



TC02297

Appeal number: TC/2010/09265

VALUE ADDED TAX – Default Surcharges – insufficiencies of funds – whether the cause of the insufficiencies amounted to a reasonable excuse within section 59(7)(b) VATA and having regard to section 71(1)(a) VATA – Customs and Excise Commissioners v Steptoe [1992] STC 757 considered and applied – the cause of the insufficiencies was cash flow difficulties arising from over-extension of the business, defaulting debtors and a credit squeeze applied by the appellant’s invoice discounters – held in principle this amounted to a reasonable excuse – but in 2 out of the 9 VAT periods in issue the reasonable excuse was exhausted before payments of VAT were made – appeal allowed in part

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

UNIGLAZE 2 (EAST ANGLIA) LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JOHN WALTERS QC

Sitting in public at Norwich on 14 February 2012

**Philip Davis (Managing Director) and Paul Cansdale (Finance Director) for the
Appellant**

Philip Rowe, HMRC Appeals and Reviews, for the Respondents

DECISION

1. The appellant, Uniglaze 2 (East Anglia) Limited (“Uniglaze”) appealed to the Tribunal on 3 December 2010 against default surcharges in the amount of £244,162.27, imposed by a decision dated 21 June 2010.

2. The surcharges in question apparently relate to the VAT periods 10/09, 01/10, 04/10 and 07/10 as follows (all are calculated at the 15% rate):

10/09	£68,475.79
01/10	56,181.00
04/10	55,848.00
07/10	<u>63,657.27</u>
Total	£244, 162.27

3. In the course of the hearing of the appeal, it emerged that Uniglaze wished also to appeal against default surcharges relating to the VAT periods 04/08, 01/09, 04/09 and 07/09 as follows:

04/08	£14,071.00 (calculated at the 2% rate)
01/09	10,886.00 (calculated at the 5% rate)
04/09	36,198.00 (calculated at the 10% rate)
07/09	31,941.00 (calculated at the 15% rate)

4. No objection was advanced by Mr Rowe, for HMRC, to including these surcharges within the scope of the appeal and I allowed an extension of time for appealing and an amendment to the notice of appeal accordingly.

5. The grounds of appeal advanced by Uniglaze can be summarised as follows:

- a. Uniglaze suffered several periods of severe restriction of the funds available to it, by reason of the actions of three successive invoice discounters. When Uniglaze was not suffering from such actions (in the VAT periods 07/08 and 10/08) it was able to pay VAT in excess of £1.2m on time.
- b. Uniglaze was obliged to write off £2m of bad debts on a turnover of £65m to £70m.
- c. Uniglaze objects to the surcharges on the grounds that they are disproportionate.
- d. The former Finance Director of Uniglaze, Roy Wigg, signed off for stress-related reasons on 13 May 2011. (I need say no more about this ground, since 13 May 2011 was over 9 months after the last VAT period in issue. Mr

Wigg's health issues cannot afford Uniglaze a reasonable excuse for any of the defaults in question.)

e. The Respondents ("HMRC") in 2011 agreed to a creditors' voluntary arrangement involving Uniglaze under which Uniglaze will pay creditors out at 71 pence in the £ over 5 years. Mr Davis argued that it would be unfair for HMRC to be able to recover in respect of the default surcharges, since other creditors had waived penalties and interest on late payment. (Again, I need say no more about this ground, since it is, in essence, an argument based on alleged administrative unfairness and cannot be the basis of a reasonable excuse for any of the defaults in question.)

6. Mr Davis introduced the appeal by explaining that Uniglaze was a large manufacturer of double glazing. He and Mr Cansdale had been appointed to their positions with Uniglaze in 2011 in order to 'turn round' Uniglaze from the parlous commercial position which it had reached in 2010. They had organized the creditors' voluntary arrangement referred to. Mr Davis explained that problems had first been encountered by Uniglaze in 2007/2008, and that its difficulties had at their root a decision to invest in a purpose built building which was occupied in 2005. Uniglaze had also invested £6m in new plant and machinery and two years later its turnover had declined from £28m to £22m.

7. Uniglaze was issued with a surcharge liability notice (but no surcharge was imposed) in respect of **the VAT period 01/08**.

8. The evidence was that the first two instalments of VAT for that VAT period were paid on time, but the balancing payment for that VAT period (Uniglaze was a 'Payment on Account Trader' obliged to make monthly payments of VAT with the third payment with reference to a VAT period being the balancing payment) was made 7 days late by CHAPS – on 7 March 2008, when it had been due on 29 February 2008.

