



**TC02867**

**Appeal number: TC/2012/02943**

*VAT – Default surcharge – Whether a reasonable excuse for late payment –  
Yes – Appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**THE STAIRCASE COMPANY LTD**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE CHRISTOPHER STAKER  
MR PHILIP JOLLY**

**Sitting in public in Bradford on 23 August 2013**

**The Appellant in person**

**Ms J Bartup for the Respondents**

## DECISION

### Introduction

- 5 1. This is an appeal against the imposition of a default surcharge of £902.44 under s 59 of the Value Added Tax Act 1994 on late payment of VAT for the period ending 30 September 2011.
2. The Tribunal gave an oral determination at the end of the hearing, allowing the appeal. Mr Bartup for HMRC requested that the Tribunal provide full reasons for the decision.
- 10 3. The Appellant's VAT return for the period to which this appeal relates was filed online, and the amount of the VAT due was paid by direct debit. The VAT return was submitted electronically on 8 November 2011, one day late, and payment of the VAT due was received by HMRC on 11 November 2011.

### The Appellant's case

- 15 4. Mr Stephen Arnall of the Appellant attended the hearing, and gave evidence as follows.
5. He referred to the general financial difficulties that the Appellant had been experiencing in recent years. At the time that the deadline for the VAT return and payment for this period was approaching, the Appellant was expecting a cheque for a large amount from one customer which the Appellant was counting on in order to be able to pay the VAT. The cheque arrived later than expected. The Appellant thought that the cheque would take five days to clear, such that cleared funds would not be available until 8 November 2011. The Appellant knew that the due date for submitting the VAT return online was 7 November 2011, but he submitted the return a day late, on 8 November 2011, as he thought that the cheque would not clear until then. The Appellant now realises that he could have filed the return on the due date, since the direct debit would not have been collected by HMRC until 10 November 2011.
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### The HMRC case

- 30 6. The HMRC position was that insufficiency of funds does not provide a reasonable excuse, and that the Appellant had not sought a time to pay agreement from HMRC.

### The Tribunal's findings

7. Having regard to the overriding objective, the Tribunal determined this appeal on the day of the hearing, on the basis of the material before it. The Tribunal does not discount the possibility that more complete material and more comprehensive argument might have led to a different conclusion.
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8. It is not disputed that the Appellant's VAT return was submitted one day late. However, there is no suggestion by HMRC that the default surcharge has been imposed by reason of the late submission of the return. The appeal therefore turns on whether or not payment of the VAT due for the period in question was paid late.

5 9. In determining whether the Appellant paid the VAT late, it must be borne in mind that the payment was made by direct debit. The precise date on which HMRC collected the direct debit was a matter within the control of HMRC. On the material before the Tribunal, it is not apparent that there was anything that would have prevented HMRC from collecting the direct debit on 10 November 2011. Had HMRC  
10 done so, there is nothing to suggest that it would not have received payment on that date, if the cheque deposited by the Appellant had cleared on 8 November 2011.

10. It seems that as a matter of practice, HMRC collects direct debits three days after the VAT return is submitted. Thus, if the return is submitted a day late, HMRC will collect the direct debit a day later than it would if the return is submitted on time.  
15 However, the question is whether, as a matter of law, the Appellant itself must be regarded as having made payment a day late in such circumstances.

11. The deadline for payment of the VAT for the quarter in question, in accordance with regulations 25(1) and 40(2) of the Value Added Tax Regulations 1995, was 31 October 2011. However, regulation 40(3) and (4) of the Regulations permit HMRC  
20 to give a direction allowing additional time for payments made by means of electronic communications.

12. Nothing that is in the form of a formal direction under regulation 40(3) and (4) of the Regulations was in the material before the Tribunal.

13. However, there was no dispute between the parties that such a direction had been  
25 made, to the effect that the Appellant had an additional 7 days to file the VAT return online, such that the due date for the online VAT return was 7 November 2011.

14. Further, a printout from the HMRC website states (page G43 of the bundle) that "If you pay online by Direct Debit, HMRC will collect the payment from your nominated bank account a further three working days after the due date for your return". It appears that this is, or reflects the terms of, a direction under regulation  
30 40(3) and (4) of the Regulations.

15. The difficulty for the HMRC case is that the page from the HMRC website does not state that the direct debit will be collected three working days *after the VAT return is submitted*. It states that "HMRC will collect payment from your nominated bank account a further three bank working days *after the due date for your return*" (emphasis added). In the present case, even if the return was submitted only on 8 November 2011, the *due date for the return* still remained 7 November 2011. If the direction is read literally, the direct debit would still be collected three working days from 7 November 2011, that is, on 10 November 2011.

40 16. The Tribunal accepts that this wording cannot be read literally in all cases. In particular, the direct debit certainly could not be collected by HMRC three working

days after the extended date for the return, if the return is only submitted more than three working days after the extended date.

17. However, in the present case, the Appellant submitted the return only one day late. Even though this amounted to a late submission of the VAT return, the Tribunal has  
5 not been pointed to anything that would make it clear that in such circumstances it will no longer be possible for the direct debit to be collected within the normal 3 working days from the extended due date, or that the payment itself will in such circumstances be deemed to be late.

18. This leads the Tribunal to conclude that even if the payment of VAT was late by a  
10 day, the Appellant has a reasonable excuse for that late payment.

19. The appeal is therefore allowed.

### **Conclusion**

20. For the reasons above, the Tribunal allows the appeal.

21. This document contains full findings of fact and reasons for the decision. Any  
15 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  
20 “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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**DR CHRISTOPHER STAKER  
TRIBUNAL JUDGE**

**RELEASE DATE: 10<sup>th</sup> September 2013**

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