at 10% of the late VAT and the Company appealed to the Tribunal against the surcharge of £1,097.61.

### **Case for the Company**

2. For the Company Mr Daley submitted as follows:

(1) The business of the Company was painting cars. There were three employees. Mr Daley joined the Company in 2010 and was unaware until later that it had tax arrears of £19,000 VAT and £8,000 PAYE. The Company could have gone bankrupt but he had agreed monthly payments with HMRC and had stuck to the scheduled payments. The Company had changed its accountants twice, and since June 2011 the books were in order.

(2) Trading conditions were bad. In May 2011 the Company had lost its largest contract (Hilton Garage), which was worth around £89,000 pa, when the customer cancelled without notice after two years of trading. Other trade customers were late in paying.

(3) In June 2011 HMRC had incorrectly made a double deduction on the agreed payments. That had had a knock-on effect. Mr Daley did not recall an offer by HMRC to repay the over-deduction. HMRC provided no help for small businesses.

(4) Mr Daley had genuinely believed that the Company had had an extra month to make the payment due. He accepted that he should have known the due dates. The Company probably did have sufficient funds to make the payment on the due date but he had genuinely misunderstood the dates.

### **Case for HMRC**

3. For HMRC Mr Foster submitted as follows:

(1) The Company had a history of late filing and late payment, although some of those defaults arose before Mr Daley joined the Company. There had been five default surcharges issued from the 11/09 VAT period: 11/09, 02/10, 05/10, 08/10 and (under appeal) 05/11. The surcharge for the 08/10 period had been withdrawn by HMRC because it was accepted there may have been confusion over a change of address. As the 05/11 default was within twelve months of the previous default, and this was the fourth default, the appropriate rate for the surcharge was 10%: s 59 VAT Act 1994.

(2) HMRC acknowledged that they had erroneously deducted payment twice in June 2011. Mr Daley had telephoned HMRC on 21 June to question the

position. That HMRC centre did not routinely record telephone calls at that time but a contemporaneous note had been made that HMRC had offered repayment but Mr Daley had declined. A formal complaint had been received and was being processed internally. Even if the repayment of the over-deducted amount had been accepted, it would have provided only around £1,700 in relation to a late VAT payment of £10,976.18. HMRC's published advice to taxpayers (available to the Tribunal) was that if they could not afford to pay their full liability then they should pay as much as they could. The Company had paid the entire liability late. The importance of timely payment was emphasised on HMRC's communications to the Company; the Company had already incurred surcharges for late payments in earlier periods; and the Company already had the benefit of a time-to-pay arrangement in relation to earlier liabilities. The Company must have been fully aware of the consequences of late payment.

(3) The Company must have been aware of the date for payment. On 17 May 2011 HMRC had issued a (paper) reminder to the Company concerning the 05/11 payment.

**Consideration and conclusions**

4. The Tribunal was satisfied that the amount of the surcharge had been calculated correctly in accordance with the relevant statutory provisions.

5. The Tribunal had to establish the reason why the payment was made late, and then determine if that reason constituted a "reasonable excuse" within the meaning of ss 59 & 71 VAT Act 1994. We find that the reason for the late payment was a genuine misunderstanding by Mr Daley as to the due date for payment. The VAT was paid in full as soon as the lateness was pointed out to the Company, but it was still late. That reason could not constitute a reasonable excuse for late payment.

6. Accordingly, we find that there was no reasonable excuse for the late payment and the default surcharge was correctly charged.

**Decision**

7. As conveyed to the parties at the conclusion of the hearing, the appeal is DISMISSED.

8. This full reasons and findings decision notice replaces the summary reasons and findings decision notice issued to the parties on 14 February 2012.

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 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: 30 April 2012**

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