[2015] UKFTT 0595 (TC)

TC04742

Appeal number: TC/2015/00450

VAT – default surcharge – late appeal – CIS refund – offset – reasonable excuse – no – penalty unfair – no - Appeal dismissed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

QUALITY ASBESTOS SERVICES LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP
MEMBER: CHARLOTTE BARBOUR, CA, CTA

Sitting in public at George House, 126 George Street, Edinburgh on Thursday 19 November 2015

Mr Dand and Mr Masson of Dand Carnegie, Chartered Accountants, for the Appellant

Mrs E McIntyre, Officer of HMRC, for the Respondents

DECISION

Introduction

1. This is an appeal whereby Quality Asbestos Services Limited ("the appellant") appealed against three default surcharges of £2,962.20, £3,588.15 and £3,582.66 for the periods 03/14, 06/14 and 09/14 respectively.

2. It is not in dispute that the appellant has been in the default surcharge regime from period 03/11, that the VAT Returns have been submitted timeously and that the default surcharges for 03/14 and 06/14 have been correctly calculated. Prior to 03/11 the appellant had also been in the default surcharge regime.

3. The issues for the Tribunal therefore are:

(a) the quantum of the 09/14 surcharge, and

(b) whether or not the appellant has a reasonable excuse for the late payment of VAT.

4. We refer throughout to the Respondent as "HMRC".

Preliminary and procedural matters

4. The appellant was represented by its accountants in the persons of Messrs Dand and Masson. Mr Masson gave oral evidence and ultimately presented most of the appellant's closing submission.

5. The hearing was very informal in order to maximise the input for the appellant, so in effect Mr Dand also gave evidence and presented a submission.

Notice of Appeal and late Appeal

6. The original Notice of Appeal dated 11 December 2014 was rejected by HM Court and Tribunal Service (HMCTS) since that Notice stated that the decision which was under appeal was dated 30 September 2014 and

(a) that decision was not enclosed, and

(b) no explanation had been advanced for the late appeal. Accordingly it was not a valid Notice of Appeal since it did not comply with Rule 20 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") a copy of which is annexed at Appendix 1.

7. On 13 January 2015, the appellant's representative returned the same Notice of Appeal without having completed the section in regard to late appeals and without changing the date of the decision under appeal but enclosing a copy of a decision letter dated November 13, 2014. In point of fact that letter related only to the 06/14 appeal. The decision in regard to the 03/14 appeal is dated 3 July 2014.

8. The 09/14 decision is dated 14 November 2014 so a valid Notice of Appeal should have been lodged within 30 days.

9. At the hearing there was still no valid Notice of Appeal since the correct decisions had not been identified for 03/14 and 09/14 and there had been no compliance with Rule 20(4)(a) of the Rules.

10. HMRC intimated that they did not object to the late admission of these appeals. We had due regard to Rules 2 and 5 of the Rules, copies of which are annexed at Appendix 2 and we decided that it was in the interests of justice, firstly, to deem the Notice of Appeal to be amended, and secondly, to admit the appeal late.

Jurisdiction of the Tribunal

11. The Notice of Appeal enclosed copies of five letters from the appellant's representative dated 1 May, 1 August, 30 September, 5 November and 19 November 2014 setting out the grounds of appeal. Numerous items in those letters refer to complaints about HMRC and the handling of the appellant's tax affairs by different departments of HMRC. We explained to the appellant's representatives that the jurisdiction of the Tribunal is limited to considering whether or not the law has been correctly applied in respect of the decision under appeal.

12. Although we note that there appear to be unresolved issues in relation to the Construction Industry Scheme ("CIS") and complaints about HMRC's communication, over the years, those are not matters on which we can adjudicate.

13. We can only make **findings in fact** about whether the VAT payments were made late, if they were late the amount that was late, and whether or not there was a reasonable excuse for the late payments.

14. We made it explicit that we could not look at default surcharges for later periods and indeed it appears that they may not have been appealed to HMCTS.

