



Neutral Citation: [2023] UKFTT 00892 (TC)

Case Number: TC08967

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

Location: Decided on the papers

Appeal reference: TC/2023/07712

*VAT – late payment surcharge – reasonable excuse – no – appeal dismissed*

**Judgment date:** 17 October 2023

**Decided by:**

**TRIBUNAL JUDGE ALLATT**

**Between**

**BIZNOMY SOLUTIONS UK LTD**

**Appellant**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

The Tribunal determined the appeal on 16 October 2023 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 19 April 2023 (with enclosures), HMRC’s Statement of Case (with enclosures), the bundle (75 pages) and the authorities bundle.

## DECISION

### INTRODUCTION

1. The appeal is against the Respondents' decision to issue a VAT Default Surcharge under Section 59 Value Added Tax Act 1994 for period 10/22.
2. The Surcharge charged to the Appellant that is the subject of this appeal is one of £458.97 on 16 December 2022.

### BACKGROUND

3. The Appellant's business is information technology consultancy and the Appellant has been registered for the purpose of VAT with effect from 01 December 2019.
4. Since registering for VAT, the Appellant is required to submit VAT Returns on a quarterly basis.
5. The Appellant's normal method of payment has been via Faster Payment Service.
6. A number of VAT returns and payments are relevant to this appeal.
7. Period 4/22 had a due date for return and payment of 7 June 2022. The return was received on time but the payment was made late, on 8 June 2022.
8. Period 07/22 had a due date for return and payment of 7 September 2022. The return was received on time but the payment was made late, on 12 September 2022.
9. Period 10/22 had a due date for return and payment of 7 December 2022. The return was made on time but the payment was made late, on 12 December 2022.

### THE LAW

10. Section 25(1) VATA 1994 requires that a taxable person shall account for and pay VAT for a prescribed accounting period at such time and in such a manner as determined by regulations.
11. Regulation 25(1) of the VAT Regulations 1995 provides that a return must be submitted to HMRC by all VAT registered persons not later than the last day of the month following the end of the period to which it relates.
12. Regulation 40 of the VAT Regulations 1995 states: "40(2) Any person required to make a return shall pay to the Controller such amount of VAT as is payable by him in respect of the period to which the return relates not later than the last day on which he is required to make that return."
13. The Respondents have discretion under Regulations 25A(20) and 40 of the VAT Regulations 1995 to allow extra time for the filing of a Return and the making of payment when these are carried out by electronic means.
14. For online returns, the standard deadline is extended by seven calendar days (except for Payment on Account and Annual Accounting businesses). The extended due date will be shown on online returns, and also applies to online returns where payment is not required (nil or repayment returns). The legal basis for this extension to due date is a Direction made under regulations 25, 25A(20) and regulation (40)(3) and (4) VAT Regulations 1995.
15. Section 59(1) VATA 1994; The default surcharge provides that a where a taxable person is required in accordance with regulations under this Act to furnish a return for a prescribed accounting period and —

- (a) the Commissioners have not received that return, or

(b) the Commissioners have received that return but have not received the amount of VAT shown on the return as payable by him in respect of that period, then that person shall be regarded for the purposes of this section as being in default in respect of that period.

16. A Surcharge Liability Notice (“SLN”) is sent to the taxable person if they default in respect of a prescribed accounting period. The notice specifies the surcharge period for the purposes of section 59 VATA 1994. The Surcharge Period is a period ending on the first anniversary of the last day of the period in default and beginning on the date of the notice.

The Surcharge period may be extended under section 59(3) VATA 1994. When a SLN is served by reason of a default in a VAT period that ends at or before the end of an existing surcharge period already notified, the existing surcharge period is extended.

17. Section 59(5) VATA 1994 specifies the rates of penalty for any further default within a surcharge period:

(1) The first default within a surcharge period results in a penalty of 2% of the outstanding VAT at the date of the surcharge.

(2) The second default within a surcharge period results in a penalty of 5% of the outstanding VAT at the date of the surcharge.

(3) The third default within a surcharge period results in a penalty of 10% of the outstanding VAT at the date of the surcharge.

18. Special arrangements are in place for traders if their turnover is £150,000 or less, to assist when they first have difficulties paying their VAT on time. The first time they default they are sent a letter of help and support rather than a Surcharge Liability Notice.

#### **DISCUSSION**

19. The Appellant failed to pay the VAT due on the return for period 07/21 by the due date. As HMRC records showed the Appellant’s turnover was less than £150,000 a Help Letter was issued.

20. When Appellant failed to pay VAT due on the return for Period 04/22 by the due date and so was issued with a SLN, with a surcharge period 15 June 2022 – 30 April 2023.

21. When the Appellant subsequently failed to make payment for Period 07/22 by the due date and it became liable to a surcharge at 2% as it was within the surcharge period.

22. As the penalty was less than £400, the Respondents decided not to issue a financial penalty.

23. The Surcharge Liability Notice of Extension (SLNE) notified the Appellant that the surcharge period was extended until 31 July 2023.

24. As the Appellant subsequently failed to make payment for the VAT return for Period 10/22 by the due date and it became liable to a surcharge at 5% as it was within the surcharge period.

25. I am satisfied that the penalty has been correctly charged.

26. I note that although HMRC chose not to issue the penalty for the payment for the period 07/22, this ultimately proved not to be helpful to the Appellant. A lower penalty

would probably have made more impact than no penalty at all and the situation may have resolved itself sooner.

27. The Appellant agrees that the payments were made late. The Appellant, in the Notice of Appeal, stated that the directors thought they had a further 7 days from the due date of the return to make the payment.

28. The Appellant asks for a removal of the surcharge or an application of the points based system, effective from 1 January 2023, to be imposed instead.

29. It is not within the Tribunal's power to substitute the penalty charged for the points based system as that applies only from 1 January 2023.

30. I therefore consider whether the Appellant has a 'reasonable excuse' for the late payment of this return (or of earlier returns that are relevant to the amount of the penalty charged within this appeal).

31. I have reviewed the (template) letters of the type that were sent to the Appellant upon each of the late payments of VAT.

32. They contain no ambiguity and should have alerted the Appellant immediately to the fact that the VAT had not been paid on time.

33. I consider that the 'Help Letter' contained enough detail that the directors should have checked at that point and realised that their understanding about the due date for payment was incorrect.

34. I therefore consider no reasonable excuse exists for this late payment, or for the previous late payments that led to the 5% penalty being charged.

#### **DECISION**

35. This Appeal is therefore **DISMISSED**.

#### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

36. 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.

**JUDGE ALLATT  
TRIBUNAL JUDGE**

**Release date: 17<sup>th</sup> OCTOBER 2023**