



TC06282

Appeal number: TC/2017/05972

*VAT – default surcharge – whether payment instruction made in time –
whether shortage of funds foreseeable and reasonably unavoidable –
Stepto and Clean Car applied – appeal allowed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JONATHAN SKUCE

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE HEIDI POON
SONIA GABLE**

Sitting in public at the Royal Courts of Justice, Belfast, on 29 September 2017

Nula Robinson, Accountant, for the Appellant

Mary Donnelly, Officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. The appellant, Jonathan Skuce, appealed against the default surcharge in the sum of £5,922.10 at 15% surcharge rate for VAT period 03/17.
2. The appellant did not attend the hearing and was represented by Mrs Robinson, who has been the accountant to Mr Skuce's business since 22 June 2017.
3. The appeal against HMRC's review decision of 23 June 2017 was made late to the Tribunal on 2 August 2017, as Mr Skuce understood the time limit of 30 days as being reckoned from the date of a later letter from HMRC of 5 July 2017.
4. HMRC did not oppose the late appeal, and the Tribunal exercised its discretion to admit the late appeal.
5. The principal issue for the Tribunal to determine is whether the appellant had a reasonable excuse under s 59 of the Value Added Tax Act 1994 ('VATA') for making the VAT payment late for the period 03/17.

The applicable law

6. The relevant legislation includes sections 59 (on default surcharge), 70-71 (on mitigation of penalties and on interpretation of reasonable excuse), 83 (on appeal), of the VATA 1994 ('VATA'), and regulations 25, 25A and 40 of VAT Regulations 1995 on accounting, payment and returns, and s 108 of the Finance Act 2009 ('FA 2009') on suspension of penalties during currency of agreement for deferred payment.
7. The provisions for the default surcharge regime are under s 59 of VATA. Of direct relevance to this appeal is sub-s 59(1)(b) VATA, which states that a taxable person shall be regarded as being in default in respect of a prescribed accounting period if, by the statutory due date, the Commissioners 'have not received the amount of VAT shown on the return as payable by him in respect of that period'.
8. By virtue of s 59(7), a taxable person is not liable to the surcharge if he '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, ...'.
9. Section 108 FA 2009, provides for the suspension of penalties during the currency of an agreement for deferred payment. The section applies if 'P makes a request to an officer of Revenue and Customs that payment of the amount of tax be

deferred’, and an officer ‘agrees that payment of that amount may be deferred for a period’. This is commonly referred to as a ‘Time-to-Pay’ agreement (‘TTP’).

10. The authorities referred to in this decision are: *Rowland v HMRC* [2006] STC (SCD) 536 (‘Rowland’); *The Clean Car Company Ltd v C&E Comrs* [1991] VATTR 234 (‘The Clean Car’); *C&E Comrs v Steptoe* [1992] STC 757 (‘Steptoe’); *C&E Comrs v Salevon Ltd* [1989] STC 907 (‘Salevon’); *C&E Comrs v Salevon Ltd* [1989] DTC 907 (‘Salevon’).

The Facts

Background

10 11. Mr Skuce is an engineer and the sole proprietor of Structsteel Engineering, which specialises in the supply of steel beams made to measure in the construction of buildings. The fabricated steel beams are then installed on site by a team of erectors.

12. Mr Skuce started the business in 2008 when he was 21. The business is located in County Fermanagh in a rural area with poor road infrastructure, and where unemployment is higher than the national average. The business has grown despite the economic downturn of 2008, which has caused a significant number of young people to move away from the area in search of employment. The business now provides full-time employment for 12 people, who often have to travel long distances to Belfast, Derry and Londonderry, Dublin and even Scotland to get work.

20 13. Mr Skuce has been registered for VAT since 2008, and making returns and payments electronically from February 2010.

14. The business has an ongoing history of defaults, and the period of 03/17 under appeal represents the twelfth default in the rolling surcharge period that commenced with the period 09/13.

25 15. As a result of the history of defaults, the surcharge rate is at 15% for the period 03/17, which had an uncommonly large VAT liability of £39,480.73, being over three times the average VAT liability (around £12,000 per quarter) for the year 2016.

16. The combined total of VAT payable in 2016 stands at £43,914.87, and the VAT liabilities for the four quarters in 2016 are as follows:

- 30
- (1) Period 03/16 at £11,736.15;
 - (2) Period 06/16 at £8,815.70;
 - (3) Period 09/16 at £11,289.37;
 - (4) Period 12/16 at £12,073.65.

