



TC03728

Appeal number: TC/2014/00864

Value Added Tax – late submission of return – payment by direct debit – appellant failed to notice diary entry due to staff shortages – no reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MEDIAEVAL BAEBS LTD

Appellant

- and -

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

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The Tribunal determined the appeal on 26 May 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 11 February 2013 (with enclosures) and HMRC's Statement of Case (with enclosures).

DECISION

1. The Appellant company has been in the VAT default surcharge regime from the
5 period 09/13 onwards. Prior to this period six earlier surcharge liability notices had
been issued by HMRC.

2. The return for the period 09/13 should have been received by HMRC by 7
November 2013 but was not received until 8 November 2013. The payment of the tax
should also have been received by HMRC by 7 November 2013 but was not received
10 until 13 November 2013.

3. The Appellant company in its Notice of Appeal states that due to economic
circumstances they were understaffed with the Manager undertaking all the admin
roles and due to a very busy time organising releases and tours for the Christmas
period he failed to notice his diary entry to complete the return on time. The Manager
15 accepts that the payment was six days late and has asked that the penalty be
reconsidered as to impose it will seriously hinder the recovery of the company. He
also claims that a surcharge of £413.67 for being six days late makes pay day loans
look reasonable.

4. As the return was received one day late and as payment is then collected by
20 HMRC by direct debit it was inevitable that payment would also be late. The forms
which the Appellant company receives make it clear that the direct debit will be
activated three working days after receipt of the return.

5. The Appellant company has been registered for VAT since May 1997 and prior
to the default subject to this appeal had received six surcharge notices. These
25 surcharge notices explain the rising scale of the surcharges so the Appellant company
should have been aware of the amount of surcharge which would be imposed if the
return was late.

6. The surcharge notice was issued under section 59(4) of the VAT Act 1994 at the
rate of 15% due to the previous defaults. In order to avoid the surcharge both the
30 return and payment must be received by the due date.

7. While HMRC accept the fact that the diary note was overlooked was a genuine
mistake they contend that the Appellant company should have instigated management
checks to ensure that such mistakes did not occur.

8. In the case of *The Commissioners for Her Majesty's Revenue and Customs and
35 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
40 mitigation in any particular case) imposed by the regime in general are not
disproportionate.

9. 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 the surcharge due to mitigating circumstances.

5 10. 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’

11. The Appellant company has not produced any reasonable excuse for the late submission of the return which resulted in the late payment.

10 12. The Appeal is therefore dismissed and the surcharge remains due for payment.

13. 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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ALASTAIR J RANKIN
TRIBUNAL JUDGE

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RELEASE DATE: 11 June 2014