



**TC03225**

**Appeal number: TC/2013/04534**

*VAT – late registration for VAT – Whether reasonable excuse for late registration - No.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SIMON STEWARD**

**Appellant**

**- and -**

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

**TRIBUNAL: PRESIDING MEMBER  
PETER R. SHEPPARD FCIS FCIB CTA  
AIIT**

**The Tribunal determined the appeal on 4 December 2013 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 8 July 2013 with enclosures, and HMRC's undated Statement of Case received by the tribunal on 15 October 2013, with enclosures. The Tribunal wrote to the Appellant on 15 October 2013 indicating that if they wished to reply to HMRC's Statement of Case they should do so within 30 days. No reply was received.**

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## DECISION

### 1. Introduction

5 This considers an appeal against a penalty of £3,050 levied by HMRC for the late notification by the appellant of its liability to register for Value Added Tax. The appeal was allocated to the basic category but both parties have confirmed that it should continue under the default paper category.

### 2. Legislation

10 VAT Act 1994 Schedule 1 – Registration for VAT.

VAT Act 1994 Section 71 – What is not considered a reasonable excuse.

Finance Act 2008 Schedule 41 – penalties.

### 3. Case law

HMRC v Total Technology (Engineering) Ltd. [2011] UKFTT 473 (TC)

15 Enersys Holdings UK Ltd. [2010] UKFTT 20 (TC) TC 0335

Jo-Ann Neal v C & E Commissioners QB 1987 STC 131

### 4. Facts

20 Under the VAT Act 1994, Schedule 1 paragraph 5(1) a person who becomes liable to register under paragraph 1(1)(a) shall notify the Commissioners within 30 days of the end of the relevant month. The appellant did not notify his liability at the appropriate time.

25 5. A person became liable to register if his annual taxable turnover exceeded a limit which was revised regularly/annually. The limit for the period 1 April 2011 to 31 March 2012 was £73,000 and the limit from 1 April 2012 to 31 March 2013 was £77,000.

6. The appellant submitted his notice of liability to register through an electronic application for registration for VAT on form VAT 1. This was received by HMRC on 14 November 2012

30 7. The appellant stated that he was sole proprietor of a business providing software consultancy services. He stated that turnover exceeded the threshold on 31 May 2012 and requested registration date of 1 May 2012.

8. Subsequently it was discovered that the appellant should have notified his liability to be registered by 30 June 2011

9. Schedule 41 of the Finance Act 2008 sets out the provisions whereby a Failure To Notify penalty may be levied where a person has failed to notify to HMRC on time their liability to be registered for VAT. The maximum penalty is 100% of the potential lost revenue

5 The level of the penalty may be reduced depending on the level of culpability of the appellant, whether the failure was deliberate, or concealed, and whether the disclosure was prompted by HMRC or was unprompted.

10. In this case HMRC accepted that the failure was neither deliberate nor concealed. In those circumstances the legislation provides for the penalty to be reduced to 30% of the potential lost revenue. Where a person has made an unprompted disclosure of their liability to register the legislation allows HMRC to reduce the penalty to nil. However they can only do this if the failure is for a period of less than 12 months. If the failure is for more than 12 months, as in this case, a minimum penalty of 10% of the potential lost revenue must be levied.

15 11. HMRC asked the appellant to supply them with further information. This information which was provided by the appellant on 12 March 2013 included an estimate by the appellant of a figure of £30,500 for the net tax due in the period 1 July 2011 to 30 November 2012.

20 HMRC therefore levied the minimum penalty of 10% of the Potential Lost Revenue ie £3,050.

12. The penalty may be reduced to nil if the appellant is able to provide a reasonable excuse for his failure.

### **13. The appellant's submissions.**

25 A letter dated 16 April 2013 to HMRC from the appellant's agent, SPW (UK) LLP, includes an appeal against the penalty "on the grounds it is estimated and would prove excessive." It also includes

30 "Please note that our client has been fully co-operative in terms of providing you with the details in relation to his turnover and his VAT registration was also done on time. Unfortunately due to an innocent error, he did not realise that he had gone over the threshold by an earlier date and as soon as he did he advised you. We see this as a firm reasonable excuse and accordingly apply for the immediate cancellation of the £3,050 suspended penalty.

14. An e-mail dated 8 July 2013 to the Tribunal from the appellant's agent includes:

35 ".....our grounds of appeal are Mr. Steward has made no deliberate errors in late notification of Customs of the VAT registration. This is not a culpable offence for VAT penalty purposes. As you are well aware the VAT registration rules are extremely complicated and it is very easy for any taxpayer with little or no accounting and tax knowledge such as Mr. Steward to make the sort of innocent error that Mr.

