



TC05607

Appeal number: TC/2016/05404

VAT; Default Surcharge; electronic payment; due date for payment; payment falling due on a weekend; whether payment late; yes; whether any reasonable excuse; No; appeal dismissed -

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

FASHIONIZER LTD

Appellant

- and -

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

TRIBUNAL: JUDGE J GORDON REID QC FCIarb

The Tribunal determined the appeal on 11 January 2017 without a hearing under the provisions of Rule 26 of the Tribunal Procedure, (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper case) having first read the Notice of Appeal dated 5 October 2016 (with enclosures), HMRC's Statement of Case dated 26 November 2016, (with enclosures) acknowledged by the Tribunal on the same date and sundry correspondence provided by the parties.

DECISION

Introduction

5 1. This is an appeal against a default surcharge imposed under the VAT regime. The appellant says the payment in question was made on time because the *due date* fell on a Saturday thus allowing timeous payment on the following Monday (two days later), when payment was made. The Respondents (HMRC) say it was late. No question of reasonable excuse appears to arise. The amount in question is £443.43,
10 calculated at 5% of the relevant VAT due. There is no dispute about the date of payment in question or the quantification of the surcharge liability if liability arises.

2. The case was heard on papers only as a Default Papers case under Tribunal Rule 26. Neither party sought a hearing.

3. The following are the principal papers made available to the Tribunal:-

15 Notice of Appeal (this was late but HMRC have not objected to its lateness; there being no asserted prejudice or significant delay, the Tribunal considered that the appeal should proceed.

Appellant's requests for a review dated 29 February 2016 and 24 May 2016

HMRC responses dated 16 March 2016 and 15 July 2016

20 Schedules of defaults and payments

VAT notices 160, 162, 163A and 166

Extracts from HMRC website

Factual Background

25 4. The appellant has been registered for VAT since 1988. It carries on business as manufacturer of workwear and design uniforms. It rendered returns and paid VAT quarterly, the VAT quarters ending on the last day of March, June, September, and December. At least latterly, returns and payments were rendered by electronic submission.

30 5. The appellant defaulted in early 2014 when it entered the default surcharge regime. There was a further default in early 2015.

35 6. A further default occurred in relation to the return period ending on 31 March 2016. It was subsequently withdrawn in March 2016. The appellant's director, Deborah Leon, had suffered injury in a ski-ing accident, while on holiday in Switzerland, on 29 January 2016. HMRC appear to have accepted that these circumstances constituted a reasonable excuse for the payment being late.

7. Payment relating to the return for the period ending on 31 March 2016 was made on Monday 9 May 2016 using the online banking Faster Payment Services scheme (Deborah Leon's letter dated 24 May 2016 and Bank receipt/statement dated

9 May 2016). The return itself had been received by HMRC on or about 26 April 2016, but that is not relevant for the purposes of this appeal.

8. A surcharge liability notice was issued to the appellant on or about 13 May 2016 imposing a penalty of £443.43. The appellant's response was the letter of 24 May 2016. HMRC undertook a statutory review but maintained its position. Further short correspondence ensued. Thereafter, the appellant appealed to this Tribunal.

The Default Surcharge Regime

9. HMRC's website and published literature makes it clear that they consider that, absent a reasonable excuse, payment of sums due in returns must be made by the *due* date even if that date falls on a weekend.

10. In particular, their website under the heading "VAT Returns:- 4- Deadlines" currently states:-

15 "The deadline for submitting the return online and paying HMRC are usually the same - 1 calendar month and 7 days after the end of an accounting period. You need to allow time for the payment to reach HMRC's account."

11. This or a predecessor version is the justification for the additional seven days and has been made by statutory direction under regulation 40(3) and (4) of the Value Added Tax 1995 Regulations 1995 (SI 2518), as amended (see *The Staircase Company* 2013 UKFTT 484 (TC) paragraphs 11-13); see also *De Voil Indirect Tax Service* paragraph V5.103 and 109 (Electronic payment; extension of time limits). Again, there is no dispute about this.

Grounds of Appeal

12. In its notice of Appeal, the appellant has simply referred to *the correspondence*. Essentially, the appellant says that where, as here, the *due* date for payment is on a weekend (here Saturday 7 May 2016) it is normal and permissible to delay payment to the next business day (here, Monday 9 May 2016). Therefore, the payment is not late and the appeal should be allowed.

HMRC Response

13. HMRC say the statutory position is clear and payment was due to be made on or before 7 May 2016. That could have been achieved by using the Faster Payment Services scheme which appears to have been deployed on Monday 9 May 2016. The HMRC literature was clear and the appellant ought to have known how to meet the statutory deadline.

Discussion

14. The short point in issue is whether HMRC are correct in law to assert that there can be no extension of the *due* date where it falls on a Saturday. In my view, they are. It is clear from section 59 of the Value Added Tax Act 1994, regulations 25(1) and 40(2) of the 1995 Regulations and where electronic submissions and payment are made (as here), that the *due* date is one month and seven days after the end of the prescribed accounting period in question. Here, that date is one month and seven days

after 31 March 2016, ie Saturday 7 May 2016. Subject to the question of reasonable excuse (which is not relevant here), the relevant statutory provisions allow no latitude, and in particular, no latitude for weekends.

5 15. Regulation 25A of the Value Added Tax Regulations 1995 makes provision for payment by an electronic return system. An additional seven days has been allowed to make a return and any related payment by electronic communication (see paragraphs 10 and 11 above). The VAT to which the return relates has to be paid *not later than the last day on which he is required to make that return* (1995 Regulations regulation 40(2). Here, that is 7 May 2016.). No provision is made for extending the
10 *due* date as was submitted by the appellant.

16. Even if it were relevant, there is no evidence before the Tribunal to show that there was some convention or practice that, where the *due* date would otherwise fall on the weekend, that date is extended to the next business day.

15 17. Finally, insofar as relevant, a misunderstanding of the date of the deadline is not a reasonable excuse, particularly where there is no evidence that the appellant had any legitimate expectation (even if justiciable by the Tribunal here) that the deadline would or even might be extended.

20 18. In these circumstances, the surcharge liability notice is valid and effective. No question of reasonable excuse arises (unlike the earlier period; see paragraph 6 above) and the appeal must therefore be dismissed.

25 19. 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.

30 **J GORDON REID QC FCIarb**
TRIBUNAL JUDGE

RELEASE DATE: 18 JANUARY 2017

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