[2017] UKFTT 491 (TC)

TC05945

Appeal number: TC/2016/04004

VALUE ADDED TAX – default surcharge – time to pay agreements – whether requests for time to pay agreements made in time and adhered to – held not – whether reasonable excuse for shortage of funds – held not – whether penalty disproportionate – held not - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

FINLAYSON MEDIA COMMUNCATIONS LTD **Appellant**

- and -

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

TRIBUNAL: JUDGE PHILIP GILLETT
JULIAN SIMS

Sitting in public at The Royal Courts of Justice, London on 19 May 2017

Lyndsey Frawley, of counsel, for the Appellant

Fariha Hanif and Anharul Qureshi, Officers of HMRC, for the Respondents

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DECISION

Introduction

1. This was an appeal against a decision of HMRC to issue assessments of VAT default surcharge liabilities to Finlayson Media Communications Ltd ("FMC") for the VAT accounting periods ending 03/15 and 06/15. These assessments were both charged at the rate of 15% and were in the amounts of £19,281.00 and £15,438.27 respectively.

2. Although the default surcharge liability for the period ending 06/14 was not the subject of this appeal we also considered the surcharge liability position for that period because this had an indirect impact on the calculation of the surcharge liabilities for the periods under appeal. This is in line with the approach adopted in the case of *Aardvark Excavations Ltd v HMRC* [2007] UKVAT V20468. This was a VAT Tribunal case and not therefore binding on us but we believe that we should adopt the same approach in this case.

3. There was no dispute in respect of any of these periods that the VAT in question had been paid late. The key issue before us was whether or not FMC had in place a Time to Pay ("TTP") agreement, under the provisions of s 108 Finance Act 2009, in respect of any or all of these periods, which would have the effect of eliminating the default surcharges.

4. Ms Frawley also put forward further arguments on behalf of FMC:

(1) FMC had a reasonable excuse for the late payments in that they reasonably believed that there was a TTP agreement in place for the periods in question.

(2) FMC also had a reasonable excuse in that although insufficiency of funds is not per se acceptable as a reasonable excuse, insufficiency of funds can be a reasonable excuse if the circumstances giving rise to that insufficiency of funds might themselves constitute a reasonable excuse. In this case Ms Frawley argued that the insufficiency of funds was caused by two significant events which had overtaken FMC:

(a) The global economic downturn of 2008/09, and

(b) A dramatic change in the market in which FMC operated, in that its business consisted of producing written media for the dentistry market and arranging conferences for dentists. Both of these markets had been dramatically affected by the advent of digital information channels.

(3) Thirdly, Ms Frawley argued that the penalties were disproportionate, amounting as they did to more than the company's average annual profits over recent years.

5. We invited and received written submissions after the hearing relating to the effect of payment by direct debit on the due date for payment.

Legal Framework

6. The legislation relating to the suspension of penalties when a TTP agreement is in place is set out in s 108 Finance Act 2009 as below:

108 Suspension of penalties during currency of agreement for deferred payment

(1) This section applies if--

(a) a person ("P") fails to pay an amount of tax falling within the Table in subsection (5) when it becomes due and payable,

(b) P makes a request to an officer of Revenue and Customs that payment of the amount of tax be deferred, and

(c) an officer of Revenue and Customs agrees that payment of that amount may be deferred for a period ("the deferral period").

(2) P is not liable to a penalty for failing to pay the amount mentioned in subsection (1) if--

(a) the penalty falls within the Table, and

(b) P would (apart from this subsection) become liable to it between the date on which P makes the request and the end of the deferral period.

(3) But if--

(a) P breaks the agreement (see subsection (4)), and

(b) an officer of Revenue and Customs serves on P a notice specifying any penalty to which P would become liable apart from subsection (2),

P becomes liable, at the date of the notice, to that penalty.

(4) P breaks an agreement if--

(a) P fails to pay the amount of tax in question when the deferral period ends, or

(b) the deferral is subject to P complying with a condition (including a condition that part of the amount be paid during the deferral period) and P fails to comply with it.

