



TC03885

Appeal number: TC/2014/02668

*Value Added Tax – two late payments – already in default surcharge regime -
alleged non-receipt of surcharge notice – second late payment due to taxpayer’s
admitted error – no reasonable excuse*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BAXTERS ESTATES LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The Tribunal determined the appeal on 1 August 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 13 May 2014 (with enclosures) and HMRC’s Statement of Case received on 9 June 2014 (with enclosures).

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DECISION

1. This appeal concerns VAT default surcharges of £453.65 for the period 07/13 and £1,537.41 for the period 10/13 levied by HMRC on Baxters Estates Limited (Baxters).
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2. Baxters was due to make payment of its VAT liability for 07/13 of £4,536.59 either by 31 August if paying by cheque or by 7 September if paying electronically. It was due to pay its VAT liability for 10/13 of £10,249.43 either by 30 November if paying by cheque or by 7 December if paying electronically.
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3. The two VAT payments were in fact received on 24 September and 11 December respectively.
4. Baxters had been in the default surcharge regime from the period 10/12 onwards. As a result the 07/13 surcharge was calculated at 10% of the VAT due and the 10/13 surcharge was calculated at 15% of the VAT due.
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5. When Baxters first entered the default surcharge regime after the 10/12 period HMRC sent it a Surcharge Liability Notice which clearly stated that VAT returns and any tax due must reach HMRC by the due date. The notice also advised that if Baxters expected to have any difficulties it should contact its local VAT office.
- 20 6. Liability to VAT surcharge is governed by section 59 VAT Act 1994. Each surcharge notice details how surcharges are calculated and since the period 01/13 also the percentage which will be used in calculating the surcharge for any subsequent default.
- 25 7. In a letter dated 8 April 2014 addressed to HMRC Mr W S M Baxter of Baxters admitted the late payment of the 10/13 liability was entirely his own fault as he had diarised the payment for 11 December rather than 7 December.
- 30 8. Baxters should have known that payment of its VAT liability for 07/13 should have been made by 7 September and that making payment on 24 September would have given rise to a surcharge. Even if Baxters did not receive the surcharge notice issued on 13 September 2013 section 98 of VAT Act 1994 states that any notice for the purposes of this Act may be served by post in a letter addressed to that person.
- 35 9. In the case of *The Commissioners for Her Majesty's Revenue and Customs and Anthony Boshier* [2013] UKUT 0549 (TCC) the Upper Tier Tribunal held that the scheme of the legislation coupled with the right to apply for judicial review does not infringe a taxpayer's rights under the European Convention on Human Rights and the Human Rights Act 1998. The Tribunal also held that the penalties (subject to mitigation in any particular case) imposed by the regime in general are not disproportionate.

10. The Upper Tribunal in the case of Total Technology (Engineering) Ltd [2012] UKUT 418 confirmed that neither HMRC nor this Tribunal has the power to reduce a surcharge due to mitigating circumstances.

5 11. The Tribunal agrees with the views of Judge Colin Bishopp in the First Tier Tribunal case of Enersys Holdings UK Limited [2010] UIKFTT 20 that ‘it seems unlikely that a delay of only a day might ever, without more, amount to a reasonable excuse’

12. Baxters has not produced any reasonable excuse for the late payments.

13. The Appeal is therefore dismissed and the surcharges remain due for payment.

10 14. 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
15 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

20 **Alastair J Rankin**
TRIBUNAL JUDGE

RELEASE DATE: 06 August 2014