Neutral Citation: [2026] UKFTT 01062 (TC)

Case Number: TC 09959

FIRST-TIER TRIBUNAL
TAX CHAMBER

[Taylor House, London]

Appeal references: TC/2013/07957

EXCISE DUTY – penalty – case remitted from the Upper Tribunal for a new hearing of the appeal – whether the Appellant has a reasonable excuse pursuant to paragraph 20 of Schedule 41 to the Finance Act 2008 – yes – appeal allowed

Heard on: 31 March 2026
Judgment date: 16 July 2026

Before

TRIBUNAL JUDGE KIM SUKUL

Between

B&M RETAIL LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Ben Elliott of counsel, instructed by Kennedys Law LLP

For the Respondents: Joanna Vicary of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. B&M Retail Limited ("the Appellant") appeals against a penalty in the amount of £1,172,340.94 imposed by the Respondents ("HMRC") under paragraph 4 of Schedule 41 to the Finance Act 2008. The penalty arises from the Appellant's acquisition and possession of excise goods in circumstances where it could not be established that UK excise duty had been paid on those goods.

2. The Appellant is a well-known national retailer operating a value-based business model. As part of that model, it purchased alcohol from intermediaries in the wholesale market, including Ruby Trading Company Limited ("Ruby"), with whom it had a long-standing trading relationship. Between 2010 and 2011, HMRC detained and seized a number of consignments of beer and wine supplied to the Appellant by Ruby on the basis that HMRC could not verify that excise duty had been paid. Following a series of assessments for excise duty, most of which have since been resolved between the parties, HMRC imposed the present penalty on the basis that the Appellant had acquired goods on which duty was outstanding.

3. The appeal concerns only the penalty. The Appellant accepts that, for the purposes of the statutory regime, it is to be treated as having held goods on which duty was unpaid. The sole issue is whether, within the meaning of paragraph 20 of Schedule 41, the Appellant had a reasonable excuse for acquiring the goods in those circumstances.

4. The procedural history of this appeal is lengthy. The Appellant's appeal against the penalty was originally dismissed by the First-tier Tribunal in 2023 in *B&M Retail Ltd v HMRC* [2023] UKFTT 00034 (TC) ("the FTT Decision"). That decision was subsequently set aside by the Upper Tribunal in *B&M Retail Ltd v HMRC* [2024] UKUT 00409 (TCC) ("the UT Decision") on the grounds of procedural unfairness, and the case was remitted to this Tribunal for reconsideration by a differently constituted panel. The Upper Tribunal directed that the appeal be determined by reference to the existing findings of primary fact (save where affected by unfairness), together with limited further evidence addressing the Appellant's due diligence procedures on onboarding the supplier.

5. In accordance with those directions, further evidence was served and agreed between the parties, including that the Appellant operated supplier onboarding procedures under which a Supplier Take-On Form was completed by the Appellant and a New Account Form by the supplier, and that such forms were completed in respect of Ruby. However, the contemporaneous documents have not been retained and their contents are unknown.

6. This hearing was initially listed for case management but, in the interests of justice and with the agreement of the parties, proceeded as a final hearing. I have had regard to the preserved findings of fact, the additional agreed evidence, the documentary material contained in the bundles (508-page hearing bundle and 187-page authorities bundle) and the detailed submissions made on behalf of both parties.

7. Having considered all of the evidence and submissions, I find that the Appellant has established a reasonable excuse for the purposes of paragraph 20 of Schedule 41. I have therefore decided to allow this appeal. My findings of fact and conclusions are set out below.

LEGAL FRAMEWORK

8. All statutory references are to the Finance Act 2008 unless stated otherwise.

9. In determining this appeal, I am guided by the summary of the relevant law relating to excise duty penalties as set out in the UT Decision as follows:

7. Paragraph 4 of Schedule 41 to FA 2008 provides for a penalty to be payable by a person acquiring possession of excise goods at a time when payment of duty on the goods is outstanding:

> "*Handling goods subject to unpaid excise duty etc*
>
> 4. (1) A penalty is payable by a person (P) where-
>
> (a) after the excise duty point for any goods which are chargeable with a duty of excise, P acquires possession of the goods or is concerned in carrying, removing, depositing, keeping or otherwise dealing with the goods, and
>
> (b) at the time when P acquires possession of the goods or is so concerned, a payment of duty on the goods is outstanding and has not been deferred.
>
> (2) In sub-paragraph (1)-
>
> "excise duty point" has the meaning given by section 1 of F(No.2)A 1992, and
>
> "goods" has the meaning given by section 1(1) of CEMA 1979."