35 17. Whilst the appellant has been in default for a protracted period, he has not appealed against any previous surcharges totalling £13,192.77, which is being met by a payment arrangement.

18. The surcharge of £1,811.04 for period 12/16 has been withdrawn as per HMRC's letter of 13 March 2017. The reason for the withdrawal was that the VAT payment for 12/16 'cleared HMRC's bank account by the due date', and the revised total of surcharges for defaults previous to 03/17 would therefore be £11,381.73.

5 *The circumstances leading to the default for period 03/17*

19. During the quarter of 03/17, the business was due payments from a major customer for a contract with a value of £174,000 net of VAT. According to Mrs Robinson, this customer had been in financial difficulty and was 'at risk of going to the wall'. Mr Skuce was unable to secure any payment against the contract, either in
10 full or in part, of the sums due as stage payments in the quarter.

20. With the impending VAT payment date looming, Mr Skuce mobilised all his energy and workforce to bring forward another job in order to obtain payment to meet the forthcoming VAT liability in May 2017. Mr Skuce and the workforce had to work very long hours to complete the contract for the payment due of £72,000 to be
15 secured in time.

21. On 5 May 2017 and on the completion of the job, a cheque for £72,000 was lodged into the business bank account with Ulster Bank for clearance. In his appeal letter, Mr Skuce described the customer as 'a reputable, successful local business' and for this reason, 'the cheque was guaranteed to clear'.

22. During the period leading up to May 2017, there had been correspondence from Ulster Bank informing its account holders that the bank will implement a faster clearing system whereby cheques would be cleared within two days. Mrs Robinson informed the Tribunal that Mr Skuce had believed that the cheque of £72,000 would fall within the new faster clearing regime, and be available to be drawn on by 7 May.

23. Mrs Robinson provided a newspaper article by 'The Sun Online Money Team' dated 22 March 2017, referring to the new faster cheque clearance system to be implemented by 'some banks – including Barclays and Lloyds', which will enable cheques to be cleared within one working day, and of offering customers 'the option of paying in an image of a cheque rather than the paper cheque itself'. Mrs Robinson,
30 however, did not provide any of the correspondence that had come from Ulster Bank to Mr Skuce on this matter.

24. As presented to us by Mrs Robinson, at 5 May 2017, the business bank account balance was £11,341.64 in credit and the business had an arranged overdraft of £62,500, and with the cheque lodgement of £72,000, Mr Skuce believed that he had
35 sufficient funds to clear the VAT payment due of £39,480.73 in full on 7 May 2017.

25. Further lodgements were made to the business account on 8 May for £5,400, and on 9 May for £50,000.

26. On 6 May 2017, the VAT return for 03/17 was submitted and an electronic payment was authorised on the same day, according to Mrs Robinson.

27. The date of 9 May 2017, however, was the ‘Date committed’ for the payment to HMRC on the printout produced by Mr Skuce. We note also that the printout has the heading as ‘Dual Authorisation threshold’, and under which is listed the payment to HMRC with the ‘Date committed’ being 9 May 2017. Below the entry as regards
5 payment to HMRC was an ‘Authorisation Summary’ by payment icons, which seems to be a guide of the permutations of the dual elements to set authorisation threshold.

28. On 10 May 2017, Mr Skuce’s father, who assisted him in the business with some administrative matters, made an Electronic Bill Payment (‘EBP’) of £20,000 to a supplier.

10 29. On 11 May 2017, Mr Skuce became aware that the VAT payment had not gone through. He immediately re-authorized another payment by Faster Payment Service to reach HMRC on the same day.

15 30. On 12 May 2017, Mr Skuce also contacted HMRC to alert them of the late payment. He was under the impression from that phone call that no surcharge was imposed on the quarter.

Appellant’s appeal to HMRC

31. By letter dated 31 May 2017, Mr Skuce appealed against the surcharge to HMRC. The grounds of appeal are as follows:

20 ‘I had hoped to make this payment [for period 03/17] on time however due to a payment that I had been promised from a customer (which was late) meant that my VAT payment was late as well. I received this payment on the 9th May which would have been one day late but the cheque didn’t clear for a further two days.’

