



TC06884

Appeal number: TC/2018/01724

VAT – default surcharge – Government Gateway problems – believed submitted – whether reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TECH SET LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The Tribunal determined the appeal on 11 September 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 6 March 2018 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 9 July 2018.

DECISION

Introduction

1. This is an appeal against a default surcharge of £448.51 for the VAT period 11/17.

- 5 2. The appellant registered for VAT with effect from 1 December 1994. It has been in the default surcharge regime from the VAT period 11/16 as the VAT return for that period was submitted sixteen days late and the associated direct debit payment was received 19 days late.

Appellant's case

- 10 3. The appellant argues that they have a reasonable excuse for the delay in submitting the return for the following reasons:

15 (1) They attempted to submit their VAT return online on 18 December 2017 but received a message stating that there were technical difficulties and advising that they try again in a few minutes. They had had similar problems submitting payroll information. No screenshot or similar evidence was kept of the technical issue;

20 (2) When they tried later that day, all appeared fine and they believed that the return had been submitted, although the appellant confirmed to HMRC that they could not recall receiving any acknowledgement of submission on-screen or by email;

(3) They do not check their bank account regularly to ensure that direct debits have been taken and so did not realise that the payment had not been made;

25 (4) When they logged onto the Government Gateway on 22 January 2018, they realised that the return had not been properly submitted and the VAT payment had not been made, and so submitted the return again;

(5) All of their previous tax filings for VAT, PAYE and corporation tax had been submitted on time. They did not know why the return and payment for the 11/16 period had been received late by HMRC and they had not received a Surcharge Liability Notice for that period.

- 30 4. The appellant submitted, therefore, that the problem was not one of their making but arose as a result of a technical issue with HMRC's systems.

HMRC's case

5. HMRC submitted as follows:

35 (1) There is a statutory obligation on a person required to make a return and to pay the associated VAT to HMRC within the statutory deadline. As the appellant files returns online and makes payment by direct debit, the statutory deadline for filing the 11/17 return was 7 January 2017. As payment is made by direct debit, it is collected automatically from the appellant's bank account three working days after the payment deadline on their VAT return or, if later, three days after the return is filed.

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5 (2) Although the appellant states that they were not aware that their return and payment for the 11/16 was late, and that they did not receive a Statutory Liability Notice for that period, HMRC understand that the address they have for correspondence regarding VAT is correct and that the appellant's address has not varied since the 06/01 period, well before the 11/16 period. All notices have been issued to that address and the appellant has received correspondence from HMRC regarding VAT, including the Surcharge Liability Notice for the 11/17 period. HMRC record undelivered post on their systems and have no evidence that the Surcharge Liability Notice for the 11/16 period was returned undelivered by Royal Mail. HMRC therefore contend that the notice for the 10 11/16 period was issued to the correct address, in accordance with s98 VATA 1994 and s7 Interpretation Act 1978 the notice is deemed to have been delivered unless the contrary is proved. HMRC noted that the lack of any financial element in the Statutory Liability Notice for the 11/16 period may have meant that the appellant overlooked the significance of the document.

15 (3) HMRC's systems show that the appellant logged onto the Government Gateway successfully on 1, 7, 14 20 December 2017 and 4 January 2018. There is no record of the appellant logging onto the system on 18 December 2017. There were no known technical issues or maintenance on the Government Gateway systems on 18 December 2017.

20 (4) The appellant has confirmed that they could not recall receiving any acknowledgement of the submission of the return in December 2017. HMRC would have expected the appellant to contact them or checked the VAT account again before the due date to ensure that the return had been submitted successfully.

25 (5) It appears that the appellant believed that the return had been submitted and accordingly made a genuine mistake.

30 (6) 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, where the judge noted that "the Act does not provide shelter for mistakes, only for reasonable excuses".

6. HMRC submitted that they have discharged the burden of proof on them to show that a penalty is due, and that the appellant has failed to demonstrate that there was a reasonable excuse for the late submission of the return and payment.

35 **Discussion**

7. It is agreed that the return and payment was made late. The appellant was, therefore, in default in respect of the 11/17 period. The two questions that need to be considered are:

40 (1) Was the appellant already within the default surcharge regime, so that a financial penalty applied; and

(2) Whether there was a reasonable excuse for that default.

8. The appellant states that they were not aware that their return and payment for the 11/16 period had been received late and had not received a Statutory Liability Notice for that period.

9. Considering the evidence, I find that a Statutory Liability Notice was issued to the appellant for the 11/16 period and, as it was correctly addressed and not returned undelivered to HMRC, it is deemed to have been delivered to them. As HMRC noted it may be that, as that was the first default and so the Notice had no financial element, the appellant overlooked the significance of the Notice when it was received.

10. I find, therefore, that the appellant was within the default surcharge regime when the 11/17 return was submitted late and, unless the appellant can establish that they have a reasonable excuse, a penalty of 2% of the VAT due in relation to that return applies to that default.

11. There is no statutory definition of “reasonable excuse” but, in my view, the test set out in *Clean Car Company* [1991] VTTR 234 should be applied:

“a reasonable excuse should be judged by the standards of reasonableness which one would expect to be exhibited by a taxpayer who had a responsible attitude to his duties as a taxpayer, but who in other respects shared such attributes of the particular appellant as the tribunal considered relevant to the situation being considered”

12. It is clear from the appellant’s evidence that they believed that they had submitted their VAT return. However, this was clearly a mistaken belief and 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.

13. Applying the *Clean Car* test, I find that a reasonable and prudent taxpayer in the same circumstances would have noticed that they had received no acknowledgement of the submission from HMRC and would have investigated further, before the due date for the return, and realised that the return had not in fact been submitted. As the appellant pays by direct debit, the delay in making payment is a consequence of the delay in making the return. Accordingly, I find that the appellant does not have a reasonable excuse for the delay in submitting their return and making payment.

Decision

14. The appeal is dismissed and the default surcharge of £448.51 is confirmed.

15. 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.

**ANNE FAIRPO
TRIBUNAL JUDGE**

RELEASE DATE: 19 DECEMBER 2018