8. The liability to the penalty is not fixed by reference to the person's own liability to excise duty. Accordingly, HMRC are able to impose penalties on every person in a supply chain who has dealt with the goods even if only one of them is assessed to the duty.

9. No penalty is payable, as a result of paragraph 20 of Schedule 41 to FA 2008, if the taxpayer can satisfy the tribunal on appeal that there is a reasonable excuse for the act or failure giving rise to the penalty. Paragraph 20(1) of that Schedule provides as follows:

> "*Reasonable excuse*
>
> 20. (1) Liability to a penalty under any of paragraphs 1, 2, 3(1) and 4 does not arise in relation to an act or failure which is not deliberate if P satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the act or failure."

10. The approach to determining whether a taxpayer has a reasonable excuse is set out in *Christine Perrin v HMRC* [2018] UKUT 156 (TCC) at [81]:

> "(1) First establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).
>
> (2) Second, decide which of those facts are proven.
>
> (3) Third, decide whether viewed objectively those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT in this context to ask itself the question "Was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"."

11. Section 154(2) of the Customs and Excise Management Act 1979 applies to penalty proceedings: in accordance with the provisions of that subsection, it was, therefore, for B&M to show that excise duty had been paid on the beer and wine concerned.

> 12. In *Euro Wines (C&C) Limited v HMRC* [2018] EWCA Civ 46 the Court of Appeal rejected the submission that, in the case of penalties issued under paragraph 4(1) of Schedule 41 to FA 2008, the reverse burden of proof imposed by that subsection was incompatible with Convention rights under the ECHR. In response to the submission that traders faced great difficulties in rebutting the presumption, the Court of Appeal said:
>
>> "40. What is undeniable is that traders are in a good position, and it should be part of the routine conduct of their business, to undertake due diligence as regards the provenance of goods purchased by them. As the Upper Tribunal said at [42]:
>>
>> "Nevertheless, who is in the best position, when carrying out its own trade, to know the circumstances of that trade. In every case a trader who is at the point of acquiring dutiable goods has the opportunity to take steps in order to satisfy itself about whether duty has been paid before going ahead. A trader who goes ahead without being satisfied knows or ought to know it is at risk. A trader in that situation can avoid the risk entirely by refusing to take such goods."
>>
>> 41. Due diligence is not foolproof. There will be occasions when, notwithstanding the reasonable steps taken by a trader, it transpires that duty has not been paid on goods purchased by him. In such a case, the trader will establish the defence of reasonable excuse."

10. The parties are broadly agreed as to the applicable legal framework. In particular, it is accepted that the penalty arises under paragraph 4 of Schedule 41 where a person acquires excise goods on which duty is outstanding. It is also common ground that the only issue for determination is whether the Appellant has established a reasonable excuse within the meaning of paragraph 20 of that Schedule.

11. The parties also agree that the test for reasonable excuse is objective, applying the approach described in *Christine Perrin v HMRC* [2018] UKUT 156 (TCC) ("*Perrin*"). There is likewise no real dispute as to certain underlying principles of law, including that due diligence is relevant but not determinative, reliance on third parties must be supported by reasonable care, and a trader may avoid risk by declining to transact where it cannot be satisfied as to duty status.

POSITION OF THE PARTIES

12. The dispute between the parties is therefore not one of legal principle, but rather of application.

13. HMRC's case is that the Appellant does not have a reasonable excuse for these purposes and submits that, viewed in the light of the relevant circumstances, the Appellant's conduct in acquiring the goods was not objectively reasonable. They contend that the Appellant is an experienced and sophisticated national retailer operating in the wholesale "grey market" (where genuine goods are sold through indirect or less transparent supply chains) for alcohol, and that this context required a heightened level of caution. They argue that the Appellant proceeded to purchase goods in circumstances where it did not know the upstream source of those goods, where the supplier (Ruby) did not take physical possession of them, and where the Appellant was aware of risks inherent in the supply chain. HMRC places particular reliance on the fact that a number of consignments were detained and seized over a period of time and submits that these events should have acted as clear warning signs which required the Appellant to reconsider its trading relationship with Ruby or to cease trading altogether.

