



TC07988

VAT – gig economy worker registered for VAT by courier company – below threshold and did not understand VAT – failed to charge output tax – life-threatening health conditions including loss of use of a limb following coronavirus – assessments totalling £20,021 – appeal allowed in part – assessments totalling £3,408 upheld and other assessments set aside.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/07919

BETWEEN

**HARRY EDEBIRI
t/a TT TRADING**

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE ANNE REDSTON
MISS PATRICIA GORDON**

The hearing took place on 10 December 2020 using the Tribunal video platform. A face to face hearing was not held because of difficulties caused by the pandemic.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. The hearing was therefore held in public.

The Appellant in person

Ms Olivia Donovan, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

Introduction and summary

1. Mr Edebiri appealed against VAT assessments made by HM Revenue and Customs (“HMRC”) of £20,021 for periods 07/14 to 01/18.
2. The Tribunal has cancelled all the assessments other than those for 07/16 to 04/17.
3. As a result, **the total of the VAT assessments is reduced to £3,408** and Mr Edebiri’s appeal is allowed in part.
4. The facts of the case, in summary, are as follows:
 - (1) Mr Edebiri was registered for VAT by DHL when he was a courier working in the gig economy, and he did not understand how VAT worked.
 - (2) He was told that because he was self-employed, the VAT on his franchise fee and petrol could be claimed back. He provided DHL with a record of the money he had spent on petrol.
 - (3) He left DHL in 2013 and began working as a driving instructor. He was well below the VAT threshold and his customers could not reclaim input VAT. Had he understood the VAT rules, he would have deregistered when he left DHL.
 - (4) Instead, he went on claiming VAT on his petrol costs. He did not charge VAT to his customers.
 - (5) HMRC repaid all his claimed VAT until 2018, when an HMRC officer visited his premises and explained how VAT worked. She issued an assessment to recover the output tax and some of the input tax.
 - (6) The Tribunal has set aside all but four of the assessments because HMRC failed to exercise their discretion to consider alternative evidence of input tax, see *GB Housley Ltd v HMRC* [2016] EWCA Civ 1299 (“*Housley*”).
 - (7) Mr Edebiri is seriously ill. He is on daily dialysis as the result of Chronic Kidney Disease (“CKD”). During 2020 he was in hospital for two months with coronavirus, including three weeks on a ventilator. Although he has now been discharged, he has lost the use of one of his legs. He is unable to work. His mental health is suffering because of the stress caused by these assessments.
 - (8) He has always been entirely honest and straightforward in his dealings with HMRC, and this situation came about as the result of an innocent mistake. Had Mr Edebiri understood VAT he would have deregistered, and the output tax (which formed the bulk of each assessment) would never have arisen.

The evidence

5. The Tribunal was provided with the evidence in the Bundle, which included:
 - (1) the correspondence between the parties, and between the parties and the Tribunal;
 - (2) Mr Edebiri’s VAT returns and HMRC’s assessments; and
 - (3) the invoice for the car which Mr Edebiri purchased to carry out his trade.
6. Mr Edebiri gave oral evidence, was cross-examined by Ms Donovan and answered questions from the Tribunal. He was an entirely honest and credible witness. We had to take

several breaks during the proceedings as he was too distressed to continue. We offered an adjournment, but Mr Edebiri said he was determined to keep going in the hope of resolving the financial difficulty he was facing.

The facts

7. On the basis of the evidence in the Bundle and Mr Edebiri's oral evidence, the Tribunal makes the following findings of fact.

Working for DHL

8. In 2010 Mr Edebiri began working as a franchisee courier driver for DHL. He understood that he was self-employed and that he had to provide his own vehicle. He paid DHL a franchise fee for working as a courier.

9. DHL registered him for VAT, although his turnover was well below the relevant threshold. He was instructed to provide DHL with the monthly amount he had spent on fuel and he did this, keeping a record in his notebook.

10. Mr Edebiri did not understand VAT. He thought the self-employed could claim VAT back on money they had spent in their business, such as fuel and franchise fees, because he knew DHL claimed that VAT. However, he did not realise that DHL had used their own information about the income he made from his journeys to include output VAT on his returns.

