



**TC03076**

*Appeal number: TC/2013/03265*

*Value Added Tax - Default surcharge - Appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ERECT ARCHITECTURE LIMITED**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE HOWARD M. NOWLAN  
HELEN MYERSCOUGH ACA**

**Sitting in public at 45 Bedford Square in London on 25 October 2013**

**Barbara Kaucky, director of the Appellant, in person**

**Alison McHugh of HMRC on behalf of the Respondents**

## DECISION

1. This was a very simple default surcharge Appeal, in relation to the Appellant's VAT period 12/12. The VAT in that period was the amount of £33,657.19, and since the minor default was the Appellant's third default, the surcharge, calculated at the 5% rate, was £1,682.85.
2. Barbara Kaucky explained that the reason for the delay in paying the VAT, and the claimed reasonable excuse for the late payment, was that she (an Austrian national) and her daughter had been visiting her parents in Austria for Christmas, and that because her daughter became ill, she had to delay her return to London from the intended date of 28 December 2012 to 3 January 2013. Her daughter had indeed not recovered by that time and Barbara Kaucky had to leave her daughter with her parents in Austria. She had to return to London urgently because, as the director of her firm of architects, she was responsible for a project that was commencing its critical stage in early January.
3. Barbara Kaucky explained that the Appellant was a small firm and that she was responsible for the particular project and for dealing with the VAT returns. The project related to a construction on the Olympic site, all geared to restoring the site to public use, and she told us that it was absolutely critical to her firm, and more relevantly the client, London Legacy Development Corporation, that there should be no delays in the project. She explained to us that the architect's role was particularly crucial when the separate traders responsible for countless different aspects of the development were due to start their particular contributions, and that the role of the architect was to ensure, at the start of each firm's involvement that the firm knew exactly what it was meant to do, and when it was expected to undertake each particular task. Numerous work programmes on the project were due to commence in January. Rather obviously one delay could have a knock-on effect which could become more serious as other trades had to reallocate their schedules.
4. She explained to us that the project was a £5 million project, in which delays could have a significant cost overrun exposure. She emphasised that the more significant point was the prestige importance to the Development Corporation of finishing the project on time, and then handing the Olympic park back to the public. Amongst other prestige factors was the feature that the Queen was due to re-open the park to the public on an already fixed date. Accordingly the Appellant was under very considerable pressure from the Development Corporation to ensure that everything proceeded to plan.
5. This resulted in Barbara Maucky, the only person able to attend to the VAT filing, working for the entirety of January under intense pressure. She said that the VAT return usually took two days to prepare. As a result of the pressure to attend to the crucial work on the project, intensified due to her daughter's illness, she was one day late in filing the VAT return. She filed it on 7 February. We understand that had it been filed on 6 February, the Direct Debit machinery used to pay the VAT would have ensured that the payment was not counted as a late payment, even though the Direct Debit machinery, actioned on 6 February would not have resulted in HMRC receiving payment until at least three days after that date, the actual delay depending on delays resulting from the week-end. As it was, and on account

presumably of an intervening week-end, although the return was filed just one day late, HMRC did not actually receive the VAT until 13 February.

6. We asked Barbara Kaucky whether the Appellant wished to advance any reasonable excuse claim in relation to the earlier two defaults, the effect of which might have been to reduce or eliminate the surcharge for the 12/12 period before even considering the reasonable excuse contention in relation to that period. She said that since no surcharge had been imposed for either period, no consideration had ever been given to whether there might have been a reasonable excuse for any late filing, and that she had not thought of the point that a late claim that there had been such an excuse, might reduce or eliminate the present claimed surcharge. We accordingly ignored this point.

7. We did, however, both unhesitatingly conclude that the unforeseen event of Barbara Kaucky's daughter's illness, the resulting delayed return from holiday and the subsequent additional pressure on the intense work programme do provide the Appellant with a reasonable excuse for the one day late filing of the VAT return.

8. As we announced immediately, this Appeal is accordingly allowed.

9. 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 HOWARD M. NOWLAN  
TRIBUNAL JUDGE**

**RELEASE DATE: 22 November 2013**