The law on default surcharge

15. Regulation 25 of the Value Added Tax Regulations 1995 ("the Regulations") requires the person who is registered for VAT to submit a Return for every period of three months. In terms of Regulation 25(1) the Return must be made not later than the last day of the month next following the period to which it relates. Regulation 40(2) of the Regulations requires the person who makes the Return to pay any VAT payable under the Return not later than the last day permitted for submission of the Return.

16. Section 59(1) of the Value Added Tax Act 1994 ("VATA") provides that a person is in default if it fails to submit a Return and/or pay the VAT due on time. HMRC can serve a "Surcharge Liability Notice" on the taxable person specifying a "surcharge period" and if the taxable person is in default during the surcharge period, it is liable for a surcharge of the greater of the "specified percentage" of the outstanding VAT for the relevant period or £30 (Section 59(4) of VATA).

Section 59(5) sets out the specified percentage which varies from 2% for the first default to 15% for the fourth and subsequent defaults. In this appeal there was no dispute that the applicable rate was 15%.

17. Section 59(7) VATA provides two defences to the default surcharge. It reads as follows:-

> "(7) If a person who, apart from this subsection, would be liable to a surcharge under subsection (4) above satisfies the Commissioners or, on appeal, a tribunal that, in the case of a default which is material to the surcharge—
>
> (a) the Return or, as the case may be, the VAT shown on the Return was despatched at such a time and in such a manner that it was reasonable to expect that it would be received by the Commissioners within the appropriate time limit, or
>
> (b) there is a reasonable excuse for the Return or VAT not having been so despatched,
>
> he shall not be liable to the surcharge and for the purposes of the preceding provisions of this Section he shall be treated as not having been in default in respect of the prescribed accounting period in question (and, accordingly, any surcharge liability notice the service of which depended upon that default shall be deemed not to have been served).

18. In summary the appellant seeks to rely on Section 59(7)(b) arguing that it had a reasonable excuse in that the VAT should be offset against anticipated refunds of CIS deductions.

19. Section 108(2)(b) Finance Act 2009 provides that there is no liability to a default surcharge for a period where contact is made with HMRC prior to the default arising in order to arrange a payment deferment and that is agreed by HMRC. That is known colloquially as a Time To Pay agreement ("TTP").

The returns and payments

20. Since 11 March 2013, when the appellant contacted HMRC in regard to the then outstanding liabilities for the periods 09/12 and 12/12 arguing that a refund of CIS deduction suffered should be offset against the outstanding VAT, the appellant has consistently advanced the same argument.

03/14

21. The Return was submitted by the due date and £667.11 paid by the due date of 7 May 2014. The remaining liability was cleared by 3 CIS offsets of £8,828.94 on 16 September 2014, £382.71 on 24 September 2014 and £2,275.39 on 24 September 2014. The balance of £8,260.96 was allocated as part of a payment of £9,454.83 received by HMRC on 6 November 2014. (See 09/14).

06/14

22. The Return and a part payment in the sum of £14,729.02 were lodged on time by the due date of 7 August 2014. The remaining liability of £22,933.47 was cleared

by three electronic payments being £1,193.87, which was the balance of the payment of £9,454.83 referred to in the preceding paragraph, on 6 November 2014. There were two further payments of £1,739.60 on 6 February 2015 and £20,000 also on 6 February 2015. That left the balance outstanding as at 15 April 2015 of £987.55.

09/14

23. It was a matter of agreement that the Return was submitted by the due date of 7 November 2014. It transpired during the hearing that the appellant's representative had written to HMRC on 5 November 2014 and that letter was received on 10 November 2014 after the due date of 7 November 2014. That letter intimated that a sum of £9,454.83 would have been paid to HMRC in respect of the 09/14 return.

24. That sum was indeed received by HMRC on 6 November 2014 but since there was no request with the payment to have it allocated to 09/14 it was allocated at that time to the older debt being the periods 03/14 and 06/14 as we indicate above. As the payment was received before the due date which was November 7, 2014 Mrs McIntyre conceded that it had been paid timeously. Accordingly the liability outstanding as at 15 April 2015 is £14,429.59. Since the rate is 15% the default surcharge is therefore reduced from £3,582.66 to £2,164.43. That whole VAT liability remained outstanding as at 15 April 2105.

