



**TC03368**

**Appeal number: TC/2012/05632**

*Value Added Tax – default surcharge for late payment – whether Time to Pay arrangements in place – no – no reasonable excuse – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MICHAEL SHERIDAN  
T/A LONGS**

**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.**

**The Appellant did not appear and was not represented.**

**Anna Rees, 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 period 01/12. The amount due on 7 March 2012 was £12,735.45 but it was paid late over a five week period after the due date. The Appellant had been in the default surcharge regime from 01/09 onwards. The surcharge was levied at the rate of 15% in the sum of £2,060.31.

### Appellant's submissions

- 10 2. The Appellant contends that they contacted HMRC on 5 March 2012 and agreed a Time to Pay (TTP) arrangement for the period 01/12. These arrangements were made before the due date of 7 March 2012 and therefore the surcharge should be removed.

3. The Appellant stated in his letter of 23 April 2012 the following:

- 15 "I am a small business trying my best to keep afloat in times of economic uncertainty accompanied by my ill-health. I do not have the funds to pay such a large amount of money in one hit. May I also point out that I followed the tips on how to avoid VAT surcharges by calling as soon as I knew what the VAT amount due would be".

### 20 Respondents' Submissions

4. The sole proprietor has ultimate responsibility for the timely submissions of the VAT return and any tax due thereon.
5. Prior to the period subject to this appeal, Surcharge Liability Notices had been issued, which explained within the Guidance Notes that the VAT due must reach  
25 HMRC by the due date. It also explained that if there was any difficulties in meeting the payments then HMRC officers should be informed as soon as possible so an agreement can be made to defer the payment or to pay by post.
6. While the Appellant did telephone HMRC on 5 March 2012, as the return for the period was not yet on record, he was advised to call back with payment proposals  
30 by 8 March 2012.
7. The notes indicate that the Appellant actually phoned again on 7 March 2012 to discuss TTP, which was refused due to the number of earlier TTP arrangements which had been given and which were not always been adhered to. The notes also indicated that the Appellant was warned of the fact that he would probably be issued a  
35 surcharge.

## **The Law and Public Notices**

- (1) Section 59 VATA 1994.
- (2) Section 71 VATA 1994 which does not provide the definition of a reasonable excuse but does state what is not a reasonable excuse.
- 5 (3) Section 83 VATA 1994 which deals with an appeal against default surcharge.
- (4) Notice 700 The VAT Guide and Notice 700/50 Default Surcharge which both explain and give details of how VAT operates and how the surcharges are levied.

## 10 **Conclusion**

- (1) The Appellant has the responsibility for meeting his VAT obligations. He is a cash trader and the VAT due is received when a sale is made so the VAT due to HMRC would have been collected prior to the due date and should be paid to HMRC on time to avoid any surcharges.
- 15 (2) It is established that lack of funds is not a reasonable excuse unless there are some exceptional circumstances. There are no exceptional circumstances in this case. The Appellant alludes to having health problems and has provided medical evidence which suggests that there are ongoing health issues but there is no explanation that any of these  
20 impacted on the late payment.
- (3) It is understandable that an Appellant in this situation would feel aggrieved especially where he has made efforts to contact HMRC to agree Time to Pay arrangements. However, given his past default record and the fact that he had not kept to the terms of previous TTP it was not  
25 offered. There were no TTP arrangements in place at the relevant time. In the circumstances the Tribunal finds that the Default Surcharge Penalty should be upheld and the appeal is dismissed.

8. 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  
30 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.

35

**DR K KHAN  
TRIBUNAL JUDGE**

**RELEASE DATE: 27 February 2014**

5