



**TC06214**

**Appeal number: TC/2017/04105**

*VAT default surcharge - payment received by HMRC one day late - instructions for electronic transfer of funds not given to bank until shortly after 'cut off time'- whether reasonable excuse - on the facts, yes - Appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**STYLOGRAPHICS LIMITED**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE MICHAEL CONNELL  
                  MEMBER DEREK SPELLER**

**Sitting in public at Taylor House, Rosebery Avenue, London on 24 July 2017**

**Mr Simon Olley Director of the Appellant Company for the Appellant**

**Sabha Kanval, Officer of HMRC, for the Respondents**

## DECISION

### **The Appeal**

5 1. Stylographics Limited (“the Appellant”) appeals against a default surcharge of £6,514.80, for its failure to submit, in respect of its VAT period ended 31 December 2016, by the due date, payment of the VAT due.

2. The point at issue is whether or not the Appellant has a reasonable excuse for making late payment.

### **Background**

10 3. The Appellant’s principal business activity is the provision of re-press and pre-media services. The business is based in Watford, Hertfordshire and registered for VAT on 1 May 1992.

15 4. The Appellant had previously defaulted in period 12/15 when its VAT payment was received in three instalments, on 5 February 2016 (on time) and 7 March 2016 and 24 March 2016, being 29 days and 46 days respectively later than the due date. A VAT Default Liability Notice was issued. However the Appellant had requested a Time to Pay arrangement prior to the due date for the period 12/15, and therefore the Appellant was entitled to relief under s 108 of the Finance Act 2009, the result of which was the cancelling of the surcharge on 7 November 2016.

20 5. The Appellant defaulted again in 06/16 when its VAT payment was made 2 days late. A VAT default Surcharge had been issued on 8 August 2016, for 2% of the VAT due. Due to the removal of the surcharge for the period 12/15, the surcharge for the period 06/16 was reduced to a non-financial notice on 7 November 2016.

25 6. The due date for the Appellant’s 12/16 period was 31 January 2016. The Appellant’s return was received on time on 7 February 2016. The amount of VAT due under the return was £325,740.09. Payment due was received by HMRC in two instalments, by electronic transfer of funds, both on 8 February 2017, being 1 day later than the due date.

30 7. On 7 May 2017, following a review of HMRC’s decision, which was upheld, the Appellant lodged a notice of Appeal with the Tribunal.

8. The Appellant paid VAT on a quarterly basis. Section 59 of the Value Added Tax Act 1994 (“VATA”) requires a VAT return and payment of VAT due on or before the end of the month following the relevant calendar quarter. [Reg 25(1) and Reg 40(1) VAT Regulations 1995].

35 9. Section 59 VATA sets out the provisions in relation to the default surcharge regime. Under s 59(1) a taxable person is regarded as being in default if he fails to make his return for a VAT quarterly period by the due date or if he makes his return by that due date but does not pay by that due date the amount of VAT shown on the

return. The Commissioners may then serve a surcharge liability notice on the defaulting taxable person, which brings him within the default surcharge regime so that any subsequent defaults within a specified period result in assessment to default surcharges at the prescribed percentage rates.

5 10. The specified percentage rates are determined by reference to the number of periods in respect of which the taxable person is in default during the surcharge liability period. In relation to the first default after the issue of a VAT Surcharge Liability Notice, the specified percentage is 2% and the percentage ascends to 5%, 10% and 15% for the second, third and fourth default.

10 11. A taxable person who is otherwise liable to a default surcharge, may nevertheless escape that liability if he can establish that he has a reasonable excuse for the late payment which gave rise to the default surcharge(s). Section 59 (7) VATA 1994 sets out the relevant provisions : -

15 (7) If a person who apart from this sub-section would be liable to a surcharge under sub-section (4) above, satisfies the Commissioners or, on appeal, a Tribunal that in the case of a default which is material to the surcharge –

20 (a) the return or as the case may be, the VAT shown on the return was despatched at such a time and in such a manner that it was reasonable to expect that it would be received by the commissioners within the appropriate time limit, or

25 (b) there is a reasonable excuse for the return or VAT not having been so despatched then he shall not be liable to the surcharge and for the purposes of the preceding provisions of this section he shall be treated as not having been in default in respect of the prescribed accounting period in question ..’

30 12. The initial onus of proof rests with HMRC to show that a surcharge has been correctly imposed. If so established, the onus then rests with the Appellant to demonstrate that there was a reasonable excuse for late payment of the tax. The standard of proof is the ordinary civil standard on a balance of probabilities.

### **Appellant’s Case**

13. In its letter to HMRC requesting a review the Appellant said:

35 “The quarter in question generated a much larger return than we are used to, with an amount payable of £325,740.09. We processed the payment through our on-line banking system Barclays.net at 17.36 pm on the 7th February on a same day payment as we would usually do.

40 However the system did not process the payment. We contacted our bank and they advised that there was a limit of £250,000 imposed which couldn't be uplifted in time, so they recommended that we split the payment into two smaller amounts, £200,000, £125,740.09 This we did and at 17.55pm on 7th February the final payment went through, which we thought was in plenty of time. (Attached are the details of these payments).

