Neutral Citation: [2024] UKFTT 00828 (TC)

Case Number: TC09287

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House, London

Appeal reference: TC/2022/01791

VALUE ADDED TAX – assessments made under VATA 1994, s 73 – whether to best of HMRC's judgment – yes – whether the amount of the assessment should be amended – no – appeal dismissed

Heard on: 3 and 4 July 2024
Judgment date: 12 September 2024

Before

TRIBUNAL JUDGE RACHEL GAUKE

Between

DOMINION WORLD LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Oladipo Olagunju, director of the Appellant

For the Respondents: Olivia Donovan, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. The Appellant, Dominion World Limited ("Dominion"), appeals against a VAT assessment that was made following HMRC's decision to disallow input tax and increase output tax for the period ending 31 July 2014 to the period ending 31 January 2016 (periods 07/14 to 01/16). Following an alternative dispute resolution (ADR) process, and the subsequent identification of an arithmetical error, the amount of the assessment has been revised to £5,387.10.

2. Mr Olagunju contends that the assessment was not made to the best of HMRC's judgment and should be set aside.

HEARING AND EVIDENCE

3. HMRC had provided the Tribunal with a hearing bundle of 621 pages. I also had Dominion's accounts for the period ended 31 January 2024, and HMRC's skeleton argument.

4. At the hearing, Mr Olagunju provided hard copies of Dominion's skeleton argument and a response to HMRC's skeleton argument, neither of which I had received before the hearing. I allowed Ms Donovan time to read these documents, and having done so she did not object to them being handed up to me. I confirm that I have read these documents carefully and considered their contents.

5. I had witness statements from HMRC's officer Hazel Poomun Muree and from Mr Olagunjo. Ms Poomun Muree attended the hearing and was cross-examined by Mr Olagunju. Mr Olagunju represented himself and was cross-examined by Ms Donovan.

FINDINGS OF FACT

6. Dominion conducted business as an internet café, providing printing, scanning and photocopying services, and also made commission from cargo collection services.

7. Mr Oladipo Olagunju is a director of Dominion and is its sole shareholder.

8. Dominion registered for VAT voluntarily with effect from 1 June 2014. Its first VAT period ended on 31 July 2014 and so was two months long. After that its VAT returns were due quarterly, until it deregistered for VAT on 30 November 2016.

9. All supplies made by Dominion were taxable at the standard rate for VAT purposes, except that it sub-let part of its premises, and the rent on this sub-lease was exempt.

10. The services provided by the internet café were described as "business centre" services. In the periods under appeal, Dominion had three sources of income: the business centre, cargo collection services, and rent from the sub-lease.

11. In the relevant periods, Mr Olagunju owned a car which he used for both business and personal purposes.

12. Dominion's VAT returns for periods 07/14 to 04/16 declared no sales but reclaimed VAT on purchases.

13. Following a check by HMRC of these VAT returns, Ms Poomun Muree and a colleague visited Dominion's premises on 20 September 2016 and met Mr Olagunju and Dominion's accountant, Mr Zaccheus. After that visit, Ms Poomun Muree requested various documents and information, and a correspondence ensued.

14. On 31 January 2017, Ms Poomun Muree raised a VAT assessment for periods 07/14 to 01/16, and a separate assessment for period 04/16. The total VAT due was stated to be £9,082. HMRC are no longer seeking payment of any VAT for period 04/16, and so this separate assessment is not under appeal. However, period 04/16 is still relevant to an understanding of how HMRC calculated the VAT due from Dominion in the previous periods.

15. At the time the VAT assessments were raised, Ms Poomun Muree had received handwritten sales listings for March 2015, May to September 2015, January 2016, and March to April 2016. These showed that, despite no sales having been declared in the relevant VAT returns, Dominion had made sales in all these periods. Dominion's explanation for no sales having been declared in the VAT returns was that the income was too low.

16. HMRC had requested sales information for the whole of the periods to which the VAT assessments related, but information for a number of months was missing, namely June 2014 to February 2015, April 2015, October to December 2015, and February 2016. Dominion's agent suggested that HMRC use best judgment to quantify the sales for which records were not available.

17. To estimate Dominion's sales for each period for which information was missing, Ms Poomun Muree added the figures for the known periods and divided them by the number of those periods. These figures were recalculated later, after the ADR and after Dominion had provided more information, and so Ms Poomun Muree's calculations in January 2017 do not form the basis for the amount of VAT which HMRC now say is due.

18. In relation to input tax, by the time she raised the VAT assessments Ms Poomun Muree had received lists of purchases for all of the periods to which the assessments related, but Dominion had not told her which items related to personal expenditure, and which related to the business. It was clear from the description of the purchases that many related to personal expenditure (for example, KFC, Primark and various shoe shops and supermarkets). As Dominion had not specified which of these items were for business as opposed to personal use, Ms Poomun Muree reduced the input tax on the returns to nil.

19. Dominion had reclaimed VAT on the petrol used in Mr Olagunju's car, but given that the car was at least partly used for personal use, Ms Poomun Muree disallowed this too.

20. Dominion's premises were leased, and Ms Poomun Muree initially disallowed VAT on the rent because the rent invoices were addressed to Mr Olagunju personally, rather than to Dominion. Following ADR, HMRC agreed to allow the VAT on these invoices, despite them having been addressed to Mr Olagunju. HMRC then adjusted the VAT due under the assessments to reflect this agreement, and so no issue relating to VAT on the rent arises on this appeal.

21. A penalty assessment was issued on 20 March 2017, but was cancelled following the ADR procedure.

22. At some point between January 2017 and December 2019 (although I have been unable to establish the date), Ms Poomun Muree received figures for Dominion's sales in some, although not all, of the months for which this information was previously missing.

