



TC08024

Appeal number: TC/2020/00420

VALUE ADDED TAX – Appellant registered for VAT between August 2014 and June 2015 but continued trading below threshold after de-registration – error correction claim made in November 2019 in respect of 46 payments made between September 2014 and December 2015 – claim made out of time for 44 payments made before December 2015 – no VAT invoices or other evidence to show the two payments in December 2015 were attributable to a taxable supply made while still VAT registered – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RYAN FLOOD

Appellant

- and -

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

TRIBUNAL: JUDGE JANE BAILEY

The Tribunal determined the appeal on 22 January 2021 without a hearing with the consent of both parties under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, having first read the Notice of Appeal (with enclosure) received by the Tribunal on 10 January 2020, HMRC's Statement of Case (with enclosures) received by the Tribunal on 16 March 2020, the documents in the appeal bundle, and the correspondence on the Tribunal file.

DECISION

Introduction

1. This appeal is against HMRC's review decision dated 2 January 2020 to refuse the Appellant's error correction claim seeking recovery of input tax. The Appellant had sought recovery of the input tax on 46 payments (made between September 2014 and December 2015) totalling £9,478.52. The input tax incurred on £9,478.52 amounts to £1,579.75.

2. HMRC refused the Appellant's error correction claim on the basis that they considered the Appellant's claim was contained in an email sent on 27 November 2019, and so it was made too late in respect of all but two of the payments, and in respect of those two payments there were no VAT invoices and, as the payments were made more than five months after the Appellant had de-registered for VAT, it was unlikely that the payments related to supplies made while the Appellant was still registered for VAT.

3. The Appellant's appeal to the Tribunal was made on the basis that he considered he had claimed the input tax within time, and that he was only claiming money to which he was entitled.

Evidence before me

4. Towards the end of this decision, I have set out the history of these Tribunal proceedings and noted that the documents that the Appellant wished to rely upon are seven emails that he sent to the Tribunal with attached copies of recent HMRC correspondence. (That correspondence is in the bundle.) The Appellant's specified seven emails primarily contain assertions about HMRC's behaviour, and so I have taken them into account as the Appellant's submissions.

5. The Appellant has not provided copies of any contemporaneous documents (such as his VAT returns, his cash book, his ledger or any other documents relating to his trading such as his contract with the franchisor or invoices) or any contemporaneous correspondence (such as the letters from HMRC concerning the checks of his VAT returns or copies of the material he provided to HMRC at the time). I understand that the Appellant has not retained copies of any of his business records (save a hire purchase agreement provided to HMRC in 2018). As this is a paper hearing, the Appellant has not provided any oral evidence. HMRC have provided some documentary evidence but this is limited.

6. In the absence of much of the primary evidence, I am reliant on second hand accounts provided in correspondence and, in particular, the history provided in the review decision. Where there is no dispute about the underlying events (for example, that the Appellant did make 46 payments) then I am satisfied, on the balance of probabilities, that these events occurred.

Facts found

7. On the basis of the documents before me, I find as follows:

8. From an unknown date but probably 8 August 2014, the Appellant traded as a sole proprietor, providing confectionary and snacks. For (at least) part of the time that he traded, the Appellant was a “Snack in the Box” franchisee, providing confectionary and other snacks via vending machines and boxes provided by the Snack in the Box franchisor.

9. On 20 August 2014, the Appellant entered into a hire purchase agreement to purchase a vehicle. The cash price for the vehicle was £17,400 but the Appellant did not pay for the vehicle outright. Instead, the Appellant paid a deposit of £4,400 against a total price of £20,357.88 (including interest and various other charges) with the remainder paid in 48 monthly payments (of approximately £328 each) starting from October 2014.

10. On 17 September 2014, HMRC received a VAT registration application from the Appellant. The Appellant asked for his registration to be back-dated to 8 August 2014. This registration was a voluntary registration as the Appellant’s estimation of his turnover was under the VAT registration threshold. Also, on 17 September 2014, HMRC received the Appellant’s application to join the Flat Rate Scheme, and the Appellant’s registration for Self Assessment on the basis that he was self-employed.

11. The Appellant’s application to register for VAT and his application to join the Flat Rate Scheme were both accepted by HMRC (on 29 September 2014 and 22 October 2014 respectively). The Appellant was registered for VAT with effect from 8 August 2014.

12. During September 2014, the Appellant made 4 payments, at weekly intervals, of £103.20 each. The Appellant does not recall the precise name of the company to whom these payments were made but it is not disputed, and so I find on the balance of probabilities, that the payments were made to the Snack in the Box franchisor and that the payments were made because the Appellant was a Snack in the Box franchisee.

13. During October 2014, the Appellant made a further five payments, again on a weekly basis, to the Snack in the Box franchisor. In this month each payment had increased to £141 each.

14. The Appellant’s first VAT return was for the period 8 August 2014 to 31 October 2014. The Appellant submitted his first VAT return ahead of the deadline of 30 November 2014. On 25 November 2014, Officer Jones emailed the Appellant to inform him that she would be checking this first VAT return.

15. On 9 December 2014, the Appellant and Officer Jones spoke by telephone. Officer Jones’s notes of that call recorded the Appellant as saying that his franchise included 70 vending machines and 70 snack boxes, and that he paid £1.50 per week per machine to the franchisor. (That would amount to £105 per week, very similar to the payments made in September 2014.)

16. On 9 December 2014, the Appellant also emailed Officer Jones with copies of his bank statements and the invoices he was relying upon to support his claims, to enable Officer Jones to conduct her check. Officer Jones replied to that email, stating that she had requested ledgers and cash books from Dennis and Turnbull. Dennis and Turnbull also emailed Officer Jones on 9 December 2014, informing her that they did not deal with the Appellant’s VAT return. Nevertheless, Dennis and Turnbull

provided HMRC with a copy of the Appellant's VAT return for the period ended 10/14 and a ledger report showing all transactions to 31 October 2014. The ledger report showed the Appellant's initial purchase of the Snack in the Box franchise on 18 July 2014, and purchases of stock on 7, 8, 14 and 21 August 2014. However, no other payments to the franchisor were shown in any of the documents or reports provided to HMRC. All of the reports provided to HMRC balanced, suggesting nothing had been omitted.

17. On 13 January 2015, Officer Jones concluded her check of the Appellant's 10/14 return, and reduced the repayment due to the Appellant. The review conclusion letter records that the reason given by Officer Jones for the reduction in the repayment was that some of the input tax claimed by the Appellant in respect of his van purchase was disallowed, and that Officer Jones had also disallowed the Appellant's claim for insurance, tax and the duplicated entries. Officer Jones' letter to the Appellant concluded by informing the Appellant of his appeal rights. The Appellant did not appeal against this return check conclusion.

18. The Appellant's next VAT return was due for the period 1 November 2014 to 31 January 2015, and was also submitted on time. During this VAT period the Appellant made eleven payments to the Snack in the Box franchisor. Ten payments were of £141 each, made on a weekly basis. The final payment, apparently covering the last two-thirds of January, was £40.80.

