



TC03478

Appeal number: TC/2013/08191

Default surcharge – whether reasonable excuse – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ESTATES AND LAW LTD

Appellant

- and -

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

TRIBUNAL: JUDGE JENNIFER BLEWITT

Sitting in public at Manchester on 4 April 2014

**Mr S. Cunningham, Managing Director, and Mrs G. Nuttall, Company
Secretary for the Appellant**

Ms L. Fletcher, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. By Notice of Appeal dated 18 November 2013 the Appellant appealed against a
5 VAT default surcharge imposed in the sum of £2,700 for late payment of VAT in the
period 07/13.

2. By way of background, the Appellant had been in the default surcharge regime
since 04/11. Initially it made its VAT payments via direct debit, which was cancelled
by the Appellant on 5 June 2013. In respect of the period under appeal, the VAT
10 payment due by 7 September 2013 was paid in the following instalments:

- 02/09/13 - £4,255
- 09/09/13 - £2,500
- 09/09/13 - £5,000
- 09/09/13 - £2,500
- 15 • 09/09/13 - £8,000

3. The surcharge was imposed at the rate of 15% following 4 previous defaults.

4. The Appellant's grounds of appeal can be summarised as follows: the date for
payment was unclear. The Appellant believed that payment was due by 12 September
2013, by which date full payment had been made.

20 5. Mr Cunningham explained that due to current economic conditions, the
Company had taken proactive steps to remain afloat and manage its financial affairs.
The Appellant had strived to ensure that all VAT payments were made on time,
particularly as it was aware in the increasing rate of surcharges applied for continued
defaults.

25 6. Prior to the period under appeal the Appellant's payment date had always been
on the 12th as the payment was made by direct debit. A default surcharge imposed in
respect of period 04/13 was removed as HMRC accepted that this had been the case
and the Appellant had received, in respect of that period, a computer generated
message, which confirmed the date for payment as 12th. As a result of the surcharge
30 being removed, the Appellant had understood that its belief that this date continued to
be the date for payment was correct.

7. It was conceded by Mr Cunningham that ignorance is no excuse and that the
information setting out due dates for payment can be found on HMRC's website and
in its published guidance notes. However he stated that the information provided by
35 HMRC was not easily accessible and the date of 12th was entrenched in the
Appellant's mind as the date for payment. He noted that no harm had been done by
the late payment as the liability was paid before the date on which HMRC would have

taken the payment by direct debit, had it not been cancelled. He also queried what the position would have been had the payment been made manually when a direct debit was also in place.

5 8. On behalf of HMRC it was submitted that the information pertaining to due dates for payment was available to the Appellant in a number of different formats and the Appellant had been advised of the deadlines on at least 2 occasions prior to the default.

10 9. HMRC accepted that in respect of the 04/13 default the return, which was submitted on 31 May 2013, prompted an automated message which stated the due date for payment as 12 June 2013. Between submission of the return and payment, the Appellant chose to cancel the direct debit which meant that the payments made by it on 10 and 11 June 2013 were late. In a letter to the Appellant dated 5 August 2013 HMRC stated:

15 *“Thank you for your letter in which you request a review of the default surcharge issued to you regarding the period 04/13.*

The Commissioners of HM Revenue and Customs have agreed to cancel the default for the above period...

20 *Please note that if you wish to pay by direct debit in future, you will need to reapply. Unless you are paying by direct debit, payments must reach us by no later than one month and seven days after the last date of the VAT return period. Our web site gives details of the due date for each type of payment for each VAT period.”*

Discussion and Decision

25 10. Mr Cunningham and Ms Nuttall were credible and honest witnesses and I accepted that there was no intention to pay the VAT late. I also accepted that the decision to cancel the direct debit was taken in an effort to ensure that payments made manually to HMRC were made when the Appellant had sufficient funds.

30 11. That said, the letter dated 5 August 2013 set out at [9] above makes clear that the payment date varies depending on whether payment is made by direct debit or not. I was also satisfied that information is widely available – both online and in published guidance notes – which sets out the due dates. I did not accept that the information provided by HMRC is unclear and even if the Appellant found it so, the letter of 5 August 2013 is unequivocal.

35 12. I was satisfied that the Appellant’s ignorance as to the due date for making payment cannot amount to a reasonable excuse. I was also satisfied that any mistaken belief arising from HMRC’s removal of the default in period 04/13 does not provide the Appellant with a reasonable excuse. The onus rests with a taxpayer to ensure that he is aware of the due dates for making payments and discharges his liabilities in accordance with legislation. The regime and consequential penalties are set by statute and I was satisfied that the penalty was properly imposed.

13. The appeal is dismissed.

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 “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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**JENNIFER BLEWITT
TRIBUNAL JUDGE**

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RELEASE DATE: 10 April 2014