



TC06377

Appeal number: TC/2017/07526

*VAT – default surcharge – direct debit not taken – whether reasonable
excuse – no*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CROWN BLINDS LTD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The Tribunal determined the appeal on 8 March 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 16 September 2017 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 1 December 2017.

DECISION

5 1. This is an appeal against a VAT default surcharge of £1,020.32 for the VAT period 04/17, issued on 16 June 2017, for late payment of VAT.

2. The appellant also was also issued with a default surcharge for the subsequent period, 07/17, in the amount of £2,292.97 for late payment of VAT. This default surcharge was issued on 15 September 2017. The appellant's appeal does not cover this default surcharge but, as the appellant makes reference to that amount in their supporting document and the Respondents (HMRC) have addressed it in their Statement of Case, this decision has considered that default surcharge as well.

Agreed facts

3. The appellant does not dispute, and so I have taken it to be agreed that:

- 15 (1) the VAT return for 04/17 was received on the due date, 7 June 2017;
- (2) the VAT return for 07/17 was received on 4 September, prior to the due date of 7 September 2017;
- (3) VAT was paid late for both the 04/17 and 07/17 periods;
- (4) the appellant had been in the default surcharge regime from 07/16 onwards;
- 20 (5) the amounts of the default surcharges are correctly calculated.

Appellant's evidence and submissions

4. The appellant submits that it had a reasonable excuse for the late payment of VAT in respect of both periods in that it had a direct debit instruction in place in time for the payment of VAT in respect of each period but HMRC failed to process the direct debit. The appellant submits that they paid the VAT by bank transfer as soon as they realised that the direct debit had not been processed for each period.

5. The appellant acknowledges that their direct debit instruction had been cancelled but submits that the direct debit instruction had been reinstated on 5 June 2017, which is before the date on which HMRC would take payment for the VAT due for the 04/17 period and that this direct debit instruction continued to be in place at the time when HMRC would take payment for the 07/17 VAT period. An email from the appellant's bank manager was provided which confirmed that the direct debit had been cancelled on 9 March 2017 and was subsequently re-instated on 5 June 2017 at the appellant's request.

35 6. The appellant submits that they called HMRC Debt Management on 22 September 2017 to discuss the situation and were advised that HMRC could not understand why the direct debit was not in place and could not advise how to ensure that the situation would not recur at the end of the next VAT period.

7. The appellant therefore submits that it had an active direct debit instruction in place for both periods and that the late payment is due to HMRC's failure to process that direct debit instruction. The appellant therefore submits that it has a reasonable excuse for the failure to pay VAT on time for the 04/17 and 07/17 periods and that the penalties should be extinguished. The appellant also noted in its grounds of appeal that it did not understand why HMRC allowed a company to file online if a direct debit was not in place.

HMRC's evidence and submissions

8. HMRC set out the background to the appellant's direct debit arrangements with HMRC as follows:

(1) The appellant's direct debit was in September 2016 as it was unpaid by the bank. HMRC notified the appellants of this cancellation on 14 September 2016.

(2) The direct debit was then reinstated on 15 September 2016 and HMRC again notified the appellants of this reinstatement.

(3) In March 2017 the direct debit was again cancelled and HMRC notified the appellants accordingly on 13 March 2017, with a letter which advised that "[I]f you wish to pay your VAT by Direct Debit in the future you will have to complete another Direct Debit instruction, either online or by sending us a paper Instruction".

9. HMRC submits that no further direct debit instruction was received from the appellants.

10. HMRC further submits that, even though the appellant's bank had confirmed that a direct debit instruction had been reinstated on the appellant's bank account on 5 June 2017, this did not reinstate the direct debit instruction on HMRC's systems. A new direct debit mandate would have been required to fully re-establish in June 2017 a direct debit which had been cancelled in March 2017, as advised in the letter in 13 March 2017.

11. HMRC also submits that, when the appellant filed their VAT return online, they would have received an acknowledgement which would have shown that payment was to be made by electronic means other than direct debit and would have shown the due date for such payment.

12. HMRC submits that a prudent trader would have read the acknowledgement and realised that the direct debit was not in place and would have made alternative arrangements for payment by the due date for both periods.

Relevant law

13. Section 59(7)(b) VAT Act 1994 provides that a person who would otherwise be liable to a surcharge for late payment of VAT shall not be so liable where there is a reasonable excuse for the payment not having been made on time.

Discussion

14. It is not disputed that the surcharges have been correctly calculated and the appropriate notices served on the company.

5 15. The appellant has been in the default surcharge regime since the 07/16 period and had failed to pay VAT on time on two occasions prior to 04/17. I consider that a prudent taxpayer, knowing that they were within the default surcharge regime, would pay careful attention to communications from HMRC with regard to payment of VAT. This would include reading the acknowledgement received from HMRC on submission of the VAT.

10 16. Had the appellant read the acknowledgements received in respect of the 04/17 and 07/17 periods it would have been clear that HMRC would not be taking payment of VAT by way of direct debit and the appellant would have been able to make payment by other electronic means by the due date for such payment. For the 04/17 payment, although the return was filed on the due date, the appellant has not
15 suggested that a payment could not have been made by the Faster Payment System to ensure that it was received on time. The return for the 07/17 period was filed ahead of the due date for both the return and the payment and so payment could have been made on time by the Faster Payment System or other electronic means. I also consider that a prudent taxpayer would have queried the direct debit failure with HMRC at the
20 time of receiving the first acknowledgement, rather than waiting several months to ask why the direct debit instruction was not being processed.

17. I find that the appellant does not therefore have a reasonable excuse for the late payment for either of the 04/17 or 07/17 periods as a prudent trader, receiving such acknowledgements, would not have relied on the direct debit as a means of payment
25 for either period.

18. Although the appellant did not specifically raise the question of proportionality, HMRC submitted that the default surcharges were not disproportionate and cited the case of *Trinity Mirror* [2015] UKUT 21 in support of this submission. I agree that the surcharges are not disproportionate to the appellant's failure to pay VAT on time.

30 19. The appellant noted that it did not understand why HMRC allowed a company to file online if a direct debit was not in place. This appeared to be an observation rather than a ground of appeal but I consider that, if it was intended as a ground of appeal, that is a question of policy which is, at best, a matter for judicial review and therefore outside the jurisdiction of this tribunal, as has been made clear in a number
35 of decisions.

Decision

20. For the reasons given above, I do not consider that the appellant has a reasonable excuse for the late payment in either the 04/17 or 07/17 periods and the appeal is therefore dismissed and the penalties confirmed in full.

21. 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**

RELEASE DATE: 10 MARCH 2018

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