



**TC07211**

**Appeal number: TC/2018/06288**

*VALUE ADDED TAX – default surcharge – bank holiday weekend,  
business very busy – whether reasonable excuse – no – whether surcharge  
disproportionate – no*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**RICHARD WILLIAMS**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ANNE FAIRPO  
IAN MENZIES-CONACHER**

**Sitting in public at Birmingham on 17 April 2019**

**The Appellant appeared in person**

**Ms Grainger and Mr Burke, presenting officers, for the Respondents**

## DECISION

### **Introduction**

1. This is an appeal against a default surcharge for the period 03/18 in the amount of £720.36 for late payment of VAT.
2. It was not disputed that the payment was made late: it was due on 7 May 2018 and was received on 8 May 2018.
3. It was also not disputed that the amount of the surcharge had been correctly calculated. The appellant (Mr Williams) had been in the default surcharge regime since the 09/14 period and so the applicable surcharge rate was 15% of the VAT due (£4,802.43).

### **Appellant's case**

4. Mr Williams argued that he had a reasonable excuse. He explained that the payment had been due on a bank holiday and his business, a pub, was very busy over the bank holiday long weekend.
5. The VAT return had been prepared by Mr Williams' accountant, who had advised him of the amount to pay, and the date for payment.
6. Mr Williams recalled that, on the weekend in question, he had spoken to his wife about the need to pay the VAT and she had asked him whether it was paid automatically by direct debit. With the amount of work going on that weekend, Mr Williams could not remember how he usually paid his VAT and did not check until after the bank holiday weekend as he believed that, even if he did not pay by direct debit, any payment made over the weekend would not reach HMRC until Tuesday, 8 May 2018. When he later checked with his bank, Mr Williams was told that this was correct.
7. When Mr Williams checked after the bank holiday, he realised that the payment was not paid by direct debit and so made payment immediately. Mr Williams submitted that the amount was harsh for a single day's delay in making payment,

particularly as he had been improving his procedures to bring himself out of the default surcharge regime.

8. In response to questions from HMRC, Mr Williams explained that:

(1) He deals with paperwork as and when he can, but tries to make payments on time. He prefers to make payment through the Faster Payment System rather than by direct debit.

(2) He did not attempt to contact HMRC to tell them that the payment would be late because he knew HMRC did not work at weekends, and he planned to pay.

### **HMRC's case**

9. HMRC submitted that Mr Williams did not have a reasonable excuse. He was aware of the amount due and that the due date for payment fell on a bank holiday but made no attempt to pay before the due date. He had not requested a time to pay arrangement and so the payment was late.

10. HMRC noted that whether or not a person has a reasonable excuse is an objective test, to be considered in the light of all of the circumstances of the case (*Rowland* (2006) STC (SCD) 536). They submitted that the test is to determine what a reasonable trader, in the position of Mr Williams, would have done whilst exercising reasonable foresight and due diligence, having regard to their tax responsibilities.

11. HMRC submitted that the reasonable taxpayer would have been aware of the need to make payment on time and would have made arrangements accordingly. HMRC produce guidance for VAT traders on when to make payment where the payment date is on a bank holiday.

12. With regard to Mr Williams' submission that the amount of the surcharge was disproportionate to a single day's delay, HMRC submitted that the Upper Tribunal decision of *Trinity Mirror* [2015] UKUT 421 is binding upon this tribunal, and that decision found that the default surcharge regime as a whole is a rational scheme and only in exceptional circumstances would a challenge to a default surcharge on the grounds of proportionality succeed. HMRC submitted that no such exceptional circumstances existed in this case.

### **Discussion**

13. There is no statutory definition of "reasonable excuse"; it is an objective test to be considered in the circumstances of the particular case. The test is what a reasonable and prudent taxpayer intending to comply with their tax obligations, in the position of the appellant, would have done in the same circumstances (*Perrin* [2018] UKUT 0156 (TC)).

14. We consider that it is clear that Mr Williams simply made a mistake. He was advised by his accountant when, and how much, to pay HMRC in relation to his 03/18

VAT period and apparently forgot to make the payment in time. When he remembered, over the bank holiday weekend, he considered that it was already too late to make payment on time and had some momentary confusion as to whether the payment would be met by direct debit.

15. Applying the test in *Perrin*, we consider that a reasonable and prudent taxpayer, mindful of the need to comply with their tax obligations, would not have forgotten that the VAT payment was due and would have made payment on time.

16. We agree with Judge Hellier in *Garnmoss* [2012] UKFTT 315 (TC) that the legislation does not provide shelter for mistakes, but only for reasonable excuses.

17. With regard to Mr Williams' submission that the amount of the default surcharge is not proportional to the single day's delay, we are bound by the decision of the Upper Tribunal in *Trinity Mirror*. That decision held (inter alia) that the objective "of the default surcharge regime is to impose a penalty for failing to pay VAT on time, and not to penalise further for any subsequent delay in payment ... It would not be possible, therefore, in our view, for the fact that the payment was only one day late to render an otherwise proportionate penalty disproportionate" (at §68).

18. Although *Trinity Mirror* acknowledged that there might be exceptional circumstances in which a default surcharge could be disproportionate, the Tribunal in that case also made clear that a delay of one day in making payment is not an exceptional circumstance.

## **Decision**

19. For the reasons set out above, we find that Mr Williams does not have a reasonable excuse for the late payment of VAT for the 03/18 period, and that the default surcharge of £720.36 is not disproportionate. The appeal is therefore dismissed and the penalty upheld in full.

20. 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.

**ANNE FAIRPO**

**TRIBUNAL JUDGE  
RELEASE DATE: 18 JUNE 2019**