



**TC02890**

**Appeal number: TC/2012/08140**

*Value Added Tax – Default Surcharge – late payment – bank holiday –  
whether reasonable excuse – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**R M GROUP SERVICES LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE DR K KHAN**

**The Tribunal determined this appeal on 25 July 2013 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 Appellant's Notice of Appeal dated 18 August 2012 and HMRC's Statement of Case which was undated.**

## DECISION

### Appeal

- 5 1. The Appellant appeals against a Default Surcharge of £587.95 for the 03/12 period.

### Appellant's ground of appeal

- 10 (1) The Appellant says that his BACS payment was initiated on 4 May 2012. He provided documentary evidence to support this transaction which is for the payment of £11,759.06 on 3 May at 15:05 hours.
- (2) The Appellant says that the payment would have been received by HMRC on Monday 7 May 2012, the Monday being a Bank Holiday.
- 15 (3) He has accepted that it is their responsibility to make sure that they allow for Bank Holidays but on this occasion he had made a genuine mistake and the payment was late.

### Respondents' submissions

- 20 (1) The liability to the Default Surcharges arises by law under s.59 VATA 1994. The due date for payment was 7 May 2012 for electronic payments but this date was a Bank Holiday. The period 03/12 return was received electronically on time but the BACS payment was received on Tuesday 8 May 2012, being one day late.
- (2) The surcharge rate of 5% had been correctly applied in accordance with s.59(4) VATA 1994 since payment was received by HMRC after the due date.
- 25 (3) The Respondents say that the Appellant should have been aware of the potential financial consequences of any further default and been able to calculate the amount of any surcharge becoming due since they had been issued with a Surcharge Liability Notice and Extensions in respect of periods 06/11 and 09/11.
- 30 (4) HMRC's position is well documented in Notice 700 – the VAT Guide, para.21.3.1. This refers to the fact that if a due date falls on a Bank Holiday or weekend the payment must clear HMRC's bank account before then and if the payment arrives late there will be a surcharge liability. This position is not disputed.
- 35 (5) The Appellant was aware of the surcharge regime and also had been sent an advice sheet regarding Default Surcharges.

## Conclusion

2. This case was stayed on the Upper Tribunal decision in *Total Technology (Engineering) Limited* [2012]. That decision held that there was nothing in the VAT Default Surcharge regime which led to the conclusion that it was unfair or disproportionate and had to be set aside. The Default Surcharge regime complied with the principle of proportionality.

3. In looking at a Default Surcharge case the Tax Tribunal must not substitute its own view of what is fair for a penalty which Parliament has imposed. For a taxpayer who has made an honest mistake, any penalty must seem excessive.

4. It is easy to sympathise with a taxpayer finding themselves liable for a penalty for what appears to be a simple error. However UK VAT law does not recognise a *de minimis* rate of a default penalty and a late payment, even by a single day, results in a penalty.

5. The guidance given by HMRC makes it clear that the taxpayer must make the necessary arrangements to make payments on time where a Bank Holiday arises. The fact that the taxpayer had not considered the Bank Holiday is not a reasonable excuse. The Default Surcharge regime operates as a civil penalty and encourages taxpayers to make payments on time and the fines imposed are well known and documented. The penalty regime is statutory.

6. In the circumstances therefore, the Appellant does not have a reasonable excuse and the appeal is accordingly dismissed.

7. 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.

**DR K KHAN**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 14 August 2013**