



VAT – have you been over-surcharged?

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A VAT tribunal has unexpectedly quashed a punitive default surcharge imposed on the late submission of a VAT return. Businesses that have been heavily surcharged by HMRC in the last 3-4 years may be able to get a refund.

Since 1986, HMRC has imposed default surcharges on the late submission of VAT returns and/or late payment of VAT. Penalties are calculated automatically, based on a flat percentage of the unpaid VAT. Late is late, and full penalties are applied even if a return or payment is only one day overdue.

The *Energys Holdings UK* case

A large energy company, operating non-standard tax periods, misunderstood the due date of its VAT return and submitted the return and payment just one day late, resulting in a surcharge of over £130,000. In a surprising, yet very welcome decision, the tribunal has ruled that the penalty should be withdrawn, stating that no reasonable court or tribunal would impose such a high penalty for an error of this kind.

What could this mean?

This is the first time that a tribunal has quashed a default surcharge on the grounds of proportionality. There may now be an opportunity for businesses that believe they have been excessively surcharged in the past to seek recovery of those amounts from HMRC.

Matters are at an early stage. The *Energys* decision does not set out clearly quantifiable limits to decide where the line should be drawn between a fair surcharge and an excessive one and HMRC may well appeal against the tribunal's ruling. Despite this, prompt action is advised as this would at least ensure that a potential reclaim does not fall foul of the relevant time limits.

What should I do now?

If your business has incurred substantial surcharges since April 2006, speak to your local PKF VAT advisor to consider the viability of a claim.

For help and advice on VAT claims please get in touch with your local PKF VAT contact at: www.pkf.co.uk/vatteam

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