



TC04715

Appeal number: TC/2015/003731

Default Surcharge VAT – Default Surcharge – reasonable excuse late payment – whether reasonable excuse – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

	RS AND LR LLOYD T/A SITTING ROOMS	Appellant
	- and -	
	HER MAJESTY'S REVENUE AND CUSTOMS	Respondents

TRIBUNAL: JUDGE DR K KHAN

The tribunal determined the appeal on 5 October 2015 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 15 June 2015 and HMRC's Statement of Case 14 July 2015.

DECISION

Introduction

5 1. This is an appeal against the Default Surcharge for the period 02/15 in
the amount of £481.82 being 10% of the tax owed which as stated on the return
is £5328.21.

2. The Appellant has been registered for VAT since 17 January 1985 and
10 has been in the Default Surcharge Regime from the period 08/13 onwards.

Background facts

15 (1) The Appellant acknowledges that the payment for 02/15 was
rendered late and as a result a default occurred.

(2) The Appellant requested a review of the surcharge in a letter dated 28 April 2015 and the Respondents issued a reply upholding the surcharge on 18 May 2015.

5 (3) The Appellant sent in a further letter dated 1 June 2015 with more enclosures and the Respondents considered the information provided and upheld the surcharge on 3 June 2015.

The Appellant's case

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(1) The Appellant, who paid using the Faster Payment Service (FPS) stated that a Bank Holiday fell at the same time as the due date and as a result there was a delay in the receipt of cleared funds by HMRC.

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(2) They further say that the amount of the surcharge was excessive for a delay of one day and pointed out that the Respondents had issued a statement saying that late payment would not be penalised as long as liabilities were fully paid.

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(3) The penalty would make their trading position difficult.

HMRC's submissions

10 (1) The return for the period 02/15 had a due date of 7 April 2015 for electronic VAT return submission and payment by electronic means. The return was received on 17 March 2015 and payment was received in two parts, £501.00 on 31 March 2015 and £4818.21 on 8 April 2015. This meant that the surcharge was calculated on the
15 outstanding balance of £4818.25 which was not paid on by the due date.

(2) The HMRC say that the penalty charged was properly imposed in accordance with the law and the Appellant had adequate notice of the charge and the way it was calculated.

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(3) They point out that due dates regularly fall on a week day and/ or Bank Holiday and the Appellant has a responsibility to make themselves aware of the times when this occurs and to arrange for payment to be sent at an earlier date.

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(4) They say that it would appear from the Appellant's statement that they were waiting for funds to be received and this would suggest that they were suffering from an insufficiency of funds which does not give rise to a reasonable excuse where the payment has not been made by the due date.

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(5) HMRC say that the Appellant may have misunderstood a recent statement in the media regarding the waiving of penalties. The position has always been that if the Appellant is able to demonstrate a reasonable excuse or mitigating circumstances then the penalty may be waived. The Default System is not excessive or disproportionate and this has been decided by the courts in the Total Technology (Engineering) Ltd case in the Upper Tribunal. Finally, the Respondent's say that the onus of proof rests with them to show that the Appellant failed to pay the VAT on time. The onus then passes to the Appellant to show that there is a reasonable excuse.

Conclusion

(1) The Appellant was clearly aware of the due date for payment of its VAT liability and the potential consequences of a late payment.

(2) While the Tribunal sympathises with the Appellant's position the fact remains that the payment was late.

(3) In order for a payment to arrive by the due date the Appellant must

5 take into account weekends and Bank Holidays and have a reasonable expectation that the payment would be received on time.

In this case, the Appellant had clearly not considered that a Bank Holiday fell at the same time as the due date and there would be a delay in the receipt of the cleared funds. Where arrangements are

10 not made to deal with such a situation and to ensure a timely payment there is no reasonable excuse for the late payment.

(4) The Appellant say that they were waiting for funds to be received.

This would suggest that there was the probability that the Appellants

15 may have had an insufficiency of funds on the due date. In such a case, the Appellant should have contacted HMRC before the due

date and explained their position and entered into an arrangement for the payment after the due date. This was not done. A shortage of funds on its own is not a reasonable excuse as specified in Section 71(1) (a) VATA 1994.

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(5) Surcharges are issued under the VATA 1994 Section 59 and are penalties based solely on the amount of VAT paid after the due date regardless of the length of delay. This may seem harsh to taxpayers but there is little the Tribunal has by way of powers to vary those penalties.

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(6) Lastly, the Appellant states that the penalty is disproportionate. It is now settled law based on the decision in Total Technology (Engineering) Ltd that the Default Surcharge Regime does not infringe the principal of proportionality.

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(7) In summary, there is nothing in this case to suggest there is a reasonable excuse for the late payment and accordingly the appeal is dismissed.

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3. This document contains full findings of facts and reasons for the Decision. Any party dissatisfied with the decision has a right to appeal 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 fifty six days after this decision is sent to that party. The parties are referred to “Guideline to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**TRIBUNAL JUDGE
K KHAN
RELEASE DATE: 17 NOVEMBER 2015**

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