



**TC03820**

**Appeal number: TC/2014/00167**

*VAT default surcharge - payment received by HMRC three days late - Appellant overlooked that last day for electronic payment fell on a weekend and that payment therefore fell due on last previous working day - whether reasonable excuse - no - Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**GRE-ECO LTD**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE MICHAEL S CONNELL  
                  MR JOHN E DAVISON**

**Sitting in public at Phoenix House Bradford on 15 May 2014**

**Mr Lee Maude Director of the Appellant company**

**Ms Joanna Bartup Officer of HM Revenue and Customs, for the Respondents**

## DECISION

### The Appeal

5 1. Gre-Eco Limited (“the Appellant”) appeals against default surcharges of £433.21 and £871.05 for its failure to submit, in respect of its VAT periods ended 07/13 and 10/13, 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. Prior to the defaults of 07/13 and 10/13, the Appellant had previously defaulted on VAT payments in period 07/11, when a VAT Surcharge Liability Notice was issued, and again in periods 04/12, 07/12 and 10/12 when VAT default extension notices were issued.

15 4. The Appellant paid VAT on a quarterly basis. Section 59 of the VAT Act 1994 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].

20 5. The due date for the Appellant’s 07/13 period was 31 August 2013. The due date is extended by seven days where payment is made electronically, except where this falls on a bank holiday or weekend, when the due date is deemed to be the last previous working day. The Appellant’s return was received by HMRC on 27 August 2013. The amount due under the return was £3,241.04. Payment of the VAT due was received by HMRC by electronic transfer of funds on 9 September 2013, which was three days late as the VAT should have been received by HMRC by 6 September 25 2013, 7 September 2013 being a Saturday.

6. The due date for the Appellant’s 10/13 period was 31 November 2013. If payment was made electronically, which it was, the due date for payment was 7 December 2013. Again, this was a Saturday, and the Appellant’s FPS payment did not reach HMRC until 9 December 2013. The amount due under the return was 30 £5,807.03.

7. Section 59 Value Added Tax Act 1994 (“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.

8. 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.

9. 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 : -

10                   ‘(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 –

15                   (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

20                   (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 ..’

10. 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

11. The Appellant does not dispute that its VAT payments for the periods under appeal were paid late.

30 12. Mr Maude for the Appellant explained that the company had been short of work and did not have the funds to employ full time office staff. He had one assistant, Alison, who only works part time coming in as and when required. Alison dealt with the VAT returns and payments. Unfortunately Mr Maude had asked her to make the VAT payments on the 7 September and 7 December 2013 respectively (being, as he thought, the last dates on which they could be paid on time) without appreciating that these dates fell on a weekend. On each occasion payment of the VAT liability was three days or one working day late.

HMRC’s Case

40 13. Ms Bartup for HMRC said 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 07/11 and further surcharge default notices for

periods 04/12, 07/12 and 10/12. The information contained on the reverse of each Notice states:

5                                   ‘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.’

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

- 10                                   • 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.

15                                   15. 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).

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

#### Conclusion

20                                   17. The issue is whether the Appellant has shown a reasonable excuse for the late payments. The Appellant was clearly aware of the due date for payment of its VAT and the potential consequences of late payment. Because there had been several earlier defaults the Appellant would have been aware of the financial consequences of a further late payment and should have ensured that the VAT payment was made in good time to reach HMRC no later than the due dates. The Appellant overlooked the

25                                   fact that when payment is made electronically and the normal payment date falls on a weekend, the due date is deemed to be the last previous working day. That is unfortunate for the Appellant, but an oversight or a mistake, albeit honestly made, is not a reasonable excuse.

30                                   18. 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, for the reasons given above, that burden has not been discharged and there was no reasonable excuse for the Appellant’s late e-payment of VAT for the period under appeal.

19. The appeal is accordingly dismissed and the surcharges upheld.

35                                   20. 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.

5

**MICHAEL S CONNELL**

**TRIBUNAL JUDGE**

**RELEASE DATE: 21 July 2014**

10