19. On 4 March 2015, Officer Flachi emailed the Appellant to inform him that she would be checking his return for the VAT period ended 01/15. On 19 and 25 March 2015, the Appellant emailed Officer Flachi to confirm that he was running a vending machine business and that his claim for repayment arose from his payments for stock and fuel. The Appellant emailed Officer Flachi his bank statements and four purchase invoices relating to stock for resale. The Appellant also stated that he had not declared output tax as he had not yet taken a wage from the business.

20. On 30 March 2015, the Appellant emailed copies of his handwritten VAT cash book to Officer Flachi.

21. On 1 April 2015, Officer Flachi emailed the Appellant with the conclusions of her check into the 01/15 VAT return. Officer Flachi concluded that, instead of being due a repayment of VAT, the Appellant was due to pay VAT to HMRC for this period. Officer Flachi stated:

I have gone through the bank statements and cash books you have provided ... I have calculated what I believe the maximum amount of input tax you could claim as per bank statements (which I cross ref to your cash book) subject to providing valid purchase invoices ...

Box 1 calculated as $£6790.37 \times 1/6 = £1131.69$

Box 4 calculated as $£3905.87 \times 1/6 = £650.96$

Box 5 VAT DUE to HMRC = £480.83

22. (There appear to be very minor errors in HMRC's arithmetic. The Box 1 figure should be £1,131.73, the Box 4 figure should be £650.98, and therefore the Box 5 figure should be £480.75.)
23. With her conclusions, Officer Flachi also attached a spreadsheet showing her workings out. Officer Flachi also identified several of the Appellant's suppliers by name. The franchisor was not named as one of these suppliers.
24. On the same day the Appellant replied to Officer Flachi stating that he was happy with these figures and did not want the check dragging on any longer. On 20 April 2015, Officer Flachi formally refused the repayment and assessed the Appellant to £480.83 for the period 01/15.
25. On 24 April 2015, Officer Flachi wrote to the Appellant in connection with the penalties she intended to charge the Appellant in respect of the errors in his 01/15 VAT return. On 25 April 2015, the Appellant emailed Officer Flachi to ask about progress on making the repayment to him. Officer Flachi responded to the Appellant on 27 April 2015 to explain that there was no repayment due as the Appellant was required to pay VAT as a result of her check.
26. The Appellant's next VAT return was due for the period 1 February 2015 to 30 April 2015. During this period the Appellant made six payments to the Snack in the Box franchisor. Four of these payments were £141 each and the other two payments were of £216.60 each. These payments were made weekly, with no payments being made in this VAT period after 13 March 2015.
27. On 26 June 2015, the Appellant requested cancellation of his VAT registration, explaining that he was trading below the VAT registration threshold. On 29 June 2015, HMRC confirmed that the Appellant's VAT registration had been cancelled with effect from 26 June 2015.
28. During the period 1 May to 26 June 2015, the Appellant made five payments to the Snack in the Box franchisor. Three payments were of £216.60, one was of £400 and one was of £433.20. These payments were made at fortnightly intervals.
29. Although the Appellant was directed to file a final VAT return that would cover the period 1 May to 26 June 2015, the Appellant did not do this by the deadline of 27 July 2015 (and did not do so until February 2019). In the absence of a final return and on an unknown date, it appears that HMRC assessed the Appellant to VAT in the sum of £301 in respect of this final VAT period.
30. On an unknown date, Officer Flachi wrote to the Appellant with her conclusions regarding the penalty she proposed to charge him for the errors in the 01/15 VAT return. On 14 July 2015, the Appellant appealed to HMRC against this penalty and sought a review. In seeking a review, the Appellant explained that the franchisor had recommended a computer programme to complete VAT returns, and that he had used this programme. The Appellant stated that he had sent the correct information to Officer Flachi but that he had made an error putting the figures through the computer.
31. From 27 June 2015, after his de-registration, the Appellant continued to trade as a Snack in the Box franchisee, continuing to remain below the VAT threshold. The Appellant continued to make payments to the Snack in the Box franchisor. The

Appellant paid £416.60 in July (in two irregular payments), £963.12 in August (four payments at weekly intervals), £649.80 in September (three payments at fortnightly intervals), £866.40 in October (two irregular payments), £649.80 in November (two irregular payments) and £844 in December 2015 (two irregular payments).

32. On 12 November 2015, Review Officer Blades wrote to the Appellant upholding a penalty of £3,421 in respect of the errors in the Appellant's 01/15 VAT return.

33. There is then a period of three years where there is no evidence that either party either contacted the other or took any action in respect of the issues to be decided by this Tribunal.

34. On 21 November 2018, the Appellant telephoned HMRC to ask for a VAT certificate but he was unable to remember his VAT registration number. On the balance of probabilities, I conclude that during this call the Appellant referred to wanting to make a claim for input tax as HMRC's note of this telephone call records that the Appellant was directed to a VAT Notice 700/45 (which provided information about how to make an error correction claim).

35. The Appellant telephoned HMRC again on 3 December 2018 and was advised on the error correction process.

36. On 5 December 2018, HMRC received a letter from the Appellant seeking to recover VAT of £2,900 on the vehicle purchased under the hire purchase agreement entered into by the Appellant on 20 August 2014. (It is unclear – and so I make no findings – whether this was the same vehicle on which the Appellant had successfully claimed some input tax in his first VAT return.)

37. On 14 December 2018, the Appellant telephoned HMRC to see if his letter had been received. The Appellant telephoned HMRC again on 21 December 2018, and was given the telephone number for the error correction department. The Appellant telephoned HMRC again on 2 January 2019, and was transferred to the error correction department. The Appellant rang HMRC twice on 3 January 2019. On the first occasion the Appellant failed security, and was advised to write again if he had previously been told by the error correction team that his letter had not been received. On the second occasion the Appellant passed security and was transferred to HMRC's debt management team.

38. On 16 January 2019, HMRC received an undated letter from the Appellant. The Appellant provided what he stated were the figures for his final return (giving identical box 4 and box 5 figures) and continued:

I have written multiple letters to HMRC to try to resolve this issue.

I have also made in excess of 15 phone calls to HMRC to resolve these individual issues.

There is a £301 late return penalty on this account that needs to be removing.

There is also a penalty notice on this account of £3421 for incorrect box 5 figures. This is a result of myself claiming VAT back from a vehicle I purchased for my business.

This is also incorrect there has been miscommunication here.

The incorrect figure difference of Box 5 was the VAT I tried to claim back on vehicle.

I have attached the vehicle invoice to this hand written letter as proof of purchase.

The main reason for writing this letter is to claim back the £2900 VAT on the vehicle I purchased.

This is the amount due back to myself £2900.

I have been in conversation over the telephone with a HMRC employee in the error correction team and they have advised me to write this letter rather than fill a VAT 652 form due to the complicated matter of this issue.