Further payment

25. We accept HMRC's assertion that as at 10 April 2015 all verified repayments had been made for the 2013/14 tax year. Any further repayments thereafter require Payment and Deduction Statements beyond the £98,687.13 that have already been submitted. HMRC have intimated that requirement in letters from the PAYE office dated 17 June 2014, 26 August 2014 and 25 November 2014.

Findings on default surcharge and quantum

26. We therefore find that payment was received late in all three periods and that the default surcharges are £2,962.20 for the period 03/14, £3,588.15 for 06/14 and £2,164.43 for 09/14.

Reasonable excuse

27. As we indicate above the appellant's primary case is that they had a reasonable excuse for the late payment of the VAT in these three periods because of the problems that they had encountered with offsetting CIS repayments. Up until April 2014 the appellant had never been in a position of receiving repayments under CIS.

28. The year-end RTI submission prepared by the appellant's representatives for 2013/2014 showed that they had calculated a final excess of CIS deductions, as against PAYE and National Insurance, of £39,748 due to the appellant. They sent a letter by recorded delivery to HMRC on May 1, 2014 stating that and intimating that "… we understand this to be our client's formal request for repayment of this sum …".

29. That letter went on to state that the VAT liability for 03/14 showed a sum due of £20,415.11 and there was outstanding corporation tax due for the year 2013 of £20,000. They therefore calculated that the appellant owed HMRC £667.11 and, as can be seen in paragraph 21 above, that sum was paid by the due date. Lastly, the letter went on to say that there would be further CIS excess deductions and that the intention was to request repayment on a monthly basis.

30. HMRC responded directly to the appellant, with a copy to the representatives, on 3 July 2014 stating explicitly that:-

> "Moreover you should not withhold a payment of a return even if you are anticipating a refund from another tax regime, in your case CIS and Corporation Tax. This is because each VAT return is dealt with separately and any refund due in respect of another tax regime or VAT return will be refunded in due course; whereas paying a Return after the due date will result in a default being recorded, as has happened in this case. For defaults to be avoided the Return and full correct payment must be received by the due date."

31. The representatives wrote to HMRC on 1 August 2014 in regard to the 06/14 payment stating that the Return showed a sum due of £38,650.69 and the anticipated CIS deduction was £23,921.02 leaving a net sum due of £14,729.67 which would be paid by the due date, as indeed it was, as we indicate above. The letter went on to say that the representative had spoken at length with various HMRC officers "over the last 12 months and have been advised that this method is acceptable". The letter asked that receipt be acknowledged and confirmation that HMRC agreed with this approach.

32. That letter was addressed to the VAT Central Unit but copied to the PAYE office in Newcastle. The only reply, if it can be called such, was from the PAYE office on 26 August 2014 and it referred to telephone conversations. It referred to repayments in the years 2011/12, 2012/13 and 2013/14 but stated that the officer concerned was unable to give any information about VAT and referred the representatives to a VAT address in Glasgow.

33. As we indicate above, the representatives had raised the question of offset of CIS over quite a long period of time. On 2 August 2013 they wrote to the VAT Central Unit indicating that an officer had explained to them that she had had to refer the question of their request to set off VAT due against CIS liability to the technical unit. On 14 October 2013, HMRC wrote to the representatives stating:-

> "In order to comply with VAT Regulations a VAT Return and full payment must be received by HM Revenue & Customs at VAT Central Unit on or before the due date. When we do not receive the VAT Return and full payment by the due date, surcharge notices are sent out automatically … Whilst I have noted your comments regarding the fact that your clients are awaiting a CIS overpayment, a trader should not rely on a refund from one HMRC department to pay an amount due to another HMRC department. As a VAT registered company, a trader charges the VAT to their customers and are required by law to pay this with the appropriate return by the due date.
>
> Furthermore, I note my colleagues from PAYE have advised that in-year credits cannot be offset during the tax year."