(5) The taxes and penalties referred to in subsections (1) and (2) [include] …

Value added tax

Surcharge under section 59(4) or 59A(4) of VATA 1994 [or under paragraph 16F of Schedule 3B, or paragraph 26 of Schedule 3BA, to that Act]

> (6) If the agreement mentioned in subsection (1)(c) is varied at any time by a further agreement between P and an officer of Revenue and Customs, this section applies from that time to the agreement as varied.
>
> […]
>
> (11) This section has effect where the agreement mentioned in subsection (1)(c) is made on or after 24 November 2008.

7. This section therefore gives relief from a default surcharge penalty if various conditions are fulfilled. The most important of these conditions in the context of the current appeal is the date by which the taxpayer must apply for a TTP agreement. S108(2) states that [the taxpayer] is not liable to a penalty for failing to pay the [default surcharge] if

> (a) the penalty falls within the Table, and
>
> (b) [the taxpayer] would (apart from this subsection) become liable to it between the date on which [the taxpayer] makes the request and the end of the deferral period.

8. Subsection (b) could perhaps have been expressed more clearly but in our view this means that the taxpayer must apply for the TTP agreement on or before the due date for the payment of the tax, ie, the taxpayer must make "the request" before the due date, because the surcharge is triggered on that due date. However subsection (b) does not in our view mean that HMRC must agree the TTP agreement before the due date as was argued by HMRC.

9. Following from this a key question is when the tax is considered to be due and payable for the purposes of this section.

10. Under Reg 25 Value Added Tax Regulations 1995 the tax and VAT return are due on the last day of the month next following the end of the period to which it relates. However, under Reg 40, HMRC have the power to issue a direction which allows additional time for a payment if it is made by electronic means. HMRC have issued such a direction, in the form of Public Notice 700/12, and this states that if payment is made by electronic means the due and payable date is 7 days after the last day of that month.

11. A further complication arises however in that if a taxpayer has set up a direct debit arrangement then the direct debit is collected a further 3 days after the 7 day extension period. The question therefore is whether or not this has the effect of extending the due and payable date by a further 3 days, which is clearly crucial in establishing the date by which the request must be made for a TTP agreement in order for it to be valid.

12. Mr Qureshi stated that the additional three days does not indicate an extension of the due and payable date but is a function of HMRC's internal accounting in that the direct debit instruction is triggered by the submission of the return. If therefore

the return is filed on the due and payable date, ie 7 days after the end of the month, it then takes 3 days for the direct debit to be activated and the funds collected. He therefore argued that the additional 3 days do not constitute a further 3 days before the tax becomes due and payable.

13. HMRC Public Notice 700/12 states, in paragraph 5.2, that where the taxpayer provides an online return and has a direct debit set up then "When you view your return online, the due date shown onscreen includes the extra 7 days. It will then be a further 3 bank working days before the payment is collected from your bank account." This clearly supports the argument put forward by Mr Qureshi that the use of a direct debit does not extend the due date by another three days, but merely that the actual collection date is deferred by three days.

14. Ms Frawley, at the request of the tribunal, made further representations on this point, and provided copies of various HMRC documents:

(1) Notice 700 section 21 as at August 2013, which was the version applicable in respect of the 06/14 VAT period.

(2) An HMRC provided document and web archive from 2014 regarding the benefits of paying by direct debit.

(3) A screen shot showing the "VAT payment deadline calculator" where the June 2014 return date has been entered

(4) The "How to pay VAT" section of the HMRC website.

15. Ms Frawley argued that all these documents indicate that the due date for VAT Payments at the time of the 06/14 return, when a direct debit mandate was in place, was 10 days after the end of the month next following the end of the relevant VAT period. Of these documents, only Notice 700 might, in our view, amount to a direction by HMRC under Reg 40 VAT Regulations 1995 that might extend the due date. Further, we cannot find in any of these documents a clear statement that the due date is extended to 10 days after the relevant month end. The position as conveyed by these documents is perhaps best summed up in the document regarding the benefits of paying by direct debit. This document states:

> "You will get an extra seven calendar days after your standard due date to submit your online return.
>
> If you pay by online direct debit HMRC will collect payment a further three bank working days after the extended due date. This means that online VAT direct debit offers you more time to pay than any other method – a minimum of 10 extra calendar days."

16. In our view therefore the due and payable date is not extended by the additional three days and remains at seven days after the end of the month next following the end of the period for which the return is made.

