



TC03539

Appeal number: TC/2014/00032

VALUE ADDED TAX – default surcharge – whether reasonable excuse for late payment – no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

YELLOW ON BLACK LTD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 04 April 2014 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 21 December 2013 and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 29 January 2014.

DECISION

The Appeal

- 5 1. This is an appeal against a default penalty surcharge of £558.11, imposed for the late payment of VAT for the three month period ending 31 July 2013.
2. Mr Simon Owen appeals on behalf of the appellant company. (“the company”)

The issue

3. Mr Owen appeals on the grounds that there was a reasonable excuse for late payment. This is disputed by HMRC.

10 The law

4. Section 59 (7) Value Added Tax Act 1994 (“VATA”) provides:

" If a person who, apart from this subsection, would be liable to a surcharge ...satisfies ..a tribunal that, in the case of a default which is material to the surcharge—

- 15 (a) ... 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 ... VAT not having been so despatched,

- 20 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..

- 25 5. The legislation does not define the term “reasonable excuse”. It has been held to be “a matter to be considered in the light of all the circumstances of the particular case” *Rowland v HMRC [2006] STC (SCD) 536 at [18]*.

Burden of proof

- 30 6. HMRC has the burden of proving that the penalty has been incurred. The taxpayer has the burden of proving that there was a reasonable excuse. *Jussila v Finland (73053/01) [2006] ECHR 996*.

The agreed facts

7. The default history was not contested and can be summarised as follows:

(1) Period 04/11 - default one - Electronic payment was due on 07 June 2011 and was paid on 20 July 2011. No penalty was incurred but a surcharge liability

notice was issued. Attached to the reverse of the surcharge liability notices up to 12/12 contained the following paragraph

“Please remember: Your VAT returns and any tax due must reach HMRC by the due date. If you expect to have any difficulties contact..”

5 (2) Period 07/11 - default two - Electronic payment was due on 07 September and was paid on 12 October 2011. A surcharge of 2 % was applied. However, because this was less than £400, HMRC did not issue a penalty surcharge but extended the surcharge liability notice for a further 12 months.

10 (3) Period 10/11 - default three - Electronic payment was due on 07 January 2012 and was paid on 31 January 2012. A surcharge of 5 % was applied. Again this was less than £400 and HMRC did not issue a penalty surcharge but extended the surcharge liability notice for a further 12 months.

15 (4) Period 01/12 - default four – No payment was due. However the return was due on 28 February 2012 and was received on 06 May 2012. HMRC did not issue a penalty surcharge but extended the surcharge liability notice for a further 12 months. Attached to the reverse of the surcharge liability notices up to 12/12 contained the following paragraph

20 “Please remember: Your VAT returns and any tax due must reach HMRC by the due date. If you expect to have any difficulties contact...”

(5) Period 04/12 - no default - payment was made after the due date. However HMRC cancelled the penalty upon review. In their letter of withdrawal dated 02 September 2012 enclosed advice on avoiding a surcharge. Included within the advice was the following statement:

25 “remember your VAT due dates. Don’t rely on us to remind you. If you can’t pay the full amount file your return on time and phone the business payment support helpline....before the due date”

(6) Period 01/13 - default five - Electronic payment was due on 07 March 2013 and was paid on 25 March 2013. A surcharge of 10% was applied.

30 (7) Period 04/13 - default six - Electronic payment was due on 07 June 2013 and was paid on 25 June. A surcharge of 15% was applied.

The period under appeal

35 8. The VAT for the period 07/13 was due to be paid electronically on 07 September 2013. The return was filed on 03 September and the VAT was paid electronically via the faster payments service on 11 September 2013. The VAT amounted to £3,720.75. As this was the seventh default a surcharge of £558.11 was applied at the rate of 15% of the outstanding VAT.

The arguments

The appellant's case

5 9. Mr Owen submits that he was unaware that he would incur a penalty for late payment as he had submitted his VAT return on time. He states that he was unable to make the payment on time as the company had recently changed computers and he did not have the login details for his online bank account. The login details arrived a week after the return had been filed.

The respondent's case

10 10. HMRC submit that the company were on notice of the payment deadlines due to the number of previous defaults. They submit that the inability to access online banking does not amount to a reasonable excuse as the company does not appear to have sought to pay the VAT by other means such as telephone banking.

Reasons for decision

15 11. I accept that Mr Owen genuinely believed that he had not incurred a default due to the timely filing of his return. However I do not find that this belief was reasonable in the circumstances in view of the number of previous defaults and the advice contained in the surcharge liability notices namely "Please remember: Your VAT returns and any tax due must reach HMRC by the due date"

20 12. I accept that Mr Owen was not able to access his online bank account on 07 October. However in these circumstances it would have been reasonable for him to have attempted other methods of payment such as telephone banking or CHAPS payments. There is no evidence to suggest that he explored any other alternative methods of payment.

25 13. In the event that Mr Owen was unable to pay via his bank it would have been reasonable in the circumstances for him to have contacted HMRC before the due date to make a request for time to pay. There is no evidence that any such request was made.

14. For these reasons I do not find that there was a reasonable excuse for the late payment.

30 Decision

15. There was no reasonable excuse for the late payment of VAT.

16. The appeal against the VAT penalty surcharge of £558.11, is dismissed.

Rights of appeal

5 17. 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
10 “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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**JOANNA LYONS
TRIBUNAL JUDGE**

RELEASE DATE: 28 April 2014