



**TC04829**

**Appeal number: TC/2015/02357**

*VAT default surcharge - whether reasonable excuse - insufficiency of funds  
- Steptoe considered - time to pay arrangement requested - whether request  
properly considered - no - whether reasonable excuse - yes - appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**RIPON FARM SERVICES LIMITED**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE MICHAEL CONNELL  
MEMBER PETER SHEPPARD**

**Sitting in public at City Exchange, Albion Street, Leeds on 16 September 2015**

**Mr Nick Riley, Finance Director and Mr David Young, Group Accountant of the  
Appellant Company for the Appellant**

**Ms Joanna Bartup, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

### **The Appeal**

- 5 1. Ripon Farm Services Limited (“the Appellant”) appeals against a VAT default surcharge of £14,661.95 in respect of the period 10/14, for its failure to submit by the due date, in respect of the VAT period, payment of VAT due.
2. The point at issue is whether the Appellant has a reasonable excuse for making the late payment.

### **Background**

- 10 3. The Appellant Company is based in Ripon, North Yorkshire having been established approximately thirty years ago. The Company deals in the sale of new and used vehicles, trailers, agricultural, construction and ground care machinery and equipment. It also operates a servicing and spare parts department from its various service depots.
- 15 4. The Appellant paid VAT on a quarterly basis. 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]. The due date is extended by seven days where payment is made electronically except where this falls on a bank holiday or weekend when the due date is deemed to  
20 be the last previous working day. Since April 2010 it is mandatory for all businesses with an annual turnover of £100,000 or more (excluding VAT) to render returns and pay VAT due electronically.
- 25 5. The Appellant had previously defaulted on VAT payments in period 10/13 when a VAT Surcharge Liability Notice was issued and again in period 04/14, although a VAT default surcharge issued in respect of that default was subsequently withdrawn on the basis that a Time to Pay (“TTP”) arrangement was in place.
- 30 6. The due date for the Appellant’s VAT return for the 10/14 period was 30 November 2014 extended, as explained in paragraph 4. above, to Friday 5 December 2014. The Appellant’s return was received by HMRC on time on 5 December 2014. The amount due under the return was £843,097.93 less £110,000 paid prior to the due date, leaving a balance of £733,097.93.
- 35 7. Payment of the balance due was received by HMRC by twenty-two BACS part payments after the due date, the last part payment being over ten weeks late, but in accordance with what the Appellant initially but erroneously understood was an agreed TTP arrangement.
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 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. On 12 December 2014, HMRC imposed a penalty of £36,654.89 in respect of the late payments for the period 10/14. The penalty was levied at 5% of £733,097.93 being the total amount of tax paid late. As a result of the subsequent withdrawal of the penalty in respect of the period 04/14, the default surcharge of £36,654.89 was reduced to £14,661.95 (2%).

10. Mr Young, the group accountant for the Appellant Company, asked HMRC to review the decision to impose the 10/14 default surcharge on the grounds that the Company was suffering an insufficiency of funds, its cash flow being heavily influenced by seasonal trading and that a TTP arrangement under Finance Act 2009 s 108 had been provisionally agreed between Mr Young and Mr Wicks an Officer of HMRC's Business Management Support Unit.

11. Mr Young said that the VAT return in respect of the quarter ending on 31 January for the previous three years had 'been in a refund position' which supported his contention that the Company's business was heavily seasonal. He said that it peaks in March and September resulting in significantly higher VAT due to HMRC in May and November. HMRC were aware of this and recognised the Company's commitment to clear its VAT as soon as possible, cash flow permitting. TTP arrangements had been agreed previously and with only very occasional minor delays had always been adhered to. Further, there were no VAT arrears from past periods.