5 On the 22nd February we received a surcharge notice from HMRC because our payment was not received. As you can imagine we were hugely concerned and contacted our bank to check it, as the money had gone from our account. They explained that the payment did go through the banking system on that day but did not clear until 3 minutes after midnight, so technically into the following day. They have apologised that our same day payment missed the midnight deadline.

10 We really hope that on review of the circumstances you will see that we genuinely intended to get the payment to you on time but were caught out by unusual circumstances, for which we apologise. This surcharge would be a massive hit for us and we would be really grateful if you could help us by voiding this surcharge on this occasion and we can assure you that we will initiate the payment earlier in future.”

14. The Appellant’s grounds of appeal as stated in its Notice of Appeal are:

15 “It was our intention to pay the VAT due on the due date but due to vast number of transactions at the bank, the payment of £325,740.09 cleared 3 minutes past midnight. We did everything in our power to pay this on time and were let down by the Banking Clearing System. The VAT due was paid on the 7/2/17, which cleared in HMRC’s bank account at 12.03am on 8/2/17. We are appealing due to circumstances beyond our control.”

20 15. The Appellant therefore does not dispute that its VAT payment for the period 12/16 was due no later than 7 February 2017, nor that HMRC received the payment on 8 February 2017.

25 16. At the hearing Mr Olley for the Appellant said that it appeared to be the bank’s policy not to accept responsibility for a delayed transmission of funds. His finance manager had initially attempted to put the full payment of £325,740.09 through in one payment at around 4.00pm on 7 February, but because of the £250,000 limit of which he was totally unaware, the payment would not go through. Having made enquiries of the bank, the finance manager was eventually able to transfer the monies in tranches of £200,000 and £125,740.09. By that time however it was approximately 17.55pm. The cut off time operated by many banks is 17.45pm, and normally a warning message is displayed at 17.40 to advise the customer that they are approaching the faster payment service cut off time. Mr Olley did not notice any such message and, to his knowledge, neither did his finance manager. Normally payment by faster payment service is a same day service and payment reaches the payee within two hours. Having made further enquiries of the bank it now appears that the payment was actually made at 03.00am, not 12.03am, but the bank had not been able to explain either the reason for the delay or the discrepancy as to when the money was actually transmitted.

40 17. Mr Olley provided a copy of the Company’s bank payment request in respect of the period 12/16 as evidence that his finance manager attempted to make payment on 7 February 2017. Whilst the ‘Creation’ date was 7 February 2017, the ‘Execution’ date, that is the date payment was made, is 8 February 2017. Mr Olley says that by that time it was too late. He accepts that payment was made late in the day but says that in times of electronic payments and everyday assurances by the bank that a payment would be made the same day, the combination of his not knowing about

5 £250,000 limit, the delay in the bank providing advice and the fact that in consequence he had inadvertently missed the cut off time by perhaps less than an hour, he had a reasonable excuse for the late payment. He had not received a satisfactory explanation as to why he had been advised that payment had been made at 12:03am, then later advised that payment had been made at 03.00am.

10 18. On review HMRC said that “when making the payment you did not take into consideration any unforeseeable event”. The Appellant’s view was that HMRC had not fully considered the reasons for the late payment, and that in any event it was difficult to understand how he could have taken into account an unforeseeable event, which in any event was also outside his control.

### **HMRC’s Case**

15 19. Ms Kanval for HMRC said that the Appellant’s VAT Period 12/16 had a statutory due date of 31 January 2017. The due date is extended by seven days where payment is made electronically. The VAT should have been received no later than 7 February 2017, but was one day late.

20 20. Regulation 40(2) of the VAT Regulations 1995, stipulate that VAT must be paid no later than the due date of the return.

25 21. The potential financial consequences attached to the risk of further defaults would have been known to the Appellant after issue of the Surcharge Liability Notice for period 12/15 and the further surcharge default notice for period 06/16. The information contained on the reverse of each Notice states:

25 ‘Please remember your VAT returns and any tax due must reach HMRC by the due date. If you expect to have any difficulties contact either your local VAT office, listed under HM Revenue & Customs in the phone book as soon as possible, or the National Advice Service on 0845 010 9000.’

22. The requirements for submitting timely electronic payments can also be found-

- In notice 700 “the VAT guide” paragraph 21.3.1 which is issued to every trader upon registration.
- On the actual website [www.hmrc.gov.uk](http://www.hmrc.gov.uk)
- On the E-VAT return acknowledgement.

23. Also the reverse of each default notice details how surcharges are calculated and the percentages used in determining any financial surcharge in accordance with the VAT Act 1994 s 59(5).

35 24. Therefore the surcharge has been correctly issued in accordance with the VAT Act 1994 s 59(4).

25. HMRC may allow additional time for payment if requested. Any request must be made prior to the date on which the VAT falls due. No request for a time to pay arrangement was received by HMRC from the Appellant prior to the default.

