



**TC06660**

**Appeal number: TC/2017/09401**

*VAT – default surcharge – payment overlooked – whether reasonable  
excuse – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**NICHOLSON & GRIFFIN LTD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE FAIRPO**

**The Tribunal determined the appeal on 27 June 2018 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 22 November 2017 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 8 March and the Appellant's Reply dated 3 April 2018.**

## DECISION

1. This is an appeal against a VAT default surcharge of £713.06 for late payment  
5 of VAT for the period 07/17, being 5% of the VAT due for that period.

2. The appellant company has been registered for VAT since its incorporation in February 2011. The company has been in the default surcharge regime from the 01/17 period onwards, having made payment eight days late for the 01/17 period and four days late for the 04/17 period.

### 10 **Appellant's submissions**

3. The appellant accepts that the payment was late, stating that they had filed their return on 6 September 2017 but omitted to make payment. The appellant's director explained that "this was a mistake on my part but not intentional" and confirmed that the business had funds available to cover the VAT. The appellant noted that they had  
15 a good compliance record not just since 2011 but also for the predecessor unincorporated business had been registered for VAT since 1986.

4. The appellant explained that they usually made payment by the Faster Payment System immediately after submitting the returns. On receipt of the penalty notice, the appellant had first thought that it must be a mistake until the bank statements were  
20 checked and found that no transfers had been made. Once they realised, the outstanding amount was paid immediately. The appellant further explained that direct debits have now been put in place to make sure that payments are not missed again.

5. The appellant submits that one of HMRC's conditions for cancelling a default surcharge has been met, specifically the condition that HMRC "are satisfied that a  
25 business had a reasonable expectation that [HMRC] would receive the payment ... by the due date". This condition was set out in the review conclusion letter dated 8 November 2017. The appellant submits that this condition has been met because it "is exactly the actions I make every quarter and this quarter in question was no different. I made the submissions as usual and no reason not to pay ... the expectation was there  
30 with the submissions having been sent and the intention was mine to make the payment".

### **HMRC's submissions**

6. HMRC submitted, in summary:

(1) There is a statutory obligation on a person required to make a return to  
35 pay the VAT to HMRC within the statutory deadline.

(2) A genuine mistake is not a reasonable excuse for late payment of VAT, as set out in *Coales* [2012] UKFTT 477, *The Clean Car Co Ltd* [1991] VAT TR 234 and *Garnmoss Ltd* [2012] UKFTT 315.

5 (3) The condition set out in the review decision letter does not apply as the appellant cannot have had a reasonable expectation that HMRC would receive payment on time, as no payment had been sent. This condition applies where, for example, a taxpayer makes a payment in time but a subsequent bank error delays the payment.

(4) The fact that the appellant submitted their return by the due date does not create a reasonable expectation that payment would also have been made as the appellant's payment mechanism is separate to the return filing mechanism.

10 7. HMRC submitted that the appellant did not take appropriate or sufficient steps to ensure that it met its VAT payment obligations; the default did not occur as a result of something outside their control.

### Decision

15 8. It is agreed that the payment was made late. The appellant was, therefore, in default in respect of the 07/17 period and the only question is whether there was a reasonable excuse for that default.

9. There is no statutory definition of "reasonable excuse"; it is an objective test to be considered in the circumstances of the particular case. The test is what a reasonable and prudent taxpayer intending to comply with their tax obligations, in the position of the appellant, would have done in the same circumstances.

20 10. It is clear from the appellant's submissions that a mistake was made and the payment of VAT was overlooked until the penalty notice was received. There was no reason for the payment to have been overlooked other than a mistake; applying the test set out above, I find that a reasonable and prudent taxpayer in the same circumstances would not have overlooked the requirement to make payment.

25 11. I agree with the decision in *Garnmoss* that "the Act does not provide shelter for mistakes, only for reasonable excuses." This was clearly a mistake, but it does not amount to a reasonable excuse.

30 12. I note the appellant's argument that they meet one of HMRC's conditions for cancellation of the surcharge but also note that the condition is that "the *business* had a reasonable expectation that [HMRC] would receive the payment" (emphasis added). The business cannot have had a reasonable expectation that HMRC would receive payment when the business had not initiated that payment. A mistaken belief is not the same as a reasonable expectation. That condition is therefore not met.

### Decision

35 13. The appeal is dismissed and the default surcharge of £713.06 is confirmed.

14. 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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**ANNE FAIRPO**

**TRIBUNAL JUDGE**

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**RELEASE DATE: 9 August 2018**