I have also been advised to add this statement below.

State how this issue needs sorting as soon as possible as I have been [indecipherable] a lot longer than the [indecipherable] period HMRC state.

There are 3 individual issues that need resolving that also are all connected that is why I have sent 1 letter with all 3 issues on.

1. £2900 that need paying to Ryan Flood (VAT on vehicle)
2. £3421 penalty notice that needs removing (incorrect VAT return figures)
3. £301 late charge penalty notice (that needs removing).

39. As is obvious from the text of this letter, there is no reference to the 46 payments the Appellant made to the Snack in the Box franchisor.

40. Although the Appellant has referred to writing multiple letters, I do not accept that the Appellant had written multiple letters to HMRC prior to his undated letter received by HMRC on 16 January 2019. HMRC has a record only of receiving one earlier letter (that being the letter received on 5 December 2018). The Appellant has not provided a copy of any of other letters he says he sent to HMRC. While letters can be lost in the postal service, it is inherently unlikely that multiple letters sent to the same recipient would all be neither delivered, nor returned to the sender because they could not be delivered. I find, on the balance of probabilities, that the Appellant sent only two letters to HMRC, and these are the letters received by HMRC on 5 December 2018 and 16 January 2019.

41. On 6 February 2019, a member of the Error Correction team telephoned the Appellant. HMRC agreed to repay the VAT incurred when the Appellant entered into the vehicle hire purchase agreement on 20 August 2014. The HMRC officer also advised the Appellant to appeal against the penalty of £3,421, and to submit his VAT return for the period 1 May to 26 June 2015 in order to displace the assessment of £301. Later on 6 February 2019, the Appellant telephoned HMRC and was guided through the process of submitting an online VAT return. On the balance of probabilities, I find that this online return was the VAT return for the period 1 May to 26 June 2015 that had been due to be filed by 27 July 2015.

42. On 20 February 2019, the Appellant telephoned HMRC three times. On the first occasion the Appellant was informed that the error correction claim he had submitted had been dealt with but that the amount due as a repayment had been set

against the penalty he had been charged for the errors in his 01/15 VAT return. On his second call to HMRC, one hour later, the Appellant stated that he wished to complain about Review Officer Blades and her review of the penalty that had been charged. In his third call, a further hour later, the Appellant again stated that he wished to complain about Review Officer Blades.

43. On 21 February 2019, the Appellant telephoned HMRC to chase progress on the complaint he had made about Review Officer Blades. The Appellant asserted that the matter had been ongoing for months. While it is correct that the Appellant had been telephoning HMRC about his vehicle error correction claim since 21 November 2018, three months earlier, the Appellant's complaint about Officer Blades had been made only the previous day.

44. The Appellant telephoned HMRC three times on 22 February 2019 regarding his complaint. The Appellant was subsequently telephoned by a member of HMRC's complaint team, Officer Mitchell, who took an extensive note of her call. Officer Mitchell recorded the Appellant as stating that the error in his return occurred as a result of an HMRC officer guiding him on the telephone as to how to input his figures. If this record of what the Appellant said is correct, then the Appellant's 2019 version of events is different from the explanation he had given in 2015 (when he told Officer Flachi that he had used a computer programme recommended by the franchisor but made a mistake in inputting the figures).

45. Officer Mitchell's note recorded the Appellant as asking for the penalty to be overturned. Officer Mitchell explained that she could not do that as part of a complaints investigation but she could investigate if someone had been rude to the Appellant. Officer Mitchell asked the Appellant if there was any other information that HMRC should have. The Appellant agreed that it was all covered in the letter received by HMRC in December 2018.

46. The Appellant telephoned HMRC twice on 25 February 2019 seeking an update on his complaint. On 5 March 2019, Officer Mitchell wrote to the Appellant with her complaint conclusions.

47. On 25 April 2019, the Appellant telephoned HMRC seeking progress on his Tribunal case. (That Tribunal case is not this current appeal before the Tribunal.) The Appellant is recorded as advising HMRC that he had contacted the Tribunal and that the Tribunal was awaiting information from HMRC.

48. A member of HMRC's complaints team telephoned the Appellant on 26 April 2019 to explain that they had no access to Tribunal correspondence and that the Appellant should contact HMRC's Tribunal team. On 24 June 2019, the Appellant telephoned HMRC twice, on both occasions seeking an update on his Tribunal appeal.

49. On 1 July 2019, the Appellant telephoned HMRC to make a complaint about the way his repayment had been handled. On 2 July 2019, the Appellant emailed Officer Mitchell to say that his error correction claim was in respect of a vehicle purchase.

50. On 11 July 2019 the Appellant telephoned HMRC twice to query why the repayment he had expected to receive had been set against the penalty, and to complain that he had yet to receive a response to his previous complaint.

51. On 15 July 2019, the Appellant telephoned HMRC twice. In his first call the Appellant complained about the offset. In his second call, the Appellant complained that the HMRC team dealing with his Tribunal case had breached their guidelines. On 24 July 2019, the Appellant telephoned HMRC with regard to his complaint. (There is no record of which complaint this related to.)

52. On 6 September 2019, HMRC Assistant Director Chris Gargan emailed the Appellant to tell him that the penalty of £3,421 would be cancelled, and so the repayment of £2,900 would be made to him.

53. On 6 November 2019, the Appellant telephoned HMRC regarding the penalty of £3,421. On 8 November 2019, the Appellant telephoned HMRC to state that he was also seeking the removal of the £301 penalty.

54. The Appellant telephoned HMRC again on 11 November 2019 but the note of that call seems to suggest that the call ended while the Appellant was on hold. The Appellant telephoned HMRC twice on 22 November, to chase the repayment (presumably of the £2,900) that was due.

55. On 25 November 2019, the Appellant telephoned HMRC three times. On the first two occasions, HMRC's record of the call shows that the Appellant was trying to speak to Mr Gargan. On the third occasion, HMRC's note records the Appellant as stating that he wanted to make a reclaim of VAT with regard to 46 payments he had made from 2014 onwards. The Appellant was advised to complete an error correction form to correct the errors in his VAT returns.

56. On 27 November 2019, the Appellant emailed Mr Gargan as follows:

Following our telephone call discussing an issue with 46 individual payments that I have ask for a member of the HMRC to investigate this issue previously but with no response. I have tried on multiple occasions as you suggested to contact the error correction team and the VAT helpline but with no joy.

57. Pausing there, I find that the Appellant had indeed telephoned HMRC a large number of times. However, on the basis of the notes of calls provided in the bundle, I find that the first occasion on which the Appellant mentioned the 46 individual payments, in the context of making a claim, was in a telephone call to the helpline on 25 November 2019, two days before his email to Mr Gargan.

58. The Appellant's email continued:

I would ask if you could pass this information on to the correct team and ask for them to look into the case. I have made 46 payments from 2 bank accounts all 46 payments have been made to the same company "Snack in the Box" I believe I am due VAT back from these 46 payments. I have bank statements as proof of all 46 individual payments made.

