



TC03130

Appeal number: TC/2011/09924

VAT – default surcharge - reasonable excuse.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KATELL LTD

Appellant

- and -

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

**TRIBUNAL: JUDGE RICHARD BARLOW
WARREN SNOWDON**

Sitting in public at North Shields on 22 October 2013.

Mr Andrew Hurworth for the Appellant

Mrs Rosalind Oliver for the Respondents

DECISION

5 1. This appeal concerns three default surcharges totalling £17,528.02 for the three tax periods ending 10/10, 01/11 and 04/11. The appellant was within the default regime throughout the relevant periods because of a default in period 04/10.

2. The appellant admitted that it was in default in respect of each of the three periods because it had failed to pay the tax due by the due dates and in respect of the two earlier periods it had also made its returns late.

10 3. Mr Hurworth told us that the Bank of Ireland had decided to withdraw from the UK because of its own financial difficulties and that it had started that process in June 2010. However, it did not withdraw immediately or fully at that stage and what happened was that it began to reduce the appellant's facility to overdraw so that by the time the appellant changed its bank to Lloyds TSB in August 2011 its loan facility
15 had been reduced by £800,000 to £1,900,000.

4. A shortage of funds available to account for tax can be a reasonable excuse only if it arises from an unexpected event which causes the shortage. The Bank of Ireland's withdrawal might have amounted to such an event were it not for the fact that the appellant had put itself in a position of having insufficient funds to pay its tax
20 because it had paid off debts owed by associated companies rather than its own debts. The cause of the lack of funds was the appellant's own choice rather than the act of the Bank of Ireland. There may have been good economic reasons for its paying those debts first and had it applied to the commissioners for agreement as to time to pay they might have allowed it because the payments on behalf of the other
25 companies consisted of or at least included tax debts for which such agreements had been reached. No such time to pay was sought.

5. In fact Mr Hurworth also admitted that had the appellant realised the commissioners would impose surcharges the appellant would have been able to find a way of paying the tax on time.

30 6. A different excuse was proposed for the period 04/10 which was not one for which a surcharge had been imposed but if there is a reasonable excuse for it that would delay the start of the default period and remove the first surcharge and reduce the rate at which the second and third were charged. The only excuse put forward was that the appellant's officer had failed to press the submit button when making the
35 return electronically which we do not regard as a reasonable excuse.

7. The appeal is dismissed.

8. 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
40 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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RICHARD BARLOW
TRIBUNAL JUDGE

RELEASE DATE: 13 December 2013

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