9. There was evidence before me that, beginning in late November 2007, Uniglaze had been suffering successive restrictions in the funding available to it from its invoice discounters and that on 26 February 2008 Roger Pummell of Uniglaze had made contact with HMRC asking for a deferment of the payment (of just under £370,000) VAT due on 29 February and that HMRC, by Sue Walters, had confirmed that she would allow such a deferment based on a 'Payment Promise', providing the payment was received by HMRC by 10 March 2008 – which it was. Mr Rowe only faintly resisted Uniglaze's appeal in relation to the surcharge liability notice served with reference to period 01/08 and I accept that Sue Walters's assurance gave Uniglaze a reasonable excuse for making the balancing payment for that VAT period after the due date of 29 February 2008. This will have an effect on the calculation of any subsequent default surcharges which are due.

10. In respect of **the VAT period 04/08**, a first instalment of £84,537 was due on 31 March 2008, a second instalment of the same amount was due on 30 April 2008 and a balancing payment was due on 30 May 2008. Uniglaze paid £353,583.53 on 16 June

2008, £108,867.00 on 30 June 2008 and £350,000.00 on 17 July 2008. These payments total £812,450.53, which is more than the VAT declared due on Uniglaze's return for the period 04/08 (£703,583.53). I did not notice this difference at the hearing and no explanation of it was given to me. The default surcharge was calculated by reference to the VAT declared (£703,583.53) at 2% - £14,071.

11. There was contemporaneous evidence in the documents before me that during this period (I have copies of emails from GE Commercial Finance ("GE") to Mr Wigg), Uniglaze's then invoice discounter, GE, applied pressure to Uniglaze to arrange refinancing elsewhere and meanwhile reduced the facility available to Uniglaze. A schedule produced by Uniglaze showed the 'current account balance' – that is, the amount due from Uniglaze to GE – reducing from £3.93m in January 2008, to £3.62m in February 2008, to £3.39m in March 2008 to £3.13m in April 2008, while over the same period receipts reduced from £2.48m in January 2008 to £2.43m in February 2008, to £2.21m in March 2008 to £1.77m in April 2008.

12. The approved facilities agreed by GE for Uniglaze had been £5m on 14 January 2008, but were reduced to £3.5m on 7 March 2008.

13. Following the pressure applied from GE, Uniglaze changed its invoice discounter to COFACE Receivables Limited ("COFACE") with effect from 30 May 2008. As stated above, the payments of VAT for the periods 07/08 and 10/08 were made on time.

14. A letter was sent by Uniglaze (Mr Pummell) to HMRC (then Customs & Excise) Debt Management, Large Payers Unit, on 4 July 2008 stating that Uniglaze wished to appeal against the surcharge of £14,071 imposed for the VAT period 04/08.

15. In the letter Mr Pummell stated:

'I would like to explain the circumstances as to why payment was not made to your deadlines and confirm that this decision was not taken by Uniglaze 2 (East Anglia) Ltd themselves.

As you well know the financial markets last year were taken aback by the revelations in the Sub Prime Markets in the USA, this in turn led to a global lack of confidence in many of the financial institutions.

Our US owned financiers (GE Commercial Finance) withdrew their support wishing to reduce their exposure in the UK. We were then requested to source alternative finance, whilst Menzies (acting on the instructions of GE) were put in control of our day to day cash flow. Thus Menzies decided a strategy not to pay the VAT to normal terms.'

16. In respect of **the VAT period 01/09**, a first payment of £108,867 was due on 31 December 2008, a second payment of the same amount was due on 30 January 2009 and a balancing payment was due on 27 February 2009. Uniglaze made a single payment of £338,464.19 on 27 February 2009 (the due date for the balancing payment). This was the amount due per Uniglaze's return for that period.

17. Mr Davis said that the reason for this late payment was that Uniglaze's turnover was 'tumbling' with debts being written off as bad. In November 2008 £537,712 had

been written off in bad debts and in March 2009 a further £53,854 was written off. The write-off of bad debts had the consequence, under Uniglaze's invoice discounting arrangements that 80% of the amounts written off would be taken back by the invoice discounter. A severe restriction on the funds available to Uniglaze resulted.

