



[2019] UKFTT 0749 (TC)

TC07506

VAT – default surcharges – failure to pay tax due on time - reasonable excuse - yes - appeal successful.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/04690

BETWEEN

EGLAS LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE JENNIFER TRIGGER
SUSAN STOTT**

**Sitting in public on 07 November 2019 at 10.00 am at Llandudno Magistrates Court,
Magistrates Court, Conway Road, Llandudno, LL30 1GA**

Mr Robert D Evans Owner Manager and Director of Eglas Ltd for the Appellant

**Ms Tracey Gibson Presenting Officer Solicitor's Department of Her Majesty's Revenue
and Customs for the Respondents**

DECISION

Eglas Ltd (the “appellant”), appealed against the decision of the respondents, (“HMRC”), to issue VAT default surcharges for the periods 10/17, 04/18, 10/18 and 01/19.

Background

1. The appellant had been in the default surcharge regime from Period 10/17.
2. The appellant had registered for VAT with effect from 26 April 2012 and carried on a business of landscape gardening. The appellant’s VAT registration number is 133 3603 47.
3. The director and owner manager of the appellant was Mr Robert D Evans.
4. The appellant had been mandated to submit their returns electronically under Regulation 25A of the VAT Regulations 1995.
5. The default schedule showed that the appellant submitted their VAT returns by the due date.
6. The Period 10/17 due date was 07 December 2017 for electronic payments. The appellant made two payments after the due date, the second of which was received on 22 December being 15 days late. A Surcharge Liability Notice, (“the SLN”), was issued and the appellant entered the default surcharge regime.
7. The Period 04/18 due date was 07 June 2018 for electronic payments. Payment was received on 08 June 2018 being one day after the due date. SLN Extension was issued. The appellant was also liable to a surcharge at 2% but as the default was less than £400.00 HMRC did not impose any financial penalty.
8. The Period 10/18 due date was 07 December 2018 for electronic payments. Payment was received on 08 December 2018 being one day after the due date. Accordingly, HMRC issued a SLN Extension. The appellant was also liable to a surcharge at 5% but as the default was less than £400.00 HMRC did not impose a financial penalty.
9. The Period 01/19 due date was 07 March 2019 for electronic payments. Payment was received on 08 March 2019 being one day after the due date. A SLN Extension was issued. The appellant was liable to a surcharge. The surcharge percentage applicable was 10% being £572.46.

The appellant’s grounds of appeal

These can be summarised as follows;

10. The appellant was a micro business based in Ynys Mon (Anglesey) providing grounds maintenance and associated services. The owner manager’s primary function was to meet prospective customers, prepare and submit quotations and tenders, set out weekly and daily schedules of work. Prepare day work based invoices, supervise critical site activities, stand in for absent staff, provide input site labour when needed to meet contractual deadlines, oversee equipment purchase and monitor equipment maintenance. In addition there was a requirement to attend training courses and

generally oversee the management of the business. Like many owner managers Mr Robert D Evans worked long hours and found the work “increasingly exhausting”.

- 11 In 2015 the appellant employed an accounts manager, Miss Gillian Griffiths, one or two half days a week adjusted by her other contractual commitments and volume of work at a specific time. The accounts manager was with the appellant for a number of years and during that time an account management process became established. This involved the accounts manager using SAGE accounting package to enter sales and purchase invoices into the package, issuing sales invoices, chasing clients for settlement of overdue invoices, maintaining cash flow. Reconciling the bank payments and receipts, preparing VAT returns and accounts for the accountant’s annual return and crucially ensuring outward payments, particularly VAT payments were met by the due date.
12. Mr Robert D Evans totally relied on the accounts manager to administer the appellant’s entire accounts system of the business thus enabling him to concentrate on the business operations.
13. On 29 September 2017 the accounts manager broke her left upper arm in two places as a result of a cycling accident. This fact caused the appellant’s accounting process to be paralysed. The accounts manager was absent from work between 29 September 2017 and 23 April 2018. Throughout this period the accounts manager was under regular orthopaedic review. The appellant claims that the accident and the subsequent absence from work of the accounts manager on sick leave constitutes a reasonable excuse.
14. The appellant, in the initial stages of the absence on sick leave of the accounts manager, made extensive enquiries to find another SAGE experienced accounts manager. Those enquiries were wide ranging. SAGE trained employees are specialists. The economic circumstances in Ynys Mon have suffered a downturn over a number of years. The ability to attract trained SAGE employees is limited. Enquiries were made at Bangor University and other training centres. The response was poor. Either the distance was too far for the employee to travel or there were no possible candidates. Enquiries were made with the appellant’s accountant’s which have established offices throughout Ynys Mon, but with no success.
15. The appellant tried to make the payments on time but they was unable to do so. Their knowledge of SAGE was so very poor as to be none existent. However, they managed to engage the services for one day only of a SAGE operative who took holiday entitlement from permanent employment to help the appellant.

