



TC03806

Appeal number: TC/2014/01168

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NBH PRO CONSULT LTD

Appellant

- and -

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

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 14.07.2014 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 19.02.2014 (with enclosure) and HMRC's Statement of Case submitted on 20.05.2014 (with enclosures).

DECISION

1. The late appeal is admitted.
- 5 2. The Tribunal decided that the Notices of Assessment of Surcharge dated 27.11.2013 and 11.11.2013 in the sums of £375.84 and £591.94 in respect of VAT due for the periods 01.02.2013 to 30.04.2013 and 01.05.2013 to 31.07.2013 were properly issued by the Respondents.
3. The appeal is dismissed.
- 10 4. The Tribunal found that the VAT Return for the period 01.02.2013 to 30.04.2013 was received by the Respondents on 09.11.2013. The due date was 07.06.2013 for electronic payments and electronic VAT submission. Payment was received on 14.11.2013 i.e. over five months late.
- 15 5. The Tribunal also found that the VAT Return for the period 01.05.2013 to 31.07.2013 was received by the Respondents on 09.11.2013. The due date was 07.09.2013 for electronic payments and electronic VAT submission. Payment was received on 14.11.2013 i.e. over two months late.
- 20 6. The Tribunal further found that there was no reasonable excuse for the late payment of VAT for the above two periods, The principal ground of appeal appears to be that the Appellant was unable to gain access to the Respondents' website and was thereby prevented from attend to the filing on time. However the Appellant admits, in the Notice of Appeal, that he was "still unable to gain access to the site up until the end of April 2013"; this does not assist him in this appeal because the due dates for the Returns and payments were in June and September 2013.
- 25 7. The Appellant also says that from May to November 2013 he was working in West Yorkshire and had "very limited time and phone access due to the very tricky mobile phone signals in the West Yorkshire area". The Tribunal believes that West Yorkshire is a highly populated area and is unlikely to have extensive areas of poor signal for mobile telephones; furthermore the Appellant could have availed himself of
30 landline telephones and/or internet access in local libraries.
8. The Respondents have a record of only one telephone call being received from the Appellant with regard to difficulties in accessing the online system, namely on 19.04.2013. More persistent attempts at telephone contact might well have assisted the Appellant in avoiding the surcharges.
- 35 9. Having been subject to the default surcharge regime since the quarter ended 30.04.2012 the Appellant will have been aware of the consequences of late payment of VAT; he will have received at least four Surcharge Documents with clear guidance and instructions in the past.

10. Even if the Appellant had not known the exact amount of VAT payable he could have made a payment on account on the basis of a best guess estimate and thus mitigated his liability for penalties. He failed to do so.

5 11. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and due diligence and a proper regard for the fact that the payment of VAT would become due on a particular date would not have avoided the defaults. The facts and chronology of events, set out in the Notice of Appeal and the Respondent's Statement of Case, disclose that such foresight and diligence would have avoided the defaults.

10 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
15 "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**

RELEASE DATE: 15 July 2014