12. Mr Young also explained that the Company had been in discussions with Mr Wicks and agreed to pay instalments on account and in advance of the due date, the objective being to reduce the debt to a level that could be more easily managed and hopefully funded on the due date. In respect of the October 2014 VAT quarter there had been an agreement with Mr Wicks to make a part payment in advance and £110,000 had been paid prior to the due date on the basis that the company would then pay £30,000 per day until the balance of VAT was discharged. The company had adhered to the arrangement. Prior to the due date, the Company had heard nothing further from HMRC but that was not considered unusual because previous time TTP arrangements had always been verbal and dealt with in a similar manner. It was not until 12 December 2014 that he was informed HMRC would not agree a TTP arrangement. Mr Young said that there was nothing he could do other than to maintain the promised £30,000 payments.

13. On 18 February 2015, HMRC replied stating that they were unable to review their decision because a TTP arrangement had not been formally agreed, and that an insufficiency of funds is specifically excluded from being a reasonable excuse for the

late payment of VAT under s 71(1) VATA 1994. By then the 10/14 VAT had in any event been paid, the final £30,000 instalment having been made by BACS on 16 February 2015.

5 14. In a follow up to their review of the decision on 13 March 2015, HMRC said that their record of the telephone conversation on 5 December 2014 confirmed that no formal TTP arrangement had been agreed. Mr Wicks' file note said "I advised Mr Young of our timescales and so I cannot give agreement to TTP at this level. He will continue to make the repayments and call me on 12 December 2014."

15. The Appellant lodged a Notice of Appeal with the tribunal on 17 March 2015.

## 10 **Evidence**

16. The documentary evidence in HMRC's document bundle included a copy of the Appellant's bank overdraft facility, copy profit and loss account and balance sheet for 2013-14, copy creditors and debtors ledger, the Schedule of Defaults; copy details of the Appellant Company's payment history and previous TTP arrangements; copy screen-prints of HMRC's 'action history records' and a copy of HMRC's 'accounting  
15 interrogation' records (showing tax payments due and made), copy correspondence between the Appellant and HMRC and HMRC's log of telephone conversations with the Appellant from September 2013, prior to the original default when the surcharge liability notice was issued, to March 2015. Mr David Young and also Mr Nick Reilly  
20 gave evidence on behalf of the Appellant Company. HMRC had no witnesses.

17. Copy screen-prints of HMRC's 'action history records' extended from June 2011 to February 2015, but unfortunately some periods were omitted and in particular the period between mid October and mid December 2014, although we were provided with a transcript of the conversation between Mr Young and Mr Wicks on 5  
25 December 2014.

18. It was clear from the action history records that throughout 2013-2015, there was regular dialogue between Mr Young and HMRC. VAT payments were regularly made late and by instalments without any further action being taken by HMRC. On other occasions, where a VAT default surcharge had been issued, it was subsequently  
30 withdrawn on payment of the balance of VAT due.

19. HMRC's own internal guidance is that where a TTP has been agreed before a default surcharge has been issued, a VAT719 should be issued to inhibit a surcharge processing for the specific accounting period. Where a TTP is agreed after the default/surcharge has been issued, HMRC issues a VAT720 to remove the default and  
35 surcharge.

20. The Appellant's VAT was due quarterly on 30 November, 28 February, 31 May and 31 August in each year, payment to be made electronically no later than seven days after each due date. A review of the Appellant's action history records show that:

- 5       • The VAT due on 30 November 2011 was paid late. The Company had previously been issued with a surcharge liability notice and as a result of the late payment a 2% default surcharge issued. There was no TTP in place, although there had been regular contact and dialogue between the Appellant and HMRC. Payment was eventually made in full by instalments in accordance with assurances previously given by Mr Young. The surcharge was subsequently removed by the issue of a VAT720 and a SLN extension notice was issued.
  
- 10       • The VAT due on 31 May 2012 was paid late. Again no TTP was in place and again there had been regular dialogue with the taxpayer. Payment was made by instalments and eventually cleared by the end of June 2012. The reason given for the late payment was seasonal cash flow problems. The action history records did not indicate that a default surcharge had been raised.
  
- 15       • The VAT due on 30 November 2012 was paid late but in this instance pursuant to a TTP that the VAT would be paid by agreed instalments and by the 31 January 2013. A default surcharge was issued in December 2012 but subsequently removed because of the TTP arrangement. The Appellant adhered to the instalment arrangement that had been agreed.
  
