



[2020] UKFTT 0024 (TC)

TC07530

VALUE ADDED TAX – Default Surcharge - Return filed in time, but payment sent by Bank Giro Credit insufficiently early to clear to HMRC's account by the due date - No reasonable excuse - Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/04672

BETWEEN

HONG JIANG

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE CHRISTOPHER MCNALL

The Tribunal determined the appeal on 9 January 2020 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 July 2019, and HMRC's Statement of Case dated 2 August 2019 and the attachments to it.

DECISION

1. This is my decision in relation to the Appellant's appeal, made on 9 July 2019, against a VAT default surcharge assessment issued on 15 March 2019 (and upheld at departmental reviews on 21 June 2019 and 8 July 2019) for period 01/19, at the rate of 10%, amounting to £493.48.

2. The Appellant has been registered for VAT since 1 January 2014.

3. The period 01/19 had a due date of (Thursday) 7 March 2019 both for electronic filing and for payment.

4. The return was filed (comfortably) in time: on 28 February 2019.

5. Payment was sent using Bank Giro Credit on (Wednesday) 6 March 2019 (that being the date stamped by the Post Office on the counterfoil provided by the Appellant).

6. However, the payment was not received by HMRC until (Friday) 8 March 2019. The payment was therefore received late (albeit by one day).

7. On 8 April 2019, the Appellant wrote to HMRC saying that the surcharge had been charged in error:

"As you can see from our enclosed bank payment slip, we paid our VAT bill on the same date as we always pay in plenty of time. If your bank has failed to process our payment promptly, that is their fault and not ours."

8. On 5 July 2019, the Appellant wrote and made the same point, and relied on stamped Bank Giro Credit payment counterfoils showing payments sent on 6 June 2018 (period 04/18, due date 7 June 2018) and 6 September 2018 (period 07/18, due date 7 September 2018).

9. Consistently with this, the Notice of Appeal says, in full:

"I pay my VAT bill every month on the same date. It has always been accepted as on time until this most recent one. The VAT office claims that this month is late even though it was paid on the same date every other month and been accepted as being on time. My accountant advises me of the date to pay. My grounds for appeal are that I had a reasonable expectation that the VAT office would receive my return and payment on time as usual. This is the criteria the VAT office review panel themselves state is a reasonable reason for the appeal to be upheld. I will take measures to ensure I pay a bit earlier each month to make absolutely sure in future that no delay outside of my control can cause a late payment."

DISCUSSION AND DECISION

10. I have considered the submissions of both parties carefully.

11. Payment was received late for period 01/19. Payment was received on the Friday when the due date was the Thursday.

12. I am satisfied that the reason for this is that the Appellant, consistently with the manner and pattern of earlier payments, was making payment by way of Bank Giro Credit at such a late stage that not enough time was being left for the moneys to clear and be received by HMRC by the due date.

13. I am satisfied that payment is late for the purposes of the default surcharge regime if received late, regardless of when sent.

14. The point which I must consider is whether the Appellant had a reasonable excuse for the late payment in 01/19: section 59(7)(b) of the VAT Act 1994. The legislation does not give further guidance as to what is a reasonable excuse.

15. The Appellant was not a newcomer to the VAT system, and knew to make returns and payments on time.

16. I am satisfied that the Appellant was given sufficient warning by HMRC that the due date meant that payment had to be *cleared and received* by no later than that date:

(1) The so-called 'Help Letter' issued to the Appellant on 15 September 2017 (when a late payment had been made, for period 07/17, but HMRC had decided to deal with this by way of a help letter rather than by way of entering the Appellant into the default surcharge regime) made it clear that payment had to have been cleared and received by HMRC 'by the due date';

(2) I am also satisfied that the surcharge liability notices encourage taxpayers to 'think ahead' and allow enough time for payment to clear to HMRC's bank account by the due date.

17. As such, I am satisfied that the Appellant either knew, or at the very least ought reasonably to have known, that payment had to be received by HMRC by no later than the due date.

18. Bank Giro Credit (unlike some other modes of payment) is not an instantaneous or 'same-day' system. I am satisfied that Bank Giro Credit makes it clear that payment ordinarily needs at least three clear working days before the due date. That is to say, and by way of an example, if the due date was a Friday, payment would have to be made by no later than close of business on the Monday in order to give three clear working days. Payment on a Wednesday is less than three clear working days before Thursday.

19. The Appellant did not leave three clear working days for the payment for 01/19. I reject any suggestion that there was any delay in the transmission of the moneys by the Post Office across the Bank Giro Credit system: there was not. The payment actually cleared in one clear working day. But it was still late.

20. I reject the Appellant's argument that previous payments were on time, and accepted as such by HMRC. They were not. On the information before me, and especially the stamped Bank Giro Credit counterfoils, the payments for 04/18 and 07/18 were each dealt with by the Appellant by Bank Giro Credit on the very last working day before payment was due to be received, and both of those payments were consequently received late.

21. Those late payments attracted escalating surcharges at 2% and 5% respectively. However, the Appellant was not actually called upon to pay anything because the amounts due by way of default surcharge on each occasion were less than £400, and HMRC, by way of concession, does not issue surcharges for sums of less than £400. It seems to me that this is at least part of the reason why the Appellant says that, as far as he was concerned, payments being made on the 6th of the month were being received on the 7th. They were not.

22. I am satisfied that 10% was the appropriate rate. This was a fourth default, and a whole year had not passed since the previous default (in passing, I note that the payment for 10/18 must have been on time, because nothing is said about it, and the return is not in the bundle).

23. The Appellant has - it seems to me, sensibly - remarked that he intends to take steps to ensure he pays a bit earlier each month to make absolutely sure in future that no delay outside his control can cause late payment.

24. Applying the guidance of the Upper Tribunal in *Perrin v HMRC* [2018] UKUT 156 (TCC) to the above facts and matters:

(1) The Appellant says that a belief that payments made by Bank Giro Credit on the 6th, in advance of a due date of the 7th, would be received on time (and, coupled with a belief that payments made on the 6th were, for previous periods, being received on time) gives rise to a reasonable excuse;

(2) I am satisfied that the Appellant genuinely, albeit mistakenly, believed this to be the case. It seems to me that belief arose, at least in part, from the fact that HMRC was applying escalating default surcharges, but, due to them being less than £400, was not taking steps to collect them;

(3) However, I do not consider that what the Appellant was doing was objectively reasonable. Although the Appellant was perhaps lulled into a feeling of false security, this was against the background of numerous signposts, referred to above, that payment had to be cleared and received by HMRC by no later than the due date. Moreover, there were signposts that Bank Giro Credit was not an instant or same-day mode of payment, and indeed could take up to three clear working days to be processed. Those signposts were all present well before the due date for 01/19, and had ceased months before the due date for payment for 01/19.

(4) It was not objectively reasonable for the Appellant to leave payment, using a system which was known not to be instant, until the last working day before the due date;

25. In short, the Appellant was leaving it too late to pay, and was not leaving enough time for the payment to clear by the due date.

OUTCOME

26. The appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

27. 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.

Dr Christopher McNall

TRIBUNAL JUDGE

RELEASE DATE: 15 JANUARY 2020