



TC03365

Appeal number: TC/2014/00038

Value Added Tax – default surcharge for late payment – whether a reasonable excuse – elderly taxpayer with poor memory – yes – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

AWARD FRAMERS INTERNATIONAL LIMITED Appellant

- and -

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

**TRIBUNAL: JUDGE DR K KHAN
MS JANET WILKINS, CTA TEP**

Sitting in Oxford on 7 February 2014

Mr Michael John Selway, Managing Director, appeared for the Appellant

Miss Karen Evans, Presenting Officer, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

- 5 1. This is an appeal against a default surcharge for the late payment of tax for the period 08/13 in the sum of £1,127.24.
2. The Appellant has been in the default surcharge regime from the period 02/07 onwards.

The Appellant's submissions

- 10 (1) The Appellant, in their letter to the Tribunal on 20 December 2013 stated:
- “Whilst we realise that a mistake was made resulting in the late submission and payment of VAT on 10 October 2013, we believe that the Default Surcharge of £1,127.24 is totally disproportionate.”
- (2) The Appellant states:
- 15 “In the past 12 months we have previously submitted both our returns and the resulting payment before the due dates.”
- (3) The letter also states that:
- “The late submission and payment for the period 01 June 2013 to 31 August 2013 was due to a genuine mistake concerning the month in which that particular three monthly period ended. When on 10 October we did discover the fault, we immediately submitted the returns and paid the £7,514.94 by bank transfer. The submission was 10 days late and the payment just three days late.”
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- (4) The Appellant explained with regards to the financial history of the company, that:
- 25 “You might also take into account that some five years ago our largest client EMI Music encountered major financial problems resulting in the turnover reduced by nearly £80,000.”
- (5) At the Tribunal, Mr Selway explained this was a genuine mistake and that given his age (77 years old) he had a poor memory and thought the quarter end for VAT was September when in fact it was August. When he realised in October that he had made a mistake he paid the VAT immediately.
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Respondents' submissions

- 35 (1) The return 08/13 had a due date of 7 October 2013 for electronic payments and electronic VAT submissions. The VAT Return VAT was

received on 10 October 2013. The Appellant paid the VAT by way of Faster Payment Service transaction which reached HMRC's bank account on 10 October 2013. As both the VAT Return and Payment were received after the due date, a Surcharge Liability Notice Extension was issued. The Appellant has a history of defaults. Included in the notes on the reverse side of the Surcharge Liability Notice issued for the periods which explains, in some details, the need to pay and submit returns by the due date. It also explains how the surcharges are calculated and the percentages used in determining any financial surcharges in accordance with VATA 1994 s59 (5).

- (2) The Appellant stated that the late payment was due to a genuine error but on review this was not accepted.
- (3) The Respondents say that based on the case of *Total Technology Engineering (Limited)* the Upper Tribunal accepted that the surcharge imposed does not infringe the principle of proportionality.
- (4) The Respondents say that the lateness of a return or payment is largely a question of fact and once late a surcharge automatically arises. The length of the delay is immaterial. The surcharge applies even if the payment is one day late.
- (5) The Respondents submit that there is no genuine error in this case. The Appellant did not take the appropriate or sufficient steps to ensure that the company met its VAT payment obligations. Genuine error and reliance on third parties are not reasonable excuses for late payment of VAT.

Conclusions

3. The question of whether a particular trader has a reasonable excuse should be assessed by the standards of reasonableness which one would expect of a taxpayer who sought to honour their obligations as a taxpayer. In making this assessment, the tribunal should also consider the particular attributes of the taxpayer, their circumstances and any other factors which are relevant to the situation. Therefore, while the reasonable taxpayer would give priority to complying with their duties to make payment on time and ensure returns are accurate and timely, the age and experience, health or difficulties experienced by the taxpayer are also relevant considerations in taking a balanced view and in arriving at a fair decision.

4. It was clear from the evidence that the director responsible for the returns, Mr Selway, was elderly (77 years old) and prone to bouts of forgetfulness. He explained that he had a poor memory and was labouring under the mistake that the quarter date for the VAT return was September when it was August. When he realised his mistake he paid the tax immediately and altered his payment systems.

5. A mistake of fact can give rise to a reasonable excuse. In this case and based on the facts presented, there was a genuine error by the taxpayer. Given his age and

failing memory and the limitations which that brings, the Tribunal finds that there is a reasonable excuse and the appeal should be allowed. The Appellant has taken steps to ensure that this type of mistake does not occur in the future.

6. The appeal is allowed.

5 7. 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
10 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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**DR K KHAN
TRIBUNAL JUDGE**

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RELEASE DATE: 27 February 2014