



**TC05301**

Appeal number: TC/2016/01901

*VALUE ADDED TAX – Default Surcharge – late payment – mistaken belief that a Direct Debit was in place – whether reasonable excuse – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Benwick Sports Ltd.**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE DR K KHAN**

**The Tribunal determined this appeal on 20 June 2016 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 31 March 2016 and HMRC's Statement of Case dated 6 May 2016.**

## DECISION

### Introduction

1. This is an appeal against a Default Surcharge for the period 10/15 in the sum of  
5 £509.53 being 5% of the tax payable at the due date.

2. The period 10/15 had a due date of 7 December 2015 for electronic payments and electronic VAT submissions. The Return was received on 30 November 2015 and the payment was received on 21 December which was fourteen days later than the due date.

10 3. It was the Appellant's belief that a Direct Debit payment was in place at the time and that this constitutes a reasonable excuse.

### 4. Legislation

5. VATA 1994 Section 25 and 59 VAT Regulations 1995, Regulation.

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### 6. Relevant facts

7. The Appellant was registered for VAT on 31 August 1973 and the main business is that of retail sales of angling supplies. There are four Directors of the company. The preferred method of payment of tax has been via BACS.

20 8. The first default is recorded in 04/15 when the Appellant entered the Default Surcharge Regime. The second default was 07/15 which had a due date of 7 September 2015 for electronic payments and VAT submission. The return was received on 20 August 2015 and the payment was received on 16 September 2015 and 18 September 2015, being nine and eleven days later than the due date.

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### 9. Appellant's case

10. The Appellant made the following statement;

11. "The Appellant set up a Direct Debit to pay VAT to HMRC on 3  
March 2015. Evidence of this is attached in the form of a copy letter to the  
30 Appellant's bank (HSBC plc Ely). HMRC took payment of the 02/15  
VAT liability of £5830.48 by Direct Debit on 11 March 2015. Evidence is  
attached in the form of a copy printout from HMRC's online account."

12. HMRC claims that the Appellant was in default for late payment of VAT for the period 10/15 and raised a surcharge of £509.53. The Appellant claims that HMRC should have collected the VAT liability for this period by Direct Debit but HMRC  
5 claims that the Direct Debit had been cancelled. Evidence is attached that the Direct Debit was active in the form of a letter from the Appellant's bank dated 6 January 2016.

13. The Appellant is a responsible Taxpayer and had an excellent track record of paying Corporation Tax, PAYE, VAT and Personal Tax.

10 14. The Appellant has now set up a new Direct Debit on 29 February 2016 given HMRC's latest review.

15. **HMRC's case**

15 16. The Appellant maintained that a Direct Debit (DD) was set up in order for monies to be taken by the Respondents on 10 September 2015. This did not occur. The payment was made via BACS on 21 December 2015. There was no Direct Debit set up for the payment which was received fourteen days after the due date.

17. The Appellant used the DD as a method of payment for the period 07/10 up to and including 01/15 (with the exception of period 04/11). The DD failed for the  
20 period 04/15. The Respondent's letter of 27 March 2015 advised the Appellant that the DD instruction had been cancelled and that if they wished to use this method of payment in the future, then another DD should be completed.

18. The Respondent's advised the Appellant again on 20 July 2015 that in order for future returns to be paid by DD that they would need to set up a new DD instruction  
25 to their bank. As this was prior to the due date of the subsequent period of 07/15 the Appellant had sufficient time to act on this advice. Payment for this period was made by BACS.

19. A further letter was issued to the Appellant by the Respondent on 14 October 2015; after the Appellant had maintained that a DD was set up, advising that records  
30 indicating that no DD instruction was in place on the VAT account and that in order to resolve the issue a new DD instruction should be set up. This was prior to the due date of the subsequent period of 10/15 and the Appellant had sufficient time to act on this advice.