59. The Appellant then listed the 46 payments he had made and that are set out above. Although the Appellant refers to having his bank statements, it is clear that there were no attachments to this email and so I find that no copies of the bank statements were sent to HMRC with this email.

60. The Appellant then sent a copy of this email to the HMRC complaints team, marked for the attention of an HMRC officer named Anna Chester.

61. On 29 November 2019, Mr Patterson, a member of HMRC's VAT Error Correction Unit refused the Appellant's claim for repayment of the input tax incurred on the 46 payments on the basis that this error correction claim was out of time for the periods 10/14 to 06/15. The Appellant was advised to complete a different HMRC form to make a claim for any costs he had incurred after de-registration.

62. The Appellant telephoned HMRC on 3 December 2019. The Appellant also emailed Mr Patterson stating:

As our phone call earlier I have informed you that I have contact HMRC previously to raise this issue within the allocated time scale.

I disagree with your decision and would like an office who has no dealing with the case to review it.

63. On 4 December 2019, the Appellant telephoned HMRC to make a further complaint about HMRC's service. The Appellant was advised that the timescale for HMRC to respond to complaints was 15 working days. The Appellant telephoned HMRC again the next day to ask what progress had been made with his complaint.

64. On 9 December 2019, HMRC wrote to the Appellant to acknowledge his request for a review of the 29 November 2019 decision to refuse his error correction claim. On 10 December 2019, the allocated review officer, Officer Corps, telephoned the Appellant. During this telephone call Officer Corps noted that the Appellant had said that he had raised the issue of the 46 payments in a telephone call in either 2014 or 2015 but he was not sure which. The Appellant confirmed that he had no note of the call he said he had made, and he had no copies of the relevant invoices. There must have been a discussion about the bank statements as Officer Corps agreed that the Appellant should keep hold of his statements and that he would only be asked to provide HMRC with a copy if they were required.

65. On 17 December 2019, a member of HMRC's complaints team telephoned the Appellant to discuss his complaint. During this call the Appellant advised that one of his complaints was with the Adjudicator. On 18 December 2019, the Appellant telephoned HMRC, with the HMRC note recording that the Appellant was chasing a repayment of £220 and £301. (Given the Appellant's previous telephone calls, I consider it more likely, and I find, that the Appellant was seeking repayment of the £2,900, and asking for the assessment of £301 to be displaced.)

66. On 19 December 2019, the Appellant telephoned Officer Corps to ask about progress. Officer Corps informed the Appellant that he would call him on 3 January 2020 if there was no decision by that time.

67. On 2 January 2020, Officer Corps issued his review decision to the Appellant in a lengthy letter that included a history of the Appellant's VAT affairs so far as had been established by Officer Corps. Officer Corps acknowledged that there were some minor errors in the 29 November 2019 decision but concluded that these did not affect the overall outcome. Officer Corps concluded that the Appellant's claim must be refused on the basis that the claim was out of time for the 44 payments made more than four years before the claim, and that there was no evidence that the remaining

two payments were attributable to costs related to supplies made while the Appellant was still VAT registered.

68. On 10 January 2020, the Tribunal received the Appellant's appeal against Officer Corps review decision. The Appellant stated that his appeal concerned both income tax and VAT, and that he wanted HMRC to repay £4,615.60. (There was no explanation of how the Appellant had arrived at this figure.) As his grounds of appeal, the Appellant stated:

I am claiming the VAT back on 46 individual payments I have made to the same company over a period from 5 September 2014 – 14 December 2015.

Which the 46 payments total the sum of £9478.52.

I ask for this issue to be looked into at the time of the payments but an HMRC employee stated they would look into the issue which they never did.

I have asked for the recorded telephone calls I have made to HMRC to prove my claim and they state that the phone calls I have asked for have not been recorded.

The only issue HMRC are stating is that they do not want to pay me this tax on this money is because I have not done this in the allocated time frame that they operate by which I think is a 4 year time frame.

All I am doing is trying to claim back what is legally mine. I have claimed this in the allocated time frame but HMRC are trying to tell me that I have not done this. I have had multiple phone calls to HMRC asking about these payments and they state that the phone calls I am asking for have not been recorded.

I just want to clearly state 2 things:

1. I am only trying to claim what is legally mine, I am not trying to claim something that I should not be trying to claim.
2. If you look in to my record with HMRC you will see that I have had a shambolic service from HMRC with multiple mistakes made along the way as the evidence will show if you investigate my record.

I have had incorrect penalties issued to me which after nearly 5 years of fighting this they have realised HMRC have made multiple mistakes along the way they have reversed this.

Also I have had VAT on my vehicle which I was legally due was withheld from myself for a long period which these two issues together cost me financial hardship and put me into financial difficulty which I explained to HMRC at the time but they did not care at all.

Now I have another issue in this one where they do not want to pay to me what is legally mine. I would be happy to take this to the highest level if I cannot get this resolved at this stage.

69. In the section of his Notice of Appeal form where he was asked to state the outcome he would like, the Appellant wrote:

1. Payment in full of my claim
2. Loss of interest on the money from the first payment refunded

3. Compensation for hassle and stress
4. Compensation for multiple HMRC mistakes and with holding on money from myself that has led to financial hardship

The Tribunal's jurisdiction and what will be considered in this appeal

70. There are three issues that the Appellant originally asked the Tribunal to consider: his appeal against HMRC's refusal of his error correction in respect of the 46 payments, loss of interest, and compensation.

71. During the course of the proceedings, the Appellant also stated that he wished to claim interest at 8% on the input tax he claimed in his error correction claim.

The error correction claim

72. Section 49G of the Taxes Management Act 1970 permits a taxpayer to notify an appeal to the Tribunal against a review decision issued by HMRC. The Appellant's appeal was made in time as it was received within 30 days of HMRC's review decision and therefore the Tribunal has authority to determine this aspect of the Appellant's appeal.

Interest

73. The Appellant's first claim for interest is his request that the Tribunal award him interest "on the money from the first payment Refunded".

74. When the Appellant refers to the "first payment Refunded" I assume that he is referring to the input tax of £2,900 due as a result of his first, and successful, error correction claim. I understand that the Appellant is now asking for interest to be paid to him on the £2,900 that has (I assume now) been repaid.

75. While statutory interest is paid by HMRC in certain circumstances, that is a matter for the Appellant to take up with HMRC (not least because there is no evidence before the Tribunal about what, if anything, has already been paid to the Appellant by way of statutory interest). It is not a matter for the Tribunal.

76. The second claim for interest is the Appellant's claim for interest at 8% on the input tax he is claiming in respect of the 46 payments he had made. The Tribunal does not have jurisdiction to award interest. Therefore, whatever the Tribunal decision in respect of the error correction claim, the Tribunal will not award either statutory interest or 8% interest to the Appellant. Both of these aspects of the Appellant's appeal must be refused.

