



**TC03817**

**Appeal number: TC/2014/00327**

*VAT – EC sales list – penalty for late submission – whether reasonable excuse*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PROTEC MACHINERY LTD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 17.07.2014 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 09.01.2014 (with enclosures) and HMRC's Statement of Case submitted on 27.05.2014.**

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## DECISION

1. The Tribunal decided that the penalty of £500 in respect of the late submission  
5 of EC Sales lists for the period 09.21 was properly imposed by the Respondents.

2. The appeal is dismissed.

3. The Tribunal found that the filing date for the 09.12 EC Sales list was 14 days  
after the end of the reporting period for paper Sales lists. The appellant submitted its  
list in paper form. The list was, therefore, due on 14.10.2012. It was received by the  
10 Respondents on 26.03.2013 i.e. over five months late.

4. Section 66 of the VAT Act 1994 provides that the amount of a penalty to which  
a person who has been served with notice is liable is the greater of £50 and a penalty  
of the relevant amount for every day for which the default continues, up to a  
maximum of 100 days. The relevant amount in this case is £5. The penalty has  
15 properly been calculated by the Respondents as £500 on the basis of the default  
having continued for more than 100 days. It is noted that the Appellant had also  
submitted the 06.12. Sales list late and a Penalty Liability Notice had been issued in  
respect of that default.

5. The Tribunal further found that there was no reasonable excuse for the late  
20 filing of the Sales list.

6. It is the responsibility of the Appellant to ensure that Sales lists are submitted  
within the statutory timeframe; any delay by an accountant is not a matter that  
removes the responsibility from the Appellant Company. The size of the Appellant  
Company is not a matter that can be taken into account.

7. The test applied by the Tribunal in considering the matter of reasonable excuse  
is whether the exercise of reasonable foresight and of due diligence and a proper  
regard for the fact that the Sales list would become due on a particular date would not  
have avoided the default. The facts and chronology of events, set out in the Notice of  
Appeal and the Respondents' Statement of Case, disclose that such foresight and  
30 diligence by the Appellant would have avoided the default.

8. In so far as the Appellant may suggest that the imposition of the penalty is  
disproportionate, unjust or unfair, those arguments have already been disposed of by  
the Upper Tribunal in *HMRC v Hok* UKUT 363 (TCC) and *HMRC v Total  
Technology (Engineering) Limited* UKUT 418 (TCC). In the former it was made clear  
35 that the First-tier Tribunal has no jurisdiction to determine the fairness of a penalty  
imposed by statute. It is plain from a perusal of the latter that a penalty of the  
magnitude of that imposed in this case could not be described as disproportionate  
even if the Tribunal had jurisdiction to deal with the issue.

9. This document contains full findings of fact and reasons for the decision. Any  
40 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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**WDF COVERDALE  
TRIBUNAL JUDGE**

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**RELEASE DATE: 21 July 2014**