25 32. In this letter, it would seem that Mr Skuce was referring to the lodgement of £50,000, that being the sum lodged as a credit on 9 May 2017 per the bank statement excerpt provided, while the sum of £72,000 was lodged as a credit on 5 May 2017.

HMRC’s review decision

30 33. The review decision of 23 June 2017 upheld the surcharge on the basis that insufficiency of funds is statutorily excluded from being a reasonable excuse, and any suspension of a penalty under s 108 FA 2009 can only be given by virtue of a time-to-pay request having been agreed before the due date of payment.

Appellant’s grounds of appeal

35 34. The appeal notified to the Tribunal was dated 2 August 2017 and was by way of a 3-page letter (not on the standard form), and was accompanied by seven supporting documents. Of direct relevance to the appeal is the following paragraph:

‘When the electronic payment was set up to pay HMRC my bank balance showed a credit balance of £16,491.74. In the days prior to the HMRC payment date, a large lodgement had been made to my

5 business account for £72,500 on 5 May. Further lodgements were
made on 8th May for £5,400 and 9th May for £50,000. ... What I had
underestimated was the time that the bank would take to release this as
cleared funds. I understood that following a review of banking practice
10 that there was a reduction in the time the banks could now take to
release funds and I never even considered that a cheque lodged on 5th
May would not be available by 8th May. Following discussions with
my bank I am now informed that the clearing cycle is 4 working days,
ie 11 May. This belief, on the length of the clearing cycle, is supported
by the fact that I made an electronic bank payment for £20,000 to a
supplier on 10th May which was honoured.’

35. Mr Skuce also stated that he was unaware that he could have requested time to
pay the VAT and asked if HMRC would reconsider this matter; and that until 22 June
15 he was managing ‘almost single-handedly’ both the production and administrative
side of the business.

36. To support his appeal, Mr Skuce attached to his letter ‘a bank printout showing
that the payment was committed from the business account at 00.24 9th May’.

HMRC’s case

37. For HMRC, Mrs Donnelly submitted that:
- 20 (1) From the documentation supporting his appeal, the instruction for
payment was given on 9 May 2017 for the failed payment attempt.
 - (2) The appellant, having registered for VAT for 9 years and in the
surcharge regime for over 3 years would have been aware that the due date
fell on 7 May 2017 and not 9 May 2017.
 - 25 (3) Any payment instructions initiated on 9 May 2017 would be
incapable of enabling timely payment; a default surcharge is imposable
even if the payment is late by one day.
 - (4) If the appellant was uncertain of having sufficient funds to pay in
full, he could have chosen to make a part payment by the relevant due
30 date; the surcharge would have been reduced accordingly.
 - (5) While the appellant contended that he was unaware of the
possibility of requesting a TTP agreement in advance of the payment due
date to avoid a default surcharge, that information is provided on each
Surcharge Liability Notice, and on the letter of 13 March 2017 in relation
35 to cancelling the surcharge for the period 12/16.

Discussion

38. The onus is on HMRC to demonstrate that the surcharge is imposable due to the
VAT payment being late. It is common ground that the due date was 7 May 2017, and
the payment made on 11 May 2017 was therefore late. Nor is there any dispute that
40 the surcharge rate is imposable at 15% of the net VAT liability for the period 03/07.

39. The principal issue for determination in this appeal is therefore whether the appellant had a reasonable excuse for making the VAT payment late. The term ‘reasonable excuse’ is not defined by statute; it is ‘a matter to be considered in the light of all the circumstances of the particular case’ (*Rowland* at [18]).

5 40. Whether there was a reasonable excuse is determined by an objective test as set out by Judge Medd in *The Clean Car*:

10 ‘In my judgment it is an objective test in this sense. One must ask oneself: 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 at the relevant time, a reasonable thing to do?’

Whether payment instruction made on time

15 41. Mr Skuce’s grounds of appeal focused on the narrow window of time between the instruction of payment, the realisation of non-payment and the re-authorisation of payment on 11 May 2017.

42. At the hearing, Mrs Robinson informed the Tribunal that the payment instruction was made on 6 May 2017 after the submission of the VAT return on 6 May 2017. The date of the return being received by HMRC was indeed 6 May 2017.

20 43. For HMRC, Mrs Connelly relied on the printout provided by Mr Skuce in support of his appeal on which the ‘Date Committed’ was stated as 9 May 2017. She emphasised that the payment instruction was made on 9 May 2017, and as such the payment would have been late in any event.

