



**TC03772**

**Appeal number: TC/2014/01633**

*VAT – default surcharge – penalty – whether properly imposed – whether reasonable excuse*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ROWLAND CLARK LTD**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 23.06.2014 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 25.03.2014 (with enclosure), HMRC's Statement of Case submitted on 09.05.2014 (with enclosures) and the Appellant's Reply dated 19.05.2014.**

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## DECISION

- 5 1. The Tribunal decided that the Notice of Assessment of Surcharge dated 15.11.2013 in the sum of £1,261.38 in respect of VAT due for the period 01.07.2013 to 30.09.2013 was properly imposed.
2. The appeal is dismissed.
3. The Tribunal found that the VAT Return for the period 01.07.2013 to 30.09.2013 was received electronically by the Respondents on 13.11.2013. Payment  
10 of the VAT was made on 18.09.2013. The due date for electronic returns and payments was 07.11.2013.
4. The Appellant pays VAT by way of direct Debit and the earliest date that the Respondents could request the VAT payment by Direct Debit was 14.11.2013. Payment was, therefore, received by the Respondents a week late.
- 15 5. The Tribunal further found that there was no reasonable excuse for the late payment of VAT for the period ended 30.09.2013. In particular the Appellant had been in the Default Surcharge Penalty regime since the period ended 30.09.2012. The current default consequently results in a surcharge rate of 10%. Having been  
20 registered for VAT since 2011 the Appellant will have been familiar with due dates for returns and payments. The Appellant will have received numerous notices following previous defaults and the imposition of previous penalties.
6. The fact that this was the first time that the appellant had made an online Return does not amount to a reasonable excuse. Likewise the failure to notice that an attempted submission had been treated as a draft is not a reasonable excuse because a  
25 closer scrutiny of the acknowledgment would have made this clear.
7. The Appellant admits that it made a genuine mistake. The Respondents' Public Notice 700/500 (December 2011 and July 2013) section 6.3 states that the Respondents consider that genuine mistakes, acting honestly and acting in good faith are not acceptable as reasonable excuses for surcharge purposes. The Tribunal agrees  
30 that this summarises the pertinent provisions in the relevant legislation.
8. The Appellants accept that there was no question of lack of funds contributing to the delay in making payment but say, in the Notice of Appeal, that they can ill afford the surcharge. Difficulty in paying the surcharge cannot be taken into account when considering the merits of this appeal.
- 35 9. The Default Surcharge regime is strict: a penalty is properly imposed even if payment is made only one week late.
10. 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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**WDF COVERDALE  
TRIBUNAL JUDGE**

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**RELEASE DATE: 2 July 2014**