



TC04695

Appeal number: TC/2014/06761

Default surcharge - late return and payment – whether reasonable excuse – appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

	G Robertson Consulting Ltd.	Appellant
	- and -	
	Her Majesty's Revenue and Customs	Respondents

TRIBUNAL: JUDGE K KHAN

The Tribunal determined this appeal on 21 September 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 of 15 September 2014 and HMRC's Statement of Case submitted in January 2015.

DECISION

Introduction

- 5 1. This is an appeal against a Default Surcharge Notice for the period 08/14
in the sum of £358.55. The surcharge was levied at the rate of 10% of the tax
due of £3585.54.
2. The period 08/14 had a due date of 7 October 2014 for electronic VAT
10 return submission and payment. The return was received on 8 October and
payment was received on 13 November 2014.
3. The Appellant's first default is recorded for the period 11/13 and entered
the default surcharge regime at that time.
- 15 4. The Appellant had submitted returns late previously, for example, in the
period 02/13 but as their turnover was less than £150,000.00 a help letter and
advice was provided.

Legislation

- 25 (1) Liability to a VAT surcharge is governed by the VATA 1994
Section 59 which gives details of how the surcharges are calculated
and the percentages used in determining any financial surcharge.
- (2) The Surcharge Liability Notice advises a trader how the surcharges
are calculated and the percentages used.
- 30 (3) VAT Notice 700/50 explains HMRC's understanding of the
legislation and states that reliance on a third party is no considered a
reasonable excuse.
- 35 (4) S 71(1) (a) VATA 1994 specifically excludes an insufficiency of
funds as providing a reasonable excuse for late payment.

Submissions by the parties

- 40 (1) The Appellant says that their return was submitted by an
"alternative organisation". The Appellant did not have a record of
the date the money was due to leave their account. They explained
that they had spoken to the bank and there were insufficient funds at
45 the time to make the payment.

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- (2) They explained that they cannot afford to pay the penalty surcharge and it will cause financial difficulties.
 - (3) HMRC submit that where the Appellant relies on a third party or alternative organisation to file their returns there's no excuse pursuant to Section 71(1) (b) VATA. This is explained in VAT Notice 700/50 at paragraph 6.3.
 - (4) They submit that it would appear that the reason a debit payment was not made was because the Appellant appeared not to have sufficient cleared funds to make the payment. Had the Appellant contacted HMRC on the due date regarding their lack of funds the surcharge could have been avoided.
 - (5) A lack of funds or insufficiency of funds does not constitute a reasonable excuse.

Conclusion

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- (1) The Appellant, like many other taxpayers, has argued that the Default Surcharge Regime is unfair and a burden on business. The Tribunal understands that point. However the laws, as made by Parliament, states that a trader must pay the VAT owed by a prescribed date and must submit their returns by a prescribed date and if they fail to do so a surcharge liability will arise. The legislation is clear that a shortage of funds is not a reasonable excuse nor is the reliance on a third party. The surcharge Notices served on the Appellant would have explained clearly the implications of filing returns late and not making payment on time. It is unfortunate that the Appellant did not approach HMRC earlier to explain their position and to make arrangements for a time to pay past the due date.
 - (2) In the circumstances therefore the Surcharge has been correctly imposed and there is no reasonable excuse. The appeal is accordingly dismissed.

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 the Tribunal not later than fifty six days after the 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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TRIBUNAL JUDGE K KHAN
RELEASE DATE: 09 DECEMBER 2015

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