34. That letter confirmed that the surcharge for the period 06/13 would remain in force. That decision was not formally appealed.

The law in regard to CIS deductions

35. The provisions of the CIS tax system do allow for businesses such as the appellant to receive payments without deductions of tax. However, the appellant does not operate within those provisions and is subject to the deduction. The relevant legislation is to be found in the Finance Act 2004 and Section 62(3) provides for the treatment of sums deducted. That reads as follows:-

> "62(3) – If the sub-contractor is a company—
>
> (a) a sum deducted under Section 61 and paid to the Board is to be treated, in accordance with the regulations, as paid on account of any relevant liabilities of the sub-contractor;
>
> (b) regulations must provide for the sum to be applied in discharging relevant liabilities of the year of assessment in which the deduction is made;
>
> (c) if the amount is more than sufficient to discharge the sub-contractor's relevant liabilities, the excess may be treated, in accordance with the regulations, as being corporation tax paid in respect of the sub-contractor's relevant profits; and
>
> (d) regulations must provide for the repayment to the sub-contractor of any amount not required for the purposes mentioned in paragraph (b) and (c)."

36. Those Regulations are the Income Tax (Construction Industry Scheme) Regulations 2005 and Regulation 56 provides for the Application of sums deducted in terms of Section 61. Regulation 56(5) reads as follows:-

> "56(5) The Commissioners for Her Majesty's Revenue & Customs shall not repay any sum deducted under Section 61 of the Act to the qualifying sub-contractor unless—
>
> (a) The tax year in which the deduction was made, has ended; and
>
> (b) The qualifying sub-contractor has paid to the Commissioners for Her Majesty's Revenue & Customs—
>
> (i) Any amounts the qualifying sub-contractor deducted from contract payments in their capacity as a contractor during that tax year, and
>
> (ii) any amounts due under the PAYE Regulations in respect of that tax year."

37. The Finance Act 2008 provides that there can be a set-off where there is both a credit and a debit in relation to any taxpayer. However that legislation applies only to England, Wales and Northern Ireland and it does not apply in Scotland.

Other information

38. There is considerable information available in the public domain in regard to the operation of CIS. The HMRC Guide for contractors and sub-contractors was, and is, comprehensive but included therein was a section indicating where companies could set off deductions. It makes it clear that: "at the end of the tax year, when we have received the company's final employment summary and full payment submission, any excess scheme

deductions that cannot be set off may be refunded or set against corporation tax used". There was no mention of VAT. The Guide also included information about the availability of more detailed advice on the CIS website.

39. The website, snapshots of which, dated 6 February 2014 and 3 June 2014 were provided for us, makes it explicit that-

> "Limited companies that have an excess of CIS deductions over and above the amount of tax/NICs/CIS that they are due to pay to HMRC in their capacity as an employer will not be able to claim a repayment of those CIS deductions until
>
> - The final FPS for the year has been submitted …
> - The company has paid all amounts due to HMRC for the tax year in their capacity as an employer/contractor.
> - The tax year in which the CIS deductions were made from the company has ended …".

40. On 5 January 2014 the Joint Initiative on HMRC Service Delivery: Improvements to CIS Repayments ("JISD") was published . That JISD indicated that from April 2014, HMRC customers could expect an improved experience when requesting a CIS payment but pointed out that where there was a mismatch in the information held by the company and HMRC, then HMRC would need to investigate the discrepancy and that would dictate how long it would take to make the repayment. It goes on to state:-

> "As part of this commitment:
>
> - HMRC can set off the company's CIS repayment against its Corporation Tax or VAT debt as long as:
>   - The CIS repayment covers the full amount of the Corporation Tax or VAT debt
>   - The company tells the HMRC team chasing the debt that they have sent a claim for repayment
> - If the company meets both these conditions, HMRC will stop the recovery of the corporation tax or VAT debt to allow time to process the repayment claim and allocate to the debt."

