



TC04929

Appeal number: TC/2015/03228

VALUE ADDED TAX – Invoices for services dated more than 6 months before date of registration – whether registration date correct – para 9 Sch 1 VATA 1994 – held no, should have been earlier date – appeal allowed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LEPTON SERVICE STATION LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE RICHARD THOMAS
PHILIP JOLLY**

Sitting in public at Phoenix Ct, Bradford on 25 January 2016

Mr Raza Hussain of Aabacus Accountants & Consultants Ltd for the Appellant

Mr John Nicholson, Presenting Officer, for the Respondents

DECISION

1. This was an appeal against a refusal by the Commissioners for Her Majesty's
5 Revenue and Customs ("HMRC") to allow two amounts of input tax to be credited in
the appellant's first VAT return. At least that is what Mr Nicholson, representing
HMRC, informed us was what he thought to be the only issue and what he had
prepared for. He said this when Mr Hussain, in opening for the appellant, put forward
evidence and arguments in relation to HMRC's refusal to backdate the appellant's
10 registration. Mr Nicholson argued that we should not decide the backdating issue as it
was not mentioned in the grounds of appeal to the Tribunal.

2. We observed from our reading of the papers before the hearing that it was
reasonably obvious that the appellant wished to appeal against the refusal to backdate
and that they had written to the Tribunal saying as much. It seems that this
15 correspondence with the Tribunal may not have been passed to HMRC. We decided
that we would hear arguments on the backdating, but we would direct that the
appellant must give details to HMRC of the cases he was quoting from or using in
support of this aspect of his appeals and we directed that Mr Nicholson was to have
30 days to consider the cases and the appellant's arguments and to let us have any
20 comments.

3. We also allowed Mr Nicholson a similar time to consider a point put to the
parties by the Tribunal about the correct date of registration, which if correct would
decide the appeal in the appellant's favour.

4. In the event rather than comply with the directions HMRC notified the Tribunal
25 that it accepted the Tribunal's point as correct and was withdrawing its opposition to
the appeal, which we have taken to be a withdrawal of its case under Rule 17 of the
Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (SI 2009/273).
Although the normal outcome where one party withdraws its case is that the appeal is
allowed or dismissed automatically without a formal decision, in this case we have
30 issued a decision as the point that we raised and which HMRC have accepted as
correct seems to us to be an important one especially as HMRC's forms and their
accompanying notes relating to registration for VAT do not seem to fully follow or
correctly explain the law. It is important that they should, as the form concerned,
VAT 1, is prescribed by law as the form on which the application for registration must
35 be made. For that reason we have set out the facts of the case and our reasoning on
the matter we raised with HMRC. It is not now necessary for us to consider the
backdating issue raised by the appellant.

Facts

5. The matters set out in §§6 to 19 below are undisputed and they are our findings
40 of fact. They derive from the bundle of documents prepared by HMRC and from the
oral evidence of Mr Tariq Nazir, the shareholder and director of the appellant, which
was not challenged.

6. The appellant was formed to acquire a disused petrol station in the village of Lepton near Huddersfield. Substantial work was required to bring the site back to a fit state to be opened to the public, involving major construction work by a contractor such as installing pipes underground, relaying the concrete base of the site etc. A substantial number of invoices were paid in respect of this work.

7. In the autumn of 2013 (there was some dispute about the date) the appellant submitted a VAT registration application on Form VAT 1, requesting a registration date of 1 November 2013. A request for information was issued by HMRC on 11 November 2013. A follow up letter was issued on 29 November 2013.

8. On 20 January 2014 Aabacus Accountants & Consultants Ltd (“Aabacus”) informed HMRC that the letter of 29 November had not been received as it was addressed to the site. HMRC wrote on 24 February 2014 to say that they would not re-open the application, but this letter was returned to HMRC

9. On 20 February 2014 the appellant submitted another Form VAT 1. This was before the work on the petrol station had been completed and any supplies made.

10. In the outlined section on page 2 headed “Taking over a going concern” in “About your VAT registration”, Item 9 asked “Are you registering for VAT because you have taken over ... a business ... as a going concern?”. There was no tick in either the Yes or No boxes. There was an answer to the question in item 10 “What is the previous owner’s name?” which was “Tariq Nazir”. The question in item 12 “Do you want to keep the previous owner’s VAT number?” was answered “No”.

