



TC05302

Appeal number: TC/2016/01214

*VALUE ADDED TAX – late submission of payment of VAT due on Return
– whether reasonable excuse for late payment – no – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ABC Countdown Cars Ltd

Appellant

- and -

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

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 27 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 11 March 2016 and HMRC's Statement of Case dated 13 April 2016 .

DECISION

Introduction

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1. This is an appeal against a Default Surcharge for the period 09/15 for the late payment of VAT. The surcharge was levied at 10% of the tax due the amount being £1, 580.53.

2. The period 09/15 had a due date of 7 November 2015 for electronic payments and electronic VAT submissions. The Return was received on 6 November 2015 and payment was received on 11 November 2015 thus making it late.

3. The Appellant has always paid using the Faster Payment System (FPS) and has been in the Default Surcharge Regime since the period 03/14.

15 4. Legislation

5. Value Added Tax Act (the VATA) 1994 S. 59 and 71(b)

6. The legislation lays out provisions whereby a Default Surcharge may be levied where HMRC have not received a VAT Return for a prescribed accounting period by the due date, or have received the Return but have not received by the due date the amount of VAT shown on the Return as payable.

7. The first default does not give rise to a penalty but the trader is brought within the Default Surcharge Regime. A second default within a twelve month period leads to a penalty of 2% of the tax due. Further default within the following year results in a 5% penalty, which with further defaults, can increase to 15%. Where the trader does not default for a full year they would be outside of the regime.

8. A trader will escape a penalty if a reasonable excuse can be established.

9. Appellant's submissions

10. The Appellant acknowledges that the payment for the period 09/15 was made late but makes the following point:

11. Debit "The surcharge arose as my accountant assumed that I had a Direct Debit mandate set up which I did not have. Payment was made in the same timescale as if a Direct Debit mandate was in place".

12. Where a Taxpayer pays by the electronic method other than Direct Debit they will normally get an extra seven calendar days in which to submit their return and payment. If a Direct Debit payment is made the Taxpayer gets an extra seven

calendar days to submit the return but HMRC would collect the payment from the bank on the third working day after the extended due date for the return. This clearly gives the Taxpayer extra time to make the payment.

5 **13. The Respondent’s submissions**

14. HMRC say that since the Appellant’s accountants had the responsibility to establish the method of payment for the tax, they should have made the necessary arrangements prior to the return and the payments being due and it should not have been assumed that the tax had been collected using the Direct Debit system. The accountants made the assumption that this method of payment was being used when in fact the Faster Payment Service was the arranged method of payment.

15. The assumption that the accountants would have paid the tax using the Direct Debit system does not provide a reasonable excuse for the removal of the surcharge. It is simply a mistake and not a reasonable excuse.

16. Where there is a genuine error or mistake the provisions of Notice 700/50, Default Surcharge para. 6.3 are relevant. It states that a “genuine mistake, honestly and acting in good faith is not a reasonable excuse.” Further, the law provides that reliance on someone else to submit the Return or make payments is also not a reasonable excuse.

17. Once the 09/15 Return had been filed the accountant would have received an online acknowledgment screen which would have shown how payment was effected. It would have been clear that there was no Direct Debit in place when the payment was made.

18. Therefore the fact that the payment was made on 11 November 2013, the same date as payment would have been collected by Direct Debit, does not provide grounds for the removal of the surcharge. There was simply no Direct Debit in place so the payment remained due on 7 November 2015.

19. Lastly, HMRC say that reliance on a third party is excluded from providing a reasonable excuse under Section 71(1) d VATA.

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20. **Conclusion**

21. The Tribunal was provided with no evidence that a Direct Debit system had been set up by the Appellant. The Tribunal received no paperwork showing the completion of a mandate or instruction to the bank to set up a mandate which would have allowed HMRC access and permission to operate the account for a withdrawal. If a Direct Debit had been set up it would have been the responsibility of HMRC to take the payment at the requisite time. In fact it would have been quite clear to the Appellant when their Return was submitted, the acknowledgment receipt would have

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shown the method of payment whether BACS, CHAPS, Faster Payment or Bank Giro Credit Transfer and the expected due date for electronic payment.

22. HMRC's Notice 700 – the VAT Guide - as well as the HMRC website would also have provided information the date and method of payment.

5 23. By law, a VAT registered trader is responsible for the timely submission of the VAT and delegating the task to a third party does not absolve that responsibility. Where reliance is placed on any other person to perform tasks which should properly be performed by the taxpayer there is no reasonable excuse. It is not possible to delegate a statutory obligation in this way. The Tribunal, as an observation, would
10 point out that that Taxpayers should keep all documentary evidence to support their position or argument before the Tribunal. It is not enough simply to say something has been done. If that action can be supported by telephone notes, emails or any documentary evidence this would be most helpful to the Tribunal.

15 24. It may well be that the Taxpayer in good faith believed that they had set up a Direct Debit instruction but there is no evidence that this was done or indeed that it was set up and later cancelled.

25. In the circumstances therefore the appeal is dismissed and the Penalty is upheld.

26. 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
20 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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**DR K KHAN
TRIBUNAL JUDGE**

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