Working as a driving instructor

11. In 2013 Mr Edebiri left DHL and retrained as a driving instructor. He continued to purchase his own fuel and paid franchise fees to a succession of driving schools. From early 2014 to May 2016 he paid £197.50 a week to a school called Bill Plant Ltd; from June 2016 for about a year he paid £100 a week to a school called RED, and he subsequently paid £52.50 a week to a school called D Johns.

12. It was Mr Edebiri's evidence that the franchise fees were paid via his bank account by direct debit and were identifiable as such on the bank statements, and that he had provided HMRC with his bank statements for 2014 to 2018. However, those statements had not been included in the Bundle. Ms Donovan did not challenge his evidence, and said she was willing to locate the bank statements, although this would require an adjournment.

13. We decided that it was not in the interests of justice to adjourn, and we accepted Mr Edebiri's unchallenged evidence that he had provided the bank statements to HMRC and as to the amounts of the franchise fees, and as to the method of payment, for the following reasons:

- (1) Mr Edebiri was able to provide precise figures for the weekly fee paid to each school, no doubt reflecting the size of the payments as a percentage of his weekly earnings;
- (2) it made commercial common sense for driving schools to require their drivers to pay the franchise fees on a regular basis via direct debit;
- (3) HMRC had asked him for the bank statements (see §26), and it was extremely unlikely that Mr Edebiri would have failed to provide them; and

(4) an adjournment to require HMRC to add the bank statements to the Bundle, or for Mr Edebiri to obtain further copies, would further delay the resolution of Mr Edebiri's appeal.

14. After the issuance of the assessments Mr Edebiri contacted the schools to obtain further evidence, but only RED responded. Bill Plant Ltd had gone into liquidation and no reply was received from D Johns. Mr Edebiri forwarded the letter from RED to HMRC. There was no copy of that letter in the Bundle, but the HMRC review officer, Ms Coster, confirmed receipt and said that the VAT included in the figure provided was £671. The total paid inclusive of VAT must therefore have been £4,026. Given that the franchise fee was £100 a week, we find that Mr Edebiri worked for that school for around 40 weeks.

His VAT position when a driving instructor

15. Mr Edebiri's annual turnover was between £20,250 and £26,060, so less than one-third of the VAT threshold. His customers were all individuals who were not VAT-registered. He charged between £20 and £22 per hour.

16. Mr Edebiri remained registered for VAT when he left DHL, but because he did not understand how VAT worked, he continued to reclaim the VAT on his fuel and his franchise fee as he knew this was what DHL had done, but he did not know he had to charge VAT to his customers. As a result, his VAT returns were all repayment returns. HMRC repaid him the VAT he had claimed, without question.

17. In June 2016, Mr Edebiri purchased a Ford Fiesta for £14,900 including VAT of £2,475. He used the vehicle to give driving lessons and to some extent privately.

Mr Edebiri's illness, the HMRC visit and the assessments

18. In 2017 Mr Edebiri was diagnosed with kidney problems and advised to change his work because it was contributing to the deterioration in his health. He decided to try and earn money by letting out rooms. He borrowed to carry out a property conversion so that individual rooms could be let to students. He knew that letting rooms was a business and assumed he would be continuing to work on a self-employed basis and so could reclaim the VAT on the conversion costs. He included input tax of £11,766 on his VAT return for the period 04/18.

19. On 25 June 2018, Mrs Watkins, an HMRC Officer, visited Mr Edebiri at home. She identified that he had not been charging or collecting output tax. Although he had written down each purchase of fuel in a notebook, as he had done when he worked for DHL, he was unable to locate the related receipts. Mrs Watkins also explained to Mr Edebiri that letting rooms is exempt from VAT, and so he could not claim that input tax.

20. On 28 June 2018, Mrs Watkins wrote to Mr Edebiri, saying that:

- (1) she had disallowed the input VAT relating to the property;
- (2) he owed VAT of £16,380.28 on his outputs for the period from 07/14 to 04/18; and
- (3) she had disallowed most of the input tax claimed in relation to his driving school work for the same period, but allowed £130 per week for fuel, adjusted for a private use scale charge, with the result that input VAT of £8,120 was owed.

21. HMRC deregistered Mr Edebiri with effect from 25 May 2018. We were not provided with the related documentation but have inferred that he was deregistered from that date because he was no longer working as a driving instructor and so had ceased to make taxable supplies.

