



TC03407

Appeal number: TC/2011/08722

**VAT – Penalty – late returns and payment – whether reasonable excuse
on the ground of appeal – No – Appeal disallowed**

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SPATIAL DESIGN & ARCHITECTURE LIMITED Appellant

- and -

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

**TRIBUNAL: JUDGE KENNETH MURE QC
MR JOHN WILSON FCA, CTA**

Sitting in public at North Shields on 28th November 2013.

Mrs R Oliver, Office of HMRC, for the Respondents.

The Appellant was not represented

DECISION

1. This appeal is in respect of penalties imposed in relation to a series of failures to submit timeously Returns and make prompt payment of VAT due. These defaults, eleven in total, are itemised at B1-3 of the Bundle.

2. Mrs Oliver on behalf of the Respondents moved us to disallow the appeal and confirm the penalties. She referred firstly to the Grounds of Appeal at B9 – 10 and a further letter (B13) dated 24th June 2011 from the Appellant. These refer to financial problems arising from general trading difficulties. The Appellant's turnover was reduced. Its staff faced salary cuts and redundancies. Its bankers had restricted its credit facilities.

3. Mrs Oliver explained further that on two occasions the Appellant had made "time to pay" arrangements with HMRC, in early 2009 and June 2010. On each occasion these were made following default. (tax payers are encouraged to seek such an arrangement beforehand). The Appellant had defaulted on both arrangements. In 2009 while the Appellant had made payments due under the arrangements, he had failed to meet timeously subsequent liabilities.

4. We noted also the terms of HMRC's letter of 16th December 2011. Para 7 on B 33 suggests that cash flow was sufficient to pay any tax due.

5. Mrs Oliver submitted that there was no evidence supporting a *reasonable excuse* for the delays or other defence. No exceptional or unforeseeable financial circumstance had been referred to. Accordingly, the appeal must fail, she argued.

6. We agree with Mrs Oliver. The delays are not in dispute. The circumstances as narrated in the papers do not disclose a reasonable excuse

7. 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.

**KENNETH MURE QC
TRIBUNAL JUDGE**

RELEASE DATE: 17 March 2014