11. Page 3 of the VAT 1 form has an outlined section (item 13) for “Voluntary Registration” and another outlined section for “Compulsory Registration”. The only entry was in the “Voluntary Registration” section. The appellant had not answered either “Yes” or “No” to the question in item 13 “Are you applying for voluntary registration because your turnover is below the registration threshold?”, nor had he ticked any of the boxes relating to why he was asking to be registered. But he entered in answer to the question in item 13 “What date do you wish to be registered from?” “01 03 2014”.

12. The form was signed by Mr Nazir and dated 20 February 2014. The stamps on the form show it was received by HMRC on 25 February 2014.

13. On 7 March 2014 HMRC sent a letter to the appellant. This requested the answers to a number of questions, and we set out below the questions and the answers.

- (1) Q1. Have you taken over all or part of a registered business? A. No
- (2) Q2a. Please confirm the date you wish to be voluntarily registered from ... A. 1. 4. 2014.
- (3) Q2b. Please tick one the boxes below:

Your turnover is below the current registration threshold but you want to register now. A Yes

You intend to make taxable supplies in the future: A Yes

5 (4) Q3. Please provide the National Insurance number of the ... director ... making the application. A No answer.

14. The form was signed by Mr Nazir on 18 March 2014 and stamped as received by HMRC on 20 March 2014.

10 15. Mr Nazir said in evidence that he had completed the replies without reference to Mr Hussain or his firm (Aabacus) as he was not available on the day and Mr Nazir thought he needed to return the form quickly. He did not know why he entered 1 April 2014 as the start date rather than 1 March which was on the VAT 1.

16. On 29 August 2014 the appellant sent in its first VAT return for the period 07/14. It showed a net repayment of £75,685.79.

15 17. On 18 September HMRC issued a request for copy invoices in support of the return.

20 18. On 23 September 2014 Victoria Turnbull, an officer of Revenue and Customs, informed Aabacus that two invoices were dated more than six months before the registration date and as they related to services, rather than goods, the input tax was not eligible for reclaim. The amount of the input VAT in question was £7,212.00 made up of £7,000 to a builder where the invoice was dated 18 September 2013 and £212 to Northern Powergrid on an invoice dated 27 September 2013.

19. Mr Nazir explained that the £212 was on an invoice for the supply of electricity and that the £7,000 was on the first of four invoices in round sums designed to cover all the works on the site carried out by the contractor.

25 **Law**

20. The law on registration in relation to taxable supplies is found in Schedule 1 to the Value Added Tax Act 1994 (“VATA”), the relevant parts of which are:

Liability to be registered

30 1—(1) Subject to sub-paragraphs (3) to (7) below, a person who makes taxable supplies but is not registered under this Act becomes liable to be registered under this Schedule—

(a) at the end of any month, if the person is UK-established and the value of his taxable supplies in the period of one year then ending has exceeded £82,000; or

35 (b) at any time, if the person is UK-established and there are reasonable grounds for believing that the value of his taxable supplies in the period of 30 days then beginning will exceed £82,000.

5 (2) Where a business, or part of a business, carried on by a taxable person is transferred to another person as a going concern, the transferee is UK-established at the time of the transfer and the transferee is not registered under this Act at that time, then, subject to sub-paragraphs (3) to (7) below, the transferee becomes liable to be registered under this Schedule at that time if—

- (a) the value of his taxable supplies in the period of one year ending at the time of the transfer has exceeded £82,000; or
- 10 (b) there are reasonable grounds for believing that the value of his taxable supplies in the period of 30 days beginning at the time of the transfer will exceed £82,000.

Notification of liability and registration

15 5—(1) A person who becomes liable to be registered by virtue of paragraph 1(1)(a) above shall notify the Commissioners of the liability within 30 days of the end of the relevant month.

(2) The Commissioners shall register any such person (whether or not he so notifies them) with effect from the end of the month following the relevant month or from such earlier date as may be agreed between them and him.

20 (3) In this paragraph “the relevant month”, in relation to a person who becomes liable to be registered by virtue of paragraph 1(1)(a) above, means the month at the end of which he becomes liable to be so registered.