- 20       • The VAT due on 31 May 2013 was paid late. Mr Young explained that the Company was having cash flow difficulties because there were always difficulties at that time of year. There was no TTP in place prior to the due date but an instalment plan agreed in early May 2013 between the Appellant and HMRC was subsequently retrospectively treated as a TTP arrangement and a default surcharge that had been raised was removed by the issue of a  
25       VAT720 notice.
  
- 30       • VAT due on 31 August 2013 was paid late. The amount due was £181,507. Mr Young telephoned on 5 September 2013, that is prior to the due date, explaining that the Company's bank had reduced its overdraft facility from £4.5 million to £4 million. He pointed out that previous TTP's had been adhered to. HMRC agreed a short term TTP arrangement. The VAT was received by HMRC on 16 September 2013.
  
- 35       • VAT due on 30 November 2013 was paid late. The amount due was £1,014,831.61. There was no TTP arrangement in place, and in fact a TTP request made after the due date had been rejected, 'because previous TTP's had not resulted in the Company getting back on track'. As the Company was at the date of default outside a surcharge liability notice period, the default was treated as a first default and therefore no surcharge issued. Payment was made by ten instalments of £92,000 and one instalment of £94,831.61, the final instalment being made on 15 January 2014. The Appellant's bank overdraft  
40       facility letter shows that an overdraft of £4,750,000 had been agreed in October 2013, at which time the Appellant's overdraft stood at £4,485,392.00.

- The VAT due on 30 May 2014 was paid late. The amount due was £325,724.24 and paid under a TTP arrangement by four instalments, the final payment being made on 29 July 2014. A VAT default surcharge of 2% issued on 13 June 2014 was removed by the issue of a VAT720 notice.

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- The VAT due on 31 August 2014 was paid late. The amount due was £536,853.06. HMRC agreed a TTP arrangement whereby the sum would be paid by twenty-one payments of £25,000 and a final payment of £11,853.06 by 3 October 2014. The Appellant was unable to adhere to the arrangement but eventually cleared the balance on 16 October 2014.

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- The VAT due on 30 November 2014 was paid late and it is that default and the surcharge of 2% which was raised which is the subject of this appeal.

21. The amount due was £843,097.93. At the time, the Appellant Company's bank overdraft facility had been reduced to £4,000,000, but its overdraft stood at £4,471,161. Mr Young says that an application to the bank to cover the VAT due to HMRC was declined. A business analysis undertaken by Baker Tilley, accountants had shown that one of the reasons for its cash flow difficulties was that the Company was overstocked by up to £2 million. Mr Young explained that steps were actively being taken to address that issue.

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22. In evidence Mr Young said that having spoken to Mr Wicks of HMRC Business Management Support on Friday 5 December 2014, it had been provisionally agreed that a payment of £110,000 would be paid prior to the due date and the balance paid by instalments of £30,000 per day. Mr Wicks told him that he did not have the authority to formally agree a TTP at that level, and that the request would have to be referred to a higher officer. It was agreed that the Appellant would continue to make payments of £30,000 per day and that Mr Young would telephone HMRC on the following Friday, 12 December 2014 for a decision. Mr Wicks mentioned that he was retiring that day, the indication being that someone else would revert to Mr Young.

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23. HMRC's 'action history' record shows that Mr Young telephoned HMRC on 12 December 2014 and was informed that HMRC would not agree to enter into a TTP arrangement 'due to repeat previous agreements'. He was informed that the directors needed to make more robust measures to implement disposal of stock and reduce borrowings. HMRC threatened enforcement action.

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24. Mr Young said that the Company's trading and profit and loss accounts 2013-14 confirmed that its turnover and operating profits peaked in the spring and summer months, particularly March and September and profits were lowest in the winter months. The figure for debtors was significantly greater during the periods of high turnover and operating profit, the highest figure of £10,558,492 being in August and the lowest figure of £6,511,667 being in December. Stock peaked at a figure of £27,039,055 at the beginning of the Company's accounting year in February and gradually decreased towards October when the figure stood at £22,354,594, before rising again towards the end of the year. Annually the mean difference in stock levels between February and October was therefore approximately £4.68m. With the

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exception of two late payments in August, the Company's other defaults were all in May and November when the VAT due figure was always much higher.

