



TC03564

Appeal number: TC/2013/06914

VAT default surcharge - VAT paid late - notice of appeal disclosing no valid grounds - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CONTRACT SERVICES (MILLENIUM) LIMITED Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL S CONNELL
 MR JOHN WILSON**

**Sitting in public at Alexandra House, The Parsonage Manchester on 7 January
2014**

The Appellant did not attend and was not represented.

Ms Helen Roberts Officer of HM Revenue and Customs, for the Respondents

DECISION

The Appeal

- 5 1. Contract services (Millenium) Limited (“the Appellant”) appeals against a default surcharge of £3,651.68, for its failure to submit, in respect of its VAT period ended 31.05 20013, by the due date, payment of the VAT due. The surcharge was calculated at 2% of the amount due of £182,584.01.
2. The point at issue is whether or not the Appellant has a reasonable excuse for making late payment.
- 10 3. The Appellant did not attend the hearing and was not represented. The Tribunal was satisfied that the Appellant had been notified of the date time and venue of the hearing and that it was in the interests of justice to proceed.

Background

- 15 4. The Appellant had previously defaulted on VAT payments in period 11/12 when a VAT surcharge liability notice was issued.
5. Section 59 of the VAT Act 1994 requires a VAT return and payment of VAT due on or before the end of the month following the relevant calendar quarter. [Reg 25(1) and Reg 40(1) VAT Regulations 1995].
- 20 6. The Appellant paid VAT on a quarterly basis and usually paid its VAT by a BACS payment. HMRC may allow additional time for payment when made by electronic means and pursuant to regulation 40 (4) of the VAT regulations 1995 allows an additional seven days after the end of the calendar month when payment would normally fall due (together with a further three days when the VAT is collected by direct debit). Limitations apply if the due date falls on a weekend or a bank holiday
25 in which event the due date defaults to the last previous working day.
7. The Appellant submitted its 05/13 VAT return electronically on 25.06.13 and was therefore on time. Payment of the VAT due if made electronically was due no later than 07.07.13, but was not received by HMRC until 16.07.13 and was therefore nine days late.
- 30 8. Section 59 Value Added Tax Act 1994 (“VATA”) sets out the provisions in relation to the default surcharge regime. Under s 59(1) a taxable person is regarded as being in default if he fails to make his return for a VAT quarterly period by the due date or if he makes his return by that due date but does not pay by that due date the amount of VAT shown on the return. The Commissioners may then serve a surcharge
35 liability notice on the defaulting taxable person, which brings him within the default surcharge regime so that any subsequent defaults within a specified period result in assessment to default surcharges at the prescribed percentage rates. The specified percentage rates are determined by reference to the number of periods in respect of which the taxable person is in default during the surcharge liability period. In relation

to the first default the specified percentage is 2%. The percentage ascends to 5%, 10% and 15% for the second, third and fourth default.

9. A surcharge liability notice was issued for £3,651.68 on 12.07.13.

10. HMRC say that the Appellant would have been aware of the potential financial consequences of a further default having defaulted on a previous occasion.

11. A taxable person who is otherwise liable to a default surcharge May nevertheless escape that liability if he can establish that he has a reasonable excuse for the late payment which gave rise to the default surcharge(s). Section 59 (7) VATA 1994 sets out the relevant provisions : -

10 ‘(7) If a person who apart from this sub-section would be liable to a surcharge under sub-section (4) above satisfies the Commissioners or, on appeal, a Tribunal that in the case of a default which is material to the surcharge –

15 (a) the return or as the case may be, 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

20 (b) there is a reasonable excuse for the return or VAT not having been so despatched then 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 in question ..’

12. The initial onus of proof rests with HMRC to show that a surcharge has been correctly imposed. If so established, the onus then rests with the Appellant to demonstrate that there was a reasonable excuse for late payment of the tax. The standard of proof is the ordinary civil standard on a balance of probabilities.

Appellant’s Case

13. The Appellant Company was not represented. In its Notice of Appeal to the Tribunal the Appellant referred to its letter to HMRC of 24.07.13 in which it said that payment of the 05/13 return was processed on Friday 12.07.13 but not received by HMRC until Tuesday 16.07.13 due to the intervening weekend. The Appellant said that whilst it accepted that payment was late, it was made before the issue of the surcharge note.

HMRC’s Case

14. At the hearing Ms Helen Robert for HMRC said that the potential financial consequences attached to the risk of a further defaults would have been known to the Appellant after issue of the Surcharge Liability Notice for period 11/12. The information contained on the reverse of the Default Notice states:

40 ‘Please remember your VAT returns and any tax due must reach HMRC by the due date. If you expect to have any difficulties contact

either your local VAT office, listed under HM Revenue & Customs in the phone book as soon as possible, or the National Advice Service on 0845 010 9000.’

15. The requirements for submitting timely electronic payments can also be found -

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- In notice 700 "the VAT guide" paragraph 21.3.1 which is issued to every trader upon registration.
 - On the actual website www.hmrc.gov.uk
 - On the E-VAT return acknowledgement.

10 16. Also the reverse of each default notice details how surcharges are calculated and the percentages used in determining any financial surcharge in accordance with the VAT Act 1994 s 59(5).

17. Therefore, HMRC say that the surcharge has been correctly issued in accordance with the VAT Act 1994 s 59(4).

15 18. With regard to the Appellant’s grounds of appeal, the VAT regulations do not specify when the default surcharge notice has to be issued by HMRC.

Conclusion

19. The Appellant was clearly aware of the due date for payments of its VAT and the potential consequences of late payment.

20 20. The Appellant’s only ground of appeal is that payment of the VAT due was made before the issue of the surcharge note. This is not a ground of appeal. As HMRC say the VAT regulations do not specify when the default surcharge notice has to be issued by HMRC

21. The Appellant has not shown a reasonable excuse for late payment of VAT for the 05/13 period.

25 22. The appeal is accordingly dismissed and the surcharge upheld.

30 23. 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.

MICHAEL S CONNELL

TRIBUNAL JUDGE

RELEASE DATE: 6 May 2014

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