Compensation

77. The Tribunal has also asked the Tribunal to award him compensation. This request arises out of what the Appellant considers to be mistakes made by HMRC and the stress he has suffered as a result of those mistakes.

78. However, as the Appellant will be aware from the many complaints he has already made to HMRC, the correct complaint route is for him to make a complaint to HMRC in the first instance. The Appellant can make an onward complaint to the

Adjudicator if he remains dissatisfied with HMRC's response. All issues relating to the Appellant's complaints, including any request for compensation, are within the jurisdiction of HMRC and the Adjudicator.

79. The Tribunal has neither jurisdiction to consider complaints about HMRC, nor the power to award compensation following complaints about HMRC. Therefore, this aspect of the Appellant's appeal is also refused.

What this decision will cover

80. The only matter that is within the Tribunal's jurisdiction is the Appellant's appeal against the refusal of his error correction.

Discussion and decision

81. In an appeal against HMRC's refusal of an error correction claim, the onus of proof is on the Appellant. The standard of proof is the civil standard of the balance of probabilities.

82. Parliament has enacted legislation to govern how an error correction claim must be made, when it can be made and what it must contain. These laws are there to provide certainty and finality for both parties.

The format of a valid claim

83. I start by considering Regulation 37 of the Value Added Tax Regulations 1995 ("VAT Regulations"). This provides:

37. Any claim under section 80 of the Act shall be made in writing to the Commissioners and shall, by reference to such documentary evidence as is in the possession of the claimant, state the amount of the claim and the method by which that amount was calculated.

84. "Section 80 of the Act" is a reference to Section 80 of the Value Added Act Tax Act 1994 ("VATA 1994"). Section 80 permits a claim to be made when an amount of input tax has not been brought into account. HMRC are only liable to repay or credit an amount under Section 80 where a claim has been made.

85. Therefore, it is a requirement that a claim to HMRC, for repayment of input tax that was not previously brought into account, must be made in writing.

86. For the avoidance of doubt, I am satisfied that the 46 payments that the Appellant made to the franchisor were not previously brought into account. The payments were not included in any of the VAT returns submitted by the Appellant. They did not appear in the ledgers or cash books the Appellant submitted during the check of his first and second VAT returns. The Appellant did not query the figures or calculations presented by Officer Jones or by Officer Flachi at the conclusion of their checks, and he did not appeal either of the check conclusions.

87. The Appellant has stated that he first raised the issue of the 46 payments in a telephone call to HMRC made in 2014 or 2015.

88. I am satisfied that on 9 December 2014, the Appellant told Officer Jones that he made payments of £1.50 per week per vending machine. (It is unclear if the Appellant told Officer Jones who these payments were made to but it was unlikely that such payments would have been to anyone other than the franchisor.) This may be the telephone call which the Appellant is referring to. However, I have concluded that the statement on 9 December 2014 by the Appellant that he made weekly payments was not made in the context of the Appellant making a claim for the input tax incurred and that the Appellant did not tell Officer Jones he wanted to make a claim for the input tax incurred in respect of these payments. I reach this conclusion because the payments were not included in the Appellant's VAT first VAT return (filed only a few weeks earlier), and the payments were not included in the Appellant's cash book or ledger provided for inspection by Officer Jones. The Appellant should have had the invoices from the franchisor at the time of the first VAT return check but, when he gave Officer Jones the invoices he was relying upon to support the input tax claims he was making, he did not give Officer Jones copies of the invoices from the franchisor for the weekly payments. When Officer Jones finished her check of the Appellant's first VAT return and presented her calculations, the Appellant did not say anything about the weekly payments to the franchisor not being included in those calculations. I conclude that, in December 2014, the Appellant did not make a claim for repayment of the input tax incurred on the weekly payments he had made to the franchisor.

89. The Appellant has not produced notes of any of the telephone calls he made to HMRC. On the basis of the telephone notes HMRC have produced, I have made findings of fact (above) about the telephone conversations between the Appellant and HMRC. These notes were made by the HMRC officers who took the calls, and they were made at the time of the calls. There is no evidence before me that the Appellant mentioned the 46 payments he had made to the franchisor in any telephone call to HMRC at any time between 9 December 2014 and 25 November 2019. Shortly before this hearing was due to take place, HMRC offered to provide transcripts of all of the calls for which there were still recordings held. That would have delayed the hearing by about six weeks but would have produced more detail about what was said in each telephone call. The Appellant described the transcripts as "vital evidence" but chose to proceed without the transcripts in order to avoid delaying the outcome of his appeal. Instead, the Appellant suggested that the appeal outcome could not be fair because of the absence of the transcripts. (This is considered in more detail below.)

90. However, whatever may or may not have been said in a telephone call, Regulation 37 requires a claim to be made in writing. The earliest written claim of which any evidence has been presented is the Appellant's email to Mr Gargan of 27 November 2019.

91. I conclude that the earliest occasion on which the Appellant made a written claim to be entitled to the input tax paid on the 46 payments to the franchisor was 27 November 2019.

The time frame for making a valid claim

92. As the parties are not agreed on whether the Appellant's claim of 27 November 2019 was made in time, I must identify the time frame available for the Appellant to make his claim.

93. The time frame for making a claim is calculated slightly differently depending on whether it relates to a period when the Appellant was VAT registered or whether it relates to a period after the Appellant had de-registered. I look at the Appellant's period of registration first.

Payments made between 8 August 2014 and 26 June 2015

94. The relevant parts of Regulation 29 of the VAT Regulations provide as follows:

(1) Subject to paragraph (1A) below, and save as the Commissioners may otherwise allow or direct either generally or specially, a person claiming deduction of input tax under section 25(2) of the Act shall do so on a return made by him for the prescribed accounting period in which the VAT became chargeable save that, where he does not at that time hold the document or invoice required by paragraph (2) below, he shall make his claim on the return for the first prescribed accounting period in which he holds that document or invoice.

(1A) Subject to paragraph (1B) the Commissioners shall not allow or direct a person to make any claim for deduction of input tax in terms such that the deduction would fall to be claimed more than 4 years after the date by which the return for the first prescribed accounting period in which he was entitled to claim that input tax in accordance with paragraph (1) above is required to be made.

...

(2) At the time of claiming deduction of input tax in accordance with paragraph (1) above, a person shall, if the claim is in respect of—

(a) a supply from another taxable person, hold the document which is required to be provided under regulation 13;

...

(3) Where the Commissioners are satisfied that a person is not able to claim the exact amount of input tax to be deducted by him in any period, he may estimate a part of his input tax for that period, provided that any such estimated amount shall be adjusted and exactly accounted for as VAT deductible in the next prescribed accounting period or, if the exact amount is still not known and the Commissioners are satisfied that it could not with due diligence be ascertained, in the next but one prescribed accounting period.

95. As can be seen, Paragraph 29(1A) provides that a claim cannot be made more than four years after the date by which the return is required for the period in which the Appellant was first entitled to claim the input tax.