25 44. Mrs Connelly made a valid submission, that if the payment instruction was made on 9 May 2017, then the payment would have been late regardless of whether the £72,000 had been cleared. If payment was instructed on 9 May 2017, that would not have been the action of a responsible trader to give rise to a reasonable excuse.

30 45. In reply, Mrs Robinson suggested to the Tribunal that it could have been a typing mistake by Mr Skuce when making the instruction, by keying in the number ‘9’ as ‘6’, as 9 is the key right above 6 in the number section of a keyboard.

35 46. In his 3-page appeal letter to the Tribunal, Mr Skuce himself had given additional information in respect of the time the payment was ‘committed’ as 00.24 hour on 9 May. It is not clear where the reference to the 00.24 hour has come from, as it is not stated on the printout: the date committed takes the format of ‘09/05/2017’ with no reference to the time. It would appear that Mr Skuce got the 00.24 hour from another source. In conjunction with the time 00.24 hour, the date of 09/05/2017 appears to us to be a record of the date when a processing function in the banking system took place. We are not persuaded by Mrs Robinson’s explanation that the number ‘9’ was wrongly keyed in by Mr Skuce.

47. The reference to 'Date Committed' would seem to be an automated entry after processing relevant data input within the banking system. In the context of the heading of the printout being concerned with 'Dual Authorisation Threshold', it is possible to construe the 'Date committed' as the date when sufficient funds had been cleared to commit to making the payment.

48. Without some evidence from Ulster Bank, or from Mr Skuce himself, on what the term 'Date committed' is intended to mean within the banking system, we are unable to make a conclusive finding of fact as respects when the payment instruction was made. Alternative evidence may exist to verify the exact time the payment instruction was made, but that is not in front of us.

49. The fact as respects when the payment instruction was made therefore remains in doubt. We have to decide on this fact on the balance of probabilities. In doing so, we have regard to the following primary facts and factual inferences drawn therefrom:

(1) From the excerpt of the bank statement, a lodgement was made on 5 May 2017 for £72,000; this would be the cheque lodgement that became cleared funds on 11 May.

(2) The ledger balance of the account after the £72,000 lodgement was £17,034.61 in credit, which suggests that the opening balance (before the lodgement) was £54,965.39 in debit. (The opening balance and numerous other entries are blacked out on the bank statement excerpt.)

(3) We take judicial notice that the date of a lodgement on a bank statement is the date the deposit is made, and not the date when the deposit becomes cleared funds.

(4) The overdraft limit was agreed at £62,500, so the business account being overdrawn at £54,965.39 was close to the overdraft limit, before the lodgement of £72,000.

(5) When Mrs Robinson referred to the bank account being in credit by £11,341.64 at 5 May 2017, it would seem that she had taken into account the £72,000 to arrive at that credit balance.

(6) On 9 May 2017, a lodgement of £50,000 was shown on the statement, bringing the ledger balance to £66,491.74 in credit. It was probably at this point that the payment instruction for the VAT payment met the dual authorisation threshold to generate the 'Date committed' as 9 May 2017 on the printout.

(7) On 10 May 2017, a £20,000 payment was made to a supplier. The EBP might have forestalled the VAT payment from being processed.

50. In his appeal letter, Mr Skuce related that he had dealt almost single-handedly with all the administrative matters, which we take to include dealing with the VAT returns and payments, until he engaged the service of Mrs Robinson in June 2017. On balance, it is more likely than not that Mr Skuce, having been in a surcharge period since 09/13, was fully aware that the due date for 03/17 was 7 May 2017.

51. We have special regard to the fact that the VAT period immediately preceding, that of 12/16, had its payment cleared into HMRC's account by the due date, and avoided the surcharge of £1,811.04. On the balance of probabilities, we conclude that Mr Skuce would have made the first payment instruction before the due date of 7 May 2017, and the payment was stalled due to a lack of cleared funds to honour it.

52. The account from Mrs Robinson of Mr Skuce bringing forward the contract of £72,000 in order to generate funds to meet the VAT liability appears to us to be credible. The lodgement of the cheque on 5 May 2017, followed by the submission of the VAT return on 6 May 2017, provide a consistent pattern of actions that Mr Skuce had worked towards procuring the funds by the due date of VAT to enable payment.