17. Subsection (3) then states that if:

(a) the taxpayer breaks the agreement (as set out in more detail in subsection (4)), and

(b) an officer of Revenue and Customs serves on the taxpayer a notice specifying any penalty to which P would become liable apart from subsection (2),

P becomes liable, at the date of the notice, to that penalty.

18. In other words, if the taxpayer breaks the TTP agreement by not, for instance, making payments in accordance with the agreed schedule, then the agreement falls away and the default surcharge becomes payable, but if, and only if, HMRC serve a notice on the taxpayer specifying the penalty to which the taxpayer becomes liable. Ms Frawley argued that this meant that HMRC had to serve a specific notice on the taxpayer specifying the penalty which had arisen as a result of the breach. She said that in the current case no such notice had been given. However, for HMRC, Mr Qureshi said that the normal Default Surcharge Notice was sufficient notice for this purpose. We agree with Mr Qureshi's suggested interpretation.

19. It is important to note that the agreement may be varied, but again, if the taxpayer fails to adhere to the terms of the revised agreement then that agreement falls away and the penalty becomes due.

Facts

20. We received written witness statements from Jason Newington, Director of FMC, and Aleksandar Ungar, Management Accountant of FMC. These statements were not challenged by HMRC and we therefore accept them as correct, bearing in mind, as Ms Frawley acknowledged, that they were based on their memories of events some years previously, although obviously with the support of various records from the time.

21. We were also shown copies of various letters and HMRC telephone logs, although it was not clear that these were complete records and there were also some inconsistencies. We did however accept them as being a correct record of what had been said and done by HMRC.

22. Therefore, we find as a matter of fact:

Period ending 06/14

23. The VAT return was submitted early, on 29 July 2014.

24. Mr Newington contacted HMRC to request a TTP agreement in early August 2014. There is some lack of clarity as to the precise date on which Mr Newington first contacted HMRC but HMRC papers indicate that it was 8 August and a statement that it was 8 August is included in the witness statement of Alex Ungar. 8 August 2014 was a Friday and FMC received a letter from HMRC, confirming the TTP agreement, which was dated 11 August 2014. We therefore find as a matter of fact

that the first contact to request a TTP agreement in respect of the 06/14 period was 8 August 2014.

25. This letter set out details of the payments to be made, which were £20,000 on 1 September 2014 and the balance of £77,168.95 on 1 October 2014. FMC adhered to this agreement.

Period ending 03/15

26. The VAT return was submitted on time, on 7 May 2015.

27. FMC contacted HMRC to request a TTP agreement on 5 or 6 May 2015. On 7 May, Mr Newington sent an email to HMRC setting out a proposal for a payment schedule and on 8 May had a telephone conversation with HMRC to discuss the details.

28. However, according to HMRC telephone records, Mr Newington had said in the telephone call that the VAT was due on 12 May 2015, and that he would pay £20,000 on 12 May, leaving a balance of £83,540 which he would pay by the end of May. However, within an hour of that call, the HMRC log shows that an email was sent to FMC saying that the VAT was due on 7 May, not 12 May, and that the deadline for the payment of arrears was 22 May, and not 24 May. The log also states clearly that the TTP agreement was therefore refused at that time.

29. The HMRC telephone log says that Mr Newington rang again, at 11.04, presumably in response to the email, to say that he had thought that the VAT was due on 12 May, because that is when the Direct Debit would have been collected, but now accepted that the due date was 7 May. The HMRC telephone log concludes by saying "After a long discussion I agreed to accept payment of all (which included PAYE and Corporation Tax debts) except 03/15 VAT."

30. In another telephone call that day, at 11.08, HMRC agreed a schedule of payments with FMC as to £12,000 on 12 May, £25,000 on 31 May and the balance on 30 June. The payment on 12 May would also include PAYE debts. This is precisely the same schedule of payments as noted by Mr Newington in his witness statement and we therefore take it as a correct statement of the facts.

31. Following these calls Mrs Kimberley Finlayson, part owner of FMC, rang HMRC on 22 May to explain that they were in the process of selling a property in order to settle the HMRC debts, but that things were being delayed.

32. Unfortunately, although the payment due on 12 May was paid when due, according to the HMRC VAT accounts ledger, there were no further VAT payments until 16 July. A payment of £25,414.81 was made on 2 June, but this was treated as being in respect of PAYE arrears. Mr Ungar called HMRC to ask that this should be credited to the VAT account but the HMRC telephone log states that the original TTP agreement of 8 May was only valid if all other liabilities were paid, which they were not. Therefore, in the view of HMRC, the terms of the 8 May agreement were not adhered to.

