



TC03422

Appeal number: TC/2013/09549

VAT – Late payment – Money owed by customers to appellants promised but not paid in time – Said to be circumstances beyond appellants’ control - Whether reasonable excuse - No – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MEDIA ORB LTD

Appellants

- and -

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

Respondents

TRIBUNAL: JUDGE NORMA BAIRD

The Tribunal determined the appeal on 28 February 2014 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 9 December 2013, (with enclosures), HMRC’s Submissions dated 21 January 2014 and the appellants’ reply dated 11 February 2014(with enclosures).

DECISION

1 The appellants appeal against the decision of HMRC to impose a default surcharge
5 of £556.34 for the period 07/13 under the provisions of Section 59 of the VAT Act
1994. The return for that period was filed electronically in time. Payment was due
electronically on or before 7 September 2013 and was received by HMRC on 20
September.

10 2. The appellants accept that the payment was late. Having been told that lack of
funds cannot constitute a reasonable excuse for late payment they submit that they
could not pay the VAT on time due to circumstances beyond their control. They were
at the time the VAT was due owed over £25,000 by various clients who had
15 promised payment by the VAT due date. Because the appellants had no reason to
disbelieve these promises they did not advise HMRC that they might be in unable to
pay the tax on time.

3. HMRC note that a 'Help Letter' had been issued to the appellants for the period
04/12. Such a letter is issued under special arrangements for those traders with a
20 turnover of £150,000 or less. The first time they fail to pay their VAT on time they
are sent a letter of help and support rather than a Surcharge Liability Notice. The
appellants then entered the Default Surcharge regime in the period 01/13 and the
financial consequences of further default were set out in the Notice. In relation to that
25 period the appellants' representative called the Business Payment Support Service on
7 March 2013 to say they were waiting for a payment clearing to their account. The
position of HMRC in relation to the payment for the period 07/13 is that the delay in
payment by customers does not go beyond the normal hazards of business and thus
does not amount to a reasonable excuse. They point out that section 108 of the
30 Finance Act 2009 provides that there is no liability to a default surcharge for a period
where contact is made with HMRC to arrange a deferment prior to the due date and
this is agreed. HMRC conclude that the appellants have not established that they have
a reasonable excuse for the late payment.

4. In their reply to the Statement of Case the appellants say that they passionately
35 believe that the reasons for late payment are a reasonable excuse.

5. I have given careful consideration to the evidence before me. A reasonable excuse
is normally an unexpected or unusual event, either unforeseeable or beyond the
person's control, which prevents him from complying with an obligation when he
40 otherwise would have done so. The matter has to be considered in the light of the
actions of a reasonable prudent taxpayer exercising foresight and due diligence and
having proper regard for his responsibilities under the Taxes Act. The excuse given by
the appellants is that they did not have the funds to pay the VAT because their
customers had not paid them. Section 71 of the VAT Act 1994 says that an
45 insufficiency of funds to pay VAT cannot amount to reasonable excuse but HMRC
are clear that they will look at the underlying cause of an inability to pay and in
exceptional circumstances this may constitute reasonable excuse. I accept that the

appellants were in financial difficulties due to failure by customers to pay on time but I do not accept that this was exceptional or that it gives rise to a reasonable excuse. The appellants were clearly aware that they could seek deferment of the payment and they were presumably aware of the financial ramifications of failing to pay on time. In
5 all the circumstances I find that the appellants have not established a reasonable excuse for the late payment

6. The appeal is dismissed.

10 6. 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
15 accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**NORMA BAIRD
TRIBUNAL JUDGE**

RELEASE DATE: 19 March 2014

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