### **“Reasonable excuse” and relevant legislation**

5 25. 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).

26. 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 -

(b) there is a reasonable excuse for the return or VAT not having been so despatched then

15 - 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 ..’

It is s 59(7)(b) on which the Appellant seeks to rely.

20 27. Section 59(7) must be applied subject to the limitation contained in s 71(1) VATA 1994 which provides as follows : -

‘(1) for the purposes of any provision of section 59 which refers to a reasonable excuse for any conduct -

(a) any insufficiency of funds to pay any VAT is not reasonable excuse.’

25 28. Although an insufficiency of funds to pay any VAT due is not a reasonable excuse, the underlying cause of any insufficiency of funds if entirely unforeseen and outside the control of the taxpayer, may constitute a reasonable excuse – *Customs & Excise Commissioners v Steptoe* 1992 STC 757 (“*Steptoe*”).

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

### **Appellant's Case**

35 30. The Appellant's case is essentially as argued in its correspondence with HMRC, that firstly, the Company was suffering an insufficiency of funds, its cash flow being heavily influenced by seasonal trading and that secondly, the Appellant had relied upon a TTP arrangement under Finance Act 2009 s108, which he understood had been provisionally agreed between Mr Young and Mr Wicks for HMRC.

31. At the hearing, Mr Riley said that he and Mr Young had explained the Company's position fully to HMRC. The Company was not suffering an insufficiency of funds as a result of poor trading or because of the normal hazards of business but because of seasonally recurring events combined with an unexpected reduction in its overdraft facilities which caused a temporary interruption in its cash flow, but which would improve on receipt of monies due from customers and trade debtors together with a projected reduction of the company's stock levels. He said it was difficult to understand HMRC's reasoning in first provisionally agreeing to, and then refusing, time to pay. The Company had been offered time to pay previously and had always adhered to promised payment schedules. From what Mr Wicks told Mr Young, HMRC understood the Company's difficulties, and there appeared to be no reason why a TTP arrangement could not have been formally confirmed. Mr Young had contacted HMRC prior to the due date and it was unfair that having been asked to contact HMRC on 12 December 2014, that is after the due date, a TTP arrangement was then refused.

32. HMRC's guidance on TTPs says that the Commissioners will:

‘Agree time to pay where it believes that you are genuinely unable to pay in full and on time. Also that by allowing you extra time it will mean that you can pay what is due and you can return to making future payments in full and on time.’

No explanation had been given as to why the Company was being refused a TTP arrangement other than that it had been offered time to pay previously, and this had not resulted in the Company subsequently paying its VAT on time, save by recurring TTP arrangements. Mr Riley said that it was clear the Company would be able to pay the VAT due; it simply required brief deferral period. In fact, by the time the VAT default was imposed the VAT for 10/14 had already been paid.

### **HMRC's Case**

33. Ms Bartup for HMRC said that the potential financial consequences attached to the risk of further default would have been known to the Appellant after issue of the Surcharge Liability Notice for the period 11/11, given the information contained in the Notice. Included within the notes on the reverse of the Surcharge Liability Notice, is the following, standard, 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 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.’

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

- 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](http://www.hmrc.gov.uk)



- On the E-VAT return acknowledgement.

35. 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 VATA1994 s 59(5).

5 36. Therefore HMRC say that the surcharge has been correctly issued in accordance with the VATA 1994 s 59(4).

37. HMRC's Notice 700/50 (December 2011) s 6.3 (the Notice represents HMRC's policy and understanding of the relevant legislation) states that HMRC consider that genuine mistakes, honesty and acting in good faith are not acceptable as reasonable  
10 excuses for surcharge purposes.