Entitlement to be registered

25 9—Where a person who is not liable to be registered under this Act and is not already so registered satisfies the Commissioners that he—

- (a) makes taxable supplies; or
- (b) is carrying on a business and intends to make such supplies in the course or furtherance of that business,

30 they shall, if he so requests, register him with effect from the day on which the request is made or from such earlier date as may be agreed between them and him.

35 17—Any notification required under this Schedule shall be made in such form and manner and shall contain such particulars as may be specified in regulations or by the Commissioners in accordance with regulations.

21. The law on pre-registration input tax is in regulation 111 of the Value Added Tax Regulations 1995 (SI 1995/2518) (“the VAT Regulations”):

111 Exceptional claims for VAT relief

40 (1) Subject to paragraphs (2) and (4) below, on a claim made in accordance with paragraph (3) below, the Commissioners may authorise a taxable person to treat as if it were input tax—

- (a) VAT on the supply of goods or services to the taxable person before the date with effect from which he was, or was required to

be, registered ... for the purpose of a business which either was carried on or was to be carried on by him at the time of such supply or payment,

...

5 (2) No VAT may be treated as if it were input tax under paragraph (1) above—

(a) in respect of—

(i) goods or services which had been supplied, or

10 (ii) save as the Commissioners may otherwise allow, goods which had been consumed,

by the relevant person before the date with effect from which the taxable person was, or was required to be, registered;

15 (b) ... in respect of goods which had been supplied to ... the relevant person more than 4 years before the date with effect from which the taxable person was, or was required to be, registered;

(c) in respect of services performed upon goods to which subparagraph (a) or (b) above applies; ...

20 (d) in respect of services which had been supplied to the relevant person more than 6 months before the date with effect from which the taxable person was, or was required to be, registered;

...

Submissions

22. For HMRC Mr Nicholson argued that the date on which the appellant was registered was 1 April 2014 as it requested, the invoices were for supplies and were
25 out of time for a valid claim to be made, as they were dated before 1 October 2013. If, as Mr Nazir suggested, the supply was of goods he argued that the invoices were insufficiently detailed to show that, and in any event the supply by the contractor was an overarching supply of construction services.

23. For the appellant Mr Hussain argued that in relation to the supply by the
30 contractor, Mr Nazir's evidence showed that part at least of the supply was a supply of goods, and that the services were performed on the goods, eg to dig any necessary trenches for them and to cover them.

24. As to registration he put forward a number of cases in which backdating had been allowed, namely *Yee Mei Yung* (VATTR 18017), *Simon Damels and Stuart
35 Stevenson t/a Homeforce* (VATTR 17948) and *Kevin & Mary Lai t/a The Rice Bowl* (VATTR 20531).

Discussion

25. As we have indicated we put to the parties a point which emerged when we read the papers before the hearing. As this was a voluntary registration the governing
40 provision was paragraph 9 of Schedule 1 VATA. That allows an applicant for

voluntary registration to have one of two registration dates. In a paragraph 9 case the date of registration is either *the day on which the request is made* or an *earlier* date as agreed between HMRC and the applicant.

5 26. It might be argued that “if he so requests” in paragraph 9 carries the implication that the voluntary applicant can choose one of these two dates in preference to some other date, for example the date he puts on the VAT 1. We do not think that is right, as there is nothing in Schedule 1 to provide a default date for registration for a voluntary applicant. The “so” in “if he so requests” clearly means “if he requests to be registered voluntarily”, not if he requests a non-standard date, there being no
10 default or standard date for a voluntary applicant.

15 27. In this case the request for registration was made on 20 February 2014. As the appellant did not request an earlier date (ie one earlier than its date of application) and did not agree such a date with HMRC, then HMRC was under an obligation to register him from 20 or 25 February. We do not need in this case to decide whether in law the day of making the request is the date HMRC received the request, 25 February, because whichever date is the paragraph 9 date, the appellant succeeds in relation to the two questioned invoices. But given that an applicant will know the date they made the application, but cannot know the date HMRC received it, our preference would be to say that it is the date on the application form. In the notice
20 withdrawing their case, HMRC say that the correct date of registration is 25 February. But as we say we do not need to come to a final conclusion on this point.

