



**TC03330**

**Appeal number: TC/2012/09333**

*VAT default surcharge - VAT return filed late and payment made late due to 'due to oversight' - whether reasonable excuse - no - Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PROMOTIONAL PAPER WORKS UK LIMITED      Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE MICHAEL S CONNELL  
                  HELEN MYERSCOUGH**

**Sitting in public at Bedford MC 3 St Pauls Square Bedford on 13 November  
2013**

**The Appellant did not attend and was not represented.**

**Mr Christopher Jacobs Officer of HM Revenue and Customs, for the  
Respondents**

## DECISION

### The Appeal

1. Promotional Paper Products UK Limited (“the Appellant”) appeals against a  
5 default surcharge of £652.64 for its failure to submit, in respect of its VAT period  
ended 31 December 2011, by the due date, a VAT return and payment of the VAT  
payable. The surcharge was calculated at 10% of the amount due of £6,526.42.

2. The point at issue is whether the Appellant has a reasonable excuse for the late  
filing and making late payment.

10 3. The Appellant did not attend the hearing and was not represented. The  
Appellant’s proprietor, Mr Bernard Bradley, had previously written to the Tribunal to  
say that he would be attending the hearing. The Tribunal was therefore satisfied that  
the Appellant had been notified of the date, time and venue of the hearing and that it  
was in the interests of justice to proceed.

### 15 Background

4. The Appellant had previously been late submitting returns and had defaulted on  
VAT payments in period 03/11, when a VAT surcharge liability notice was issued,  
and again in periods 06/11 and 09/11.

20 5. Section 59 of the VAT Act 1994 requires a VAT return and payment of VAT  
due on or before the end of the month following the relevant calendar quarter. [Reg  
25(1) and Reg 40(1) VAT Regulations 1995].

25 6. The Appellant paid VAT on a quarterly basis and usually paid its VAT by direct  
debit. HMRC may allow additional time for payment when made by electronic means  
and pursuant to Regulation 40(4) of the VAT Regulations 1995 allows an additional  
seven days after the end of the calendar month when payment would normally fall due  
together with a further three days when the VAT is collected by direct debit.  
Limitations apply if the due date falls on a weekend or a bank holiday, in which event  
the due date defaults to the last previous working day.

30 7. The Appellant’s December 2011 VAT return was due on 31 January 2012 and  
the VAT was due for payment on 7 February 2012.

8. The Appellant submitted its VAT return electronically on 22 February 2012 and  
paid the VAT due on 27 February 2012.

35 9. Section 59 Value Added Tax Act 1994 (“VATA”) sets out the provisions in  
relation to the default surcharge regime. Under s 59(1) a taxable person is regarded as  
being in default if he fails to make his return for a VAT quarterly period by the due  
date or if he makes his return by that due date but does not pay by that due date the  
amount of VAT shown on the return. The Commissioners may then serve a surcharge  
liability notice on the defaulting taxable person, which brings him within the default

5 surcharge regime so that any subsequent defaults within a specified period result in assessment to default surcharges at the prescribed percentage rates. The specified percentage rates are determined by reference to the number of periods in respect of which the taxable person is in default during the surcharge liability period. In relation to the first default the specified percentage is 2%. The percentage ascends to 5%, 10% and 15% for the second, third and fourth default.

10. A surcharge liability notice was issued for £652.64 on 22 February 2012.

11. HMRC contend that the Appellant should have been aware of the potential financial consequences of further defaults, having been in the default surcharge regime from 03 /11 and having defaulted on four previous occasions.