14. HMRC further submits that the Appellant's reliance on matters such as the length of its trading relationship with Ruby, assurances that the goods were duty paid, invoices, contractual

warranties and due diligence procedures based on HMRC guidance are insufficient to establish a reasonable excuse. They argue that such matters amount, at most, to reliance on third parties and do not demonstrate that the Appellant satisfied itself that duty had in fact been paid before acquiring the goods. HMRC emphasises that due diligence, while relevant, is not determinative and that a trader who proceeds without being satisfied as to the duty status of goods knows or ought to know that it is taking a commercial risk which it could avoid by refusing to transact.

15. In summary, HMRC contends that the Appellant made a commercial decision to continue trading in circumstances where there were escalating indicators of risk, and that, taken as a whole, those circumstances do not amount to a reasonable excuse within the meaning of the legislation.

16. The Appellant's case is that it did have a reasonable excuse. It submits that it took all reasonable steps that could have been taken in the circumstances to satisfy itself that duty had been paid on the goods and that the statutory test is met on the facts found by the Tribunal. The Appellant argues that it carried out detailed due diligence procedures in accordance with HMRC's published guidance, including supplier onboarding checks, ongoing commercial checks on each transaction and verification of pricing and supply explanations. It relies on the preserved findings of fact that such checks were undertaken and that there was no evidence of any failure in the Appellant's due diligence procedures. The Appellant further submits that its due diligence process included obtaining assurances from Ruby that the goods were duty paid and conducting sense checks as to whether the pricing of the goods was commercially explicable. The Appellant contends that Ruby was a long-standing and reputable supplier with whom it had traded for a number of years without issue, and in relation to whom there has been no suggestion of involvement in fraud. It submits that there were no indications, at the time of the relevant transactions, that the goods might not be duty paid, and that the existence of seizures did not, in context, point to any systemic issue with Ruby itself.

17. A central feature of the Appellant's case is that it was, in practical terms, impossible to obtain conclusive proof that duty had been paid on beer and wine of the kind in question, particularly in a market involving multiple intermediaries. The Appellant contends that the law requires only that reasonable steps be taken, not that certainty be achieved, and that, on the findings of fact, there was nothing further that it could realistically have done to verify the duty status of the goods. Finally, the Appellant submits that HMRC's case effectively amounts to an assertion that it should not have traded in the wholesale market at all unless it could obtain definitive proof of duty payment. It contends that such a standard is unrealistic and inconsistent with the authorities, and that the correct approach is to assess whether the steps it actually took were objectively reasonable in the circumstances in which it operated.

18. The resolution of this appeal therefore turns on the evaluation of the facts against the agreed legal test, rather than on any disagreement as to the facts or the test itself.

THE EVIDENCE

19. I have considered the following categories of evidence in determining this appeal.

Witness evidence

20. The principal factual evidence relied upon by the Appellant was contained in the witness statements of Mr Simon Arora, the Appellant's Chief Executive Officer, and Mr Guy Nuttall, the Appellant's former senior buyer. Mr Arora gave evidence as to the Appellant's business model and trading practices, the design and purpose of its due diligence procedures, the Appellant's relationship with Ruby and the decisions taken following HMRC interventions and seizures. The evidence of Mr Nuttall addressed the operational detail of the Appellant's purchasing processes, including supplier onboarding and transaction-level checks. On behalf

of HMRC, I had regard to the evidence of Mr Neil Smith, an HMRC officer who reviewed the case and explained HMRC's position.

Admissibility of further witness evidence

21. HMRC also served a further witness statement from Mr Smith following remittal, in which he acknowledged HMRC's acceptance of the additional evidence relating to the remitted factual issues but maintained HMRC's position that the Appellant remained liable to a penalty.