96. The franchisor is (and was) a large company and I consider it more likely than not that the franchisor was registered for VAT. I also consider it more likely than not that the invoices for the weekly payments that the franchisor issued to the Appellant would have been valid VAT invoices. The Appellant has stated that he no longer has any of the invoices provided to him by the franchisor. The onus is on the Appellant to demonstrate that his claim was made in time but, in the absence of any documents that would show dates, I will make conclusions, on the balance of probabilities, about when the franchisor invoiced the Appellant based on the evidence that is before me. I

consider it more likely than not that the franchisor provided the Appellant with an invoice prior to the Appellant making payment.

97. There is no evidence about the precise date when the Appellant started trading but his VAT registration was back dated to 8 August 2014. The Appellant bought stock on four dates in August 2014 but he did not have a vehicle until 20 August 2014. The payments made by the Appellant start at the beginning of September 2014. I conclude, on the balance of probabilities, that the Appellant was invoiced during or just after the week to which the payment related, and that (at least at the beginning when the payments were made on a regular basis) the Appellant paid the franchisor shortly after receiving the invoice, and for a week that had only very recently passed.

98. The deadline for filing a VAT return is the end of the month following the VAT period covered by the return. Therefore, looking again at Regulation 29, the Appellant's claim for input tax should have been made have been made in the VAT return for the period in which the VAT became chargeable because the Appellant held an invoice at that time. Therefore, the Appellant could have claimed the input tax in the VAT returns that covered the VAT periods for which the payments were made.

99. Therefore, input tax on the payments made by the Appellant in September and October 2014 could have been claimed in his first VAT return, covering the period 8 August 2014 to 31 October 2014. The deadline for this VAT return to be filed was 30 November 2014. Therefore, the deadline for the Appellant to make an error correction claim in respect of this period was 30 November 2018.

100. Input tax on the payments made by the Appellant in November and December 2014, and in January 2015 could have been claimed in his second VAT return, covering the period 1 November 2014 to 31 January 2015. The deadline for this VAT return to be filed was 28 February 2015. Therefore, the deadline for an error correction claim in respect of this period was 28 February 2019. (It must have been to this second VAT period that HMRC attributed the £2,900 input tax claimed by the Appellant in his claim of 5 December 2018. That is because a claim received on 5 December 2018 would have been received too late for a claim relating to the first VAT period.)

101. Input tax on the payments made by the Appellant in February and March 2015 could have been claimed in his third VAT return, covering the period 1 February 2015 to 30 April 2015. The deadline for this VAT return to be filed was 31 May 2015. Therefore, the deadline for an error correction claim in respect of this period was 31 May 2019.

102. Input tax on the payments made by the Appellant in May and up to 26 June 2015 could have been claimed in his final VAT return, covering the period 1 May to 26 June 2015. Although the Appellant did not file this return until February 2019, the deadline for this final VAT return to be filed was 27 July 2015. Therefore, the deadline for an error correction claim in respect of this period was 27 July 2019.

103. I have found that the earliest written claim made by the Appellant was made on 27 November 2019. As is clear, 27 November 2019 was more than four years after the deadline for making an error correction claim in respect of any of the periods for which he was registered for VAT. Therefore, the Appellant's error correction claim is

out of time in respect of all of the payments made during the period in which he was registered for VAT.

104. During the course of these proceedings, the Appellant asked the Tribunal to take account of what he described as delay on the part of HMRC, and to take that into account when making a decision about whether his claim was made in time.

105. In considering whether the Appellant's error correction claim was made in time, it is the Appellant's actions that are relevant, and not how HMRC have responded. I have determined that the Appellant made his written claim to HMRC in respect of the 46 payments on 27 November 2019. I can see that the Appellant has known since (at least) 5 December 2018 (when he made his error correction claim in respect of the vehicle) that he should write to HMRC to make a claim for input tax. Whatever action or inaction there was on the part of HMRC in responding to Appellant's complaints, that would not affect the Appellant's ability to make a written claim for the input tax on the 46 payments.

106. Even if there had been delay by HMRC (and I make no findings in this regard), the four year time limit is set by Parliament and it is fixed. I do not have the discretion to extend this four year time limit. The Appellant's error correction claim is out of time in respect of all of the payments made during the period in which he was registered for VAT.

Payments made between 27 June and 14 December 2015

107. The Appellant made a number of payments to the franchisor after his de-registration. I now consider the relevant time frame for making a claim in respect of a payment made after the Appellant had de-registered. The relevant parts of Regulation 111 provide as follows:

(5) Subject to paragraph (6) below, if a person who has been, but is no longer, a taxable person makes a claim in such manner and supported by such evidence as the Commissioners may require, they may pay to him the amount of any VAT on the supply of services to him after the date with effect from which he ceased to be, or to be required to be, registered and which was attributable to any taxable supply made by him in the course or furtherance of any business carried on by him when he was, or was required to be, registered.

(6) Subject to paragraph (7) and (8) below, no claim under paragraph (5) above may be made more than 4 years after the date on which the supply of services was made.

108. Therefore, in looking at these payments, the deadline for the Appellant to make his error correction claim is four years after the date on which the supply of the services was made.

109. As I have noted above, the Appellant has not retained the invoices issued to him and so I have had to make conclusions about the supply made to him based on the balance of probabilities. I have concluded that the Appellant was invoiced during or just after the week to which the payment related, and that (at least at the beginning when the payments were made on a regular basis) the Appellant paid the franchisor

shortly after receiving the invoice. Therefore, the supply of services was made in advance of the payments being made.

110. I remind myself that the Appellant's error correction claim was made on 27 November 2019. That means that the Appellant's claim was made more than four years after the payments he made to the franchisor made in July, August, September, October and November. Therefore, the Appellant's error correction claim was out of time in respect of all of these payments.

111. The Appellant's claim was made less than four years after the two payments made in December 2015 (a total of £844). This part of the Appellant's claim was made in time.

What a claim must demonstrate

112. Paragraph 111(5) (set out above) provides that input tax may be claimed in respect of a payment that is attributable to a taxable supply made in the course of any business carried on when the person was registered.

113. Paragraph 3 of Regulation 111 provides:

(3) Subject to paragraphs (3A) and (3B) below, a claim under paragraph (1) above shall, save as the Commissioners may otherwise allow, be made on the first return the taxable person is required to make and, as the Commissioners may require, be supported by invoices and other evidence.

114. That means that, for the Appellant to be successful in his claim, he must support his claim with evidence that the payments made by him in December 2015 are attributable to his supply of snacks at a time when he was still registered for VAT. As noted above, the onus is on the Appellant to prove his claim, so the Appellant must show that this is more likely than not.

115. A claim should ordinarily be supported by VAT invoices. The Appellant has not been able to provide any VAT invoices to demonstrate that either of the two December 2015 payments relate to his trading up until 26 June 2015, and do not relate to his trading from 27 June 2015 onwards. HMRC have the discretion to allow a claim that is supported by evidence other than VAT invoices but the Appellant does not have any other evidence to support this aspect of his claim.