53. We note 5 May 2017 was a Friday, that being the date the cheque of £72,000 was lodged, and 7 May was a Sunday, that being the due date for the VAT payment. Even if the faster clearance system had been up and running, it would not have generated cleared funds until at least the next working day. It seems to us totally unrealistic of Mr Skuce to expect that a cheque lodged on Friday would create cleared funds on a Sunday to meet the VAT payment on time.

54. The assertion by Mr Skuce that '[his] belief, on the length of the clearing cycle, is supported by the fact that [he] made an electronic bank payment for £20,000 to a supplier on 10th May which was honoured' seems to us equally unfounded. An electronic payment is in no way comparable to a cheque lodgement; a cheque payment clearing the banking system is the valid comparison to a cheque lodgement.

55. Had Mr Skuce applied some business acumen, he could have requested the contract customer of £72,000 to make a same-day payment to him on 5 May 2017, but that was not what he did. However, one can understand that a cheque in hand is better than relying on the goodwill of the customer to make the requested payment in time.

56. We therefore conclude that the first payment instruction failed to be honoured due to an insufficiency of funds. It remains to be addressed whether in this instance, the insufficiency of funds amounts to a reasonable excuse.

Insufficiency of funds

57. Section 71(1)(a) specifically precludes an insufficiency of funds from being a reasonable excuse. This statutory exclusion is qualified, to a limited extent, by case law authority such as *Steptoe*, which establishes the principle that there is a distinction between the direct or proximate cause and the underlying cause for the shortage of funds.

58. In *Steptoe*, the taxpayer was an electrical contractor with 95% of his work being done for a Local Council, which was 'virtually his only customer', and 'an extremely slow payer'. The tribunal of first instance described the council as having 'never paid the amount owing on an invoice less than six weeks after it was delivered and usually it was paid upwards of two months late'.

59. The taxpayer in *Steptoe* was not on cash accounting, and was late in paying his VAT for two periods (11/86 and 08/87) and then continued to be in default for the four successive periods of 11/87, 02/88, 05/88 and 11/88. The payments were late by about two months, and the taxpayer pleaded cash flow difficulties as his reasonable excuse. The Commissioners rejected the taxpayer's grounds for reasonable excuse, but the VAT tribunal (as it was then) allowed the taxpayer's appeal on the ground of the Council's pattern of paying late. The Commissioners appealed to the High Court, and Kennedy J confirmed the tribunal's decision. The Commissioners' appeal to the Court of Appeal was dismissed by a majority (Lord Donaldson MR and Nolan LJ, Scott LJ dissenting).

60. The reasoning of the majority in *Steptoe*, according to Lord Donaldson, as regards the legislative intention of the predecessor provision of s 71(1)(a), 'is that insufficiency of funds can never of itself constitute a reasonable excuse, but that the cause of that insufficiency, ie the underlying cause of the default, might do so'.

61. That said, Lord Donaldson states that 'there must be limits to what could be regarded as a reasonable excuse'. As to what those limits could be, Lord Donaldson agrees with Nolan LJ's reasoning in this respect:

'Nolan LJ, as I read his judgment in *Customs and Excise Comrs v Salevon Ltd* [1989] STC 907, is saying that if the exercise of reasonable foresight and of due diligence and a proper regard for the fact that the tax would become due on a particular date would not have avoided the insufficiency of funds which led to the default, then the taxpayer may well have a reasonable excuse for non-payment, but that excuse will be exhausted by the date on which such foresight, diligence and regard would have overcome the insufficiency of funds.'

62. In contrast, Scott LJ's opinion that the underlying cause of the insufficiency of funds must be an 'unforeseeable or inescapable event' is considered as 'too narrow' by Lord Donaldson for the following reasons:

(a) it gives insufficient weight to the concept of reasonableness and
(b) it treats foreseeability as relevant in its own right, whereas I think that 'foreseeability' or as I would say 'reasonable foreseeability' is only relevant in the context of whether the cash flow problem was 'inescapable', or as I would say, 'reasonably avoidable'. It is more difficult to escape from the unforeseeable than from the foreseeable.'

63. According to Lord Donaldson therefore, the appropriate test concerning whether an insufficiency of funds amounts to a reasonable excuse is to examine if the underlying cause of the insufficiency is 'reasonably avoidable'. It is important to distinguish what is foreseeable from what is avoidable. The foreseeability of the insufficiency has no relevance in its own right, and foreseeability is only relevant in assessing whether the shortage of funds could have been avoided. Shortly stated, what is unforeseen cannot be avoided; only the foreseeable is avoidable.