38. It is also specifically stated in s 71(1) VATA 1994 that any insufficiency of funds to pay any VAT is not reasonable excuse.

39. The Finance Act 2009 s 108 specifies that there is no liability to a default surcharge for a period where contact is made with HMRC prior to the due date in  
15 order to arrange a payment deferment and this is agreed by HMRC. In this case there was no agreement and whether or not a TTP arrangement should be agreed is entirely within the discretion of HMRC. A liability to surcharge arises on the day after the due date if no agreement has been reached. Section 59A VATA 1994 specifically states that a taxpayer is liable to a default surcharge if late in making a payment on account.

20 40. Ms Bartup for HMRC said that the Appellant's arguments regarding financial constraints and the Company's cash flow problems along with its efforts to meet its obligations were nothing out of the ordinary. The events that occurred were entirely foreseeable and in essence were normal business risks. The heavily seasonal nature of the Appellant's business was something which the Appellant should have prepared for  
25 and did not provide a reasonable excuse for the default.

### **Conclusion**

41. It is clear from the facts that the Appellant had done everything it could to exercise reasonable foresight, due diligence and have due regard for the fact that its VAT was payable on the due date. It had in place an overdraft with its bankers, albeit  
30 insufficient to cover its needs. The management acted proactively in ensuring that HMRC were aware of its position and there was constant dialogue between the Appellant's management and HMRC's Business Unit. The Appellant's TTP proposals were based on realistic forecasts and with very minor occasional exceptions previous TTP's were always adhered to.

35 42. HMRC argue that the causes of the insufficiency of funds were not exceptional. They argue that they were foreseeable and attributable to the ordinary hazards of trade. As such, they say that they could not be regarded as a reasonable excuse for the Appellant's late payment of VAT. However, that is to regard foreseeability as the sole  
40 criteria for determining whether a reasonable excuse has been shown and is not the correct approach. In any event it is difficult to see how the cash flow insufficiency

caused by the bank by reducing the Appellant's overdraft facility by £0.75m could have been foreseen.

43. The issue of reasonable excuse and s 71(1)(a) was considered in detail in *Stepto*. The Court of Appeal held that although insufficiency of funds can never of itself constitute a reasonable excuse, the cause of that insufficiency, that is, the underlying cause of the taxpayer's default, might do so and in considering that, as Lord Donaldson MR explained, the question is whether the late payment was "reasonably avoidable". The test to apply can be found in his judgment, where he said:

10            "... If the exercise of reasonable foresight and of due diligence and a proper regard for the fact that the tax would become due on a particular date would not have avoided the insufficiency of funds which led to the default, then the taxpayer may well have a reasonable excuse for non-payment, but that excuse will be exhausted by the date on which such foresight, diligence and regard would have overcome the insufficiency of funds."

15            44. That is the correct test to be applied and is binding upon the Tribunal. In *Stepto* Lord Nolan said that it is necessary to distinguish between the reason for non-payment and excuse for non-payment. The taxpayer here is saying that it should be excused from the surcharge not because it was short of funds but because that shortage was brought about by circumstances which were unforeseeable and over which it had no control. Lord Nolan quoting from his own decision in *Customs and Excise Commissioners v Salevon* [1989] STC 907 said:

25            "... It is worth bearing in mind that the penalties imposed for a delay or deficiency in payment, however slight, are fixed. Neither the commissioners nor the tribunal have any power to mitigate them by reference to the facts of the particular case. In these circumstances the wide discretion conferred on the commissioners and the tribunal by s 19(6) should not in my view, be regarded as having been cut down by s 33(2) to any greater extent than the language of the latter subsection strictly requires. The commissioners and the members of the tribunal are well qualified to distinguish between the trader who lacks the money to pay this tax by reason of culpable default and the trader who lacks the money by reason of unreasonable and inescapable misfortune."

35            45. Unfortunately for the Appellant a number of factors combined, some of which were foreseeable and some not, which caused a recurring significant cash flow problem. The Company had a substantial amount of its working capital tied up in stock, which problem it was endeavouring to address, but to compound its difficulties the bank had reduced its overdraft facilities, although as could be seen from the Appellant's figures the bank appeared to tolerate repeated breaches of the agreed overdraft limit. The seasonal nature of the Company's business did not help.

