



TC01555

Appeal number TC/2011/04942

VAT – Default surcharge – Late submission of payment – No reasonable excuse – Appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

SAFFRONS CROSS RECOVERY LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: LADY MITTING
SHAMEEM AKHTAR (MEMBER)**

Sitting in public in Birmingham on 5 October 2011

There was no attendance on behalf of the Appellant

Darren Bradley of HM Revenue and Customs, for the Respondents

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DECISION

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1. The appellant was appealing against an assessment to a default surcharge for the period 12/10 in the sum of £1,193.82. When the case was called on for hearing, there was no representation on behalf of the Appellant. We had in front of us the copy of the Hearing Notice which we understand had not been returned. Additionally, Mr
10 Bradley had spoken to the contact Director, Ms Sharon Collin, on the morning of the hearing and she merely stated that she “hoped” to attend. Mr Bradley had also sent Ms Collin a copy of the bundle of documents on which reference to the hearing date was given. We were therefore satisfied that the Appellant was fully aware of the hearing and decided it would be in the interests of justice to proceed.

15 2. The Appellant had been in the surcharge regime since period 06/09 and this was its 5th default. The due date for payment had been 31 January 2011. The Return was submitted online and was sent and received on 4 February 2011. We were satisfied from evidence produced by the Appellant that the company had instigated payment also on the 4 February (a Friday) but payment did not reach the Commissioners’
20 account until Tuesday 8 February.

3. When a taxpayer pays electronically, he has an additional 7 calendar days for his funds to reach the Commissioners’ account. However, transfer is not instantaneous and taxpayers are advised by the Commissioners that it currently takes 3 bank
25 working days for payments to clear and taxpayers are advised that they should check with their bank to see how long it will take for payments to be processed. Additionally, in this case, when the Appellant defaulted in Period 3/10 which was the period in which the company first made a payment by BACS, payment was received late and the Commissioners wrote to the Appellant by letter dated 28 July 2010 as follows:

30 “Please be advised that when payment is sent by BACS transfer to HMRC this currently takes three bank working days to clear, hence we received your payment on 10 May 2010 and you incurred a default penalty for the lateness”

Although the surcharge was withdrawn on this occasion, the message to the Appellant was clear that 3 working days had to be allowed for cleared funds to reach the
35 Commissioners’ account.

4. Payment in this case should have reached the Commissioners’ Account by Monday 7 February. A payment which was not triggered until Friday 4 February could never have got there in time. The Appellant could not therefore have had any reasonable expectation that the payment would be received on time.

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5. The grounds of appeal merely recite this chronology and conclude

5 “I feel this is totally wrong I have paid my taxes on 4/2/11 thinking it would be there by 7/2/11. We are a small company who pay on what we have thought was on time and appears not to be the case. This has happened before and I am sorry that it has not got there on time. Times are hard as it is without having a penalty to pay. I feel I am not wrong on these occasions.”

10 6. As we have said, the Commissioners’ guidance is quite clear that 3 working days has to be allowed for payment to reach the Commissioners and neither can anything that has been put before us can amount to a reasonable excuse for late payment.

7. The appeal is dismissed.

15 8. 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.

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TRIBUNAL JUDGE

RELEASE DATE: 9 NOVEMBER 2011

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