64. Following Lord Donaldson's reasoning in setting the limits for an insufficiency of funds as giving rise to a reasonable excuse, we apply a two-stage test by asking: (a)

whether the shortage of funds was foreseeable; and (b) if foreseeable, whether the shortage of funds was *reasonably* avoidable, with the test of reasonableness as formulated by Judge Medd in *The Clean Car*.

5 65. Turning to the facts in relation to 03/17, it is plain that the shortage of funds was foreseeable. As Mrs Robinson related, a major customer was at risk of ‘going to the wall’ and Mr Skuce was unable to secure any payment against the contract.

66. Having foreseen the insufficiency of funds, was the insufficiency reasonably avoidable? We conclude that the shortage of funds at that particular juncture was not reasonably avoidable, so far as the inflow of cash was concerned. We so conclude for
10 the following reasons:

(1) In common with the facts in *Steptoe*, in which the appellant’s supplies were made to one main customer, a London Borough Council, Mr Skuce’s major customer held a contract value of £174,000 at the time.

15 (2) The invoices to this major customer would have been included in the VAT quarter of 03/17.

(3) Although we have not been provided with the actual invoiced amounts relating to this customer in the period 03/17, we note that the VAT liability of £39,480.73 for the quarter of 03/17 is close to being the combined total of the VAT liabilities of £43,913.87 for the previous 4
20 quarters in 2016.

(4) The net VAT liability of £39,480.73 for 03/17 would appear to have included the output VAT payable on the invoiced amounts to this contract customer who was facing financial difficulties, and from whom no payments had been secured.

25 (5) In common with the facts in *Steptoe*, Mr Skuce is not on cash accounting and will have to account for VAT by reference to the date of the invoice, whether or not the invoice has been settled.

67. For all these reasons, we consider that a major customer defaulting on settling the invoiced amounts meant that the insufficiency of funds was not reasonably
30 avoidable. We have special regard to the scale of this default, and that the quantum of VAT payable for 03/17 was over three times in excess of the average VAT liability for all the previous quarters in the rolling surcharge period beginning with 09/13.

68. We accept the account from Mrs Robinson of the actions taken by Mr Skuce to procure funds to meet the VAT payment by bringing forward the contract of £72,000.
35 Applying the objective test of reasonableness as set out in *The Clean Car*, to the subjective circumstances of Mr Skuce, we consider that Mr Skuce has demonstrated a high sense of responsibility towards his obligations as a taxpayer.

69. We consider that what Mr Skuce did was a reasonable thing for a responsible trader, conscious of and intending to comply with his obligations regarding tax, to
40 have done. We have regard to Mr Skuce’s experience and other relevant attributes, which to us explained why he was not aware of the option to request a TTP in

advance, why he did not request the reputable customer to make a same-day payment of £72,000, and perhaps why he had erroneously believed that the faster clearance system would have been implemented to deliver cleared funds on a Sunday.

5 70. Notwithstanding the failure of the first payment instruction, we consider Mr Skuce to be a conscientious businessman who has exercised reasonable foresight, due diligence and has a proper regard for the fact that the tax would become due by trying to take appropriate action to forestall a late payment penalty. The VAT liability was settled in full 4 days later by a same-day payment on 11 May. We allow his appeal.

10 71. The engagement of Mrs Robinson's service is a step in the right direction to assist Mr Skuce in managing the finances of the business. In due course, with Mrs Robinson's assistance, Mr Skuce may wish to consider whether the application for bad debt relief against his future VAT liabilities is relevant if the contract value of £174,000 plus its VAT remain unpaid to whatever extent. Another relevant consideration in due course may be an application to join the cash accounting scheme, 15 to enable VAT to be returned on a receipt (instead of invoice) basis. There are conditions to be met before joining the scheme, such as being out of the default surcharge regime, and the annual turnover being within a certain limit.

Decision

72. The appeal against the surcharge in relation to period 03/17 is allowed.

20 73. The surcharge liability of £5,922.10 is accordingly cancelled.

74. 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 25 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.

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**DR HEIDI POON
TRIBUNAL JUDGE**

RELEASE DATE: 29 DECEMBER 2017