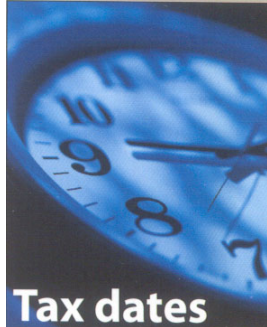


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VAT Default Surcharge - by Request

For the vast majority of yachting businesses that are registered for VAT, there will hardly ever be a need to worry about the exigencies of the VAT penalty regime. All they need is a reasonably effective VAT administrator to file their VAT return on time and pay any VAT due to Customs & Excise. But for those who, by commission or omission, fall short of this administrative aspect of VAT, tidying matters up with the authorities can prove daunting. Hence the need to know the basics. By reader request, we outline below one of the relatively benign instruments often used against the errant VAT trader: the VAT Default Surcharge.



A default occurs where either a VAT return is submitted late or a payment of VAT is made late.

The first time a default occurs Customs issue a default surcharge liability notice. This notice outlines a period of 12 months in which the trader is put on warning.

For example if a trader, call it Yachting Limited, submitted its VAT return for the quarter to 30 June 2005 late, it would receive a default surcharge liability notice covering the 12 months from 30 June 2005. This is the "surcharge period".

A default during this 12-month surcharge period will have two consequences. Firstly the surcharge period is extended to the 12 months from the date of the latest default. So if Yachting Limited again submitted its return for the quarter to 31 December 2005 late, its surcharge period would be extended to 31 December 2006. Secondly a surcharge is calculated.

The amount of surcharge calculated depends on how "naughty" Yachting Limited has been so far in the current surcharge period. Customs look at the number of defaults that Yachting Limited has made during the current surcharge period to determine a percentage according to the table below. The surcharge is this percentage of the unpaid VAT and is paid in addition to the unpaid VAT.

Number of defaults during current surcharge period	% of unpaid VAT
1	2
2	5
3	10
4 or more	15

Customs will not assess a surcharge in three situations. Firstly if a surcharge is less than £400, unless the surcharge is being calculated using the 10% or 15% rate in which case they assess the surcharge, whatever amount it is, or the minimum charge of £30 if more. Secondly Customs will not calculate a surcharge if a nil or repayment return has been submitted late. A nil return is one where the amount of VAT due is exactly nil. And thirdly they will not apply the surcharge if the tax is paid on time although the return itself is submitted late.

However in all of the above situations Yachting Limited has submitted a late return and so there has still been a default. Therefore the surcharge period is extended. So although a late return alone may not increase the rate of surcharge for the next default in the surcharge liability period, the period itself is still extended.

The only way to "escape" from the surcharge period is to submit 4 quarterly returns (or if the trader is submitting monthly returns 12 monthly returns) on time and pay the VAT due on time. The surcharge period then elapses and the trader starts again with a clean sheet.

A default can be disregarded in two situations. The first situation is where the return or the VAT was dispatched to Customs at such a time and in such a manner that it was expected that they would arrive on time. Customs have indicated that posting a return first class at least one working day before the due date is accepted as reasonable.

The second situation is where the trader had a reasonable excuse for his default. For "reasonable excuse" in VAT matters read, "pulling the leg of an elephant"!

Finally, and worth remembering always, the default surcharge cannot be mitigated; it is an all or nothing penalty.

This bulletin is prepared by Moore Stephens Consulting (Isle of Man) Limited. Yachting VAT Note is designed to keep readers abreast of current developments. But it is a general guide only and is not intended to be comprehensive. No liability is accepted for the opinions it contains, or for any errors or omissions. In all cases you should seek professional advice specific to your circumstances.

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