Steward has made. Facts prove that Mr. Steward is an excellent taxpayer and always pays his tax and VAT on time.”

15. In the Notice of Appeal dated 8 July 2013 the appellant’s agent states “the grounds of appeal are that quite innocently, our client referred to a particular tax for the purposes of VAT registration. Unfortunately he did not realise until later that the threshold applied on a rolling basis. Our client has not made any deliberate errors.”

#### 16. HMRC’s submissions

HMRC note that sales of £247,928 have been declared in respect of the first long period (covering 01/07/11 to 31/01/13 -19 months). They say that this shows that the appellant’s exceeding of the registration limit was not marginal.

The appellant’s need to monitor the value of taxable supplies was more obvious than in some cases.

17. HMRC draw attention to the Tribunal decision in the case of Jo-Ann Neal v C & E Commissioners QB 1987 STC 131 and to the passage where it states that VAT is

“now well enough established in our daily commerce that anyone, however inexperienced ought to recognise the need to become acquainted with its basic requirements when embarking on a career.”

18.HMRC say that it is the responsibility of a sole proprietor to monitor the value of their taxable supplies. In this case HMRC say the figures show it was more obvious that close monitoring was required than in some cases.

19. HMRC say that in calculating the penalty the appellant has been given all allowable reductions. The appellant has recovered the VAT amounts that should have been charged and benefitted through the use of the Flat rate scheme. HMRC does not consider the penalty excessive.

20. HMRC does not consider that the appellant not realising that the registration threshold applies on a 12 month rolling basis constitutes a reasonable excuse for his failure to notify his liability to register for VAT on time.

21. HMRC request that the appeal is dismissed.

#### 22. The Tribunal’s observations

The level of the surcharges and whether or not they are disproportionate is discussed at length in the Upper Tribunal’s decision in the case of Total Technology Engineering Ltd. The decision also discusses the fact that there is no power of mitigation available to the Tribunal. The only power in this respect is that if the tribunal considers the amount of the penalty is wholly disproportionate to the gravity of the offence, if it is not merely harsh, but plainly unfair, then the penalty can be discharged. For example in Enersys Holdings Ltd the tribunal discharged a potential

penalty of £130,000 for the submission and payment of a return submitted one day late.

23. The level of the penalties has been laid down by parliament and unless the late notification penalty has not been issued in accordance with legislation or has been  
5 calculated inaccurately the Tribunal has no power to discharge or adjust it other than for the reasons as outlined in paragraph 22 above. The Tribunal does not consider that a penalty of 10% of the potential lost revenue to be wholly disproportionate to the gravity of the offence nor plainly unfair.

24. The only other consideration that falls within the jurisdiction of the First-tier  
10 Tribunal is whether or not the appellant has reasonable excuse for his failure as contemplated by Section 59 (7) VAT Act 1994.

25. The appellant has made the submissions set out above and it is clear to the Tribunal that this was an unfortunate and innocent error by the appellant. However the oversight lasted for over 12 months and it was the responsibility of the appellant to  
15 ensure that they comply with tax legislation. It is apparent that the appellant's taxable turnover did not exceed the VAT registration threshold by a marginal amount. His turnover for the 1 July 2011 to 31 January 2013 was £247,928 that is over £13,000 per month on average. The VAT registration limit for most of that period was an annual taxable turnover of £77,000. At an average turnover rate of £13,000 per month the  
20 annual registration threshold would have been exceeded in 6 months. In the Tribunal's view the appellant's turnover was at such a level that he ought to have been aware of his need to notify HMRC of his liability to register for VAT long before he did so on 14 November 2012. The appellant has offered no other excuse for his failure other than it was an innocent error. Whilst that might be so it does not  
25 provide the appellant with a reasonable excuse for the failure for over 12 months to notify a liability to register for VAT.

26. In the light of the Upper Tribunal decision in Total Technology (Engineering) Ltd. as explained in paragraph 22. above this Tribunal has no statutory power to  
30 adjust the level of a penalty paid unless it is incorrectly levied or inaccurately calculated. HMRC has applied the legislation correctly and has calculated the penalty accurately as explained in paragraphs 9. to 11. above. The penalty of £3,050.00 being 10% of the Potential Lost Revenue of £30,500

27. The appellant has established no reasonable excuse for its late notification of a liability to be registered for VAT. Therefore the appeal is dismissed.

35 28. 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  
40 "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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**PETER R. SHEPPARD  
TRIBUNAL PRESIDING MEMBER**

**RELEASE DATE: 16 January 2014**