



TC04830

Appeal number: TC/2015/02036

VAT default surcharge - payment received by HMRC three days late - Appellant overlooked that as the last day for electronic payment fell on a weekend the VAT payment was due on the last previous working day - whether reasonable excuse - no - Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SPYSHOPONLINE.CO.UK LIMITED

Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL CONNELL
 MEMBER PETER SHEPPARD**

Sitting in public at City Exchange, Albion Street, Leeds on 16 September 2015

The Appellant did not attend and was not represented

Ms Lisa Fletcher, Officer of HM Revenue and Customs, for the Respondents

DECISION

The Appeal

1. Spyshoonline.co.uk Limited (“the Appellant”) appeals against a default surcharge of £2,300 for its failure to submit, in respect of its VAT period ended 04/14, by the due date, payment of the VAT due.
2. The point at issue is whether or not the Appellant has a reasonable excuse for making late payment.
3. The Appellant did not attend and was not represented. The Tribunal was however satisfied that the Appellant had been notified of the date and venue of the appeal hearing and that it was in the interests of justice to proceed.

Background

4. Prior to the default of 04/14, the Appellant had previously defaulted in period 07/13 when a VAT Surcharge Liability Notice was issued and again in period 01/14, when a Default Surcharge of £642.73 was issued, being 2% of the amount due.
5. The Appellant paid VAT on a quarterly basis. 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].
6. HMRC have discretion to allow extra time for both filing and payment when these are carried out by electronic means. [VAT Regulations 1995 SI 1995/2518 regs 25A (2), 40(2)]. Under that discretion, HMRC allow a further seven days for filing and payment. The due date is extended by seven days where payment is made electronically except where this falls on a bank holiday or weekend, when the due date is deemed to be the last previous working day.
7. The due date for the Appellant’s 04/14 period was 31 May 2014. The Appellant’s return was received late by HMRC on 9 June 2014. The amount due under the return was £46,000.05. Payment of the VAT due was late, the amount due having been received by HMRC, by electronic transfer of funds by BillPay Payment (BillPay is a service provided by Santander Corporate Banking which enables customers to pay over the internet) on 9 June 2014, which was three days late as the VAT should have been received by 6 June 2014, 7 June 2014 being a Saturday.
8. 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

surcharge regime so that any subsequent defaults within a specified period may result in assessment to default surcharges at the prescribed percentage rates.

9. 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 after the issue of a VAT Surcharge Liability Notice, the specified percentage is 2% and the percentage ascends to 5%, 10% and 15% for the second, third and fourth default.

10. 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 : -

‘(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 –

(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

(b) there is a reasonable excuse for the return or VAT not having been so despatched, 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 ..’

11. 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.

12. HMRC’s hearing bundle included the Appellant’s Notice of Appeal together with a schedule of defaults and a copy of the Appellant’s electronic VAT return submissions for the default periods. The Tribunal was also provided with HMRC’s ledger details in respect of the Appellant’s late payments, together with a copy of the exchange of correspondence between HMRC and the Appellant.

Appellant’s Case

13. The Appellant does not dispute that its VAT payment for the period under appeal was paid late.

14. The Appellant’s case as disclosed by the Notice of Appeal and the earlier request to HMRC for a review of the Decision, is that the proprietor of the Company attempted to make payment on Saturday 7 June 2014 “but for some reason the payment was not authorised even though the money was in (their) account”.

15. The Appellant submits they did all in their power to ensure prompt payment and when unable to do so made the payment on the next working day, being Monday 9 June 2014.

HMRC's Case

5 16. Ms Fletcher for HMRC said the potential financial consequences attached to the risk of further defaults would have been known to the Appellant after issue of the Surcharge Liability Notice for period 07/13 and the surcharge default notice for period 01/14. The information contained on the reverse of each Notice states:

10 '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.'

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

15 • In notice 700 "The VAT guide" paragraph 21.3.1 which is issued to every trader upon registration.

• On the actual website www.hmrc.gov.uk

• On the E-VAT return acknowledgement.