Arguments

The appellants

41. The appellants argue that:

(a) the representatives discussed the CIS offset with a PAYE officer who visited their offices to check their payroll systems operated for the appellant. The representatives allege that that officer read the JISD and said that she would seek advice on it. They also say that she came back to them at some stage before the 03/14 Return and payment was made and confirmed that it would be possible to offset CIS repayments against VAT debt. There is no record of that

discussion. They also allege that the officer in 2013 had told them that they could offset the repayment against the VAT debt but, of course, as we indicate above that was very firmly rebutted in writing by HMRC in October 2013.

(b) They therefore argue that they got what they described as "disinformation/mixed messages" from HMRC. They considered that it was not unreasonable to take the view that if HMRC owed them money then they should be able to offset against monies owed to HMRC.

(c) They state that if the CIS repayments had been made expeditiously then there would not have been the same amount of VAT outstanding.

(d) They take the view that HMRC had made a major error in 2013/14 in failing to allocate approximately £47,000 which was a series of payments made by one of their major customers in 2013/14. It was only discovered at the year end. If it had been repaid sooner then the problems would not have been the same.

(e) The whole default surcharge system is unfair and puts additional pressure on a company with 15 employees which is working hard in a difficult financial environment.

HMRC

42. HMRC argue that:

(a) VAT is never the property of the company because the money belongs to the Crown at all times and must be paid over as the law requires. Regulation 40 of the Regulations makes it clear that there is a statutory obligation on a taxpayer to pay the VAT to HMRC not later than the due date.

(b) The appellant should not withhold payment of VAT even if they are anticipating a refund from HMRC since each VAT Return is dealt with separately and any refund due in respect of another tax regime or VAT Return would be refunded in due course.

(c) It is not until the end of the tax year that excess CIS deductions which cannot be set off and are still available may be refunded or set against other liabilities.

(d) In-year repayments can only be made if the employer has applied for Gross Payment Status which the appellant has not. The appellant's representative's request that in-year excess CIS deductions over PAYE be offset against the period 06/14 and 09/14 VAT liabilities does not meet the legislative criteria.

(e) The clear message in all written communications and as recorded in the screen prints for oral communications was consistent and to the effect that a 'rolling' or in-year offset was not possible.

Conclusion

43. The appellant and its representatives were very clearly aware of the due date for the payments of VAT and the potential consequences of late payment. In essence, the appellant has suffered a cash flow shortage caused by constraints on its cash flow as a result of both trading conditions and the fact that there had been an issue with verification of a CIS refund due to the company in respect of the year 2013-14. They have had cash flow problems for years leading to late payment of VAT and corporation tax.

44. In *Customs & Excise Commissioners v Steptoe*[1] the taxpayer argued that although the primary cause of the default was insufficiency of funds, the underlying cause of that insufficiency amounted to a *reasonable excuse*. Undoubtedly one of the underlying causes of the insufficiency in this case has been the problems with determining the amount of the CIS refund. Section 71 VATA makes it explicit that a *reasonable excuse* excludes both an insufficiency of funds to pay VAT and reliance on a third party. In regard to the latter point therefore the appellant cannot argue that it relied on its representative. However, *Steptoe* is authority for the proposition that one can, and indeed should, consider the underlying cause of insufficiency of funds.

45. In this case the only argument advanced of any substance is that firstly the delay in identifying the amount of the original refund due after the year-end and, secondly, the difficulty in arranging an offset of CIS refunds in the course of the year contributed to cash flow pressure. We have absolutely no problem whatsoever with the latter point. The legislation is crystal clear and a CIS refund is only payable after the year-end. Whether or not HMRC choose to make refunds in the course of the year is a matter for them exercising such discretion as they might choose to utilise but a taxpayer cannot require repayment before the year-end. Therefore any CIS refund in the year 2014-15 would only be payable after April 2015. That should have been entirely predictable.

