



TC03920

Appeal number: TC/2014/01602

Default surcharge – payment made late in several instalments all received after the due date – faster payment system – payment due on Saturday and first payment received on Sunday – appeal dismissed – no reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

OL LIMITLESS LTD

Appellant

- and -

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

**TRIBUNAL: JUDGE JUDITH POWELL
MS ELIZABETH BRIDGE**

Sitting in public at Bedford Square, London on 27 May 2014

DECISION

Preliminary

5 1. Mr Robinson senior officer appeared for the Respondents. The Appellant's representative had indicated prior to the hearing that no one intended to appear on behalf of the Appellant but that the Appellant would like the hearing to go ahead in its absence. Mr Robinson applied for the hearing to go ahead in the absence of the Appellant and this application was granted.

10 *The appeal*

2. The appeal is against a decision of the Respondents made on 30 September 2013 which was upheld on review on 26 February 2014 that the Appellant had not shown it had a reasonable excuse for its failure to pay VAT by the due date for the 07/13 quarter. This default meant that the Appellant became liable for a default
15 surcharge in the amount of £1833.39 because the rate of the surcharge for a 07/13 default was 15%. The rate of surcharge depends upon the previous history of VAT payments and whether there have been previous defaults. The Appellant did not suggest that the rate applied was incorrect. If the Appellant can show to the satisfaction of the Commissioners or, on appeal, of the Tribunal that it had a
20 reasonable excuse for the default then its appeal against the surcharge can be allowed.

The facts

3. The facts we were able to establish in the absence of the Appellant were limited. The due date for the 07/13 payment was 7 September 2013 and the payment was made in instalments each of which were received after the due date. The due date was
25 based on the fact that the Appellant made his payments electronically and filed his return online. The return was filed on time. In fact it was submitted on 21 August 2013.

4. When a person pays electronically cleared funds must reach the Revenue and Customs account by the seventh calendar day after the normal due date and if this
30 occurs on a weekend then the payment must reach the account by the Friday before that weekend unless the faster payment system is used in which case payment can, subject to certain conditions, reach the account on a weekend or bank holiday without attracting a surcharge for late payment. In 2013 September 7 fell on a Saturday. The Appellant did use the faster payment system but the first payment was not
35 received by the Respondents until Sunday 8 September.

Submissions

5. No explanation was put forward why the payment was not received until 8 September. The Appellant suggested that the payment was late "due to the weekend". The Respondents accept the first payment was received on Sunday 8 September. The
40 Respondents say that the payment was not made in full on 8 September and that the

Appellant must have been aware of its VAT payment obligations and the surcharge system because of the explanations that accompany VAT notices once a person has defaulted in its VAT payments. They say the Appellant has put forward no explanation why the payments were late even though the faster payment system would allow a payment to reach the account on 7 September notwithstanding it did fall on a weekend day.

Our decision

6. We were unable to find that the Appellant had demonstrated it had a reasonable excuse for its failure to pay its VAT for the 07/13 period on time. In particular we fail to understand the relevance of the weekend. The first payment was acknowledged to have been received on a Sunday; the fact is that it was due on a Saturday. This is the day after it was due and so it was late just as it would have been late if it was due on a Wednesday and was received on a Thursday.

7. We dismissed the appeal.

8. 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.

**JUDITH POWELL
TRIBUNAL JUDGE**

RELEASE DATE: 12 August 2014