



**TC03153**

**Appeal number: TC/2013/06104**

*VAT – Default Surcharge – whether a reasonable excuse – insufficiency of funds – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**VERONALDER HOLDINGS LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE DR K KHAN  
MR JULIAN STAFFORD**

**Sitting in Cambridge on 7 November 2013.**

**The Appellant was not represented and indicated that the matter can proceed in their absence.**

**Erika Carroll, Presenting Officer, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.**

## DECISION

1. The matter under appeal is against a default surcharge for the VAT period ending 30 April 2013 (04/13) in the sum of £234.26 being 10% of the VAT unpaid at the due date.

2. The issue is whether there is a liability to the surcharge and whether there is a reasonable excuse for the late payment.

### The Law

3. The relevant provisions of the VAT Act 1994 are sections 59, 71, 76 and 83.

4. The relevant provisions of the VAT Regulations S.I. 1995/2518 are 25 and 25A concerning the making of returns and 40 which deals with VAT to be accounted for on returns and payment of VAT.

### Appellant's submission

5. The Appellant stated that they had no funds available to pay the VAT. The tax was paid on 10 June 2013 which was 3 days after the due date. They explained that they had not been paid by their clients and were at the end of their overdraft facility so could not make the payment on time.

### Respondents' submissions

6. The Respondents make the following submissions:

(1) The payment was late and this is not disputed.

(2) The tax due for the period was £2,342.60 and a Surcharge Liability Notice Extension (SLNE) was issued for £234.26 on 14 June 2013 being 10% of the tax unpaid at the date.

(3) An insufficiency of funds is not a reasonable excuse under s.71(1)(a) VATA 1994.

### Conclusion

7. The appeal is dismissed. An insufficiency of funds is not a reasonable excuse nor is the company's cash flow difficulties.

8. The Appellant entered the Default Surcharge regime in 2012 after their first default for the period ending 31 January 2012. The Appellant therefore had notice and knew of the penalty regime for late payment. The notice detailed how surcharges are calculated with the appropriate percentages.

5 9. It would have been helpful to the Tribunal if the Appellant had explained in some more detail about their client's non-payment on time. It is possible in some circumstances where clients do not pay and the clients are substantial, for the Appellant to have a reasonable excuse on grounds of non-payment by a substantial client.

10. There was no information to support this position and it was not considered by the Tribunal.

10 11. While the insufficiency of funds in itself is not a reasonable excuse, there may be circumstances which are exceptional giving rise to an insufficiency of funds which a Tribunal may consider.

12. Accordingly, the appeal is dismissed.

15 13. 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.

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**DR K KHAN  
TRIBUNAL JUDGE**

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**RELEASE DATE: 16 December 2013**