



**TC03848**

**Appeal number: TC/2013/02761**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**QUARMBY GARAGE LTD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MICHAEL S CONNELL  
MS ANN CHRISTIAN**

**Sitting in public at City Exchange Leeds on 22 July 2013**

**Mr Philip Robinson Managing Director of the Appellant company and Mr Neil Sharman Chartered Accountant**

**Mrs N Newham, Officer of HM Revenue and Customs, for the Respondents**

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## SUPPLEMENTARY REASONS FOR DECISION

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1. The Appellant has applied for permission to appeal. The appeal was heard on 22 July 2013 and the decision released on 2 December 2013.

2. The Appellant's grounds of appeal in applying for permission to appeal are that the Tribunal did not address in its decision the reasons why the Respondents late response to a request for Time to Pay in respect of defaults in periods 09/10 and 09/11 did not lead to those defaults being removed, and that if those defaults were removed, then the rate of default surcharge for the period 12/12 would be reduced from 10% to 2%.

3. The Appellant argued at the appeal hearing that those defaults should be removed because there had been requests for Time to Pay, which had not been considered by the Respondents until after the due date for payment of the VAT. This was a substantive ground of appeal, which the Appellant says the Tribunal did not adequately address in its decision.

4. This supplementary decision sets out the Tribunal's reasons for concluding that there was no reasonable excuse for the defaults in relation to periods 09/10 and 09/11, and that consequently the default surcharges for those periods should not be removed.

5. The Appellant wrote to HMRC on 29 October 2010 asking for a Time to Pay arrangement in respect of the period 09/10. HMRC did not receive the Appellant's letter until 3 November 2010, being after the due date for payment, which was 31 October 2010. HMRC did not reply to the request until 3 December 2010. Mr Sharman for the Appellant said that this delay created the default.

6. Mrs Newham, for the Respondents, disagreed with Mr Sharman's assertion that HMRC's inaction or delayed response had caused the default. The Appellant's request for Time to Pay had been too late. In any event, the Appellant could not reasonably have presumed that its proposed payment plan would be agreed by HMRC. It is entirely within the discretion of HMRC whether or not to agree to a Time to Pay arrangement. Mrs Newham said that the default was not caused by HMRC's delay, but by the Appellant's default.

7. In respect of the default in period 09/11, the Appellant wrote to HMRC on 31 October 2011, its letter being received by HMRC on 3 November 2011, which was again after the due date for payment of the VAT due for that period. The Appellant's proposal was to pay the VAT due of £10,172.52, which was due on 31 October 2011, "in two consecutive instalments .. in mid November and mid December".

8. Whether or not to agree to a Time to Pay arrangement is entirely within the discretion of HMRC. A Time to Pay arrangement, even if agreed by HMRC, must be agreed before the due date for payment. This was acknowledged by the Appellant and

his representative at the hearing, and it was also acknowledged that if the defaults for periods 09/10 and 09/11 were not removed the surcharge for the fourth default for the period 12/12 was levied correctly at 10% of the tax due.

5 9. The Tribunal reserved its decision in order to give further consideration, in particular to the Appellant's grounds of appeal based on insufficiency of funds. For the avoidance of doubt the Tribunal did not reserve its decision for the purpose of reconsidering whether HMRC's delayed response to the Appellant's request for a Time to Pay arrangement for the periods 09/10 and 09/11 had caused or contributed to the defaults. The Appellant had acknowledged at the hearing that the Time to Pay request in each case had been after the due date for payment of the tax (and so the date by which a time to pay request must be made in order to avoid a default surcharge). The Appellant also acknowledged that any decision to agree a Time to Pay arrangement is entirely within the discretion of HMRC. The Appellant's submission that HMRC must exercise their discretion fairly was considered, but, 10 given that both of the Appellant's requests for a Time to Pay arrangement had been received by HMRC after the due date for payment, it could not reasonably be argued that the discretion had been exercised unfairly.

15 10. The above reasons supplement those contained in the Tribunal's decision released on 2 December 2013.

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**MICHAEL S CONNELL**

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**TRIBUNAL JUDGE**  
**RELEASE DATE: 29 July 2014**