12. A taxable person who is otherwise liable to a default surcharge may nevertheless escape that liability if he can establish that he has a reasonable excuse for the late payment which gave rise to the default surcharge(s). Section 59 (7) VATA 1994 sets out the relevant provisions : -

15                   ‘(7) If a person who apart from this sub-section would be liable to a surcharge under sub-section (4) above satisfies the Commissioners or, on appeal, a Tribunal that in the case of a default which is material to the surcharge –

20                   (a) the return or as the case may be, the VAT shown on the return was despatched at such a time and in such a manner that it was reasonable to expect that it would be received by the commissioners within the appropriate time limit, or

25                   (b) there is a reasonable excuse for the return or VAT not having been so despatched then he shall not be liable to the surcharge and for the purposes of the preceding provisions of this section he shall be treated as not having been in default in respect of the prescribed accounting period in question ..’

13. The initial onus of proof rests with HMRC to show that a surcharge has been correctly imposed. If so established, the onus then rests with the Appellant to demonstrate that there was a reasonable excuse for late payment of the tax. The standard of proof is the ordinary civil standard on a balance of probabilities.

#### Appellant’s Case

14. Mr Bradley says that submission of the late return and late payment of VAT was due to an oversight on the part of a member of staff. He says that the business is struggling to survive and any extra charges or costs could possibly put the company out of business. He also says that since the default, the business has filed its returns and paid its VAT on time.

#### HMRC’s Case

15. Mr Jacobs for HMRC said that the potential financial consequences in the event of further defaults would have been known to the Appellant after issue of the

surcharge liability notice and subsequent surcharge default extension notices. The information contained on the reverse of each Notice states:

5           ‘Please remember your VAT returns and any tax due must reach HMRC by the due date. If you expect to have any difficulties contact either your local VAT office, listed under HM Revenue & Customs in the phone book as soon as possible, or the National Advice Service on 0845 010 9000.’

16. The requirements for submitting timely electronic payments can also be found -

- In notice 700 "the VAT guide" paragraph 21.3.1 which is issued to every trader upon registration.
- 10       • On the actual website [www.hmrc.gov.uk](http://www.hmrc.gov.uk)
- On the E-VAT return acknowledgement.

17. Also, the reverse of each default notice details how surcharges are calculated and the percentages used in determining any financial surcharge in accordance with the VAT Act 1994 s 59(5).

15 18. Therefore, HMRC say that the surcharge has been correctly issued in accordance with the VAT Act 1994 s 59(4).

19. The Appellant does not indicate that insufficiency of funds caused the late payment but it is specifically stated in s 71(1) VATA 1994 that any insufficiency of funds to pay any VAT is not reasonable excuse.

20 20. HMRC may allow additional time for payment if requested. Any request must be made prior to the date on which the VAT falls due. The Appellant did not make any request for a time to pay arrangement.

21. Whilst the submission of a return and payment of VAT can be delegated to a member of staff, it is the director’s responsibility to ensure that the returns and VAT  
25 payments are made on time.

22. HMRC contend that having submitted that the return online, the Appellant would have received an online acknowledgement, which would have shown the date on which payment should be made. The electronic VAT return would also show the due date for the period.

30 23. HMRC also contend that had the Appellant taken account of the information on the electronic VAT return, the Appellant could have filed on time and the payment would have been taken on time. The submission of the return triggers the request for the direct debit payment from the bank and filing the return out of the due date can result in late payment.

35 24. The fact that the Appellant has taken steps to ensure that it meets future VAT obligations on time is not itself a reasonable excuse for the late payment.

Conclusion

25. The Appellant was clearly aware of the due date for submission of its return and payment of its VAT. It was also aware of the potential consequences of late payment.

5 26. The Tribunal finds that the Appellant's VAT return and VAT payment for the period 12/11 was made late.

27. The burden of proof is on the Appellant to show that a reasonable excuse exists for its failure to meet its VAT obligations.

10 28. In the Tribunal's view, that burden has not been discharged and there was no reasonable excuse for the Appellant's late return and payment of VAT for the 12/11 period.

29. The appeal is accordingly dismissed and the surcharge upheld.

15 30. 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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**MICHAEL S CONNELL**

**TRIBUNAL JUDGE**

**RELEASE DATE: 12 February 2014**

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