



**TC01561**

**Appeal number: TC/2010/07651**

*ROAD FUEL – Scale charge – Appellant did not keep contemporary mileage records – Whether subsequent evidence of proportion of business to private use can be used to displace scale charge assessment – VATA 1994 s.55*

**FIRST-TIER TRIBUNAL**

**TAX**

**STU'S FRUIT & CONVENIENCE STORE**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: SIR STEPHEN OLIVER QC  
JOHN ROBINSON**

**Sitting in public in Norwich on 23 September 2011**

**The Appellant in person**

**Bruce Robinson for the Respondents**

## DECISION

1. Mr S J Jeffries, who trades as Stu's Fruit and Convenience Store, appeals against an assessment for under-declared VAT. The issue in this appeal is confined to Mr Jeffries' liability to "fuel scale charges". HMRC say the liability is to the full amount of £620. Mr Jeffries contends that the liability should be confined to one-fifth of that amount, i.e. £124.

2. Mr Jeffries' business is that of a fruit and convenience store in Norwich. He has been registered for VAT for some twenty-three years.

3. In the course of a visit in March 2010, the HMRC officer (Mrs Diane McKie, who provided evidence at the hearing) observed that Mr Jeffries had not been maintaining records in support of his claims to input tax on motoring fuel. She then calculated the scale charges for the private element of motoring fuel and notified these to Mr Jeffries. Mr Jeffries disagreed. Mrs McKie assessed accordingly applying the scale charge which is a means of accounting for output tax where motoring fuel has been bought by a business and is then put to private use.

4. The matter was reviewed and upheld.

5. The assessment covered other matters (such as a £320 liability in respect of certain reduced rate sales and retail scheme differences). Mr Jeffries' appeal does not extend to those.

6. The assessment has been made in accordance with the terms of VAT Notice 700/64. Paragraph 8 of that Notice covers "Road fuel bought for business". The rest of paragraph 8 reads as follows:

"8.1 My business pays for road fuel, what can I do about the VAT incurred?"

There are four options you can:

- (a) claim all of the VAT because 100% is used for business purpose (see paragraph 8.2);
- (b) claim all VAT charged and apply the fuel scale charge (see paragraph 8.2);
- (c) use detailed mileage records to separate your business mileage from private mileage (see paragraph 8.3); or
- (d) claim no input tax (see paragraph 8.6).

8.2 In what circumstances can I claim all the VAT on road fuel?

You can claim all the VAT on road fuel if your business funds fuel bought for business motoring only or both business and private motoring so long as you apply the appropriate fuel scale charge ... .

8.3 In what circumstances do I need to separate my business mileage from private mileage?

5 If your business funds both business and private motoring and you wish to recover some of the VAT, but do not want to apply the fuel scale charge ... you must keep detailed mileage records.”

Paragraph 9 covers Scale Charges. It contains this passage:

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“9.1 What is a scale charge?

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A scale charge is a way of accounting for output tax on road fuel bought by a business that is then put to private use. If you use the scale charge, you can recover all the VAT charged on road fuel without having to split your mileage between business and private use. ...”

Paragraph 9.2 directs the user to the fuel scale charge tables.

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7. When the visit took place Mr Jeffries provided no mileage records because he had none. Since then he has compiled a schedule to show how, in a particular week (after the visit), four-fifths of use was for business purposes. And he has produced a statement signed by customers and associates to the effect that he never takes a holiday. The business use happens when on every day (except Sundays) the car is used to collect goods from markets and wholesalers; on some days four such trips take place. The private use happens when, on the way to or from the wholesaler, Mr Jeffries visits his mother. That pattern, said Mr Jeffries, is typical of what has always happened. I did not understand that to have been disputed by HMRC. Their problem was that there were no records as regards the periods to which the assessment related.

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8. Since the brief hearing in Norwich, we have tried to work out for ourselves what the black letter of the UK law (as distinct from the statement of practice in Notice 700/64) says. As we understand the law, the scale charge imposed by section 55 and 56 of VAT Act 1994 (VATA) is mandatory in the present situation. (Whether it is compliant with EC law is a matter that we cannot, without much fuller representation from the parties, comment on.)