22. On 17 July 2018, HMRC issued Mr Edebiri with a document headed “Notice of VAT assessment(s) or overdeclaration(s)”. The opening paragraph read:

“Examination of your records has shown that the correct amounts of Value Added Tax have not been declared or, where appropriate, assessed for the period(s) shown. The Commissioners for HM Revenue & Customs have made assessments for tax and interest, where appropriate, and/or adjusted for overdeclaration(s) for the period(s) shown.”

23. The total assessed was £23,176.78, plus interest of £1,289.31, for periods 07/14 through to 01/18, so excluding the period in which Mr Edebiri had claimed VAT on the property renovation costs. That period’s return was amended by HMRC to show an amount payable of £863.33 and was not under appeal.

24. On 24 July 2018, Mr Edebiri wrote to HMRC, saying that he had not known he had to charge VAT to his customers; he accepted he should have to repay the input tax he had claimed, but asking HMRC not to make him pay the output tax. He also sent Mrs Watkins various other documents. None of these were provided to the Tribunal.

25. Mrs Watkins replied on 15 August 2018, saying she had reduced the assessment to take into account the VAT on the car, so that the total input VAT due was now £5,444, but said she could not simply “cancel” the VAT “that is owed on the income [he had] received”.

26. Mr Edebiri asked for a statutory review, and this was carried out on 31 October 2018 by Ms Coster. She reviewed the documents Mr Edebiri had provided, and said:

“Under Regulation 29, HMRC can consider alternative evidence in support of a deduction of input tax. I have looked at the documents you were able to supply from the driving schools that you worked with, and I am prepared to accept the statement from RED Instructor Services as alternative evidence for input tax deduction. I have allowed a VAT inclusive figure of 1/6th on the weekly franchise fee shown on the statement. This will reduce the assessment issued by £671.

If you are able to provide evidence to show the value of your supplies to Bill Plant Ltd, perhaps in the form of bank statements, this can be forwarded to Officer Watkins for consideration of alternative evidence for input tax deduction.”

27. As we have already found, Mr Edebiri then provided his bank statements for 2014 to 2018. However, he did not hear any further from HMRC and there were no further reductions to the amounts assessed. We find as a fact that no consideration was given to the bank statements by HMRC.

28. By a Notice of Appeal dated 27 November 2018, received on 29 November 2018, Mr Edebiri appealed to the Tribunal. He attached a letter headed “a plea for mercy/clemency”, explaining that he had not understood how VAT worked; that had it been explained to him sooner he would have corrected the position; and that he was willing to repay the input VAT but asking that HMRC not collect the output VAT. He ended by saying he had been recently

informed by his hospital consultant that his kidney had failed, and he was finding it difficult to work.

29. During the hearing, Mr Edebiri said that he had subsequently been diagnosed with CKD, that he had to carry out dialysis every day in his home, and that he had been seriously ill with coronavirus, spending two months in hospital including three weeks on a ventilator in intensive care. He had now been discharged, but had lost all use of one leg, and was unable to work. His mental health was poor and exacerbated by the stress of the assessments.

The law

30. We first considered whether it was possible for Mr Edebiri to be retrospectively deregistered to 2014, as this was what he had requested.

Deregistration

31. Mr Edebiri was below the VAT threshold when he worked for DHL and so must have been registered on a voluntary basis under Value Added Taxes Act 1994 (“VATA”) Sch 1, para 9. This says:

“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,

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.”

32. VATA Sch 1, para 13 is headed “cancellation of registration” and subpara (1) reads (emphasis added):

“Subject to sub-paragraph (4) below [which is not relevant to Mr Edebiri], 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 from such later date as may be agreed between them and him.”

33. Thus, this provision does not allow Mr Edebiri’s registration to be backdated to 2014, but only operates prospectively.

34. Paragraph 13(2), (5) and (6) of the same Schedule reads:

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

(5) The Commissioners shall not under sub-paragraph (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.

(6) In determining for the purposes of subparagraph (4) or (5) above whether a person would be subject to a requirement, or entitled, to be registered at any time, so much of any provision of this Acts as prevents a

person from becoming liable or entitled to be registered when he is already registered or when he is so liable under any other provision shall be disregarded.”

35. Paragraph 18 of the Schedule provides that “registrable” means “liable or entitled to be registered under this Schedule”.

36. As noted earlier in this decision, Mr Edebiri’s registration was cancelled from 25 May 2018. We understand this was because he had ceased to be registrable on that date because he had stopped work as a driving instructor, and so Sch 1, para 13(2) applied.