116. I have already concluded, on the balance of probabilities that, at the beginning of the time when he was trading, the Appellant paid the franchisor shortly after receiving the invoice; I have also concluded that the invoice was issued during or shortly after the week to which it related. That is borne out by the initial payments starting four weeks after the date of the Appellant's VAT registration and the payments being regular, both in amount and in timing.

117. I can see that the regularity in the Appellant's payments diminished over time. However, for the two December 2015 payments to be attributable to the Appellant's trade when he was still registered for VAT, these two payments would have had to have been made almost six months in arrears. The Appellant's payments began four weeks after the Appellant registered for VAT, and the payments continued on a semi-regular basis. Given that history, I consider it is inherently unlikely that the

Appellant's payments to the franchisor had slipped to such an extent that the two December 2015 payments (and presumably all the other payments made after de-registration) relate to the hire of vending machines before 27 June 2015.

118. I conclude, on the balance of probabilities, that the two December 2015 payments are both attributable to the Appellant's supply on dates from 27 June 2015 onwards, when the Appellant was still a Snack in the Box franchisee but when was not registered for VAT.

119. The onus is on the Appellant to demonstrate his entitlement. In this case there has been no evidence that supports the Appellant's claim. I have accepted that it is more likely than not that he was provided with invoices, and that they were valid VAT invoices setting out the VAT that he was charged. However, I do not accept it is more likely than not that the December payments are attributable to the Appellant's supply of confectionary and snacks prior to 27 June 2015.

120. Therefore, the Appellant has failed to demonstrate his entitlement to claim input tax on the two payments he made to the franchisor in December 2015.

121. Those conclusions mean that the Appellant's appeal has failed, and this appeal must be dismissed.

122. As the Appellant raised a number of queries during the course of the proceedings, I will now address those.

Procedural issues arising during the course of these proceedings

123. Throughout the proceedings the Appellant has been anxious to avoid delay. That is understandable as the Appellant believed that his appeal would be successful and that any delay in the Tribunal proceedings would put off the day when he would receive payment. The Appellant has stated that his financial difficulties make him vulnerable and that he has reduced living standards due to those financial difficulties.

124. I am sorry that the appeal could not be heard sooner but unfortunately the progress of this appeal, and a great many other appeals, has been hampered by the restrictions on public life made necessary by the Covid-19 pandemic.

History of these proceedings

125. As noted above, the Tribunal received the Appellant's appeal on 10 January 2020. It was acknowledged by the Tribunal on 29 January 2020. HMRC filed their Statement of Case on 16 March 2020, in accordance with the Tribunal directions.

126. The Appellant sent three emails to the Tribunal on 17 March 2020. In his first email, the Appellant complained about Mr Gargan and another HMRC officer. In his second email, the Appellant asked that the judge looking at his appeal look into matters in depth because of what he considered to be mistakes made by HMRC, including that HMRC had not been able to provide transcripts of the telephone calls that had occurred. The Appellant stated that every day that went by without the input tax he had claimed was putting him into financial difficulties and leaving him vulnerable. In his third email the Appellant asked that his appeal be looked at urgently because of the financial hardship he was suffering.

127. Before the Tribunal clerk could reply to those emails, on 23 March 2020, the UK went into its first lockdown. On 25 March 2020, the Tribunal issued two successive general stays, affecting all appeals then before the Tribunal. Those two stays lasted for 14 weeks. Although this appeal did make some progress during that period, the lockdown and subsequent restrictions meant that it was very difficult for the Tribunal to respond quickly to appeal correspondence.

128. On 26 March 2020, the Appellant again emailed the Tribunal, asking that the appeal be looked at urgently because of the financial hardship he was suffering. The Appellant also asked:

I would just like the Tribunal Service to take into account the amount of time HM Revenue and Customs have taken to reply to issue emails and requests of mine over the last 5 years dealing with my tax affairs which have accounted for a large amount of the time if not more than the time I am over the allocated time HM Revenue and Customs states for claiming back the money I am legally owed. Even though I have claimed and asked for this issue to be looked into previously.

129. It seems that the HMRC presenting officer emailed the Appellant to explain about the stays and to suggest that it would be possible to ask for the appeal to be determined on paper and that could be quicker. The Appellant emailed the Tribunal on 23 April 2020 to request a paper appeal. The Appellant emailed the Tribunal again on 1 May 2020 to repeat that request. On 10 June 2020 the Tribunal issued standard directions to the parties to enable them to prepare for an appeal hearing. Both parties were directed to provide their list of the documents they would rely upon.

130. On 16 June 2020 the Appellant emailed the Tribunal to request that his appeal be heard on paper. The Appellant stated that it should not have been necessary for his appeal to be considered by the Tribunal because it was a very simple matter, and that every day it continued was costing him money.

131. On 6 July 2020, HMRC complied with the Tribunal directions, providing their consent to the appeal being heard on paper and providing their list of documents. On 27 July 2020, the Appellant emailed the Tribunal to state that he considered the service he had received from HMRC was very poor. The Appellant asked that the judge looking at his appeal ask HMRC to explain their mistakes. On 19 August 2020, the Appellant emailed the Tribunal again to state that he would be claiming interest at 8% on the £4,615.60 he was claiming from HMRC. The Appellant asked that the Tribunal judge take into account the reduced living standards he had as a result of HMRC refusing his claim.

132. The Tribunal file was referred to Judge Kempster who agreed that this appeal could be heard on paper. On 17 September 2020, Judge Kempster issued directions, requiring the Appellant to serve his list of documents by 15 October 2020 and to provide HMRC with a copy of those documents. Judge Kempster also directed HMRC to serve a bundle by 12 November 2020.

133. The Appellant sought clarification of these Directions. On 28 September 2020, and after a Tribunal clerk had spoken to the Appellant, the Tribunal wrote to the Appellant asking him to confirm that his emails of 16 June, 27 July and 19 August were what he wished to rely upon as his list of documents. On 29 September 2020,

the Appellant confirmed that seven specified emails he had sent to the Tribunal, in addition to copies of the HMRC letters attached to those emails, were what he relied upon as his list of documents.

134. On 23 October 2020, the Appellant telephoned the Tribunal to seek an update on progress. The Appellant was informed of the deadlines in the directions. On 26 October 2020, the Appellant emailed the Tribunal asking that Judge Kempster take into account his previous dealings with HMRC and the number of complaints he had made. The Appellant asked Judge Kempster to ask HMRC to explain their level of service, and he asked that the appeal be determined urgently due to his financial hardship. On 9 November 2020, the Appellant emailed the Tribunal to state that he was not making any further submissions and so he hoped that would speed up matters.