22. At the outset of the hearing, I raised with the parties whether it was necessary for me to admit or rely upon this further witness evidence, given the limited scope of the remittal. I heard submissions from both parties on that issue. It was submitted on behalf of HMRC that the purpose of the statement was to address the effect of the additional evidence and, in particular, to maintain the position that even if the relevant forms had been completed this would not have altered HMRC's conclusion.

23. In my judgment, that evidence does not assist in resolving any issue of fact that I am required to determine. The matters addressed in the witness statement do not go to a disputed question of primary fact but instead amount to a commentary on the significance of the evidence and the ultimate issue in this appeal. The question of whether the Appellant had a reasonable excuse is a matter for the Tribunal to determine, applying the statutory test to the facts as found. It is not a matter on which opinion evidence from an HMRC officer can properly assist. In those circumstances, I concluded that the further statement of Mr Smith did not constitute relevant factual evidence within the scope of the remittal and that no assistance would be gained from admitting it. Accordingly, I declined to admit or place any reliance on that further witness evidence.

Documentary evidence

24. The Tribunal was referred to a substantial body of contemporaneous documentary material, including supplier onboarding documentation (such as the Supplier Take-On Procedures Form and New Account Form), purchase orders, sales order proposals and invoices, contractual terms and conditions of purchase, internal correspondence and transaction records relating to purchases from Ruby.

25. I also considered the documentary evidence relating to HMRC's investigation, including HMRC visit reports, seizure notices and related documentation, correspondence between HMRC and the Appellant, and material underlying the excise duty assessments and penalty decision.

Preserved findings and agreed evidence

26. In accordance with the directions of the Upper Tribunal, I have had regard to the preserved findings of fact from the earlier FTT decision, except where affected by the procedural unfairness identified by the Upper Tribunal.

27. I have also taken into account the additional agreed evidence following remittal, including that the Supplier Take-On Procedures Form was completed by the Appellant and the New Account Form was completed by the supplier.

FINDINGS OF FACT

28. In evaluating the evidence, I have attached particular weight to contemporaneous documents, unchallenged factual evidence given by the Appellant's witnesses and those matters which were common ground or agreed between the parties. I have considered the evidence as a whole in order to determine the factual matrix against which the legal test of reasonable excuse falls to be applied. Having considered the evidence before me, including the

preserved findings of fact, the witness evidence, and the contemporaneous documents, I make the following key findings.

The business

29. The Appellant is a large national retailer selling a wide range of consumer goods, including alcoholic drinks, although alcohol represented only a small proportion of its overall business at the relevant time.

30. The Appellant does not operate an excise warehouse and was therefore required to procure all alcoholic goods on a duty-paid basis.

31. A key feature of the Appellant's business model is sourcing products at competitive prices, often through intermediaries in the wholesale market, where goods may pass through multiple traders before reaching the retailer.

Due diligence procedures

32. At the relevant time, the Appellant had in place structured supplier onboarding and transaction level due diligence procedures, which I accept were generally followed by its buying teams.

33. Those procedures included meeting potential suppliers and making enquiries as to the nature and history of their business, completion of a supplier onboarding process, including the use of a Supplier Take-On Procedures Form and a New Account Form, verification of company details and identities, consideration of the supplier's pricing and explanation of supply and obtaining assurances that goods were UK duty paid before orders were concluded.

34. In relation to individual transactions, the Appellant's processes involved receiving and reviewing offer details from suppliers, requesting confirmation that goods were duty paid, reviewing sales order proposals and purchase orders, requiring invoices to state that goods were supplied duty paid and checking invoices against purchase orders and supplier records before payment.

35. The Appellant's standard terms and conditions of purchase required suppliers to comply with all legal requirements, including excise duty obligations, and placed the financial risk of non-compliance on the supplier.

36. I find that these procedures were consistent with the type of due diligence described in HMRC guidance at the time and were designed to ensure, so far as practicable, that goods were duty paid.

Relationship with Ruby

37. The Appellant had an established trading relationship with Ruby dating back to approximately 2005. Ruby acted as an intermediary supplier. They did not generally take physical possession of the goods they supplied and, consistent with industry practice, did not disclose the identity of their own suppliers.

38. The Appellant understood that Ruby sourced goods from the wholesale market and supplied them on a duty-paid basis. The Appellant relied on assurances from Ruby, statements on sales documents that goods were "UK duty paid" and the absence of any material price anomalies compared with other suppliers.