37. The question was, however, whether these provisions could be read so as to allow Mr Edebiri to be deregistered from 2014, on the basis that he was not required to be registered at that time or subsequently. In *Mundy v HMRC* [2015] UKFTT 321(TC) at [30]-[37] the Tribunal (Judge Hellier and Mr Coles) carried out a careful review of the same regulations and decided that they did not allow retrospective deregistration. We agree with their analysis, which is not necessary to repeat here, and find that Mr Edebiri cannot be retrospectively deregistered back to 2014.

Output tax and input tax

38. Because Mr Edebiri was registered for VAT, he was required to charge VAT on his taxable outputs under VATA s 4.

39. VATA s 25 and 26 gave him an entitlement to claim input tax, but he was required by Reg 29 of the VAT Regulations 1995¹ to hold a VAT invoice or “such other evidence of the charge to VAT as the Commissioners may direct”.

40. Mr Edebiri had the invoice for his vehicle, and HMRC have already accepted alternative evidence for fuel and for the RED franchise fee. In relation to the other franchise fees, Ms Coster, the HMRC review officer, had said that HMRC would also consider the alternative evidence contained within the bank statements. Mr Edebiri sent in those statements, but HMRC did not consider them, and so in relation to those other fees they failed to exercise the statutory discretion provided to them by Reg 29.

The assessments

41. On 17 July 2018, HMRC issued the Notice described at §22. This was headed “Notice of Assessment(s) and/or Overdeclaration(s)”, a heading which is apt to cover both a single assessment (including a global assessment) and separate assessments.

42. The first page of the Notice sets out the totals owed, and the following pages set out each of the periods, so that for example period 07/14 was as follows²:

Period: 07/14			
From: 01.05.14	to 31.07.14		
Type	Reason code	Method code	Due to HMRC
Underdeclaration	30	A	£1,238

¹ In this decision, all references to Reg or Regs are to these Regulations

² A further column was headed “Line Ref” but that did not add anything for the purpose of this decision. Two columns headed Pen Inh and Int Inh were blank and have also been ignored.

	30	B	£26
	18	B	£508
Total tax underdeclared in this period			£1,772
TOTAL AMOUNT DUE TO HM REVENUE AND CUSTOMS IN THIS PERIOD IS			£1,772

43. We decided that HMRC had made separate assessments for each of the VAT periods from 07/14 to 01/18, and not a single global assessment, see *Temple Finance and Temple Retail v HMRC* [2016] UKFTT 041 (TC) at [282], where Judge Richards held that, although HMRC had issued a single document, they had made a series of separate assessments because:

“The Notice of Assessment contains separate figures for separate VAT periods and, while the total amount is shown, the clear inference is that, by doing so, [the HMRC Officer] was making separate assessments for different VAT periods.”

44. We also decided that each of the assessments had three components. Using the 07/14 period as an example, the first component is the output tax; the second the fuel scale charge, and the third the input tax, and together they form a single assessment for that period.

45. That this is correct is clear from VATA s 73(2), the provision under which the assessments were raised. This reads (emphases added):

“In any case where, for any prescribed accounting period, there has been paid or credited to any person

- (a) as being a repayment or refund of VAT, or
- (b) as being due to him as a VAT credit,

an amount which ought not to have been so paid or credited, or which would not have been so paid or credited had the facts been known or been as they later turn out to be, the Commissioners may assess that amount as being VAT due from him for that period and notify it to him accordingly.”

46. Section 73(6) similarly refers to time limits as being calculated in relation to assessments “of an amount of VAT due for any prescribed accounting period”, and it is clear from VATA s 25 that the “prescribed accounting period” is the period for which a person submits a VAT return.

47. VATA s 83(1)(p) provides that a person has the right to appeal “an assessment under section 73(1) or (2) in respect of a period for which the appellant has made a return under this Act”. Thus, Mr Edebiri’s appeal was against each of the assessments, not against the component parts of those assessments.

Failure to exercise discretion

48. As noted above, Reg 29 of the VAT Regs says that input tax may be allowed if the person holds “such other evidence of the charge to VAT as the Commissioners may direct”. The Regs thus give HMRC a statutory discretion to consider alternative evidence.

