



**TC03949**

**Appeal number: TC/2013/03059**

*VAT – deregistration - fall in Appellant’s sales to below the threshold -  
application to deregister - retrospective deregistration whilst entitled but not  
liable to be registered – no - appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LINCOLN SMITH**

**Appellant**

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE ANNE SCOTT  
MRS GILL HUNTER**

**Sitting in public at London on Monday 11 August 2014**

**Mr A Yhearm of Appleton Richardson & Co, for the Appellant**

**Mr P Rowe, Officer of HMRC, for the Respondents**

## DECISION

### Background

5 1. This is an appeal against HMRC's decision dated 23 August 2012, confirming the decision dated 12 June 2012, to the effect that the date for deregistration for VAT was 12 January 2012. There is an error in the later decision in that the date quoted is 13 January 2012 but that is patently a mistake. The reasoning in both decisions is the same.

### 10 The issue

2. The appellant's stance is that the deregistration date should have been 31 March 2008 because, as at that date, the appellant's turnover had fallen below the registration limit. He did not charge VAT or account for VAT after that date.

15 3. HMRC do not dispute that his turnover had fallen below the limit but argue that because he continued to make taxable supplies he therefore had an entitlement to be registered. Accordingly, the earliest possible date for deregistration is the date that the application for deregistration was received, namely 12 January 2012.

### Facts

4. The facts are not in dispute. The material core facts are:-

20 (a) Following HMRC investigations, the appellant was registered for VAT with effect from 1 August 2001. The business activity is a wine bar.

(b) He continued to make taxable supplies. In or about early 2008 the value of those taxable supplies fell below the threshold for VAT purposes. He did not deregister for VAT and as he had not paid his then accountant that accountant did not do so for him.

(c) The appellant has not accounted for VAT since 2008.

(d) Estimated Assessments were raised for outstanding VAT and that resulted in the issue on 22 March 2012 of a County Court Judgement against the appellant to recover the debt, which is of the order of £83,519.95.

30 (e) The claim in that case was issued on 4 January 2012 and a VAT 7 application was received by HMRC on 12 January 2012.

### The Legislation

5. Section 13 Schedule 1 Value Added Tax Act 1994 sets out the legislation on cancellation of registration and reads as follows: –

35 “(1) Subject to sub-paragraph (4) below, where a registered person satisfies the Commissioners that he is not liable to be registered under this schedule, they shall, if he so requests, cancel his registration with effect from the day on which the request is made or some such later date as may be agreed between them and him.

40 (2) Subject to sub-paragraph (5) below, where the Commissioners are satisfied that a registered person has ceased to be registrable, they may cancel his registration from

the day on which he so ceased from such later date as may be agreed between them and him.

5 (3) Where the Commissioners are satisfied that on the day on which a registered person was registered he was not registrable, they may cancel his registration with effect from that day.

(4) The Commissioners shall not under sub-paragraph (1) above cancel a person's registration with effect from any time unless they are satisfied that it is not a time when that person would be subject to a requirement to be registered under this act.

10 (5) The Commissioners shall not under subparagraph (2) above cancel a person's registration with effect from any time unless they are satisfied that it is not a time when that person would be subject to a requirement, or entitled, to be registered under this act.”

### **Case law**

15 7. We were referred to three cases by HMRC, namely *LaRoche v HMRC* 2013 UKFTT 356, *Olivers Village Cafe Ltd v HMRC* 2013 UKFTT 386 and *Ilkley Dress Agency v HMRC* 2011 UKFTT 693. They were of limited assistance since each was decided on its own facts.

### **The Arguments**

20 *The appellant*

8. Mr Yhearm argued that the appellant had been in dispute with his former accountant and that that was the cause of the failure to deregister. He had not operated his business accounting for VAT since 2008 and had made many purchases from non-registered traders: any assessment to VAT after March 2008 would severely penalise him and cause considerable hardship. He had had numerous trading problems. The appellant had been very stressed by the whole matter and the delay in coming to appeal. He asked that the Tribunal exercise discretion and backdate the deregistration. He also argued that there had been conflicting information from HMRC about the assessments and he and his client did not have the underlying detail for the County Court Judgement. Lastly, he argued that since there had been a final return lodged he was now unable to lodge the outstanding returns, which would reduce the estimated assessments that formed the basis for that Judgement.

### *HMRC's argument*

35 9. HMRC say that the matter is very simple. As indicated in paragraph 3 above the appellant continued to make taxable supplies in the period from April 2008 to January 2012 so he remained entitled to be registered for VAT. Accordingly in terms of section 13 the earliest possible date for deregistration was the date on which the application was received being 12 January 2012.

### **Discussion**

40 10. We explained to Mr Yhearm that the Tribunal's jurisdiction was limited to finding the facts relating to the decision under appeal and applying the relevant law. The

Tribunal does not have discretion. The question of delay in the matter coming to appeal was not within our jurisdiction.

11. We could not consider the trading conditions, stress or hardship and nor did we have any jurisdiction in regard to the estimated assessments, the County Court  
5 Judgement or the submission of the outstanding returns.

12. The fact that he was in dispute with his then accountant is not a factor that can be taken into account. However, we noted that it was stated that he had failed to communicate with the accountant and nor had he paid her. His remedy, if any, lies with that accountant.

10 13. The only issue for the Tribunal is whether or not, on the facts found, the law has been correctly applied by HMRC.

14. The facts are as set out in paragraph 4 above. Clearly although the appellant may well not have been *liable* to be registered from a date in 2008, nevertheless he remained *entitled* to be registered because he continued to make supplies.  
15 Accordingly, section 13(1) applies and the cancellation of the registration can only take effect from the day on which the request is made (12 January 2012) or a later date. He cannot benefit from the provisions of section 13(2) because of the provisions of section 13(5). Simply put, because he was entitled to be registered, he was, in the words of the section “registrable”. Therefore, section 13(3) does not apply either.

20 15. For all these reasons the appeal fails and the decision that the effective date for deregistration is 12 January 2012 is confirmed

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  
25 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.

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**ANNE SCOTT  
TRIBUNAL JUDGE**

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**RELEASE DATE: 21 August 2014**