



TC03293

Appeal number: TC/2012/01400

VALUE ADDED TAX – Default Surcharge – Appeal against 2% surcharge – appeal dismissed and surcharge upheld

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

INVEROAK LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE P M PETHERBRIDGE

Determined on the papers without an oral Hearing on the 9th December 2013

Decision

- 5 1. This is the appeal of Inveroak Limited (“the Company) against a VAT default surcharge of £1561.45 being 2% of the VAT due for the quarter ended September 2011.
2. The Company accepted that it had filed its return late for the quarter ended September 2011 and paid the VAT late.
3. There was no dispute as to whether the Notice of Assessment of surcharge was received by the Appellant.
- 10 4. The assessment was raised under Section 59 (4) of the VAT Act 1994.
5. The assessment was charged at 2% of the VAT unpaid at the due date. This equates to a penalty of £1561.45.
6. A full review of the decision to raise an assessment was carried out by HMRC and the decision to assess the surcharge was upheld.
- 15 7. The Appellant appealed against the Respondent’s decision by Notice dated the 11 January 2012.

The Evidence

8. The Tribunal was provided with a bundle from HMRC, including:
 - 20 (1) The correspondence between the parties and between the parties and the Tribunal;
 - (2) A schedule showing the Company’s defaults from September 2010 to the quarter under appeal;
9. On the basis of that evidence, the Tribunal found the following facts.

The Facts

- 25 10. For the quarter ending September 2010 the Company paid its VAT late, and received a Surcharge Liability Notice (“SLN”).
11. The Company filed its VAT return for September 2011 on 21 November 2011, which should have been filed on 07 November 2011.

The legislation, regulations and directions

12. The surcharge was levied under Section 59 (4) Value Added Tax 1994 (VATA).
- 30 13. Mr Jordan Lau on behalf of the Company in his appeal letter said that HMRC had always prior to the quarter in question sent a reminder that VAT return was due, but had not done so in this case. It was said on behalf of the Company that the delay was not due to *“any intentional act to delay filing, but rather an administration error.....”*

14. In the grounds of appeal, the Company says it had no knowledge of the previous default and “*can only assume it relates to a payment delay.....which could only been a delay of a day.*” The Respondent says that this payment due on 05 November 2010 was not received until the 30 November 2010.

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Reasonable excuse

15. The Tribunal do not find that the Company had a reasonable excuse for the late filing and payment of the VAT for the quarter ending September 2011. There was no Time to Pay Agreement in respect of the VAT due for that quarter.

10 16. The Company at no stage said that they would be unable to pay the VAT for the period September 2011 by the due date. There was no Time to Pay Agreement requested or discussed for that period.

15 17. Further, the Company argue that *unforeseen circumstances had led to serious cash flow problems*. In this respect, the Tribunal rely upon Section 71 (1) (a) of the VAT Act, which states “*an insufficiency of funds to pay any VAT due is not a reasonable excuse*”.

20 18. The Tribunal accept the submission of the Respondent that for something to be a reasonable excuse it needs to be something unexpected, something unusual to the business and something outside of the prudent tax payer’s control. Further, the Tribunal accept that a problem that has occurred over a period of time is neither unexpected nor unusual to the business.

19. The Tribunal accept the Respondent’s submission that it would expect a prudent tax payer would have had contingencies in place to deal with a client in distress and potentially going into receivership.

25 20. Regulation 25 of the Regulations states that the VAT return has to be received not later than the end of the last day of the month, next following the end of the period to which it relates making the due date for payment the 07 June 2012.

30 21. Having considered all of the arguments submitted on behalf of the Company that there was a reasonable excuse for the late payment of the VAT for the quarter ending April 2012, that it finds that there was no reasonable excuse for the late payment and accordingly the appeal has to be dismissed.

Decision and appeal rights

22. On the basis of the foregoing, I dismiss the Company’s appeal and confirm the surcharge of £1561.45.

35 23. 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.

24. The application must be received by the 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.

P M PETHERBRIDGE
TRIBUNAL JUDGE

RELEASE DATE: 7 February 2014