28. The VAT 1 of course invited any applicant for voluntary registration to give the date from which they wished to be registered. The Notes to the VAT 1 on this aspect say:

25 **“Are you applying for voluntary registration because your turnover is below the registration threshold?”**
Businesses that register for VAT usually do so because either their taxable turnover has gone over the registration threshold sometime in a previous 12 month period, or because they expect it to do so in the next
30 30 days. We explain these scenarios in more detail at notes 14 and 15.

However, you can apply to register for VAT voluntarily when:

- your turnover does not go over the registration threshold, or
- you intend to trade but your business has not started yet.

35 If this applies to you, enter the date from which you would like to be registered.

If the date entered is earlier than today, please make sure that it is no more than four years before the date of your application.

Please note that we may ask for evidence from you about the supplies that you are making or intending to make.”

40 29. This does not seem to us to reflect the law. Only if the applicant wants to register with effect from a date earlier than the date of application can they legally select a different date. The Notes do not say this, and neither does the box on the

form itself which simply asks for a date from which the intending trader wishes to be registered. We consider that in this case the only dates from which HMRC could lawfully register the appellant were 20 or 25 February 2014. If either of these was the only lawful registration date, the invoices concerned were within the six months allowed by regulation 111(2)(d) of the VAT Regulations.

30. We add that it may well be convenient for both HMRC and an applicant that registration is to be treated in a voluntary case as beginning on a date which is the first of a month and the first day of an accounting period, if it has not yet started to make taxable supplies. But where the correct registration date affects, as it did in this case, the applicant's right to deduct input tax, it is entitled to rely on the legal position, not the convenient one.

31. There is another point arising from the correspondence. Here we assume that the date the appellant requested in the VAT 1 was a properly registrable date. HMRC issued an enquiry following receipt of the VAT 1 on 25 February 2014. As we noted the enquiry form asked for the answer to 3 questions.

32. The first was "Have you taken over all or part of a registered business?" This was a reasonable question to ask as the appellant had not answered "yes" or "no" in the box on the VAT 1 about a TOGC, although the appellant had indicated in that box that it did not wish to take over any one else's VAT registration, which can only happen in the case of a TOGC.

33. The second question asked for "the date you would like to be registered from" and "the reason for your registration". In order to answer the latter question the appellant was asked to tick one of the three boxes which repeated the questions in the VAT 1 on this point. The appellant actually ticked two. It was reasonable for HMRC to ask this latter question as it needed to be sure that the appellant qualified to be registered voluntarily. But it did not need to ask for the date from which the applicant wished to be registered, because that had already been given in the VAT 1. It may be as Mr Nicholson suggested that the wording of the second question is standard in any case where the questions in the part of the VAT 1 relating to voluntary registration have not been fully answered, but asking the question again when an answer had already been provided, and indeed asking it after the date from which the appellant had asked to be registered, had the potential to be confusing to the applicant, and seemed in fact to have confused Mr Nazir.

34. And we see nothing to suggest that HMRC wondered why the date applied for had changed. No doubt HMRC thought that as the reply indicated that taxable supplies were still not being made on 18 March the appellant was doing something that seemed sensible. But it is very difficult to see why HMRC needed to ask the question about the date. Had they simply asked about a TOGC and the reason for voluntary registration and received the answers they did they would have registered the appellant from 1 March 2014. And that would have been in time for the VAT on the two questioned invoices to be deductible, even if they were entirely for services.

35. We do not need to deal with the question of backdating the date of registration, save to say that it seems to us that the appellant did not make any request for registration to be backdated until after HMRC had give a ruling on the matter. This was because HMRC had interpreted a letter from the appellant relating to Ms
5 Turnbull’s refusal to allow the two invoices as a complaint (which it wasn’t) and the Complaints Unit had then passed the letter to the office dealing with registration issues who issued the ruling on the assumption that the appellant had sought backdating (which at that time it hadn’t).

Decision

10 36. As HMRC have accepted, the two invoices in question were within the time limit laid down in regulation 111 of the VAT Regulations, so the appeal succeeds and the appellant is entitled to deduct the input tax on the invoices.

15 37. 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.

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**RICHARD THOMAS
TRIBUNAL JUDGE**

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RELEASE DATE: 1 MARCH 2016