33. In this connection we note a subsequent memo on the HMRC contact log which refers to an email from Mr Newington on 8 June 2015 stating that although there has been some confusion there is no dispute that the TTP agreement included the payment of all arrears, including the PAYE debt. It goes on to say that when the company had entered into the agreement "they had every belief" [that they would be able to adhere to it], presumably because they thought that the property would be sold and the funds injected into the company in order to settle the arrears. Unfortunately the sale had been delayed by the purchaser.

34. The HMRC contact log clearly indicates that there was some confusion between HMRC and Mrs Finlayson but on 8 June there is a statement in the log (in capital letters) that "As a final concession I will now add Month 1 of the PAYE debt to the agreement to pay all arrears by 30 June, but Month 2 of the PAYE debt must be paid on time."

35. From the HMRC contact log it appears that a number of payments were made on 30 June and 1 July but they did not include the final VAT payment, which was made in mid-July.

Period ending 06/15

36. The VAT return was submitted early, on 17 July 2015.

37. Mr Newington contacted HMRC on 5 August 2015 to request a TTP agreement. The HMRC officer who took the call noted on the log that they would treat the call as "prior contact", ie contact before the due date, but that this would not constitute a TTP agreement.

38. On 17 August 2015 the HMRC log notes that the TTP agreement has been refused for the 06/15 VAT. The log notes that Mr Ungar called on 3 September 2015 to enquire as to the possibility of paying the VAT on 30 September, at which time he was informed that the TTP request had been refused. The HMRC officer did note that he had informed Mr Ungar that he had no problem reinstating the TTP agreement and accepting payment in full on 30 September but only if the company could prove that all PAYE debts had been cleared. Apparently Mr Ungar said that he would get back to HMRC the following week.

39. Mr Newington's witness statement says that he believed that a TTP agreement for 06/15 had been agreed about this time, and HMRC have noted that he made a statement to this effect to HMRC in various telephone conversations on 22 and 23 September. However the HMRC log states clearly that it had not agreed to a TTP agreement.

40. Two payments of VAT were made towards the end of September, £50,000 on 24 September and £52,921.86 on 30 September, covering the whole of the 06/15 liability. However, HMRC are adamant that there was no TTP agreement in place and that any agreement would in any case have been conditional on the settlement of the PAYE debt.

41. The company's belief is set out in a letter from Mr Newington dated 8 September 2015, which clearly states that he felt that a TTP agreement had been agreed. However Mr Newington's letter makes no mention of any need to settle a PAYE debt and it could be that this issue has led to the misunderstanding.

5 42. Nevertheless, HMRC records are very clear that they did not agree a TTP agreement in respect of the period ending 06/15 and we therefore find as a matter of fact that no such agreement was reached.

Discussion

43. As stated above the key issues in this case are whether or not there was a TTP
10 agreement in place for the periods ending 06/14, 03/15 and 06/15, whether these were applied for before the relevant due dates, and, if there were such agreements in place, were their terms adhered to such that any default surcharge penalties should be removed.

Period ending 06/14

15 44. We have found as a matter of fact that in respect of the period ending 06/14 the request for a TTP agreement was made on 8 August 2014. Ms Frawley argued that since FMC had a direct debit instruction in place then the normal due and payable date should be extended by a further three days, which would make the due and payable date 10 August 2014.

20 45. However, as set out above, we consider that the normal due and payable date is not extended by the use of a direct debit mechanism and that the due and payable date remains as seven days after the end of the month following the period for which the return is made.

46. The application for a TTP agreement was made on 8 August 2014. This was
25 only 1 day after the normal due and payable date but nevertheless it was not made before the due and payable date. We therefore find that there was no TTP agreement in place for this period and that therefore the default surcharge was validly made.

Period ending 03/15

47. For the period ending 03/15 we have found that a TTP agreement was requested
30 before the due and payable date and was subsequently agreed by HMRC. However it is also clear that FMC did not adhere to the terms of the original agreement in that in HMRC's view it was an important part of the agreement that all arrears, including PAYE were settled by the relevant date. This was not perhaps appreciated by FMC but HMRC are clear on this point. The company did not settle all arrears by the
35 agreed date and therefore the TTP agreement was broken.

