



**TC03137**

**Appeal number: TC/2012/00279**

*VAT – Default Surcharge – late payment – whether reasonable excuse due to illness of accountant – yes – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PRIORY PRINT AND STATIONERY LIMITED                      Appellant**

**- and -**

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

**TRIBUNAL: DR K KHAN  
JANET WILKINS, CTA TEP**

**Sitting in Ashford, Kent, on 8 October 2013.**

**The Appellant did not appear in person and was not represented.**

**Alison McHugh, Senior Officer, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.**

## DECISION

1. The Appellant was contacted before the hearing by telephone and indicated to the Tribunal that the matter should proceed in her absence.

### 5 **The matter under appeal**

2. The appeal is against a default surcharge for the period ending 31 August 2011 (08/11) in the sum of £495.36 being 10% of the tax due on £4,953.69.

3. There is no dispute the payment was made late. The issue is whether there is a reasonable excuse for the late payment.

### 10 **Legislation**

Value Added Tax Act 1994 (VATA 1994)

Section 59 – the default surcharge

(a) Section 59(1)(a) provides that a taxable person is in default if payment of VAT is made late;

15 (b) Section 59(4) provides that if a taxable person is in default for a prescribed accounting period then they are liable to a surcharge of the amount of a prescribed percentage;

20 (c) Section 59(7) provides for the Commissioners or on appeal the Tribunal setting aside the surcharge if the VAT shown on the return was despatched at such time and in such manner that it was reasonable to expect that it would be received at the appropriate time or the Appellant had a reasonable excuse for the late payment;

(d) Section 71(1)(b) provides that reliance on a third party is not a reasonable excuse.

### 25 **Appellant's submissions**

(1) Their last two payments of VAT had been late as there was a change of accountant and the Appellant was waiting to be notified by the accountant of how much VAT should be paid.

30 (2) The business, which was eventually sold at a loss, had been struggling and the Government had been “trying to help small businesses to stay open” and that somehow the default surcharge would be waived.

35 (3) In a letter dated 20 March 2013, the Appellant explained that the person preparing their accounts did not realise there was a change in payment methods and did not know how to pay online. Since payments could not be made by cheque only by BACS on the computer, the person arranging payment was not familiar with online payment. The Appellant also indicated that the accountant

was unwell at the time “with a suspected breakdown but it had since turned out that he has a brain disorder called Encephalitis” and has been unable to work for over a year. They explained that the illness of the accountant could provide an excuse for the late payment.

5 **The Respondents’ submissions**

- (1) The payment in respect of the VAT liability for period 08/11 was due by Friday 7 October 2011 and was received via the telephone payment service on 7 November 2011, one month late.
- 10 (2) HMRC say the Directors had ultimate responsibility for the timely submissions of the VAT Return and any tax due.
- (3) The Appellant has been in the default surcharge regime for the period 08/10 onwards and have defaulted on four previous occasions prior to 08/11. The potential financial consequences attached to the risk of further defaults were known to the Appellant given the information printed on the Surcharge Notice.  
15 There were also warnings given of the financial penalty on the VAT Return.
- (4) The Appellant would therefore have been aware of the potential financial consequences of future defaults. The details of the rising scale of surcharge was also explained on the reverse side of each surcharge liability notice issued to the Appellant.
- 20 (5) The Directors have ultimate responsibility for ensuring they meet their statutory obligations and reliance on a third party is not an excuse.
- (6) The requirement for returns and payments to be made online was widely publicised. The Respondents submit it is reasonable to expect a responsible  
25 business person conscious of and intending to comply with their obligations regarding tax to ensure from correspondence from previous defaults and information available that they are aware of how and when to make payments. They therefore seek the dismissal of the appeal.

**Discussion and Conclusion**

- 30 (1) The default surcharge regime is intended to make taxpayers file their returns and make payments on time. If this is not done, a penalty is imposed which is a percentage of the tax which has been paid late.
- (2) The Tribunal finds that there is a reasonable excuse on the grounds of illness. This decision was communicated to the Respondents on the day of the hearing.
- 35 (3) The Appellant indicated that they had “tried to send our payment online but the information that we received from our accountant was incorrect. We were waiting for them to tell us the amount and then he never informed us that it takes five days to set up a bank payment. We assumed that you had received

the money not realising that we needed more time.” What seemed to have transpired in this case is that the Appellant was informed of the amount to be paid late. This is the first time that they were making payments online.

- 5 (4) The Appellant’s accountant, who was responsible for communicating information to the Appellant regarding their liability for the Appellant to make the necessary payments, did so late and this resulted in the Appellant making direct debit arrangements for payments late. They had not appreciated at the time that it would taken at least five days for the payment to go through once a direct debit arrangement had been put in place. The direct debit arrangements were therefore put in place late. This seems to be entirely the fault of the accountant who was ill in the relevant period.
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- 15 (5) The Appellant clearly thought that they had made the payment on time. They only realised that the payment was late when they received the default surcharge notice on 15 October 2010. Their first reaction on calling HMRC was “I thought you had received the payment”. This is because they had made the direct debit arrangements but had not appreciated that it had taken extra time before the payment was actually made which in turn resulted in a late payment.
- 20 (6) They immediately made a telephone payment of the VAT due and they explained that they were waiting for their accountant to inform them of the amount of VAT which should have been paid. The accountant clearly had worked out the liability but not informed the Appellant in time to make the payment.
- 25 (7) In the period 04/09 – 02/10 the Appellant had made all payments on time but had made a late payment in September 2010. In the Tribunal’s view the accountant, given the extended period of his illness and its serious nature, on a balance of probability would have been ill in the 18 months before the default occurred. Given the Appellant’s history of payments on time, albeit by cheque, when the new payment arrangements were put in place they were not familiar with online payments. The delay in making the payments and the fact that they had not appreciated the time taken to make the arrangements coincided with the illness of their accountant and him informing them of the amount of their liability.
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- 35 (8) The Appellant’s correspondence and approach suggests that they were diligent taxpayers who honestly and genuinely believed that they had made the necessary payments on time.
- (9) HMRC accept that a later payment due to illness on the part of the person responsible for preparing the Returns is a reasonable excuse. In the circumstances therefore there is a reasonable excuse and the appeal is accordingly allowed.
- 40 4. 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 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**

**RELEASE DATE: 12 December 2013**