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9. The normal rule is found in section 26(1) of VATA which entitles a taxpayer to credit for input tax in respect of goods (and motoring fuel use a form of “goods”) and services used by him in the course or furtherance of his business. By section 24(5) an apportionment is required where goods and services are used partly for business and partly for private purposes; only the tax apportioned to the goods or services supplied for business purposes counts as input tax in applying section 26(1). If therefore the taxpayer can satisfy HMRC (or the Tribunal on appeal) that, for example, the goods supplied to him are, as to the apportioned part, used for his

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business, he qualifies for relief. But, as we read it, section 55(5)-(7) overrides the normal rule.

10. Section 55 applies in the present situation where in a prescribed accounting  
5 period fuel is supplied to a taxable person in the course of his business (such as to Mr  
Jeffries in the course of his convenience store business) and that fuel is then  
appropriated by him for private use in his own vehicle. Fuel will have been  
appropriated “for private use” when consumed in making a private journey to, for  
10 example, Mr Jeffries’ mother; and if that occurs, there will be two consequences for  
VAT purposes. The first consequence (in subsection (5)) is to give the taxable person  
(such as Mr Jeffries) full relief for input tax on his purchase of the fuel  
“notwithstanding that the fuel is not used or to be used for the purposes of business  
carried on by the taxable person”; and subsection (5) goes on to direct that the  
15 apportionment provisions in section 24(5) have no application. Thus the taxable  
person, such as Mr Jeffries, gets full relief for input tax for purchase of the fuel  
despite section 26(1) which would otherwise operate to reduce or exclude his  
entitlement to input tax.

11. The other consequence of the appropriation to private use is an output tax  
20 charge. The “consideration” on which that output tax charge is calculated is  
determined by reference to the scale introduced by section 57. Section 56(6) directs  
that the output tax charge is imposed on the basis that, at the time when the fuel (to be  
appropriated for private use) has been put into the tank of the taxable person’s  
vehicle, the taxable person is to be treated as supplying it, in the course of his  
25 business, to himself in his private capacity for the “consideration” determined from  
the scale. That is the basis on which the present assessment has been made.

12. Because sections 56 and 57 of VATA override sections 24-26, option (c) in  
30 paragraph 8.1 of Notice 700/64 appear to be based on an administrative concession  
rather than on the strict application of the law. That at least is the position where the  
vehicle is owned and used for a non-business purpose by an individual such as Mr  
Jeffries, HMRC are entitled to manage the system in a way that ensures the collection  
of a proper amount of tax. They have done so in situations like the present by  
35 permitting an individual taxable person to take himself outside the scale charge  
regime, but only if he keeps detailed mileage records.

13. Mr Jeffries, as noted, had not kept detailed mileage records. He contended  
that for someone in his position to do so would have been disproportionate; and  
40 having regard to his absolutely predictable weekly routine, records would have added  
nothing. What is more, he says, Notice 700/64 says nothing about detailed mileage  
records having to be kept at the time when the car is actually used.

14. We think that the HMRC officer acted correctly and according to the book in  
insisting on the assessment being based on the scale charge. There were no detailed  
45 mileage records available to her when she took the decision to assess. She had to  
apply sections 56 and 57 VATA. For that reason we have to dismiss the appeal.

15. We do not know for sure whether Mr Jeffries would have been better off for VAT purposes if the assessment had been based on his own figures leading to a four-fifths business and one-fifth private apportionment. We assume he would (though it would not necessarily produce a result that only one-fifth of £620 is chargeable). We have no reason to doubt that the figures on the statement he has produced are reliable and can accurately be applied to the periods in question here. They were not challenged. This may therefore be a case in which HMRC can use their administrative discretion and bring the amount of tax into line with Mr Jeffries' proportions. That, however, is for HMRC and not for us.

16. Appeal dismissed.

17. 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.

**SIR STEPHEN OLIVER QC**  
**TRIBUNAL JUDGE**  
**RELEASE DATE: 9 November 2011**