49. In this case, HMRC exercised that discretion in relation to evidence provided by RED. We have found as facts that the weekly fee was £100 a week and that it began to be paid in

June 2016 for 40 weeks. We therefore accept that HMRC exercised their discretion to accept alternative evidence for periods 07/16 through to 04/17.

50. However, HMRC failed to exercise that discretion for the earlier periods, when Mr Edebiri paid Bill Plant Ltd, and for the subsequent periods, when Mr Edebiri paid D Johns. Mrs Donovan rightly accepted that the discretion had not been exercised, and that had it been exercised, it was likely that HMRC would have accepted the bank statements as providing alternative evidence of Mr Edebiri's expenditure on these two other franchise fees.

51. We considered whether we had the jurisdiction to reduce the assessments to take those franchise fees into account. However, Reg 29 makes clear that only HMRC have that jurisdiction.

52. In *GB Housley Ltd v HMRC* [2016] EWCA Civ 1299 ("*Housley*"), the Court of Appeal (Gloster and Patten LJJ and Baker J) held that when a person appealed against an assessment, and HMRC had failed to exercise their discretion to accept alternative evidence, the assessment was invalid and the appeal must be allowed, and the Court therefore overturned the Upper Tribunal's decision that HMRC should be permitted to make a fresh decision taking into account the alternative evidence.

53. In *Housley*, Gloster LJ gave the leading judgment, and said at [80]:

“the appellant's appeal against the assessment is to be allowed, on the grounds that HMRC wrongly failed even to consider the exercise of the reg 29(2) discretion, then necessarily—since the appeal is against the assessment itself - the assessment falls to be discharged, leaving HMRC, if they wish to do so, to consider the proper exercise of their discretion on the correct legal basis and, if they are able (given the statutory time constraints), to issue a new assessment if so advised.”

54. Patten LJ gave a concurring judgment, and said at [88]:

“...the Upper Tribunal was wrong to hold that because there had been no complete determination as to how the discretion would have been exercised following the review this somehow justified remitting the matter back to the FtT for a determination of that matter. The FtT had already determined that there had been no proper exercise of the reg 29(2) discretion and HMRC could only preserve the assessment by demonstrating that had the discretion been exercised the result would inevitably have been the same. This they were unable to do.”

55. In *Housley*, the failure to take the alternative evidence into account affected the whole of the assessment, whereas in Mr Edebiri's case it affects only one of the three components. However, that makes no difference. An assessment is either valid or it is not. And as in *Housley*, HMRC were unable to say that the assessments would have been the same had they exercised the discretion; instead it is very likely they would have been reduced.

56. We therefore find that the assessments for periods 07/16 through to 04/17 are valid, but the assessments for all other periods are not.

Decision

57. We set aside the assessments for periods other than those for 07/16 through to 04/17. We calculated the figures below on the basis of the original assessments, as adjusted for the VAT on the car (see §17 and §25) and for the £671 of VAT for the RED fee, see §26:

	Original Assessment	VAT on car	VAT on RED fee	Total
Jul-16	2,342	-2,475	-168	-301
Oct-16	1,524		-168	1,356
Jan-17	1,349		-168	1,181
Apr-17	1,339		-167	<u>1,171</u>
	6,554	-2,475	-671	3,408

58. As a result we find that the total of the VAT charged by the assessments is reduced from the £20,021.00 to £3,408, and we therefore allow the appeal in part.

HMRC's discretion

59. As the Court of Appeal pointed out in *Housley*, HMRC have the discretion to make new assessments on Mr Edebiri where they are in time to do so. The Tribunal has no jurisdiction in relation to whether or how they exercise that discretion.

60. However, we draw HMRC's attention to the summary at the beginning of this decision, and ask that they take those factors into account when deciding whether or not to issue new assessments, including in particular:

- (1) Mr Edebiri's serious health conditions, namely the life-threatening CKD including the requirement for daily dialysis and the post-Covid loss of the use of his leg, and his resulting inability to work;
- (2) the previous assessments, which were issued over two years ago, and significantly affected his mental health;
- (3) his lack of understanding of the VAT system, and the fact that had he understood VAT he would have deregistered and no output tax would have been due; and
- (4) his honest and straightforward response when the error was identified.

Appeal rights

61. 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.

ANNE REDSTON

TRIBUNAL JUDGE

RELEASE DATE: 7 JANUARY 2021