39. I find that the Appellant did not know the upstream supply chain and that it was commercially unrealistic for them to do so.

HMRC visits, seizures and the Appellant's responses

40. On 29 March 2010, HMRC visited the Appellant and detained consignments of beer and wine supplied by Ruby and another supplier. Those goods were subsequently seized as HMRC was unable to verify that excise duty had been paid.

41. Following this first seizure, Ruby reimbursed the Appellant for the goods and provided assurances that duty had been paid. The Appellant continued trading with Ruby.

42. On subsequent visits in November 2010 and March/April 2011, HMRC again detained and seized consignments supplied by Ruby on the basis that duty payment could not be verified. Again, the Appellant recovered its losses from Ruby and Ruby continued to provide assurances that the goods were duty paid.

43. I find that the Appellant's decision to continue trading was influenced by its longstanding relationship with Ruby, the fact that it had been financially protected, and the absence of any clear direction from HMRC to cease trading with Ruby.

Events leading to cessation of trade with Ruby

44. On 23 November 2011, HMRC conducted a further visit and detained a substantial quantity of goods supplied by Ruby.

45. At that stage, HMRC indicated that a wider issue existed in relation to Ruby supplies and that duty payment could not be verified across multiple consignments.

46. Following this third intervention, the Appellant placed a stop on Ruby's account and ceased further trading with Ruby thereafter.

47. I find that this decision reflected a loss of confidence in Ruby after repeated interventions, rather than any earlier awareness that duty had not been paid.

Nature of the underlying issue

48. HMRC was unable, despite extensive investigation, to establish conclusively whether excise duty had been paid on the relevant goods or to identify the precise point in the supply chain at which duty had been lost.

49. The issue arose because there was a break in the supply chain, often described as a "missing trader", meaning that the provenance of the goods could not be verified.

50. I find that the Appellant was not involved in, and had no knowledge of, any such upstream irregularity.

Overall findings

51. Having regard to all of the matters set out above, I find that:

(1) the Appellant operated structured and consistent due diligence procedures;

(2) it took active steps to ensure that goods were supplied on a duty-paid basis;

(3) it relied on supplier assurances, documentation and commercial checks; and

(4) it did not know, and could not reasonably ascertain, whether excise duty had been paid on the goods in question.

52. I further find that, in the context of the wholesale market in which the Appellant operated, it was not realistically possible for the Appellant to obtain definitive proof of duty payment for each consignment beyond the steps it in fact undertook.

DISCUSSION

53. The issue I must determine is whether the Appellant has established a reasonable excuse within the meaning of paragraph 20 of Schedule 41. The applicable approach is not in dispute. I must therefore identify the relevant facts, assess those facts, and then determine whether, viewed objectively and in context, they amount to a reasonable excuse.

54. I have accepted the Appellant's evidence regarding its due diligence procedures, the manner in which they were applied in practice and the Appellant's response to the seizures. I have found that the Appellant operated structured and considered procedures designed to ensure that goods were acquired on a duty-paid basis. Those procedures were applied in the case of Ruby. I accept that reliance on supplier assurances alone would not be sufficient. However, in this case such reliance formed part of a wider framework of due diligence and commercial checks, and must be evaluated in that context.

55. Further, the evidence that the Appellant could not obtain definitive proof of duty payment beyond the steps it had taken was not materially challenged. I also take into account that HMRC's witness was unable to identify any specific additional steps which could realistically have been taken and that HMRC was unable to establish whether duty had been paid. The difficulty lay in the inability to trace the upstream supply chain. That was a feature of the market in which the Appellant operated and not a consequence of any failure on its part.

56. HMRC's central submission is that, irrespective of due diligence, the Appellant acted unreasonably in continuing to trade with Ruby following repeated detentions and seizures, and that those events constituted clear warning signs requiring the Appellant to cease trading. I have considered that submission carefully but I do not accept it.

57. I accept that, in some circumstances, repeated detentions and seizures may be such that a reasonable trader would be expected to cease trading, even in the absence of definitive proof that duty had not been paid. Whether that point has been reached is, however, a matter of evaluation in the light of all the circumstances. In the present case, I am not satisfied that the events relied upon by HMRC were of such a character or clarity as to require the Appellant to withdraw from trading at an earlier stage than it did.