HMRC’s Case

16. Once the appellant entered the default surcharge regime they should have been aware of the financial consequences because of the information printed on the SLN.
17. Liability to VAT is governed by the VAT Act 1994 (VATA) section 59 and on the reverse of each notice is information as to how surcharges are calculated and the percentage used in determining the financial surcharge.
18. HMRC had correctly issued surcharges in accordance with section 59(4) of VATA.
19. The fact that the appellant’s owner manager had to work long hours did not constitute a reasonable excuse.

20. The appellant's had taken the risk to rely solely on their accounts manager for preparation and payment of VAT and accordingly took on the risk inherent therein.
21. The accident which befell the appellant's accounts manager on 29 September 2017 was unforeseen, but the due date for the Period 10/17 was 07 December 2017. This gave the appellant almost ten weeks in which to make alternative arrangements to ensure compliance with their tax obligations.
22. HMRC contended that the failure by the appellant to pay the VAT due on time was due to a failure to exercise reasonable foresight and due diligence having proper regard for the appellant's responsibilities under the tax acts. This was evidenced by the fact that the appellant was able to submit the returns on time in the absence of their accounts manager.
23. There was no reasonable excuse shown because reliance on a third party, in this case an employee, was not considered a reasonable excuse for late payment under section 71(1) (b) of VATA.
24. The appellant's accepted that the owner manager "became confused and in genuine error transferred funds to HMRC one day late". However, HMRC relied on the case of *Garnmoss Ltd t/a Parham Builders [2012] UKFTT 315 (TC)*:

"What is clear is that there was a muddle and a bona fide mistake was made. We all make mistakes. This was not a blameworthy one. But the Act does not provide shelter for mistakes, only for reasonable excuses. We cannot say that this confusion was a reasonable excuse. Thus this default cannot be ignored under the provisions of subsection (7)."
25. The appellant recognises that a genuine error is not recognised as a reasonable excuse but requests mitigation of the penalty.
26. Whilst VATA covers mitigation, default surcharges are not included.

Finding of fact

27. That HMRC had correctly issued the surcharges.
28. That the correct financial percentage had been applied in calculating each of the surcharges.
- 29 That the appellant had a reasonable excuse for the late payment in Period 10/17.

Discussion

30. In deciding whether the appellant had demonstrated a reasonable excuse the Tribunal had regard to the Upper Tribunal decision in *Perrin v HMRC [2018] UKFTT 156 (TCC)* which held that a Tribunal is required to deal with the following issues when considering whether there was a reasonable excuse:-
 - (a) Firstly, establish what facts the taxpayer asserts give rise to a reasonable excuse. The appellant relies on the contents of their notice of appeal to demonstrate a reasonable

excuse. The accident suffered by their accounts manager was unforeseen and the loss of her services had a fundamental effect on the ability of the appellant to manage their accounts and, in particular, the payment of VAT. The accounts manager was experienced in SAGE. The services of a replacement SAGE operator on a temporary basis proved impossible. The appellant had made extensive enquiries but had been able only to have help for one day from an employee of another firm who took one day's annual leave to assist. In the early days the extent of the account manager's injuries were unclear. In the event she needed extensive orthopaedic input which delayed her return. Finally the accounts manager did not return to the appellant's employment preferring to train as a nurse. There was considerable confusion and uncertainty in Period 10/17 which caused the delay in payment of the VAT due.

- (b) Secondly, decide which of those facts are proven. All the facts are proved.
- (c) Thirdly, decide whether, viewed objectively, those proven facts do indeed amount to a reasonable excuse. The appellant's owner manager was intelligent and articulate as was evident from the letter of appeal and the various letters in the appeal bundle. He had made extensive enquiries to find a temporary replacement accounts manager once the length of the absence from work by the accounts manager was apparent. This had proved impossible. This was because of the specialist nature of SAGE. Furthermore the location of the appellant's premises meant there was a considerable period of travel to and from work for some potential employees. This fact allied to the decrease in employment in Ynys Mon which needed SAGE operatives further reduced the available staff to take on this work. At the time the appellant did not contact the Job Centre because the appellant did not want a permanent SAGE employee. It was only at the point where the accounts manager indicated that she did not intend to return to work for the appellant that action was taken to find a permanent replacement.
- (d) Fourthly, to decide when the reasonable excuse ceased. The appellant demonstrated that there was a reasonable excuse. This reasonable excuse existed until period 04/18.

31. Accordingly, the appellant has been in the surcharge liability regime since period 04/18 when the first SLN Extension was issued. All subsequent defaults for periods namely Period 10/18 and Period 01/19 are accordingly subject to reduced percentage defaults and therefore reduced financial surcharges. It follows that the surcharge imposed for Period 01/19 does not attract a financial penalty being less than £400.00.

Right to apply for permission to appeal.

32. 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.

**JENNIFER TRIGGER
TRIBUNAL JUDGE**

RELEASE DATE: 16 DECEMBER 2019