

HMRC pays for delays

HMRC delays are held to be reasonable excuse for a taxpayer's late payment of VAT, a tribunal has ruled. Kate Garcia and Thomas Wilkinson reflect on the verdict

In *ESC Studios Ltd v HMRC* [2025] UKFTT 747, the First-tier Tribunal (FTT) allowed a taxpayer's appeal against a penalty for late paid VAT, holding that HMRC's more than six-month delay in repaying VAT to the taxpayer constituted a reasonable excuse.

Background

The taxpayer filed its VAT return for the quarter ended 31 March 2024, showing a repayment claim of £478,893.36 due from HMRC.

HMRC, not unreasonably, carried out checks in relation to the repayment claim – the checks involved raising various queries (the first of which were raised on 22 May 2024) which the taxpayer promptly answered. The checks also involved a four-hour investigative meeting with the taxpayer. In the meantime, the taxpayer filed their VAT return for the quarter ended 30 June 2024, showing a net VAT liability of £225,639.93; this was due for payment by no later than 7 August 2024.

The taxpayer intended to use the VAT repayment it was expecting from HMRC as a result of the 31 March 2024 return to satisfy the net VAT liability due to HMRC. However, correspondence with HMRC dragged on and the repayment was not forthcoming – indeed, the repayment was only received on 8 November 2024 after HMRC raising, and the taxpayer responding to, further queries.

Once the repayment was received, the taxpayer satisfied its net VAT liability to HMRC. However, this payment was made late and HMRC had already raised a penalty in the sum of £9,025.59 as a result. The taxpayer appealed the penalty on the basis that, in view of the circumstances preceding the payment, either it had a reasonable excuse for the late payment and/or the penalty should be reduced because of the special circumstances the taxpayer faced.

The decision

The FTT first considered the taxpayer's submission that it had a reasonable excuse for the late payment of VAT.

Tax legislation (paragraph 12 of Schedule 26 to the Finance Act 2021) provides that liability for a penalty in respect of a late payment of VAT will not arise where a person has a reasonable excuse for making the payment late. The legislation further provides that an insufficiency of funds will not be reasonable excuse unless attributable to events outside the person's control.

In view of leading authority in this area, the Tribunal considered that whilst the taxpayer did not have a right to the VAT repayment until HMRC's investigation concluded, the VAT repayment represented a significant sum for the taxpayer. The taxpayer had expected that the repayment would be agreed by 7 August, and the taxpayer had taken every reasonable step to facilitate that outcome by assisting HMRC promptly with HMRC's investigations.

The Tribunal considered that the taxpayer had acted “in a way one can reasonably expect of a responsible trader conscious of and intending to comply with its obligations regarding tax” and that it therefore had an objectively reasonable excuse for not paying the June 2024 VAT on time.

Having decided the taxpayer had a reasonable excuse, it was not necessary for the Tribunal to consider whether a reduction for special circumstances should be applied. Nonetheless, the Tribunal considered the point and commented that HMRC had “failed to step back and observe the proverbial elephant in the room” – being a combination of HMRC’s delay, the size of the repayment eventually accepted to be owed to the taxpayer, the taxpayer’s prompt and helpful assistance to HMRC, and the fact the taxpayer had made HMRC aware of the cash-flow difficulties it was suffering as a result of awaiting the VAT repayment.

Ultimately, the Tribunal concluded that they did not consider that Parliament would have wanted a taxpayer to pay a penalty in these circumstances and that, had they not found in favour of the taxpayer on the reasonable excuse point, the Tribunal would have nonetheless reduced the penalty to £0 in view of the special circumstances of the matter.

Comment

Determining whether a taxpayer has a reasonable excuse for the late payment of tax is naturally an extremely fact-sensitive exercise – and this judgment certainly cannot be seen as authority that delay from HMRC will always result in the taxpayer having a reasonable excuse (not least because it is a non-binding FTT judgment).

However, it offers a helpful reminder of the potential breadth of the reasonable excuse provisions and shows that the FTT are prepared to analyse the underlying cause of any delay pragmatically and with rigour to assess whether a reasonable excuse for late payment can be identified.

Perhaps the most surprising takeaway from the judgment is that HMRC pursued the matter to the FTT in the first place. Even if they had won, the facts surrounding the case are such that a published judgment would not have been painted HMRC in a favourable light. This is a reminder that HMRC approach to litigation often starkly contrasts with how commercial parties approach litigation – HMRC are not concerned with morality nor reputational considerations, nor do they fear incurring costs disproportionate to the tax at stake (in this case, £9,025.59).

The consequence is that pragmatism is sidelined and, frequently, justice is only obtained by taxpayers willing to dedicate the cost and time required to appeal to the Tribunal for a sensible outcome.

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