



TC03479

Appeal number: TC/2014/01000

VAT - DEFAULT SURCHARGE – whether a reasonable excuse – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SANDFORD PROMENADE HOTEL

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JENNIFER BLEWITT

Sitting in public at Manchester on 4 April 2014

Mr Vallance, Partner, for the Appellant

Ms Roberts, Officer of HM Revenue and Customs, for the Respondents

DECISION

5 1. By letter dated 22 February 2011 the Appellant appealed against VAT default surcharges for the periods 03/10, 06/10 and 09/10.

2. The grounds of appeal relied upon can be summarised as follows:

- The payments were only a week or two late and date back a number of years;
- The hotel was sold in 2011;
- The surcharges are too high;
- 10 • The Appellant no longer has any records for the business and Mr Vallance is struggling financially following his divorce from his business partner 2 years ago;
- Why isn't Mr Vallance's ex-wife and business partner being pursued for the debt?
- 15 • No issue is taken with the legislation applicable or the fact that surcharges were correctly imposed but Mr Vallance seeks time to pay and requests that the penalties are split equally between himself and his partner.

3. On behalf of HMRC Ms Roberts submitted that the partners of the Appellant have ultimate responsibility for the timely submission of the VAT returns and any tax due thereon. None of the grounds relied upon by Mr Vallance would retrospectively
20 be a reasonable excuse for the defaults. Partners who carry on business are jointly liable for the debts incurred by the partnership and are equally responsible under section 9 of the Partnership Act 1890 for payment of the whole of the debt.

4. The surcharges imposed are set by legislation and the Tribunal has no
25 jurisdiction to consider the issue of proportionality nor to mitigate the penalties under the default surcharge regime. The Tribunal is bound by the Upper Tribunal's ruling in *Total Technology (Engineering) Ltd v HMRC* [2012] UKUT 418 (TCC) in which it was stated:

30 *"But in assessing whether the penalty in any particular case is disproportionate, the tribunal must be astute not to substitute its own view of what is fair for the penalty which Parliament has imposed. It is right that the tribunal should show the greatest deference to the will of Parliament when considering a penalty regime just as it does in relation to legislation in the fields of social and economic policy which impact upon an individual's Convention rights."*

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5. On behalf of the Appellant Mr Vallance did not dispute that the surcharges were imposed in accordance with legislation but explained that the appeal was brought on

the grounds of his current financial hardship. He stated that his divorce was costly and the fact that his ex-wife was also his business partner has made access to paperwork difficult. I was told that Mr Vallance's partner had misled him in respect of the partnership's accounts which had led to tax liabilities being unpaid and that Mr Vallance had been wholly unaware of the situation. Upon being contacted by HMRC Mr Vallance paid all outstanding debts to HMRC. I should also note that Ms Roberts clarified that she had contacted Mrs Vallance and made her aware of this hearing. Mrs Vallance did not attend.

Decision

6. I found Mr Vallance to be an honest and responsible gentleman who had taken time off from his employment in order to attend the hearing and I accepted his explanation as to how the surcharges arose and the fact that he had paid all outstanding liabilities to HMRC as soon as he became aware that debts remained unpaid. Whilst I am sympathetic to the situation in which Mr Vallance now finds himself, I am bound by the Upper Tier decision in *Total Technology* and I have no power to mitigate the penalties or interfere with them on the grounds of proportionality. No other grounds were put forward upon which I can find that the Appellant had a reasonable excuse for the late payments of VAT made to HMRC.

7. The Tribunal and HMRC were provided with details of Mr Vallance's financial position. I note Ms Roberts' explanation that both partners are liable for the penalties and no doubt HMRC will take into account the information provided by Mr Vallance, together with his responsible conduct in this matter, in any future proceedings.

8. The appeal is dismissed.

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.

**JENNIFER BLEWITT
TRIBUNAL JUDGE**

RELEASE DATE: 10 April 2014