

[2017] UKFTT 753 (TC)



TC06164

Appeal number: TC/2017/04404

VAT – default surcharges – reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

FURNITURE INTERIOR LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE CHRISTOPHER STAKER
MR NOEL BARRETT**

Sitting in public at Taylor House in London on 12 September 2017

Mr J Moran of the Appellant

Mr N Katelia, Presenting Officer, for the Respondents

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DECISION

1. This is an appeal against the imposition of a default surcharge under s 59 of the Value Added Tax Act 1994 on late payment of VAT for VAT period 01/17. The amount of that default surcharge is £2,967.28, being 10 percent of the amount of VAT unpaid at the due date.

2. This appeal was heard on 12 September 2017, and the Tribunal gave its decision orally at the hearing, allowing the appeal. HMRC have now requested full reasons for the Tribunal's decision, which are now provided.

3. The due date for payment was 7 March 2017 if paid electronically. The VAT return for the quarter in question had been submitted by the Appellant on time, on 9 February 2017. It is common ground that the VAT was paid only on 29 March 2017.

4. The only issue in this appeal is whether the Appellant has a reasonable excuse for the late payment, for purposes of s 59(7)(b) of the Value Added Tax Act 1994 (VATA).

5. The burden of proof is on the Appellant to establish the existence of circumstances constituting a reasonable excuse. The standard of proof is the balance of probability.

6. Evidence was given on behalf of the Appellant by Mr Moran, director of the Appellant company. His evidence included the following.

7. The Appellant is a small independent retailer. Over the last years its annual profits have been about £3,400 per year. It is a one person company, employing a number of other people. In terms of the management of the company, Mr Moran does everything in person, and if a person is sick he has to go and replace them. He works enormous numbers of hours, 6 or 7 days a week. The one thing he does not do is the accounts, because he is not good with accounts. The accounts were previously done by an individual accountant, who came once a month. This person proved not to be satisfactory. Mr Moran therefore found a larger, more professional firm to take over the accounts function. However, after dispensing with the services of the former accountant, there was an unavoidable delay in the new accountants commencing their service. Thus, for one single VAT period, Mr Moran had to do the VAT return

himself. Mr Moran had no experience doing this. The Appellant company uses accounting software called Xero. Mr Moran completed the VAT return according to the instructions, but it subsequently emerged when it was too late that the payment had not been made.

5 8. Having considered the oral evidence of Mr Moran, and the evidence as a whole, the Tribunal finds the facts set out in the previous paragraph to be established on a balance of probability.

10 9. HMRC submitted that the Appellant could not rely on errors on the part of an accountant, by reason of s 71(1)(b) VATA. HMRC also submitted that a diligent trader would reasonably be expected to operate correctly the system in place to ensure that the payment was made.

15 10. HMRC submit that the question of whether there is a reasonable excuse is an objective test and is a matter to be considered in the light of all the circumstances in a particular case.

20 11. The Tribunal agrees that the circumstances have to be considered as a whole. It is correct that a mistake by an accountant would not of itself provide a reasonable excuse, by virtue of s 71(1)(b) VATA. The Tribunal also accepts that a simple mistake or oversight or instance on the part of Mr Moran would normally not provide a reasonable excuse, even in circumstances where Mr Moran was very overworked and was not very good at accounts. However, the Tribunal finds that the circumstances as a whole present a more nuanced situation. Mr Moran understood that he was not able to do the accounts, both because he was not good at accounts and because the sheer amount of other demands on his time made this impossible. Knowing this, he engaged an accountant to do this work for the company. As a responsible director of the company, he then subsequently recognised that the services being provided by the accountant were not satisfactory, and he was actively taking steps to have better accountants take over. The Tribunal accepts that he could not reasonably have avoided the situation that there was a short hiatus between the two accountants, such that Mr Moran was required to do the VAT return himself on a single occasion. In other words, the situation where Mr Moran was required to do the VAT return on a single occasion, in circumstances where he had no previous experience of doing this, was not good at accounts, and was hugely overworked, was an exceptional situation that was not of the Appellant's or Mr Moran's making. It was furthermore not a situation that could have reasonably been avoided, and was a situation that was unavoidably caused by Mr Moran's active efforts to improve the quality of the Appellant's accounting and VAT submissions.

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12. The Tribunal is satisfied that in all the circumstances there was a reasonable excuse for the late payment on this occasion, for this particular VAT quarter.

5 13. For the reasons above, the Tribunal decided that the appeal is allowed, and the default surcharge in respect of VAT period 01/17 is set aside.

10 14. 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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**DR CHRISTOPHER STAKER
TRIBUNAL JUDGE**

RELEASE DATE: 13 OCTOBER 2017