58. In my judgment, that submission does not sufficiently take account of the context in which the Appellant was operating or the way in which those events were understood at the time. The evidence does not establish that the seizures demonstrated that duty had not been paid. Rather, they demonstrated that HMRC could not verify the position. That is, in my view, a materially different proposition. In particular, the fact that HMRC was unable to verify the duty position does not, without more, compel the conclusion that goods were not duty paid. It is relevant instead to what a reasonable trader would have understood from those events at the time. On the evidence before me, the seizures indicated uncertainty in the supply chain rather than clear evidence of non-payment. Prior to November 2011, there is no evidence that HMRC indicated that there was a wider or systemic issue affecting Ruby's supplies generally. I consider that distinction to be material in assessing how a reasonable trader would have understood and responded to the earlier seizures.

59. The Appellant did not disregard those events. I find that it adopted a measured and graduated response. It raised the issue with its supplier, obtained assurances, and recovered the cost of seized goods. It continued to trade for a period, but it did so in circumstances where it had no basis for concluding that the goods were not duty paid, where it had protected its financial position, and where it had been given no clear direction by HMRC to cease trading. The absence of such guidance is not determinative, but it is relevant to the assessment of what a reasonable trader in the Appellant's position would have understood the position to be. Ultimately, when the position escalated and its confidence in the supplier was undermined, the

Appellant ceased trading. I consider that sequence of events to be significant. It demonstrates that the Appellant did not simply ignore risk but responded to it over time.

60. I am mindful that the test is not whether the Tribunal would itself have taken a different course, but whether the Appellant's conduct fell within the range of responses open to a reasonable trader in those circumstances. Put another way, the question is not whether a different trader might have ceased trading earlier, but whether the Appellant's conduct fell outside the range of responses open to a reasonable trader.

61. In addressing that question, I have taken into consideration all of the circumstances in which the Appellant found itself at the relevant time, including that no further practical steps were available to verify the duty status of the goods, that HMRC were unable to establish the duty position and did not advise the Appellant to cease trading with Ruby, that the Appellant recovered the financial cost of seizures from Ruby, and that the market in question involved multi-layered supply chains in which upstream visibility was limited. I accept that the Appellant was taking a commercial risk in continuing to trade in those circumstances. However, the existence of such a risk does not, of itself, render its conduct unreasonable. The question is whether, in light of the steps taken and the information available, the level of risk assumed was such as to make its conduct objectively unreasonable. In my judgment it was not.

62. I agree with HMRC's submission that a trader can always avoid risk by refusing to transact. That is correct as a matter of principle, but it does not follow that a failure to withdraw from trade in the face of uncertainty is necessarily unreasonable. It seems to me that to adopt HMRC's position in this case would be to impose a standard approaching certainty in circumstances where certainty was not achievable. I do not consider that is what the legislation requires.

63. Taking all of these matters into account, I find that the Appellant took such steps as were reasonably open to it, that it acted in accordance with a rational and commercially coherent approach to the information available, and that its continued trading for a limited period formed part of a graduated and considered response to developing circumstances.

CONCLUSION

64. Applying the approach in *Perrin*, I am satisfied that the relevant facts relied upon by the Appellant are established. Viewed objectively, those facts do amount to a reasonable excuse for the purposes of paragraph 20 of Schedule 41. In reaching that conclusion I have taken into account the Appellant's experience as a large commercial retailer, the nature of the market in which it operated, and the practical limits on what it could realistically have done.

65. I also consider when, if at all, any reasonable excuse ceased. In my judgment, the Appellant's reasonable excuse continued until the point at which it ceased trading with Ruby following the intervention in November 2011. At that stage, the accumulation of events led the Appellant to withdraw from trading. On the evidence before me, I do not consider there to be a proper basis to conclude that the reasonable excuse ceased at an earlier point.

66. Asking the statutory question directly, I conclude that what the Appellant did, and the decisions it took at the relevant times, were objectively reasonable for this taxpayer in those circumstances. It follows that the Appellant has established a reasonable excuse and the penalty cannot stand.

67. I allow the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

68. 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.

Release date:
16 July 2026