



TC04269

Appeal number: TC/2014/05502

*VAT – default surcharges - late submission of Return and payments –
whether “reasonable excuse” – No – Sections 59 and 71 VATA 1994 –
Appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ROTA INSTALLATIONS LTD

Appellant

- and -

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

**TRIBUNAL: JUDGE KENNETH MURE, QC
 MR PETER R SHEPPARD, FCIS, FCIB, CTA**

Sitting in public at Glasgow on Tuesday 16 December 2014

Appellant:- Mr Colin Taylor, Director

Respondents:- Mrs E McIntyre, Officer of HMRC

DECISION

1. This is an appeal against VAT default surcharges for the late submission of Returns and payment of tax due for three Periods viz £1,399.06 for 02/13; £880.90 for 05/13; and £908.98 for 08/13.
2. It was agreed that Mrs McIntyre should lead, setting out her arguments, and so highlight for Mr Taylor the matters on which he should respond.
3. Mrs McIntyre referred us first to the Schedule of Defaults (p20/21 of the Bundle). She explained that penalties resulted if either the Return or payment of VAT due was late. A seven day extension was allowed if both the Return and payment were made electronically. There had been four defaults in earlier periods, viz 11/10, 11/11, 05/12 and 11/12. In the three Periods which were the subject of the appeal both the Returns and payments were late. For 02/13 payment was not made until 25 May 2013. For 05/13 payment was made on 1 October 2013 and for 08/13 on 26 November 2013. Each of the surcharges was at the rate of 15%.
4. There had been an exchange of correspondence between Mr Taylor and HMRC. He complained that the penalties should be set aside as he had sustained a double fracture of his right leg during June 2011. HMRC had sought unsuccessfully further information from Mr Taylor, but on the basis of the information available they indicated on review that they considered that there was no *reasonable excuse*. Correspondence including the letter of Review dated 3 February 2014 was referred to at p40-43.
5. Mrs McIntyre explained that HMRC would entertain a Time-to-Pay agreement if an application were made before the due date under Section 108 VATA, but it had not been made timeously in the present case.
6. Mrs McIntyre observed that there was a second director of the Appellant company, who bore equal responsibility for its management and administration. She noted too from a file of emails produced that Mr Taylor had been able to attend meetings with his lawyers and consult with a medical specialist about a court action relating to his leg injury throughout the material time.
7. Mr Taylor then gave evidence. His role in the company was to generate sales, general management, and to collect monies due. The company, he explained, instructs a chartered accountant who completes its financial records and accounts. Additionally it employs a part-time internal book-keeper. The CA prepares the company's VAT Returns for his (Mr Taylor's) approval and he signs the cheques. Mr Taylor acknowledged that he was aware that the payments for the relevant Periods were made late.
8. Mr Taylor explained that 2011 had been a difficult trading period. He suffered his accident. The company was forced to make redundancies to cut costs. The business' organisation had to be restructured. In addition to Mr Taylor there was

another part-time salesman, but he could work only on weekdays, while most sales opportunities were at weekends. While Mr Taylor returned to work part-time in September 2011, he was not fit to work full-time until March 2012. He was unable to carry out site visits until his return to full-time work. The part-time salesman was made redundant, which also affected the level of sales.

9. From the end of 2012 and in 2013 the company was transformed. Costs were minimised. Advertising was reduced by 90%. There was sufficient work then for the available staff. During 2012 the company took on work which was less profitable than expected in order to keep the staff employed. The 2012 re-organisation did not impact on the Appellant company financially until 2013. The financial advantages resulting from the redundancies did not arise until late 2013. There was overall a one-third reduction in the company's turnover.

10. Mrs McIntyre did not challenge this account in cross-examination. We found Mr Taylor frank, straightforward and credible in his account. Accordingly the foregoing narrative reflects our **Findings in Fact**.

11. In her concluding submission Mrs McIntyre referred us to the default surcharge provisions in Section 59 VATA and to Section 71 anent the sense of *reasonable excuse*. This had been considered further in the Upper Tribunal decision in *Total Technology (Engineering) Ltd* [2012] UKUT 418 (TCC). The present circumstances did not indicate the existence of a *reasonable excuse* in her opinion. Moreover, the Time-to-Pay arrangements could not assist: HMRC would only entertain such an application if it were made before the date of default. Accordingly she moved the Tribunal to dismiss the appeal.

12. In his final address to the Tribunal Mr Taylor stressed that this was a case of delay, not a failure to pay. He had faced serious practical difficulties after his accident. The whole administration of the company's business had been disrupted and then re-organised. He had additionally to cope with his court action in respect of his injuries. His discussions with HMRC had been unsatisfactory. For these reasons he considered that the Penalties should be quashed.

30 **Conclusion**

13. We consider that the appeal should be dismissed. As the arguments developed during the hearing the relevant issue was whether or not there was a *reasonable excuse* for any or all of the three defaults. We consider that there was not. The Appellant company engages a firm of Chartered Accountants and additionally employs an internal book-keeper. Mr Taylor acknowledged that he approved the VAT Returns and issued the cheques. He was therefore aware of the delays. He indicated too that almost all of the company's customers paid in full and reasonably promptly.

14. We appreciate that Mr Taylor's accident, consequent absence from work, and the re-organisation of the business would have affected its administration. However, the accident was in June 2011 and he returned to work part-time in the autumn. By

March 2012 he was back at work full-time. There is another director of the company, who obviously bears a shared responsibility for its administration. The default relates to turnover between December 2012 and August 2013, an appreciable time after Mr Taylor's recovery and return to work full-time.

5 15. While we have a degree of sympathy for the Appellant we do not consider that there is a *reasonable excuse* for the default and, accordingly, the appeal falls to be dismissed.

10 16. In the course of the hearing it occurred to us that there might have been a *reasonable excuse* for late payment in the earlier Period 11/11. If so, the rates of penalty for the three Periods in issue would have to be re-calculated. However, we note that the Return for 11/11 was also late, and that consideration does not therefore arise.

15 17. 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.

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KENNETH MURE
TRIBUNAL JUDGE

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RELEASE DATE: 10 February 2015