



**TC01601**

**Appeal number: TC2011/3375**

**VAT – DEFAULT SURCHARGE – *Appellant failed to submit its VAT return on time – cash flow difficulties – did the Appellant have a reasonable excuse – No – Appeal dismissed***

**FIRST-TIER TRIBUNAL**

**TAX**

**ETERNITY BRIDAL LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: Michael Tildesley OBE (Tribunal Judge)**

**Sitting in public at Tribunals Service, 4<sup>th</sup> Floor, City Exchange, 11 Albion Street, Leeds LS1 5ES on 21 November 2011**

**The Appellant did not appear**

**Mrs N Newham, Tribunal Caseworker of Appeals and Reviews Unit, for HMRC**

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## DECISION

### The Appeal

1. The Appellant appealed against a surcharge assessment dated 11 February 2011 in the sum of £5,293.16.
- 5 2. The Appellant informed the Tribunal that it did not intend to attend the hearing and relied on its written submissions.
3. The Tribunal decided to hear the Appeal in the Appellant's absence in accordance with rule 33 of the Tribunal Rules 2009.

### Reasons

- 10 4. Section 59 of the VAT Act 1994 requires the Appellant to furnish VAT returns and pay the outstanding VAT within one month of the relevant accounting period. The Appellant failed to pay the VAT owing by the due date for the accounting period ending 31 December 2010. As the Appellant was subject to a surcharge liability notice throughout the relevant accounting period it was liable to pay a surcharge at the  
15 rate of 15 per cent of the VAT due, namely £5,293.16.
5. The Appellant can avoid the default surcharge if it can satisfy the Tribunal on a balance of probabilities that it had a reasonable excuse for not furnishing the VAT return and payment on time. Reasonable excuse, however, is strictly construed by the  
20 legislation. Insufficiency of funds and reliance on the default of others cannot in law constitute a reasonable excuse. In order to establish a reasonable excuse the Appellant has to show that it exercised reasonable foresight and due diligence and a proper regard for the fact that tax would become due on a particular date.
6. The Appellant's reasons for not furnishing the VAT payment on time was that one of its customers deferred its payment of £150,000 for one month and that its bank  
25 would not give any flexibility to the Appellant to pay the VAT before the customer met its debt. As soon as the customer made its payment, the Appellant remitted the outstanding VAT to HMRC.
7. The Appellant provided no background or documentation to substantiate its reasons for non-payment. The VAT return for the quarter ending 31 December 2010  
30 showed that the Appellant's sales during the period amounted to £416,451 which even with the £150,000 discounted suggested that the Appellant had the funds to meet its VAT liabilities. The Appellant supplied no evidence of the steps taken to anticipate the difficulties posed by the recalcitrant customer, and whether it had advised HMRC of potential problems with payment. The Tribunal concludes that the Appellant has  
35 failed to establish that it exercised reasonable foresight and due diligence in respect of its responsibility to furnish the VAT payment on time. The Appellant's reason for non-payment was in effect that it had insufficient funds which cannot in law constitute a reasonable excuse.

## **Decision**

8. The Tribunal is satisfied on the above findings that the Appellant did not have a reasonable excuse. The Tribunal, therefore, dismisses the Appeal confirms the surcharge assessment in the sum of £5,293.16.

5 9. 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  
10 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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**TRIBUNAL JUDGE**  
**RELEASE DATE: 22 November 2011**

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