20. The Appellant's DD details as per their online account showed there was an  
35 active DD in place between 22 May 2010 and 16 March 2015 with corresponding collection date entries. This clearly showed that the DD status was cancelled on 16 March 2015.

21. The letter from the Appellant's bank dated 6 January 2016 while confirming that there was a live DD in place, indicates that the DD was in fact a NDDS (National Direct Debit System) which is a "one off DD set up to take specific or individual DDs and was not a continuous payment as for VAT quarterly payment." This is the reason why the DD collected from the Appellant's account was on 11 March 2015.

22. The Appellant stated in their letter of 9 February 2016 that they cancelled the DD after the old partnership ceased trading and the new DD was set up for the limited company in 2015. The Respondents indicated there was confusion over the DD and the Appellant mistakenly opted for an NDDS instead of a correct DD to be set up on the account. The Respondents say that this is not a genuine error on the part of the Appellants and does not provide a reasonable excuse. They therefore believe the penalty should be upheld.

### 23. **Conclusion**

24. The Respondents drew reference to the case of Garnmoss Ltd v HMRC (TC/2011/8183) and a Notice 700/50 Default Surcharge Para 6.3 as authority for their proposition that a bona fide mistake can never give rise to a reasonable excuse. This is not quite accurate. It is more correct to say that a genuine mistake if honest and in good faith is not sufficient on its own to give rise to a reasonable excuse. However a mistake which has been reasonably made is, in principle, capable of being a reasonable excuse. It is incorrect to say a mistake can never give rise to a reasonable excuse, it is the impression created by the Public Notice.

25. In this case, the Appellant appears to have operated in the genuine mistaken belief that a Direct Debit was in place.

26. If they had checked their online VAT account on 16 March 2015 it would have clearly showed that the Direct Debit had been cancelled. The Respondents also advised the Appellant in March and in July 2015 that the Direct Debit had not been set up and had in fact been cancelled. This appears to have been confirmed by the Appellant in a letter of 9 February 2016 which stated that they had cancelled the Direct Debit after the old partnership had ceased trading and a new Direct Debit was set up for the Limited Company in March 2015. However, the Direct Debit which was set up at that time was for "one off" payments rather than quarterly VAT payments.

27. It would have been reasonable for the Appellant to have investigated the position more fully with their bank and HMRC on being given Notice that the Direct Debit had been cancelled and payment could not be made of its VAT liability. They do not appear to have investigated the status of the Direct Debit. It is surprising that the Appellant had not taken steps to check this fundamental point after being informed by HMRC that a Direct Debit system had been cancelled. They only realised that this was the case some time after a penalty was incurred.

28. A prudent Taxpayer acting in a reasonable manner with the intention of meeting their tax liabilities would have sought reassurances that the Direct Debit was active and should not have assumed that it was active without further investigation.

5 29. While the tribunal has sympathy with the Appellant it was perhaps a mistaken belief that a Direct Debit was in place led to the Penalties being incurred. The Tribunal believe that the Appellant was given notice that the Direct Debit had been cancelled. It is quite clear that there is no reasonable excuse in this case. There is no mistaken belief nor was the behaviour of the Appellant that of a reasonably prudent Taxpayer.

10 30. The legislation allows for a Taxpayer to be exonerated from a Penalty if there is a reasonable excuse. The word 'reasonable' denotes that there must be some objectivity which is to say that the Taxpayer's behaviour should be assessed objectively. The test in the statute is not whether the Taxpayer had an honest and genuine belief but whether there is a reasonable excuse. In this case, judged by an  
15 objective test, it cannot be said that the Taxpayer has a reasonable excuse since they did not behave in a reasonable manner. A reasonable person would have checked with the bank and HMRC to confirm that the Direct Debit was properly in place and was available to pay the quarterly VAT payments. That was not done and therefore, sadly, there is no reasonable excuse.

20 31. The appeal is accordingly dismissed.

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  
25 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.

30 **DR K KHAN**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 08 AUGUST 2016**

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