46. We note the representative's argument that they asked a visiting PAYE officer whether they could offset the potential CIS refunds. We have serious problems with that argument. Firstly, we only have the representatives' recollection of a discussion and the detail of that discussion is certainly not available. On the other hand there are a number of letters firstly from the VAT Central Unit making it quite clear that there can be no offset, and also a letter from the PAYE department indicating that they could not comment on VAT. Lastly, the JISD makes it very clear that there can only be an offset where the repayment exceeds the amount of the VAT debt. That has never been the case.

47. *Reasonable excuse* is not defined in the legislation but there are a number of cases which have considered the matter. Judge Medd in *The Clean Car Company*

[1] 1992 STC 757

Limited v HMRC[2] set out very clearly what constitutes a *reasonable excuse* and we agree with that explanation. It reads as follows:-

> "… the first question that arises is can the fact that the taxpayer honestly and genuinely believed that what he did was in accordance with his duty in relation to claiming input tax, by itself provide him with a reasonable excuse. In my view it can not. It has been said before in cases arising from default surcharges that the test of whether or not there is a reasonable excuse is an objective one. In my judgment it is an objective test in this sense. One must ask oneself: was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do? …. It seems to me that Parliament in passing this legislation must have intended that the question of whether a particular trader had a reasonable excuse should be judged by the standards of reasonableness which one would expect to be exhibited by a taxpayer who had a responsible attitude to his duties as a taxpayer".

48. Whilst we certainly do understand the frustrations faced by the appellant's representatives when dealing with different departments of HMRC and, it would appear, not receiving a prompt response to some of the correspondence, nevertheless it is very clear that they had repeatedly been told in writing by the VAT Unit that there was no possibility of offset unless and until a repayment had been agreed. In terms of the legislation that can only be after the year-end.

49. Although we heard from the appellant's representatives and saw the correspondence either to them or which had been copied to them, in addition we also note from the screen prints produced by HMRC that HMRC had told the appellant directly that CIS offsets could only be arranged after the year-end. For example, on 28 October 2013 there is a note of a telephone call to the administrative assistant of the appellant where HMRC stated that a default surcharge would have to be appealed because there could be no CIS offset until after the year-end. On 27 August 2014, HMRC spoke with a director of the appellant who explained that his representative had advised him what to pay each quarter and the balance would be covered by the CIS overpayment. HMRC told the director that the CIS overpayment would usually be dealt with annually and not quarterly. Both the appellant and the representative had clearly been told that offset in-year was not possible.

50. We do not think that a responsible taxpayer, let alone one which is professionally advised, in the face of explicit, repeated written advice should have relied on alleged verbal advice from a junior officer in another department of HMRC. Further, the other information in the public domain, such as the JISD and the websites, is written in plain and clear English and it is obvious that if the anticipated repayment is less that the tax debt then there can be no offset and any repayment can only be claimed after the year end.

51. In any event the appellant had previously negotiated a TTP with HMRC. We do not understand why, even if they thought that it was appropriate to offset any CIS repayment, they did not take the appropriate steps to negotiate a TTP on that basis.

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[2] LON/90/1381 X

52. As far as the perceived delay in identifying the size of the CIS refund for 2013-14 and therefore repayment of it is concerned, we are not persuaded that that is the problem that the appellant describes. We note that although the appellant's representatives have argued that the discrepancy between their and HMRC's records amounted to approximately £56,000, £47,000 of which had been identified and £9,000 not, nevertheless, as we indicate above, the appellant's representative argued in May 2014 that the final excess of CIS was £39,748. However, ultimately only £28,598.26 was agreed on 26 August 2014. That is a sizeable difference. We also take the view that agreement of the position, given the size of the discrepancy, in August was not unduly lengthy.

53. Further, although the representatives argued that £9,000 has still not been identified, we note that the HMRC screen prints make it clear that on 8 August 2014 the £9,000 would be allocated to VAT. Presumably therefore it was included in the sum identified in the letter of 26 August 2914. In addition, as we indicate above, all repayments for 2013-14 have been made.

