



TC03383

Appeal number: TC/2012/07610

VALUE ADDED TAX – default surcharge –

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

INTRAMED LIMITED trading as FORTUNA HEALTHCARE Appellant

and

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

**TRIBUNAL: JUDGE JOHN WALTERS QC
MRS LESLEY STALKER**

Sitting in public at Bedford Square, London on 17 February 2014

A Patani, Financial Controller, for the Appellant

P. Rowe, Presenting Officer, HM Revenue & Customs, for the Respondents

DECISION

Introductory

5 1. The appellant, Intramed Limited (“Intramed”), has made late payments of VAT
in a number of VAT periods. These have given rise to surcharge liability notices
being served on Intramed. However, amendments have been made by the
respondents (“HMRC”) and at the time of the appeal the position was that
10 Intramed was in default for the VAT period 09/10 (which, being the first relevant
default, attracted no default surcharge), and for the VAT period 03/11, which gave
rise to a default surcharge at 2%, in the amount of £2,220.99, which is not
appealed against, and for the VAT period 03/12, which gave rise to a default
surcharge at 5%, in the amount of £5,319.82, which is the subject of the present
appeal.

15 2. For the VAT period 03/12, the due date for the submission of the VAT return
and the payment of VAT was 30 April 2012, extended to 7 May 2012, when (as in
Intramed’s case) VAT is paid by electronic transfer to HMRC.

3. 7 May 2012 fell on a Monday, which was a Bank Holiday.

20 4. Intramed’s VAT return for the VAT period 03/12 was received by HMRC on 3
May 2012, but the payment of the VAT due was received by HMRC on 8 May,
2012, one day late.

The facts

25 5. The payment of the VAT due (£107,836.58) was made by BACS and was
initiated by Intramed on Thursday, 3 May 2012. Mr Patani told us that he was
aware that the payment would take 3 business days to be received by HMRC. The
last business day before 7 May 2012 was Friday 4 May 2012 and he said that he
had seen no need to ensure that the payment was received by HMRC on Friday 4
May 2012 because his understanding was that the general practice was that
30 payments due on a date which fell on a bank holiday would be regarded as having
been paid on time if received on the day following the bank holiday. The payment
was made with no intention that it should be paid late and at all relevant times
funds were available to Intramed to make the payment. Mr Patani said that there
had been “underlying reasons” for the payment not being initiated earlier, so that
it would be received on 4 May 2012. We understood these reasons to be
35 connected with personnel issues at Intramed.

40 6. Mr Rowe, for HMRC, referred us to the publicity which HMRC has given to the
requirement for traders to ensure that payments of VAT due on a date which falls
on a bank holiday are received on or before the working day falling *before* the
bank holiday. He said that this was highlighted in Public Notice 700 The VAT
Guide, in Public Notice 700/50, Default Surcharge and on HMRC’s website.
Furthermore the point had been made by HMRC in correspondence with
Intramed, and we were shown a copy of a letter dated 15 December 2009, which
enclosed a document headed “Advice – to help you avoid Default Surcharge”
where, at paragraph 7, headed ‘Electronic Payment’, readers are specifically

reminded that ‘if the 7th day falls on a weekend or bank holiday, payment must clear to our account before then’.

7. Mr Patani made the point that he had written to HMRC on 31 December 2012 asking for repayment of surcharges already paid (and remitted by HMRC) amounting to £14,016.86. He had asked that this amount be repaid with interest. It had been repaid, but without interest, and Mr Patani complained about the unfairness of being penalised for making a VAT payment one day late, while HMRC suffered no penalty for delaying repayments due to Intramed. (The repayment was in fact received on 10 January 2013.)

Discussion and Decision

8. We accept the evidence given, but regret that it does not establish that Intramed had a reasonable excuse for the late payment of VAT for the VAT period 03/12, for relevant purposes. Intramed was, we find, sufficiently on notice that the payment needed to be received by HMRC on or before 4 May 2012 and the reasons given for the delay in making the payment are not sufficient to establish a reasonable excuse.

9. For that reason, as we announced at the conclusion of the hearing of the appeal, we are constrained to dismiss the appeal.

Further appeal

10. 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: 5 March 2014