



TC03758

Appeal number: TC/2014/00857

VALUE ADDED TAX – late registration for VAT – appeal against penalty of £7204 – tribunal found this excessively harsh - factors in mitigation - proper penalty £400-appeal allowed in part.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JONATHAN LEE

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE BARBARA KING
MR WARREN SNOWDON**

Sitting in public at North Shields on 3 June 2014

The Appellant attended in person

Mrs Rosalind Oliver of HM Revenue and Customs, for the Respondents

DECISION

The Issue.

5 1. On 28 May 2013 the respondents (“HMRC”) informed the appellant that
information from his self assessment returns showed that he should have made an
application to register for VAT from March 2008. The appellant made an application
to register for VAT on 28 May 2013 and was then informed by the Respondents that
10 he was liable to a penalty under section 67 of the Value Added Tax Act (VATA) 1994
for failing to register from 1 March 2008.

2. On 4 December 2013 HMRC imposed a penalty of £7204 and Mr Lee appealed.
On 19 March 2014 HMRC mitigated the penalty to £3602 but Mr Lee wished to
continue with his appeal.

The law.

15 3. Because the period of default from March 2008 and May 2013 was more than
18 months, section 67 VATA allows a penalty of 15% of the net tax liability for the
period.

4. Under section 70 of VATA 1994 the Tribunal has a wide discretion to mitigate
a late notification penalty. The Tribunal may reduce the penalty to such amount
20 (including) nil as they think proper. Section 70(4) of VATA 1994, however, places a
fetter on the Tribunal’s discretion by specifically excluding: insufficiency of funds, no
significant VAT loss, and acting in good faith as factors, which can be taken into
account as mitigation by the Tribunal.

The Evidence.

25 5. Mr Lee gave oral evidence to the effect that he is now aged 36 works and is
working as a roofer. He has done this since he left school except for a three year
period when he was employed as a policeman. His work takes him all over the
country and he often has to work away from home. He works only on commercial
premises which mainly involves metal roofs. He never makes any supply of materials
30 to customers.

6. For a short period in 2008 he was in a partnership as a roofer, but otherwise he
was working as a sole trader throughout the period from 1 March 2008 to date. Until
May 2013 Mr Lee kept all his own accounts and submitted all his own self assessment
tax returns.

35 7. It had never occurred to Mr Lee that he should consider registering for VAT. He
believed that as he did not make supplies of any material there were no VAT
implications for the work he was doing.

8. He believes that none of the people, who do similar work to him, is registered for VAT. He had not discussed anything such as thresholds with any work colleagues.

9. It was only in May 2013 when he was called to speak to an officer of HMRC that he became aware of the possible need to register for VAT and he did so straight away when he was told. He has since then employed an accountant to do returns for him.

10. Now that he has been told about the threshold of £67,000 he believes that he only went over the threshold in 2008, just after he had been in partnership and then again in 2010 when he did work for a different company for a few months and he employed three workers to assist him. At the time Mr Lee made the application to register for VAT he estimated that his taxable supplies in the following 12 months would be £51,000, well under the threshold.

11. Mr Lee believes he was never notified by HMRC that he had reached any threshold for VAT and as he was submitting Self Assessment returns he believes that he could have been notified earlier of the need to register for VAT thus reducing any possible penalty

Discussion.

12. We found Mr Lee had honestly believed that he had no need to register for VAT but ignorance of the law is no excuse. The fact that a person was acting in good faith cannot be taken into account by the Tribunal when considering whether the penalty should be reduced.

13. Whilst we have found as a fact that Mr Lee was a sole trader from the 1 March 2014, the date at which he reached the threshold, we find that in the period immediately beforehand, Mr Lee had been in a partnership and that had caused the rise in sales which took him over the threshold. Shortly thereafter his sales dropped.

14. The figures only rose again when he was employing three men. In effect his sales were above the threshold only because of the services of four people and had Mr Lee realised the VAT implications at the time it is possible that he would have entered into different working arrangements, which would have meant that he would not have exceeded the VAT threshold.

15. As soon as Mr Lee found out that he needed to register for VAT we find that he did take the matter seriously and, not having used an accountant at all before, he started to employ one so that the information could be supplied to HMRC as soon as possible. HMRC do not agree that he was swift to supply the information but we find it was.

16. We consider that all of these factors can be taken into account in mitigating the penalty of £7204 which we find excessively harsh for someone who has in effect made their first mistake.

17. HMRC have addressed the question of mitigation on the basis of allowing a 50% reduction for ‘co-operation given during initial enquiries’.

18. We consider that the legislation in section 70 VATA does not restrict us to reducing the penalty by particular percentages. Section 70(1) VATA allows a Tribunal to reduce a penalty to an amount which they think proper. We consider that we can use our experience sitting in ‘Tax Tribunals’ and in other courts.

Decision

19. We consider that a penalty of £400 is appropriate in this case. The appeal is allowed in part.

20. 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.

**BARBARA KING
TRIBUNAL JUDGE**

RELEASE DATE: 25 June 2014