



**TC05214**

**Appeal number: TC/2015/06700**

*VALUE ADDED TAX – late payment – bank error – whether reasonable  
excuse – yes – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PYMENTS ALCESTER LTD.**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE DR K KHAN**

**The Tribunal determined this appeal on 25 April 2016 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 30 November 2015 and HMRC's Statement of Case of 14 January 2016.**

## DECISION

### Introduction

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1. This is an appeal against the late payment of VAT for the period of 07/15 which had a due date of 7 September 2015 for electronic payments and electronic VAT submissions. The return was received on 7 September 2015. Payment was received in three instalments on 8 September 2015 which was one day after the extended due date.

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2. The penalty is for £1,667.44 calculated at 2% of the tax assessed of £83,372.01.

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### Legislation

4. VATA 1994 s. 59 and 71.

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### Background facts

4. The Appellant has been in the Default Surcharge Regime from the period 04/15. For all periods from that date the Appellant has paid using the Faster Payment System (FPS).

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5. The Appellant is a limited company registered for VAT on 1 June 2011. Its business is the development of building projects and acting as Quantity Surveyors. The Directors are Mr T Hart and Mr L Westward.

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6. For the periods 07/13, 07/14, 04/15 and 07/15 the VAT liability exceeded £50,000 in each of those periods and the payment was made on an instalment basis using the Faster Payment System. There were between two and three instalment payments in each case.

### The Appellant's Submissions

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7. The Appellant's submission is largely contained in their letter of 16 September 2015 which explained there was an error by the bank in fixing the limit for their Faster Payments which resulted in their payments to HMRC being late. They explained it as follows in a letter to HMRC on 16 September 2015;

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“Our liability for this period (07/15) was £83372.01. I made payment on the correct day which was 7 September. We have a limit with the bank for a Faster Payment (on the day payment). I made the first payment of £50,000, I then went to make the second payment which was £33,372.01, however was unable to do so due to the status from the first payment, which was pending.

5 I called the bank to ask why the payment hadn't gone through straightaway. The bank informed me that our Faster Payment limit is £25,000 and the payment was unlikely to hit HMRC's account until the next working day, as a result of maximising our limit we were unable to make a second payment. The bank agreed our limit was supposed to have been increased to £50,000 after I rang and queried it in the past; however there was nothing they could do to amend on this particular occasion.

10 I have in the past requested an increase in our payment limit as a result of experiencing a similar problem from a similar VAT quarter. We received a letter from yourselves dated 12 June 2015, which was due to the same problem, but on this occasion, you stated we would not be charged. Since then I made the call to our bank to increase our faster payment limit, so that under no circumstance, would this happen again and I was assured that the limit would be increased, this was not the case.

15 Every effort has been made on our part to adhere to the correct payment procedure, through no fault of our own we have been a victim of the bank's online payment procedure for the prevention of fraudulent unauthorised payments".

8. The Appellant essentially say that they have a reasonable excuse because the bank did not put in place changes to the Faster Payment System which they had agreed and requested.

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#### HMRC's Submissions

9. HMRC says that the Appellant was aware of the payment date and they agree that the payment was late and that the surcharge was correctly applied.

25 10. In drawing reference to the Appellant's letter of 16 September 2015 that their bank transaction limit was £25,000. HMRC say that all tax liabilities were made in instalments prior to the due date with the exception of 04/15 and 07/15 and therefore the Appellant would have already been aware of their bank transaction limitations. They say that the Appellant has failed to take transaction limitations into account when making payments of high value quarterly returns.

30 11. The Appellant should, as prudent business people, have checked whether their limits for daily transactions under the Faster Payments System had been increased. This should have been done in advance of the payments being made. Since this was not done, the Appellant do not have a reasonable excuse. Further, the evidence shows that the date the payment was made was 8 September 2015 the day after the due date.  
35 The Respondents contend that the Appellant were aware that payment was not dispatched by the bank until after the due date. The bank had indicated the day on which the payment was to be made and therefore there was no bank error and no reasonable excuse for the removal of the surcharge.

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## Conclusion

12. It is quite clear that the Appellant had previously paid their VAT liability in instalments. This was done with all payments from the period 07/13 – 07/15. They had taken steps to increase the transaction limit from £25,000 to £50,000 with the bank. However, the bank had not increased the limits as requested by the Appellant. The limits are individual payment limits not daily cumulative limits under the Faster Payment System and there were sufficient funds in the account to make the payment. There is no question of a lack of funds.

13. The Tribunal agrees that it is a good idea for customers to contact the bank in advance, if planning to or making larger payments in a single day, to check whether the appropriate limits are in place. The Appellant did check with the bank on previous occasions when making large VAT payments which may breach the single transaction or cumulative transaction limits. This was to ensure that the particular instalment payment went through in a single day. In this instance, the transaction payment limit of 25.000 was not increased by the bank to £50,000 as requested by the Appellant. This caused a delay in making the payment for the period 07/15 which totalled £83,372.01 which in turn resulted in a late payment penalty. The first payment made for the period was for £50,000 with a proposed second payment of £33,000 to be made soon after on the same day. Since the first payment did not go through and remained pending due to the transaction limit not being increased by the bank, the second payment was delayed until the day after the due date.

14. The Appellant was in contact with the bank and the bank acknowledged that they had made a mistake. It seems to the Tribunal that the Appellant acted reasonably in the circumstances and contacted the bank to be given the assurances that the payment had gone through on the date.

15. The Taxpayer has the responsibility of making the payment to HMRC and the bank has the responsibility of acting on instructions to make those payments. Each party has a job to perform. If the bank had not performed their job then the Appellant cannot be held responsible and in the circumstances would have a reasonable excuse for the one day late payment.

16. It is clear that the Appellant had previously paid VAT amounts in excess of £50,000 by instalment. It was no different here since they had taken steps to increase the transaction limit to allow the payments to all go through on a single day. They acted reasonably and competently in the circumstances. They had chased the bank by phone on the day of the payment to make sure all was in order and the payment had gone through. However, because of the bank error, the payments were one day late. With hindsight, the Appellant may well have spoken to the bank earlier and sought their assurances that the payment would be made on time. Even if the Appellant had done that, it is quite possible that the bank may still have made the payment late and issued the normal letters of apology.

17. The Tribunal finds that the appropriate decision is to allow the appeal and to cancel the penalties.

18. 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.

**DR K KHAN  
TRIBUNAL JUDGE**

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**RELEASE DATE: 28 JUNE 2016**