48. A new TTP agreement was put in place on 8 June 2015 "as a final concession". Again however this included all PAYE arrears, and although substantial sums were paid around 30 June and 1 July, they did not include all arrears. Again therefore the

agreement was broken. As a consequence we consider that the default surcharge was validly made.

Period ending 06/15

49. Looking at the period ending 06/15, HMRC are adamant that they did not agree to a TTP agreement. HMRC did indicate that they would consider agreeing one, as long as it included the PAYE arrears. Unfortunately however, this key qualification was not fully appreciated by the company and they therefore thought that they had a TTP agreement in place. We therefore find as a matter of fact that there was no TTP in place for the period ending 06/15 and again therefore we find that the default surcharge was validly made.

Alternative grounds

50. Ms Frawley put forward three alternative arguments on behalf of FMC:

(1) FMC had a reasonable excuse for the late payments in that they reasonably believed that there was a TTP agreement in place for the periods in question.

(2) FMC also had a reasonable excuse in that although insufficiency of funds is not per se acceptable as a reasonable excuse, insufficiency of funds can be a reasonable excuse if the circumstances giving rise to that insufficiency of funds might themselves constitute a reasonable excuse. In this case Ms Frawley argued that the insufficiency of funds was caused by two significant events which had overtaken FMC:

(a) The global economic downturn of 2008/09, and

(b) A dramatic change in the market in which FMC operated.

(3) Thirdly, Ms Frawley argued that the penalties were disproportionate, amounting as they did to more than the company's average annual profits over recent years.

51. In support of her argument that FMC had a reasonable excuse for the late payment because that had a reasonable belief that they had a TTP agreement in place Ms Frawley referred us to the case of *ETC (East Anglia) Ltd v HMRC* [2014] UKFTT 098 (TC). Although not binding on us we find that the judgement offers a helpful analysis as to when a reasonable belief might constitute a reasonable excuse for the late payment of VAT.

52. S 59(7)(b) Value Added Tax Act 1994 provides that a person shall not be liable to a surcharge if there is a reasonable excuse for the return or the VAT payment not having been despatched in such a manner that it was reasonable to expect that it would be received by the Commissioners within the appropriate time limit.

53. The expression reasonable excuse has been considered on many occasions and finds a number of formulations in case law but essentially we must ask ourselves the question; was what the taxpayer did a reasonable thing for a responsible trader,

conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer, and placed in the situation that the taxpayer found himself in at the relevant time, a reasonable thing to do.

54. In order to answer this question in the current case however we think we should also ask the question why the company did not pay its VAT on time. If it did not pay the tax on time because it believed that it had a TTP agreement in place then it is possible that, as long as this belief was reasonably held, the company may have had a reasonable excuse for the non-payment of the tax. However, it is clear from the evidence that the reason that the company did not pay the tax on time was not because it believed it had a TTP agreement in place, it was simply because it did not have the funds to make the payment. In other words, any belief that the company may have had that it had a TTP agreement in place was not the reason for the late payment, and, in those circumstances, any such belief cannot constitute a reasonable excuse for the late payment of the tax.

55. In addition we considered whether or not any such belief was reasonably held. From the facts before us it is clear that the issue of other arrears, especially PAYE arrears, was mentioned to FMC on more than one occasion in the context of the company's request for a TTP agreement and was part of HMRC's thinking when considering whether or not to agree to another TTP agreement. We do not therefore consider that it was reasonable for the company to hold the belief that HMRC had agreed to a TTP agreement in the absence of any conditions regarding the settlement of the other tax arrears.

56. In the circumstances therefore we cannot find that the company's belief that it had a TTP agreement in place was a reasonable excuse.

57. We therefore move on to the company's second argument that it had a reasonable excuse, namely that the shortage of funds was caused by the recession of 2008-09 and the dramatic change in the nature of the market in which it operated.

58. There have been a number of cases as to when the causes of a shortage of funds have been regarded as constituting a reasonable excuse for the non-payment of VAT.