54. In our view, even if an offset had been possible in year, which was not the case, a prudent tax payer knowing that a VAT payment was due by a given date, should not have relied on a repayment claim that was subject to verification. The taxpayer could not reasonably rely on getting the full amount claimed or when that would be paid. Shortly put the VAT is due and payable and unless and until a repayment of CIS is agreed on the basis set out in the legislation it cannot be offset. It is not reasonable to rely on a potential repayment.

55. Lastly, the appellant argues that the default surcharge and HMRC's approach to CIS offset is unfair. We made it very clear at the hearing that both the case of *Trinity Mirror plc v Revenue & Customs Commissioners*[3], *Revenue & Customs Commissioners v Total Technology (Engineering) Limited*[4] make it quite clear that the default surcharge regime whereby penalties are imposed is proportionate. Further the Upper Tribunal in *HMRC v Hok Limited*[5] reaffirmed the First-tier Tribunal's limited jurisdiction in respect of penalty appeals, and in particular emphasised that it had no statutory power to adjust the penalty on the grounds of fairness.

56. The burden of proof is on the appellant to show that it had a reasonable excuse for the late payment of VAT for these three periods. In the Tribunal's view, for the reasons given above, that burden has not been discharged.

57. Accordingly the appeal is dismissed and the surcharges for 03/14 and 06/14 confirmed and the surcharge for 09/14 confirmed in the reduced sum of £2,164.43.

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

[3] 2015 UKUT 421 (TCC)

[4] 2012 UkUT 418 (TCC)

[5] 2012 UKUT 363 (TCC)

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.

ANNE SCOTT

TRIBUNAL JUDGE
RELEASE DATE: 25 NOVEMBER 2015

20.—Starting appeal proceedings

[(1) A person making or notifying an appeal to the Tribunal under any enactment must start proceedings by sending or delivering a notice of appeal to the Tribunal.][6]

(2) The notice of appeal must include—

(a) the name and address of the appellant;

(b) the name and address of the appellant's representative (if any);

(c) an address where documents for the appellant may be sent or delivered;

(d) details of the decision appealed against;

€ the result the appellant is seeking; and

(f) the grounds for making the appeal.

(3) The appellant must provide with the notice of appeal a copy of any written record of any decision appealed against, and any statement of reasons for that decision, that the appellant has or can reasonably obtain.

[(4) If the notice of appeal is provided after the end of any period specified in an enactment referred to in paragraph (1) but the enactment provides that an appeal must be made or notified after that period with the permission of the Tribunal—

(a) the notice of appeal must include a request for such permission and the reason why the notice of appeal was not provided in time; and

(b) unless the Tribunal gives such permission, the Tribunal must not admit the appeal.][7]

[6] Substituted by Tribunal Procedure (Amendment No.3) Rules 2010/253 rule 6(5)(a) (November 29, 2010)

[7] Substituted by Tribunal Procedure (Amendment No. 3) Rules 2010/2653 rule 6(5)(b) (November 29, 1010)

2.—Overriding objective and parties' obligations to co-operate with the Tribunal

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must—

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

5.— Case Management powers

(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may be direction—

(a) extend or shorten the time for complying with any rule, practice direction or direction, unless such extension or shortening would conflict with a provision of another enactment setting down a time limit;

(b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether in accordance with rule 18 (lead cases) or otherwise);

(c) permit or require a party to amend a document;

(d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;

(e) deal with an issue in the proceedings as a preliminary issue;

(f) hold a hearing to consider any matter, including a case management hearing;

(g) decide the form of any hearing;

(h) adjourn or postpone a hearing;

(i) require a party to produce a bundle for a hearing;

(j) stay (or, in Scotland, sist) proceedings;

(k) transfer proceedings to another tribunal if that other tribunal has jurisdiction in relation to the proceedings and, because of a change of circumstances since the proceedings were started—

(i) the Tribunal no longer has jurisdiction in relation to the proceedings; or

(ii) the Tribunal considers that the other tribunal is a more appropriate forum for the determination of the case;

(l) suspend the effect of its own decision pending the determination by the Tribunal or the Upper Tribunal, as the case may be, of an application for permission to appeal, a review or an appeal.