18. Section 21.3 of Notice 700 The VAT Guide (April 2012 onward) states:

20 'Paying by an approved electronic method will give you up to seven extra calendar days to submit your return and pay your VAT, unless you make annual returns or Payments on Account (and submit quarterly returns). The extended due date will be shown on your online VAT return and you must ensure that cleared funds reach HMRC's bank account by this date. (The exception to this is online Direct Debit (DD) - if you pay by DD, then HMRC will automatically collect your payment on the third bank working day after the date shown on your return. If your due date falls on a bank holiday or weekend, your payment must clear HMRC's bank account before then (unless you use the Faster Payments service - Faster Payments can be received on bank holidays and weekends).

25
30 If your payment arrives late you may be liable to a surcharge for late payment. To make sure that your payment clears our account in time, you should check with your bank or building society to find out:

If there are any single or daily limits to how much you can transfer from your account Is there a cut-off time for processing payments on the same day?

35 How long your payment will take to clear into HMRC's bank account?

Checking these details will help to ensure that you do not incur any unnecessary late payment surcharges.'

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

20. Information, including the specific due date for period 04/14 when paying by BillPay, would have been provided on the HMRC website which clearly explains that when paying by debit or credit card online the payer must allow three working days for payment to reach HMRC's bank account. Customers may also access HMRC's VAT payment deadline calculator which, in the Appellant's case, clearly stated that 3 June was the last date that payment could be made by debit or credit card using BillPay for the period 04/14 to reach HMRC by 6 June 2014.

21. Due dates regularly fall on a weekend and/or Bank Holiday and payers have the responsibility for making themselves aware of the dates when this happens and arrange for payment to be sent at an earlier date.

22. HMRC contends the Appellant had a history of making payment using the BillPay system and should have been aware of how the system works and how many days extension they are entitled to. The Appellant did not take appropriate or sufficient steps to ensure that it met its VAT payment obligations. The default did not occur as a result of something which was entirely out of the Appellant's control. The proprietors should have ensured they were aware of the cut off time when making a BillPay payment in order to prevent the default.

23. HMRC contend that the Appellant had previously been made aware of its legal obligations regarding submission of its VAT return and making payment and a reasonable business person acting in a reasonable manner would be aware of the due dates, method of payments and the time needed to complete electronic transfers.

24. In the case of *Garnmoss Ltd t/a Parham Builders* [2012] UKFTT 315 (TC) the Tribunal said

“What is clear is that there was a muddle and a bona fide mistake was made. We all make mistakes. This was not a blameworthy one. But the Act does not provide shelter for mistakes, only for reasonable excuses. We cannot say that this confusion was a reasonable excuse. Thus this default cannot be ignored under the provisions of subsection (7).”

25. The surcharge has been correctly issued in accordance with VATA 1994 s 59(4).

Conclusion

26. The issue is whether the Appellant has shown a reasonable excuse for the late payments. The Appellant was clearly aware of the due date for payments of its VAT and the potential consequences of late payment. Because there had been two earlier defaults the Appellant would have been aware of the financial consequences of a further late payment and should have ensured that the VAT payment was made in good time to reach HMRC no later than the due date.

27. Where payment is made by BillPay, the payment is validated and an acknowledgement is displayed when the payment is successfully processed. The payment will normally be processed within three working days of the payment being initiated. The Appellant appears not to have checked HMRC's 'VAT Payment
5 Deadline Calculator' and also overlooked the fact that a payment to HMRC made by BillPay on a Saturday could not be processed that same day. That is unfortunate for the Appellant, but an oversight or a mistake albeit honestly made is not a reasonable excuse. The Appellant would or should have been aware that when payment is made electronically and the payment date falls on a weekend, the due date is deemed to be
10 the last previous working day, in this case Friday 6 June 2014.

28. The burden of proof is on the Appellant to show that the underlying cause of its failure to meet its VAT payment obligations was due to unforeseen circumstances or events beyond its control. In the Tribunal's view, for the reasons given above, that burden has not been discharged and the Appellant has not shown a reasonable excuse
15 for its late payment of VAT in period 04/14.

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

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
20 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.

MICHAEL CONNELL

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TRIBUNAL JUDGE
RELEASE DATE: 20 JANUARY 2016