59. Ms Frawley referred us to an excellent summary of the position by Judge Sinfield in *ETB (2014) Limited v HMRC* [2016] UKUT 424 (TCC) at paragraph 15, which she suggested gave further support for the wider approach to this question:

"In summary, the question to be asked when considering whether someone has a reasonable excuse for failing to pay an amount of tax on time because of a cash flow problem is whether the insufficiency of funds was reasonably avoidable. A cash flow problem would usually be regarded as reasonably avoidable if the person, having a proper regard for the fact that the tax was due on a particular date, could have avoided the insufficiency of funds by the exercise of reasonable foresight and due diligence. If the cash flow problem was reasonably avoidable then the mere fact that the taxpayer could not afford to pay the VAT at the proper time would not, without more, be a reasonable excuse. On the other hand, if such foresight, diligence and regard would

not have avoided the insufficiency of funds then the taxpayer will usually be regarded as having a reasonable excuse for the VAT having been paid late until it would be reasonable to expect the taxpayer to have found alternative funding or taken other action to counteract the insufficiency."

5 60. This passage is indeed extremely helpful and indicates that if appropriate foresight and diligence would not have avoided the shortage of funds then this will usually be regarded as a reasonable excuse until it would be reasonable to expect the taxpayer to have found alternative funding. In this case however the explanations put forward are the global recession of some 7 or 8 years before the events in question 10 and the significant change in the company's market which had happened over the previous few years.

61. It is important to note in this context that the company had previously been sold by Mr and Mrs Finlayson, the current owners, to Springer Healthcare Ltd, in July 2007, at a time when it had been making annual profits of the order of £1.4million. It 15 had been bought back by Mr and Mrs Finlayson in February 2011, in a very different financial position, with annual profits of the order of £20,000, presumably as a consequence of the changes in the market to which Ms Frawley has referred.

62. We do not therefore think it reasonable for the company to claim that this change in its market was an unforeseeable event or that it had not been able, in the 20 intervening 3 years, to find alternative forms of funding. Ms Frawley explained that the company had approached banks during this period but none of them had been prepared to lend FMC the necessary funds. This may reflect the weakness of the underlying business or that it was, in the view of the banks, under-capitalised. Nevertheless we cannot agree that a shortage of funds extending over such a 25 significant period can constitute a reasonable excuse. In our view the owners and managers of FMC should have taken steps to refinance the company at an earlier stage, to ensure that it was adequately capitalised. In the event, this is what they eventually did, by selling a property and injecting the funds into the company by way of additional capital. Unfortunately this was after the default surcharges had arisen.

30 63. We cannot therefore find that the company has a reasonable excuse based on the underlying reasons for its shortage of funds.

64. Finally we turn to the question of proportionality. This question has been addressed a number of times in the Upper Tribunal, and most recently in the case of *HMRC v Trinity Mirror PLC* [2015] UKUT 421 (TCC). In summary, in *Trinity* 35 *Mirror*, the Upper Tribunal held that:

(1) The default surcharge regime, viewed as a whole, is a rational scheme.

(2) Using the amount unpaid as the objective factor by which the amount of the surcharge varies is not a flaw in the system; to the contrary, it is appropriate as the achievement of the aim of fiscal neutrality according to EU law depends 40 on the timely payment of the amount due.

(3) Whilst it could not absolutely rule out the possibility that a default surcharge might be disproportionate, given the structure of the regime, this is likely to occur only in a wholly exceptional case.

(4) It could not readily identify characteristics of a case where a challenge to a default surcharge on the grounds that it is disproportionate would be likely to succeed.

65. Specifically, at para 66, Mrs Justice Rose says:

"However, we accept that, applying the tests we have described, the absence of any financial limit on the level of surcharge may result in an individual case in a penalty that might be considered disproportionate. In our judgment, given the structure of the default surcharge regime, including those features described in *Total Technology*, this is likely to occur only in a wholly exceptional case, dependent upon its own particular circumstances. Although the absence of a maximum penalty means that the possibility of a proper challenge on the basis of proportionality cannot be ruled out, we cannot ourselves readily identify common characteristics of a case where such a challenge to a default surcharge would be likely to succeed."

In the light of these conclusions of the Upper Tribunal we cannot find that the default surcharges levied in this case are disproportionate.

Decision

66. For the above reasons we find that the taxpayer's appeal against these penalties should be DISMISSED.

67. 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.

PHILIP GILLETT
TRIBUNAL JUDGE

RELEASE DATE: 12 June 2017