

# SUMMARY



**TC03463**

**Appeal number: TC/2012/03557**

***VAT – Default Surcharge – Reasonable Excuse – Section 71 (A) VAT Act 1994 –  
Reasonable Excuse Not Accepted - Appeal Dismissed***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ROCKET LEISURE LIMITED**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE IAN W. HUDDLESTON**

**Sitting in public in Bedford Square, London on 25 February 2014**

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## SUMMARY DECISION

### *Facts*

- 5 1. This is an Appeal against a review decision given to the Appellant on the 25 January 2012 upholding a default surcharge which was issued for the period 10/11.

### *Appearances*

- 10 2. The Appellant itself did not appear and was not represented notwithstanding the fact that the onus of proof was upon it to establish the grounds it was asserting for reasonable excuse. Having considered the matter the Tribunal decided, in the interests of justice, to proceed - it having satisfied itself that adequate notice had been provided to the Appellant both of the date of the Hearing and the nature of the Appeal. The Tribunal did, however, have regard to all of the correspondence and representations made by the Appellant as included in the trial bundle.

### *The Facts*

- 15 3. The facts are relatively straightforward. The Appellant became registered as a trader with effect from the 3 December 2010. It appears that at that point there was a degree of confusion both as between HMRC and the Appellant. The Appellant was of the view that its first return would not need to be filed until the 28 February 2011. 20 However we were given a letter (undated) from the Appellant in which, as a result of a telephone conversation with HMRC, the Appellant had asked it for its return date to be changed from February 2011 to December 2010. We were also furnished with a copy of a telephone attendance note which indicated that HMRC and the Appellant had spoken again – a conversation in which HMRC indicated to the Appellant that the 25 earliest possible return date available (given the 3 December registration date) was the end of January 2012.

4. As a result of this dialogue HMRC appears to have operated to a filing date of the end of January but the Appellant operated to the filing date of the end of February. The default surcharges that result arose because that misunderstanding was 30 perpetuated throughout the tax year in question and in particular in the period 10/11 in relation to which the default surcharge under appeal arises. In short both parties were operating to different filing dates or "stagger periods" for the submission of returns.

### *The Appellant's Case*

- 35 5. The Appellant's case is quite simply put. From the correspondence it accepts that a clerical error arose but, as a consequence, argues that a reasonable excuse defence is available to it based on the facts of the case. In this regard, the onus of proof is on the Appellant to establish that defence on the facts of the case.

6. As indicated above the Appellant did not appear but we had the benefit of reviewing the correspondence between the parties as included within the trial bundle.

### *HMRC's Case*

- 40 7. HMRC's case is equally straightforward. It argues:-

- that it was quite clear as to the exact filing date to which the Appellant needed to operate - both by reason of the exchange of correspondence referred to above but, we were also, taken to the extracts of the returns themselves - in relation to which HMRC make the point that the return date by which the Appellant had to make its on-line submission was very clearly shown on the online submission;
- HMRC also make the point that even if the Appellant's argument (ie. that there was a one month discrepancy between the parties arising from the clerical error) was upheld then, on the facts of the case the defaults which arose for the periods 04/11, 07/11 and 10/11 (all obviously occurring in the tax year in question and leading to the default surcharge for the period 10/11) would still have been late even if there had been one month's latitude and the default surcharge notices would still have been issued;
- finally HMRC's position is that default surcharge notices were issued for the earlier periods ie. 04/11 and 07/11 so again the Appellant would have been aware of the issue and could have rectified it.

*Decision*

8. It is clear that an administrative error has arisen. It also seems quite clear that the Appellant did not become fully aware of that issue until December 2011 and essentially then during the holiday period. As soon as offices opened again for business on the 3 January 2012 the Appellant took steps to ensure the issue was rectified but by that stage the default surcharges had issued.

9. The Appellant's argument, in summary, is that there was an administrative error and that, as a consequence, a reasonable excuse against the default surcharges should prevail.

10. For such an argument to succeed the onus of proof falls upon the Appellant.

11. The Tribunal, having considered the correspondence and having considered the views of the parties (as set out above) find as follows:-

- there was clearly a misunderstanding between the parties resulting in a differing view as to the "stagger periods" or filing dates by which the Appellant was required to submit its returns;
- notwithstanding that clerical error based on the schedule of default surcharges provided to us by HMRC it would seem that even if one were to adopt the Appellant's argument then there still would have been delays which would have led, throughout the year 2010/2011, to the issue of default surcharge notices and, default surcharges;
- as to the clerical error itself whilst it would have been preferable if HMRC had confirmed in writing the telephone conversation which they had with the Appellant nonetheless it appears clear to us that following the Appellant's initial registration there was dialogue between the parties. That dialogue was to the

5 effect that the Appellant wished to change the date by which it filed its return from February to December and was subsequently told that the earliest date possible for an alternative return date was the end of January. That, coupled by the fact that the online forms therefore itself made it clear thereafter as to the date by which the returns were due we find it difficult to accept that the clerical error had the effect which the Appellant seeks.

12. Finally, as a matter of law, Section 71 (1) (a) VAT 1994 makes it clear that a clerical error of itself is not sufficient to grant a defence of reasonable excuse.

13. For those reasons we determine that the appeal should be dismissed.

10 10. 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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**IAN HUDDLESTON  
TRIBUNAL JUDGE**

**RELEASE DATE: 2 April 2014**

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