



**TC03730**

**Appeal number: TC/2014/00964**

*Value Added Tax – late payment – cash flow problems – previously in a late payment agreement – no application for late payment agreement – overdraft facility just sufficient to pay – unwilling to approach overdraft limit – no reasonable excuse*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**THAMESIDE ELECTRICAL LTD**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ALASTAIR J RANKIN**

**The Tribunal determined the appeal on 26 May 2014 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 11 February 2014 and HMRC's Statement of Case (with enclosures).**

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## DECISION

- 5 1. The Appellant company has been in the VAT default surcharge regime from the period 01/13 onwards. The electronic due date for payment of VAT for the period 07/13 was 7 September 2013. Although the return was received within time on 3 September 2013 payment was made in two instalments on 16 September 2013 and 4 November 2013.
- 10 2. The surcharge notice was issued under section 59(4) of the VAT Act 1994 at the rate of 2% amounting to £414.09.
3. When the first default occurred in respect of the period 01/13 the Appellant company received a Notice on the reverse of which it was informed that if it could not pay the full amount on time it should pay as much as it could.
- 15 4. When an earlier default occurred in 2010 the Appellant company received an advice sheet which contained the contact details for the Business Payment Support Service and also details of the Cash Accounting and Annual Accounting Schemes. HMRC believes the Appellant company would qualify for both schemes but no application to transfer has been received.
- 20 5. The VAT due by the Appellant company for the period 07/13 represented less than 7% of its actual receipts during this period. Its bank statement shows that it could in fact have paid the tax in full without breaching its overdraft facility. The Appellant company in a letter dated 17 March 2014 addressed to HMRC Local Compliance stated 'that payment in full by the due date would have been sailing too close to the wind for comfort'.
- 25 6. Section 108(2)(b) of the Finance Act 2009 states that there is no liability to a default surcharge for a period where the taxpayer makes a request to HMRC before the due date. HMRC claim that the Appellant company had previously contacted it and secured payment agreements covered by this legislation. However no such contact was made by the Appellant company in respect of the period 07/13.
- 30 7. The Appellant company has not put forward any evidence that its shortage of funds arose unexpectedly relative to the due date.
- 35 8. In the case of *The Commissioners for Her Majesty's Revenue and Customs and Anthony Boshier* [2013] UKUT 0549 (TCC) the Upper Tier Tribunal held that the scheme of the legislation coupled with the right to apply for judicial review does not infringe a taxpayer's rights under the European Convention on Human Rights and the Human Rights Act 1998. The Tribunal also held that the penalties (subject to mitigation in any particular case) imposed by the regime in general are not disproportionate.

9. The Upper Tribunal in the case of Total Technology (Engineering) Ltd [2012] UKUT 418 confirmed that neither HMRC nor this Tribunal has the power to reduce the surcharge due to mitigating circumstances.

5 10. The Appellant company has not produced any reasonable excuse for the late payment. Indeed its bank statement shows that it could have paid the tax on time.

11. The Appeal is therefore dismissed and the surcharge of £414.09 remains due for payment.

10 12. 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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**ALASTAIR J RANKIN**  
**TRIBUNAL JUDGE**

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**RELEASE DATE: 11 June 2014**