18. In respect of **the VAT period 04/09**, the first payment of £108,867 was due on 31 March 2009 and was made on time. The second payment of the same amount, due on 30 April 2009 was missed. The balancing payment of £253,115.74, which discharged the entire VAT debt due for that VAT period (£361,982.74), was paid on 2 June 2009, 4 days after the balancing payment was due. The default surcharge imposed for the VAT period 04/09 (£36,198.00) was calculated at the rate of 10% on £361,982, which was, as Mr Rowe accepted, an error. Only £253,115.74 had been paid late and therefore only that amount could attract a surcharge.

19. On 18 March 2009 COFACE introduced a 'temporary reduction' of the facilities available to Uniglaze from £5m to £3.5m.

20. There is with my papers an email sent by Mr Wigg to HMRC on 27 March 2009, which explains Uniglaze's position at that time. It reads as follows:

'For 13 years we had the financial support of NMB Heller via invoice discounting. They were taken over by GE who decided they did not want us as a customer & forced us out at great cost to ourselves (over £200,000). We had to find a new funder in a hurry & managed to be accepted by Coface & the relationship is working fine except that the facilities are considerably less than before. Due to the recession our sales are down by over £5m and we are in a desperate position. It has also been very difficult to collect outstanding debts.

We can only request that some consideration be given to our plight.

On the plus side orders have picked up steadily & the future looks bright if we can get there. Our credit facilities are at great risk if we do not pay for our main supplies at the end of this month / 3 days into April 2009.

We are up to date with our VAT quarter but were not able to pay the monthly instalments.

We did believe that penal penalties imposed would be waived because of the recession but now it appears no relief will be given. In these unprecedented times can nothing be done to help us.

Please consider our position. If we pay the monthly instalment the company's future is in jeopardy. If we do not we are faced with more penal charges.

350 employees & 25 years of our efforts depends on your help. If you can help us we believe that we would be able to pay the quarter VAT at the appropriate date.'

21. In respect of **the VAT period 07/09**, the first instalment of £106,471 was due on 30 June 2009, the second instalment of the same amount on 31 July 2009 and the balancing payment on 28 August 2009. Uniglaze discharged its VAT liability for that period in two late payments, one of £242,157.66 made on 30 September 2009, and one of £200,000.00 made on 13 October 2009.

22. The evidence was that in the period around the end of June 2009, Uniglaze's invoice discounting facility with COFACE was coming under strain and there is in

my papers an email from COFACE to Mr Wigg dated 9 July 2009 informing him that the local credit committee of COFACE had conducted an annual review for Uniglaze and would be recommending a continuation of Uniglaze's facility but subject to a reduction from £5m to £4m of the facility limit, a reduction from £50,000 to £25,000 of the default funding limit, an increase from 1.5% over base to 2.25% over base of the early payment charge and an increase from 0.15% to 0.25% of the service fee. COFACE also exhibited a reluctance to finance 90+ day debts and indicated that it would require Uniglaze to covenant to reduce 90+ days debts from 18% of gross debtors (at the end of May 2009) to 10% of gross debtors within 3 months.

23. On 7 August 2009 COFACE emailed Uniglaze to state that their head office had confirmed the conditions mentioned and added a further one: that any customer that had a balance outstanding that is 120 days or more should be placed on stop and would not receive further funding from COFACE until the account was back in line. A deed of variation implementing these changes was executed on 2 September 2009.

24. In September 2009, Uniglaze was attempting to attract third party investment to the tune of £1m. This appears to have come to nothing.

25. In respect of **the VAT period 10/09**, the first instalment of £106,471 was due on 30 September 2009, the second instalment of the same amount was due on 30 October 2009 and the balancing payment was due on 30 November 2009. According to Uniglaze's VAT return for the period, its VAT liability was £456,505.31. However it appears that only two payments have been allocated to that liability, each of £75,000, made on 29 January 2010 and 26 February 2010 respectively. There were two further payments, each of £75,000 made on 31 March 2010 and 30 April 2010, which appear to me to relate to this liability, although HMRC have, in their schedule allocated them to the VAT period 01/10, with the result that there appears to have been an overpayment of £150,000 for that period.

26. Mr Davis submitted in respect of this period, that the cause of the late (and non-) payment was the squeezing of Uniglaze by COFACE. Uniglaze was looking for a new invoice discounter. I was told that it was possible for Uniglaze at that time to exit the 'Payment on Account Trader' regime, whereby monthly payments of VAT were required and that it was Uniglaze's fault that it did not do so.

