



TC04605

Appeal number: TC/2014/01976

*VAT – surcharge – reasonable excuse – appeal partially conceded by HMRC
– remainder appeal refused*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TALENTMAP HR

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE SARAH ALLATT
MR JULIAN SIMS**

Sitting in public at Brighton on 10 March 2015

Paul Stewart for the Appellant

Mr Robinson, Officer of HM Revenue and Customs, for the Respondents

DECISION

The Appeal

- 5 1. This is an appeal against default surcharges totalling £2,051.78. The surcharges arose as follows:

Period	Rate	Surcharge £
04/13	10	497.28
07/13	15	824.65
10/13	15	502.15
11/13	15	227.70

2. The point at issue is whether there is a reasonable excuse for the late filing of the returns and late payment of VAT.

- 10 3. Section 59 of the Value Added Tax Act 1994 (VATA) provides that a person who has not submitted a VAT return or paid the VAT by the due date and who has been served a liability notice shall be liable to a surcharge equal to the ‘specified percentage of his outstanding VAT for that prescribed accounting period’. The ‘specified percentage’ increases with each subsequent default from 2% to 5% then to 10% and finally 15% (see s59(5) VATA).

- 15 4. However, if the Tribunal is satisfied that there was a reasonable excuse for the late payment of VAT or late submission of the returns s 59(7) VATA provides that:

20 ... he shall not be liable to the surcharge ... and shall be treated as not having been in default in respect of the accounting period in question (and, accordingly, any surcharge liability notice the service of which depended upon that default shall be deemed not to have been served).

5. The legislation does not provide a definition of a “reasonable excuse” which is “a matter to be considered in the light of all the circumstances of the particular case” (see *Rowland v HMRC* [2008] STC (SCD) 536).

25 Background

6. Mr Robinson explained to us that the first instance of default (return and payment issues late) was for the period 04/12. A Help Letter VAT 172 was issued, which is not part of the default surcharge regime. The returns and payment for the periods 07/12, 10/12 and 01/13 were also late, but the surcharges for these periods

were at the 2% or 5% rate, and below £400, and so due to HMRC practice these surcharges were not charged.

7. Mr Stewart, the director of Talentmap HR, explained that part of the reason for the late submission of the returns was that his company year end was 31 August, and therefore his VAT quarters were out of sync with the quarter ends of the company. He applied in August 2013 for the VAT quarters to be changed to February, May, August and November. This letter reached HMRC in September 2013, and the required change made to enable a return to be filed for the one month period to 11/13.

8. We were shown transcripts of two telephone calls made by Mr Stewart to HMRC about the VAT affairs of Talentmap HR. The first was on 27 November 2012, where Mr Stewart was reminded that the next return due was that for October 2012, due on 7 December 2012. That return was subsequently late.

9. The second telephone call was on 3 October 2013 when Mr Stewart phoned up to enquire when the change of VAT quarters would happen, and whether he could make a return for the 4 months to August 2013, rather than the 3 months to July 2013 (which was by that stage already overdue). He was told that the July return needed to be submitted, and that one would also be due for the quarter ended October 2013, but after that the change would happen so that a return would be then due for November 2013.

10. Mr Stewart then explained that he had, during this period, been suffering from General Anxiety Disorder. This was diagnosed in March 2014, but Mr Stewart explained, and we accept, that such a diagnosis is only made after at least 6-12 months of symptoms. This condition had, specifically, meant that dealing with paperwork, including opening post, had become very difficult for him.

11. He stated this medical situation had been mentioned in his notice of Appeal to the Tribunal. Mr Stewart stated that he had sent proof of this (a letter from his doctor) in May 2014 to HMRC.

12. Mr Robinson stated that he was not aware that HMRC had received such a letter.

13. We then adjourned the proceedings for half an hour to enable both parties to make enquiries and to try to produce the letter.

14. Mr Stewart contacted the doctor's surgery and a letter (not a copy of the original) was faxed over to the Tribunal within the half hour. This confirmed the diagnosis in March 2014.

15. On continuing the hearing, Mr Robinson for HMRC very fairly said he thought it likely a letter had been sent to HMRC, however as the letter did not mention Talentmap HR, but only Mr Stewart by name, it had probably not been filed with the Talentmap HR documents.

16. Mr Robinson on behalf of HMRC then decided that HMRC would accept that Mr. Stewart had a reasonable excuse for the 10/13 and 11/13 periods, and withdrew the surcharges for that period.

5 17. There remains under appeal the surcharges for 04/13 and 07/13, totalling £729.85.

Discussion

18. The issue is whether there is a reasonable excuse for the late filing of the returns and late payment of the tax.

10 19. The Appellant's contentions are firstly, that he was not aware that the company quarter end and the VAT quarter were different, hence the filing of each return approximately one month late and secondly, that this lack of knowledge was partly or entirely due to his anxiety disorder which meant that he did not attend to his post for long periods of time.

15 20. HMRC contend that (for the periods that remain under appeal) the Appellant was continuing to run a successful business during the time, and that Mr Stewart was aware of the due dates of the returns as this was clearly stated during the telephone calls and shown by the request to re-stagger the VAT quarters.

20 21. There is no definition of reasonable excuse. It is however accepted that illness of the individual responsible for the completion of the returns may constitute a reasonable excuse.

22. It is for the Appellant to prove that a reasonable excuse exists.

25 23. Had the Tribunal been required to decide the periods 10/13 and 11/13, now conceded by HMRC, we would have concluded that a reasonable excuse did exist for these periods. We accept Mr Stewart's statement that at least a 6 month period of anxiety is required before diagnosis, which happened in March 2014, and we accept that his illness did prevent him dealing with paperwork.

24. We do not, however, believe that a reasonable excuse exists for the two periods now remaining under appeal.

30 25. Of the Appellants grounds of appeal, we do not think that lack of awareness constitutes a reasonable excuse, and indeed we think the Appellant was aware that there was a problem, as he requested a change of VAT period on a form to HMRC dated 6 August 2013. He must therefore have known his VAT quarters were different from the company quarter end, and therefore have known the due date for the 07/13 return (31/08/13), nevertheless this form was still filed late.

35 26. The Appellant had previous experience of the VAT system.

27. Determining for what periods his illness provides a reasonable excuse is less clear, as the onset of the illness is not provided by the medical certificate. As stated at

paragraph 23 above, we accept a period of build up of symptoms is necessary before a diagnosis.

28. We note however that for these periods (04/13 and 07/13), there is not sufficient evidence to show that the inability to deal with business affairs was a significant
5 problem at that time.

29. We also note the primary reason for the defaults was error due to the misalignment of the VAT quarters with the company quarter-ends.

30. We therefore do not think the Appellant has shown satisfactory grounds for reasonable excuse for these remaining two periods.

10 31. We therefore dismiss this appeal in relation to the surcharges for the periods 04/13 and 07/13. For the avoidance of doubt, we formally allow the appeal for the periods 10/13 and 11/13.

15 32. 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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**SARAH ALLATT
TRIBUNAL JUDGE**

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RELEASE DATE: 25 AUGUST 2015