



TC03089

Appeal number: TC/2012/07411

*VAT – late payment – default surcharge – whether reasonable excuse – No –
Section 59 VATA 1994 – appeal refused*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

G CARDLE PLUMBING

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE KENNETH MURE, QC
HELEN M DUNN, LLB**

Sitting in Wellington House, Glasgow on Friday 15 November 2013

Having heard Mr Mark Murphy, for the Appellant

Mrs Elizabeth McIntyre, Officer of HMRC with Ms Loughridge, for HMRC

DECISION

1. The appellant did not attend the hearing and was represented by Mr Murphy, a
5 personal friend, who is employed (by another party) as a management accountant.

2. The appeal relates to a default surcharge of £248.10 in respect of the late
10 submission of the appellant's VAT Return and payment for the period 12/11. Both
the Return and payment were due on 31 January 2012 but as payment was made
electronically a seven day extension to 7 February 2012 was allowed. In fact the
Return and payment were not made until 10 February 2012. Page 15 of the Bundle
15 shows a series of defaults by the appellant for the periods 12/10, 3/11, 9/11, and
12/11, the last being the subject of the appeal. A Return and payment were submitted
timeously for 06/11. On the second and third failures in respect of the periods 03/11
and 09/11 a surcharge of respectively 2% and 5% applied. However, the amount of
the penalty was below £400 and in such circumstances it is the practice of HMRC to
waive the surcharge. In the present case, being the fourth default, a surcharge of 10%
was imposed.

3. Mrs McIntyre explained that automatic warnings were generated and sent to the
20 taxpayer in the event of the late submission of either Return or payment. HMRC's
records indicated that before the default in issue due warnings had been issued in
respect of the previous defaults. This was disputed by Mr Murphy on behalf of the
appellant.

25 4. Mrs McIntyre referred to the Grounds for appeal at p7 of the Bundle. She
questioned the basis for the appellant's belief that there was a ten day interval before
the Return and payment were due. She explained that where a direct debit had been
instructed by the taxpayer, then an extra three days were allowed for payment but the
30 period for submission of the Return was not similarly extended. In the present case
the appellant had not completed a direct debit.

5. She noted that Section 71 VATA 1994 excluded the insufficiency of funds and
35 reliance upon a third party as a reasonable excuse. Further, she observed that there
was no evidence that the appellant had sought a "time to pay" arrangement.

6. In the absence of any *reasonable excuse*, she invited the Tribunal to dismiss the
appeal.

40 7. Mr Murphy submitted that the appellant genuinely believed that the Return and
payment were not due until the Tenth of the month following the due date for the
Period. The record at p15 of the Bundle tended to confirm this, by reference to the
information for the two Returns 12/10 and 9/11. Mr Murphy explained that the
appellant had advised him that he had not received any warning letters before
45 notification of the penalty.

8. Mr Murphy explained further that the appellant was a sole trader, busily engaged as a plumber, and having to deal with his own paperwork. He had been forced to register for VAT because of a brief increase in his turnover. The penalty represented about a week's personal drawings from the business.

5

Decision

9. While we have a measure of sympathy for the appellant, we do not consider that a *reasonable excuse* has been demonstrated for the failure. This was one of a series of failures. We appreciate that the delays are relatively short and that payment was made, albeit belatedly. However, we consider that it was the taxpayer's responsibility to ensure that the Returns and payment were made within the period of seven days from the due date. It is the taxpayer's responsibility to be aware of the filing dates and to comply with these to avoid any penalties being imposed. We consider it likely that several warning letters were issued. While the information provided by Mr Murphy was that they had not, we did not have the opportunity of hearing the appellant directly on this aspect. We have considered the decision in *HMRC v Total Technology (Engineering) Ltd* [2012] UKUT 418 (TCC), in which the principles to be considered in relation to default surcharges generally were discussed. That decision does not seem to assist the appellant in the present case. The date of payment is not disputed. In our view there is no reasonable basis for the belief set out in the Grounds for appeal that there were a further three days of grace. Even a genuine error is not in terms of the legislation a reasonable excuse.

10. Accordingly we confirm the penalty and disallow the appeal.

11. 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.

35

**KENNETH MURE, QC
TRIBUNAL JUDGE**

RELEASE DATE: 27 November 2013