27. In respect of **the VAT period 01/10**, the VAT liability according to Uniglaze's return was £374,541.89. A first instalment of £106,471 was due on 31 December 2009, a second instalment of the same amount was due on 29 January 2010 and the balancing payment was due on 26 February 2010. In the event the entire liability was paid, late, on 2 March 2010.

28. Mr Davis makes the point that this payment would not have been late if Uniglaze had applied to be taken out of the 'Payment on Account Trader' regime, because then the VAT would have been due in one sum and a grace period of 7 days after 28 February 2010 would have been allowed. Mr Davis points out that two large bad debts were written off about this time, a debt for over £83,000 on 31 January 2010 and a debt for over £29,000 on 26 February 2010.

29. In respect of **the VAT period 04/10**, the VAT liability according to Uniglaze's return was £447,326.24. A first instalment of £106,471 was due on 31 March 2010, a second instalment of the same amount on 30 April 2010 and the balancing payment on 28 May 2010. Two payments were made: £181,505.31 on 30 June 2010 and £170,000.00 on 30 July 2010. These payments total £351,505.31, leaving an underpayment of £95,820.93.

30. There is in my papers an email from Uniglaze to COFACE dated 24 February 2010 trying to increase the facility available to 'make it possible for Uniglaze to pay their VAT liability in full and on time and catch up on payments to glass suppliers which will mean that the company can claim settlement discounts for prompt payment'. Mr Davis attributed the default for the VAT period 04/10 to COFACE's reluctance to release funds to Uniglaze.

31. On 3 June 2010 HMRC withdrew Uniglaze from the 'Payment on Account Trader' regime, with the result that Uniglaze was after that required to pay VAT quarterly by the end of the month following the end of the VAT period, with a further 7 days' grace allowed for electronic payments.

32. In respect of **the VAT period 07/10**, the VAT liability per Uniglaze's return was £424,383.25. It was due by, or within 7 days after 31 August 2010 and appears to have been paid in full on 1 October 2010.

33. There appears to have been a further default surcharge imposed in respect of the VAT period 10/10, which was not considered at the hearing of the appeal as Mr Rowe did not have any papers referring to that VAT period (and anyway that VAT period did not feature in Uniglaze's notice of appeal). After that, Uniglaze took steps to enter a creditors' voluntary arrangement – as indicated above.

34. Mr Davis referred me to the decision of the Tribunal in the appeal of *JMS Aggregate Supplies* (TC01279), Release Date: 29 June 2011, in which I was the Tribunal Judge. In that case the insufficiency of funds which was the direct cause of the late payment of VAT was found itself to have been caused by several customers defaulting on their debts due to the appellant, coupled with the refusal of the appellant's bank to provide the appellant with extra support to ease its cash flow problems (*ibid.* [16]). The appellant in *JMS Aggregate Supplies* appealed against default surcharges imposed for 9 successive VAT periods, in relation to all of which the VAT was paid in full not more than 42 days late, and 10 days late in the case of one VAT period. The Tribunal found, having regard to the guidance in the leading case of *Customs and Excise Commissioners v Steptoe* [1992] STC 757, that the appellant's exercise of reasonable foresight and of due diligence and the appellant's proper regard for the fact that the tax would become due on a particular date did not avoid the insufficiency of funds which led to the default (*ibid.* [17]). The Tribunal also found that the appellant took its obligations to pay VAT on time sufficiently seriously and, having regard to the exceptional difficulties being experienced in its trade, did all that it could reasonably have been expected of it to make timely payment of the VAT due (*ibid.* [19]). In the result, on the exceptional facts of that case, the Tribunal concluded that the appellant had shown a reasonable excuse for its late

payment of VAT and allowed the appeal (*ibid.* [21]). I understand that HMRC have not appealed the *JMS Aggregate Supplies* decision.

35. Mr Davis also referred me to the decision of Judge Bishopp in *Energys Holdings Limited* (TC00335) in which no reasonable excuse was found, but the appeal was allowed on the basis that the penalty represented by the default surcharge (£131,881 in respect of a payment of VAT made one day late) was disproportionate.

36. Mr Rowe made the general submission that the evidence showed that the defaults were caused by cash flow problems which had arisen from the normal hazards of trade, starting in 2005 when Uniglaze's new building with its expensive plant and machinery had been put up. He contended that Uniglaze should have made the necessary adjustments to cope with the reduced facilities obtainable from its invoice discounters and their failure to do so did not amount to a reasonable excuse.