135. On 6 November 2020, a newly appointed HMRC presenting officer emailed the Appellant to ask for a copy of the emails he had sent to the Tribunal and was relying upon as his documents, so that those emails could be included in the bundle. (Those emails had not been copied to HMRC.) The Appellant (who it seems was not aware that the Tribunal Directions required him to provide a copy of his documents to HMRC) replied to HMRC that they should seek a copy from the Tribunal.

136. On 12 November 2020, HMRC filed and served a bundle for the hearing. HMRC explained that this did not include the Appellant's emails as they had not been provided by the Appellant. On 30 November 2020, the Appellant telephoned the Tribunal for an update and was informed that the Tribunal was awaiting a judge's response on the bundle.

137. On 8 December 2020, HMRC made an application to file a supplementary bundle containing notes of the telephone calls between HMRC and the Appellant between 2014 and 2019. HMRC also asked for a stay until February 2021 so that transcripts could be provided of the calls for which there were still recordings available.

138. On 9 December 2020, the Appellant emailed HMRC to state that he had asked for recordings of telephone calls to be investigated at the beginning of the proceedings. The Appellant stated that he did not want his Tribunal appeal to be delayed any further. In his email of 9 December 2020, the Appellant also suggested that it was HMRC who had first mentioned the figure of £4,615.60, and that it was wrong for HMRC to submit that he had presented no evidence to support his claim as he had provided bank statements. The Appellant sent a copy of his email to the Tribunal.

139. On 10 December 2020, HMRC emailed the Tribunal. HMRC asked the Appellant to confirm his position with regard to transcripts. On the following day the Appellant emailed HMRC to say that he considered that if HMRC had listened to the recordings of the telephone calls then this would have had a significant impact on his complaint to HMRC, so he considered HMRC should withdraw the appeal from the Tribunal service. The Appellant then forwarded his chain of correspondence to the Tribunal and asked that the emails be read by a judge as he believed HMRC had misled the Tribunal.

140. On 18 December 2020, HMRC asked that the Tribunal consider their application to file a supplementary bundle but withdrew their application for a stay on

the basis that the Appellant had failed to confirm that he wished the Tribunal to have copies of the transcripts.

141. The Appellant emailed HMRC and the Tribunal twice on 18 December 2020. In his first email the Appellant accused HMRC of falsehood (by claiming to have reviewed the telephone calls when they had not listened to the recordings), suggested that this would affect the Tribunal's decision and that he was entitled to damages if adversely affected, and concluded that it was wrong for HMRC to send his complaint to the Tribunal service when they knew they had not conducted a thorough investigation. In his second email, the Appellant stated that he was in a vulnerable position because of his financial difficulties, and that he wished to have his appeal resolved urgently. The Appellant confirmed that he did not want to have the recordings transcribed because he believed HMRC would amend the transcripts. The Appellant also suggested that it would be impossible for the Tribunal to determine his appeal because the "vital evidence" of the telephone calls had not been reviewed by HMRC.

142. On 20 December 2020, Judge Kempster wrote to the parties, admitting HMRC's supplementary bundle and asking the Appellant to confirm he did not wish to have the telephone call transcripts made available to the Tribunal. Judge Kempster also informed the Appellant that the Tribunal did not have jurisdiction to hear complaints about HMRC

143. The Tribunal file was then allocated to me to hear the appeal on the papers. I directed HMRC to file one composite bundle that complied with the Tribunal guidance on bundles. I gave HMRC only seven days to do this in order that the hearing could take place on the allocated hearing date, thus causing no additional delay. HMRC met this deadline.

144. On 15 January 2021, the Appellant emailed the Tribunal to express his anxiety about further delay. The Appellant asked why the appeal had not been concluded in his favour due to what he described as HMRC trying to affect the outcome of the appeal. The Appellant was informed that the appeal would be heard on its listed date, and the decision then sent to both parties.

The issues raised by the Appellant during the proceedings

145. It is important to reiterate that the Tribunal does not have jurisdiction to investigate complaints about HMRC.

146. The Tribunal's role is to determine liability in relation to tax disputes. It is an adversarial system and both parties have an equal opportunity to provide their evidence, and to make submissions about the findings to be made from the evidence and the conclusions to be drawn. The Tribunal makes findings of facts on the basis of the evidence put before it by the parties, and then applies the law to those facts to reach a conclusion about the legal position. In this case the issue for determination by the Tribunal was whether the Appellant had a legal entitlement to the input tax he claimed. To be legally entitled to the amount he claimed, the Appellant had to meet the requirements, set out in the VAT Regulations, for making a claim. I have decided that the Appellant did not meet those requirements, and so he is not legally entitled to the repayment he sought.

147. The Appellant has sent several emails to the Tribunal about the recordings of his telephone calls to HMRC. The Appellant is correct in stating that this is an issue he had raised throughout the progress of his appeal. The Appellant was initially frustrated that HMRC had not provided him with transcripts of the recordings, and subsequently frustrated because he had understood that, when Review Officer Corps reviewed the refusal of his error correction claim, Review Officer Corps would have listened to the telephone recordings. That understanding of the Appellant has proved not to be correct - no HMRC officer had listened to any of the recordings. If the Appellant believes that HMRC have failed to carry out their review properly because of this, then that is a matter for him to raise with HMRC. I have not seen any document in which any HMRC officer has falsely stated to the Tribunal that he or she had listened to the recordings of the telephone calls, and so I do not agree the Tribunal has been misled.

148. The Appellant also stated that the recordings of the telephone calls were “vital evidence”. However, when the VAT Regulations were considered, it became clear that the telephone call recordings were not relevant to the legal issues to be determined by the Tribunal. This is because, as I have explained above, for an error correction claim to HMRC to be valid, it must be made in writing. Therefore, the telephone call recordings do not affect the outcome of this appeal. If the transcripts had shown that the Appellant had not made an oral claim to HMRC, then that obviously would not help the Appellant. On the other hand, if those calls had shown that the Appellant had made an oral claim to HMRC, then that would still not help the Appellant in this Tribunal appeal because an oral claim does not meet the requirements for a valid claim. A claim must be made in writing.

149. The Appellant has asked whether his appeal is rendered void as a result of what he describes as HMRC trying to affect the outcome of the appeal. It is unclear whether this question arose as a result of the Appellant’s claim (that I have not accepted) that the Tribunal was misled by HMRC or because I directed that HMRC produce a composite bundle. In both cases the answer is that the Appellant’s appeal has not been rendered void. I have been able to hear the Appellant’s appeal, looking at all the documents in the bundle and on the Tribunal file, and reading both parties submissions. I have considered the relevant legislation and I have concluded that the Appellant’s appeal is unsuccessful because his error correction claim does not meet the legal requirements.

Conclusion

150. For the reasons set out above, this appeal is dismissed.

151. In his notice of appeal the Appellant stated that he would be prepared to take his appeal “to the highest level” if he is not successful in his appeal to the Tribunal.

152. 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.

JANE BAILEY

TRIBUNAL JUDGE

RELEASE DATE: 08 FEBRUARY 2021