5 26. The Appellant has provided a copy of their bank payment request in respect of the period 12/16 as evidence that they attempted to make payment on the due date of 7 February 2017. The evidence shows that whilst the 'Creation' date was 7 February 2017, the 'Execution' date of when the payment was to be paid is in fact 8 February 2017, the day after the due date.

10 27. Within the Appellant's own bank information, in several sections on their website, details are given in respect of FPS transaction limits, cut-off times and the expectations of same day service:

15 *"Barclays Corporate Banking - Frequently Asked Questions about FPS - What is Faster Payments? - It (FPS) offers customers the ability to send irrevocable Bill/Invoice/Ad-Hoc Payments, capped at £250K per transaction (subject to channel and customer limits), that reach beneficiaries' accounts the same day.*

20 *How much money can be sent via FPS? - The FPS limits are: £250,000 maximum - bill payments/third party transfers /Future Dated Payments. These limits are set by FPS, not Barclays. Additionally, for your protection, we too have set transaction limits based on client segment and the channel used for making a payment; these may be less than the FPS limits.*

25 *How long will a Faster Payment take? - Payments sent via the FPS to a participating bank should be received on the same day - some payments will be available more quickly than others. Each payment will receive a 'Status' message from the recipient bank, which will provide information on how soon the funds will be available to the recipient. This status will be displayed on your payments pages in Online Banking.*

*Barclays Help support Faster payments - Personal Banking FAQs - Overview - Many of your electronic payments through Online Banking, Telephone Banking, branches or self-service kiosks could be processed in under 2 hours, however could take up to 24 hours to reach the bank.*

30 *How long will a Faster Payment take? - Payments should be received on the same day (within 24 hours) - although there is no guarantee of this. Some will be available more quickly than others. Each payment will receive a 'Status' message from the beneficiary bank which will provide information on how soon the funds will be available to the beneficiary.*

35 *How much money can be sent via the Faster Payments Service? - FPS has 'scheme limits' - maximum amounts for any payment sent through FPS. This maximum is part of the scheme rules, defined by the UK Payment Council and cannot be increased by Barclays. Additionally, for your protection, Barclays has set transaction limits based on customer segment and the channel used for making a payment...*

40 *Barclays - Online Banking -*

*How long do payments take to be made in Online Banking? - When you make a payment in Online banking.....the amount of time it takes for the payment to reach the payee varies.*

5                   *Payments to Barclays accounts - these are normally reflected on your statement and the other Barclays account immediately. However, on occasion payments are delayed to allow us to carry out some extra checks, to protect your account from potentially fraudulent activity. Payments to non-Barclays accounts - where possible, payments to other bank accounts should arrive in 2 hours. However, some payments may not arrive until the end of the following working day.”*

10   28. By not making themselves aware of the various restrictions and guidance issued by their own bank, they left themselves open to any potential consequences of failing to take note of them, which in this instance led to the issue of surcharges. Further, in a telephone call to the Appellant on 4 April 2017 the Appellant’s financial manager advised, when asked if the payment was late due to a banking error, that the payment  
15 didn’t go through because they had missed the cut off time.

### **Conclusion**

29. The Appellant was clearly aware of the due date for payment of its VAT and the potential consequences of late payment.

20   30. Instructions were given to the Appellant’s bank to make a payment of £325,740.09 by electronic transfer of funds at approximately 16.00pm on 7 February 2017. This was prior to the bank’s cut off time for FPS payments. Because there had been two earlier defaults the Appellant was aware of the financial consequences of a further late payment. However Mr Olley says that he was unaware of the £250,000 limit and that by the time the company’s finance manager had checked the position  
25 with the bank and been advised that the payment could be split and still made that day, it was 17.55pm before the monies were actually transmitted. The normal cut off time is 17.45pm. The Appellant’s bank do not appear to have indicated precisely what their cut off time was, and it would appear that they may not also operate the warning message which is usually displayed when the customer is approaching the FPS cut off  
30 time. It was not until the company’s finance manager had pressed the ‘execute’ command on the company’s banking terminal that it was realised the payment may not go through until 8 February. No prior warning had been given by the bank during conversations with the finance manager that the payment would not be *sent* until the following day (although Mr Olley accepts that the bank’s literature advises that could  
35 happen) or that the cut off time was 17.45pm..

31. The burden of proof is on the Appellant to show that the underlying cause of its failure to meet its VAT payment obligations was due to unforeseen circumstances or events beyond its control. In the Tribunal’s view, there were an unfortunate series of events which prevented payment reaching HMRC on 7 February 2017. It is clear that  
40 the Appellant made every effort to ensure the payment was made. However, as Mr Olley says, the payment was exceptionally large, indeed much larger than had ever been paid before by the company and this was the reason he was unaware of the £250,000 limit for a FPS payment. In all the circumstances we find that the Appellant

has discharged the burden of proof and has shown reasonable excuse for the late payment of its 12/16 VAT payment.

32. Accordingly the VAT default surcharge of £6,514.80 is discharged and the appeal allowed.

5 33. 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  
10 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.

**TRIBUNAL JUDGE  
MICHAEL CONNELL**

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**RELEASE DATE: 13 NOVEMBER 2017**