37. He said that HMRC does not accept that the Tribunal in *Energys* had the jurisdiction to make the decision it did. Although the *Energys* decision was not appealed, HMRC are taking the point in the *Total Technology* litigation (which I was not referred to).

38. He submitted that I should look at Uniglaze's case on reasonable excuse VAT period by VAT period.

39. By section 59(7)(b) VAT Act 1994 ("VATA"), a person is not to be liable to a surcharge if he would otherwise be liable but satisfies HMRC or, on appeal, a tribunal that, in the case of a default which is material to the surcharge there was a reasonable excuse for the return or the VAT not having been dispatched in time.

40. It is further provided (by section 71(1)(a) VATA) that for these purposes an insufficiency of funds to pay any VAT due is not a reasonable excuse.

41. As the Tribunal held in *JMS Aggregate Supplies*, the test which must be applied where an appellant submits that the cause of an insufficiency of funds to pay the VAT due constitutes a reasonable excuse was formulated by Lord Donaldson in *Stepto* as follows:

'If the exercise of reasonable foresight and of due diligence and a proper regard for the fact that the tax would become due on a particular date would not have avoided the insufficiency of funds which led to the default, then the taxpayer may well have a reasonable excuse for non-payment, but that excuse will be exhausted by the date on which such foresight, diligence and regard would have overcome the insufficiency of funds' (*ibid.* p.770)

42. I start by addressing HMRC's point that the defaults were caused by cash flow problems which had arisen from the normal hazards of trade and that Uniglaze's failure to make the necessary adjustments to cope with the reduced facilities obtainable from its invoice discounters does not amount to a reasonable excuse.

43. As a general matter, I find that the cash flow problems experienced by Uniglaze were caused by (a) Uniglaze over-extending itself on the provision of the new building and the plant and machinery to fit it out; (b) the subsequent recession and

downturn in its business; and (c) Uniglaze's attempts in these circumstances to 'ride out the storm' without taking drastic action to reduce its normal trade outgoings (I accept that it did endeavour to make economies while still attempting to continue with its business on about the same scale as before).

44. I also find that 'the exercise of reasonable foresight and of due diligence and a proper regard for the fact that [VAT liabilities] would become due on [particular dates]' (cf. Lord Donaldson in *Stepto*, above) would not have avoided the insufficiencies of funds which led to the default. In other words, the directors of Uniglaze at that time (before the appointment of Mr Davis and Mr Cansdale) was, in my judgment, reasonable, even though it resulted in Uniglaze getting into 'a desperate position' (to quote from Mr Wigg's email to HMRC dated 27 March 2009). In particular, I consider it was reasonable of Uniglaze to prioritise its obligations to its 350 employees and its credit facilities with its main suppliers over its VAT obligations, when any other action would have effectively destroyed its business.

45. The pressure exerted by its invoice discounters and the reduced facilities given to Uniglaze by them, together with the significant write-offs of bad debts with the associated further tightening of credit available to it were, I accept, the cause of the insufficiencies of funds experienced.

46. On the basis that it was reasonable conduct by the management of Uniglaze which led to Uniglaze suffering insufficiencies of funds to meet its VAT liabilities on time, I find that in principle there was a reasonable excuse for the defaults. I am fortified in this conclusion by the fact that, when financing from COFACE was relatively easily obtained, the payments of VAT for the VAT periods 07/08 and 10/08 were made on time.

47. However I have also to consider, in accordance with Lord Donaldson's dictum in *Stepto* whether in the case of any of the VAT periods in issue the excuse was exhausted before associated VAT was paid – i.e. whether reasonable foresight, due diligence and a proper regard for the fact that the VAT would become due on a particular date would have enabled Uniglaze to pay the VAT earlier than it did.

48. In applying this test fairly, it is impossible for me (on the evidence I have) to avoid an element of speculation. I take the VAT periods in turn, doing the best I can to achieve a fair and just result.

49. I have already found that Uniglaze had a reasonable excuse for the late payment of VAT for **the VAT period 01/08**. The VAT was paid 8 days late in that case.

