



**TC03373**

**Appeal number: TC/2013/07137**

*VAT – default surcharge – reasonable excuse – insufficiency of funds –  
appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**KEY SYSTEMS EC2 LTD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE JENNIFER BLEWITT  
MRS JO NEILL**

**Sitting in public at Bedford Square on 24 February 2014**

**Miss Michelle Clark for the Appellant**

**Mr Philip Rowe, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

5 1. By Notice of Appeal dated 6 May 2013 the Appellant appealed against a VAT default surcharge in the sum of £3,739.45 for the period 05/11.

2. As a preliminary point HMRC raised the fact that the appeal was made out of time. Miss Clark explained that an appeal had been lodged within time but was not received by HMRC. As soon as Miss Clark became aware of this, another appeal was lodged. We accepted the explanation and proceeded to hear the substantive appeal.

10 3. The return for period 05/11 was filed within time on 5 July 2011, the due date being 7 July 2011. Payment of the tax due was received by HMRC on 14 July 2011 and was 7 days late. There was no dispute by the Appellant that the tax was paid late.

4. The issue for the Tribunal to determine is whether there was a reasonable excuse for the late payment of tax.

15 5. The grounds of appeal relied upon as set out in the Appellant's Notice of Appeal can be summarised as follows:

- The return and payment were submitted online. The online banking was a new system used by the Appellant;
- 20 • On Saturday 9 July 2011 the Appellant received a letter from the bank which advised that the payment to HMRC had not been made due to insufficient funds in the account;
- Miss Clark spoke to her account manager at the bank on Monday 11 July 2011 and was told that had he, the account manager, not been on annual leave at the time, payment would have been authorised;
- 25 • The problem arose as the online system processed pending cheques and bank charges prior to the payment to HMRC which had left insufficient funds in the account;
- Had a cheque been presented rather than payment being made online, the payment would have been processed because the excess was minimal and the Appellant had another linked account with sufficient funds to cover the excess;
- 30 • Full payment was made on 12 July 2011.

35 6. Miss Clark added in oral evidence to us that this had been only the first or second occasion on which online payments had been made and that she was not aware that payments took 3 days to clear. There was no deliberate attempt to pay late and with hindsight Miss Clark accepted that funds could have been transferred from the

Appellant's linked account, which was kept separate to cover the company's corporation tax liability.

7. On behalf of HMRC Mr Rowe submitted that as payment was made online on 7 July 2011 it would have been late in any event due to the 3 days required to process the payment. HMRC advises taxpayers to check with their bank to ensure that they are aware of the time taken to process payments. It is the responsibility of the taxpayer to ensure that payment reaches HMRC by the due date and ignorance of the processes used by banks is not a reasonable excuse.

8. Mr Rowe contended that insufficiency of funds is specifically excluded from being a reasonable excuse and that this mistake or oversight on the part of the Appellant does not constitute a reasonable excuse.

#### *Decision*

9. The obligation to ensure that the payment of VAT for 05/11 was made by the due date rested with the Appellant. In those circumstances we concluded, and indeed Miss Clark accepted, that ignorance of the online payment system and time taken for payments to be processed was not a reasonable excuse.

10. As regards the issue of insufficiency of funds, we noted that the legislation precludes this from being a reasonable excuse. However, in our view there was no such insufficiency. As Miss Clark accepted there were sufficient funds held by the Appellant in a separate account, which could have been used to cover the payment. We found as a fact that the late payment arose as a result of a lack of forward planning by the Appellant which did not constitute a reasonable excuse; knowing that the account from which payment was to be made was near to its overdraft limit, funds could have been put in place to ensure that the payment was met.

11. The appeal is dismissed.

12. 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.

**JENNIFER BLEWITT  
TRIBUNAL JUDGE**

**RELEASE DATE: 28 February 2014**