40            46. Even if we regard 'foreseeability' in the context of normal everyday business hazards as the sole criterion for establishing whether or not a reasonable excuse exists, the events which affected the Appellant's business and cash flow were outside what the exercise of reasonable foresight would have allowed or enabled the Appellant to do, in order to avoid the shortage of funds which led to the late payment of VAT. It would be more apt to describe the Appellant's inability to pay its VAT as having been

caused by recurring avoidable reductions in its cash flow exacerbated by an unforeseeable aggravation of the problem when the overdraft facility was reduced, rather than insufficiency of funds.

5 47. The Appellant Company's financial difficulties in period 10/14 were not an isolated event. They had continued for a considerable period as evidenced by the fact that the company had been in a Surcharge Liability Period since period 10/13 and indeed in earlier Surcharge Liability Periods prior to that. It had benefited from several previous TTP arrangements, with which it had always, in substance, complied. The need for the arrangements was in part a reflection of the seasonal nature of the  
10 Appellant's business and the lack of access to capital from its bank.

15 48. There was clearly a history of the management taking such reasonable steps as they were able, to maintain the company's ability to discharge liabilities including VAT when they fell due. It is therefore difficult to understand why, given the facts as outlined to HMRC and the Appellant's compliance history, a TTP arrangement was not agreed for period 10/14. That was of course a matter entirely within the discretion of HMRC and we cannot disturb that.

20 49. On the facts, in respect of the 10/14 period we find on balance that there would have been no insufficiency of funds if it were not for the unexpected financial constraints which beset the business. We find that the Appellant exercised reasonable foresight, due diligence and a proper regard for the fact that the tax would become due on the due dates. Its VAT returns were submitted on time and VAT liabilities were settled immediately the Appellant had the funds, albeit deferred and by instalments.

25 50. Although the Appellant contends that a deferral of its 10/14 VAT payment payments was 'provisionally agreed' by HMRC, in so far as there was neither a rejection of the proposal nor any further communication until 12 December 2014, the Appellant can only avail itself of the relief provided by Finance Act 2009 s 108 where deferment is *explicitly* agreed by HMRC. A TTP has to be formally agreed with HMRC and silence or inaction on the part of HMRC cannot in itself be regarded as tacit acceptance of proposals.

30 51. HMRC contend that, given the Appellant's payment history and familiarity with the default surcharge regime and TTP agreements, it is not reasonable to assume HMRC's provisional agreement to payment proposals was anything more than a request for the Appellant to make payments on account until a formal decision was made.

35 52. Although Mr Young had put forward TTP proposals which were in many ways not dissimilar to previous TTP arrangements with which the Appellant had always complied, it cannot be concluded that it was reasonable for him to assume that a TTP arrangement had been agreed. However a tentative arrangement had been agreed, albeit for only seven days, and having been told to telephone again after the due date  
40 it is difficult to see what else Mr Young could have done to avoid the default surcharge if HMRC were not also going to extend the due date for payment. Although he had left it very late, giving HMRC little opportunity to consider matters, we were

not provided with any reason or evidence by HMRC as to why a decision could not have been made by a higher officer in HMRC even if that decision was to refuse a TTP arrangement, before 12 December 2014, which was effectively the due date by which the obligation to pay the VAT had by implication been extended. Had due  
5 consideration been given to the Appellant's proposals earlier than that, during the week beginning 8 December 2014, however unlikely it may have been that the Appellant could have put in place alternative arrangements to pay the VAT due, they were not given that opportunity before being notified of HMRC's decision to retrospectively refuse the TTP arrangement.

10 53. For the above reasons the Appellant has shown a reasonable excuse for the late payment and we allow that appeal.

54. 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  
15 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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**MICHAEL CONNELL**

**TRIBUNAL JUDGE**  
**RELEASE DATE: 20 JANUARY 2016**

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