50. In respect of **the VAT period 04/08**, Uniglaze paid the VAT in 3 instalments over the period June/July 2008. The VAT was paid 1½ to 3½ months late. Further, Uniglaze's decision not to pay its VAT liability on time was directly caused by the fact that control of its day to day cash flow was taken out of its hands at the behest of its then invoice discounter (GE). I am prepared to find, in the light of the acute financing difficulties faced by Uniglaze at that time that the reasonable excuse was

not exhausted before payment was made. Accordingly I find a reasonable excuse in relation to the default surcharge imposed for that VAT period.

51. In respect of **the VAT period 01/09**, the full amount of Uniglaze's VAT liability was paid on 27 February 2009, the date when the balancing payment was due. Thus the lateness relative to the payments of VAT for that VAT period was confined to the payments of the first and second interim instalments, due on 31 December 2008 and 30 January 2009. Again, I am prepared to find that the reasonable excuse in relation to this VAT period was not exhausted before the payment was made and so I find a reasonable excuse in relation to the default surcharge imposed for this VAT period.

52. In respect of **the VAT period 04/09**, the first payment, due on 31 March 2009 was made on time. The second payment was missed and the entire VAT liability for the period was discharged by a payment made on 2 June 2009, just over a month after the balancing payment had been due. Again, I am prepared to find that the reasonable excuse in relation to this VAT period was not exhausted. Therefore I find a reasonable excuse in relation to the default surcharge imposed for this VAT period.

53. In respect of **the VAT period 07/09**, both interim instalments were missed and the VAT liability was discharged in two payments made respectively just over one month and six weeks after the due date for the balancing payment. Again, I am prepared to find that the reasonable excuse in relation to this VAT period was not exhausted and that there was a reasonable excuse in relation to the default surcharge imposed for this VAT period.

54. In respect of **the VAT period 10/09**, the VAT liability was £456,505.31 and it appears that only 4 payments of £75,000 each (total: £350,000) have been made in discharge of that liability. The 4 payments were made respectively 2, 3, 4 and 5 months after the date when the balancing payment was due. In this case I consider that the reasonable excuse in relation to this VAT period was exhausted before any of the payments were made (notwithstanding the credit squeeze faced by Uniglaze at the time). Uniglaze, having failed to discharge its VAT liability in full, has failed to demonstrate 'a proper regard for the fact that the tax would become due on a particular date' (cf. per Lord Donaldson in *Stepto*). It follows that I am not prepared to find that a reasonable excuse in relation to any late payment of VAT relative to this VAT period has been made out.

55. In respect of **the VAT period 01/10**, both interim instalment payments were missed and the whole liability was paid some 4 days after the due date for the balancing payment. In this case I am prepared to find that a reasonable excuse in relation to this VAT period was not exhausted and that there was a reasonable excuse in relation to the default surcharge imposed for this VAT period.

56. In respect of **the VAT period 04/10**, it appears that of the total liability of £447,326.24 only £351,505.31 has been paid. That amount was paid in two instalments respectively 1 month and 2 months after the balancing payment was due (the interim payments having been missed). Again, I consider that the reasonable excuse in relation to this VAT period was exhausted before any of the payments were

made. Again, Uniglaze's failure to discharge its VAT liability in full shows a failure to demonstrate a proper regard for the fact that the tax would become due on a particular date. Therefore I am not prepared to find that a reasonable excuse in relation to any payment of VAT relative to this VAT period has been made out.

57. In respect of **the VAT period 07/10**, the entire liability of £424,383.25 was paid about 1 month after the due date (there being no requirement in this VAT period for interim instalments to be made) and I am prepared to find that a reasonable excuse in relation to this VAT period was not exhausted before the payment was made. Therefore I find that there was a reasonable excuse in relation to this VAT period.

58. In summary, I find that Uniglaze has shown that it had a reasonable excuse in relation to the late payments of VAT for the VAT periods: 01/08, 04/08, 01/09, 04/09, 07/09, 01/10 and 07/10. I find that Uniglaze did not have a reasonable excuse in relation to the late payments of VAT for the VAT periods 10/09 and 04/10.

59. I consider that on the evidence there is no basis for me to strike down any of the default surcharges as being disproportionate. This case is clearly distinguishable from *Energys Holdings UK Limited*.

60. I direct the parties to recalculate the surcharge(s) due having regard to this Decision. If they are unable to dispose of the appeal by agreement, it should be listed again before me for any further determinations which may be necessary.

61. 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.

**JOHN WALTERS QC
TRIBUNAL JUDGE**

RELEASE DATE: 3 October 2012