23. On 6 February 2017, Mr Olagunju wrote to dispute the assessments, and a correspondence ensued. On 29 November 2018, Dominion appealed to the Tribunal (the "first appeal").

24. On 30 January 2019, Mr Olagunju made a hardship application so that Dominion could proceed with the appeal without paying the tax in dispute. HMRC granted the hardship application on 19 March 2019.

25. The first appeal was settled under the ADR process. An ADR Exit Agreement was signed by both parties on 1 October 2019. The terms of the agreement were as follows:

(1) "15% commission vatable on the cargo sales agreed by both parties.

(2) The VAT Input Tax on the rent will be allowed in this instance as the lease agreements must be in the correct names.

(3) The penalty will be reduced from Deliberate to Mistake despite Taking Reasonable Care.

(4) Additional information and documentation (Sales and purchase listings) to be forwarded to HMRC for the periods 1 May 2016 to 30 November 2016 by 15 October 2019.

(5) HMRC to revise the assessment as agreed by 11 October 2019."

26. Following the ADR process, Ms Poomun Muree recalculated the amount of VAT due from Dominion for periods 07/14 to 04/16. The method she used was as follows.

(1) For business centre sales, she used the figures provided by Dominion in every month for which Dominion provided this information. By this stage, the months for which business centre sales were missing were April 2015, October to December 2015, and February 2016.

(2) To estimate the figures for these five missing months, Ms Poomun Muree used the business centre sales figures provided by Dominion for each of the other months beginning with February 2014 (before the business became VAT registered) and ending with April 2016: minus the five missing months, this gave 22 months for which actual sales figures were available. Ms Poomun Muree totalled the figures for these 22 months, and divided the result by 22. This gave a figure of £1,060.21, which she used as the amount of business centre sales in each of the five missing months.

(3) One of these five missing months was February 2016. This falls in period 04/16 which, as described above, is not one of the periods currently under appeal. For the periods that remain under appeal, therefore, HMRC used estimated figures for just four months.

(4) In relation to cargo collection, the figures provided to HMRC were not the amounts of commission retained by Dominion, but the total amounts on which the commission was calculated. Dominion provided these figures for February 2014 to January 2015 (ie again information was provided for the time before Dominion's VAT registration began). To determine the amount of the commission for June 2014 to January 2015, Ms Poomun Muree used the actual figures supplied by Dominion and applied the 15% commission rate as set out in the ADR agreement.

(5) To estimate the commission for the remaining months (February 2015 to April 2016), she calculated commission at 15% for each of the 12 months for which figures were available (February 2014 to January 2015), added this up and divided it by 12. This gave a figure of £35.63, which she used as the amount of cargo commission for each month from February 2015 to April 2016.

(6) The rent received by Dominion on its sub-lease was exempt from VAT and so did not feature in Ms Poomun Muree's output tax calculations.

(7) In relation to purchases, Ms Poomun Muree identified items that appeared to relate to business expenditure, and allowed the input tax on these. VAT on the remaining expenditure was disallowed.

(8) The revised calculation also gave Dominion credit for VAT on its rent invoices, as HMRC had agreed they would do as part of the ADR agreement.

27. On 11 October 2019, Ms Poomun Muree sent Mr Olagunju a spreadsheet setting out the results of her calculations and the total amount of tax due, which was now £6,926. She asked him to confirm that he agreed with these revised figures. Mr Olagunju queried whether she had, in fact, given credit for VAT on rent, and Ms Poomun Muree confirmed that she had done so.

28. On 25 October 2019, Mr Olagunju sent Ms Poomun Muree a list of purchases in respect of which HMRC had disallowed the input tax, having ticked various items which he said were business expenditure. Ms Poomun Muree adjusted the VAT calculation to allow the input tax on these items.

29. On 5 December 2019, Ms Poomun Muree sent Mr Olagunju a revised version of the spreadsheet containing her calculations. The allowance of additional input tax resulted in the total tax due being reduced to £6,801. Mr Olagunju does not seem to have responded to this communication.

30. There was then a period during which HMRC made no further progress on this case, for reasons including Ms Poomun Muree being on long-term sick leave, and the covid pandemic.

31. On 1 December 2021, Ms Poomun Muree reviewed the calculations and produced amended figures. These were used to make an amended assessment for the periods 07/14 to 01/16 inclusive, and an amended penalty assessment. These were sent to Dominion on 8 February 2022, along with a VAT Statement of Account in the amount of £11,858.10, reflecting both the tax due and the penalty. It is this amended VAT assessment dated 8 February 2022, for the periods 07/14 to 01/16, that is the subject of the current appeal.

32. In producing the assessments, Ms Poomun Muree had failed to appreciate that the effect of the ADR agreement was that the penalty should have been removed. Mr Olagunju queried the assessments, upon which Ms Poomun Muree realised her mistake and cancelled the penalty. The penalty is therefore not under appeal in these proceedings.

33. On 3 March 2022, Mr Olagunju made a further appeal to this Tribunal. HMRC applied to strike out the appeal. Following a hearing on 19 January 2023, the Tribunal refused the strike-out application.

34. On 15 August 2022, HMRC reviewed the tax calculations and discovered a mistake, described as an accounting adjustment, relating to the period 04/16. The result of this adjustment is that HMRC are no longer seeking payment of any VAT in relation to period 04/16.

35. On 30 October 2023, HMRC informed Mr Olagunju that they had discovered a further calculation error, as a result of which they reduced the amount of tax due from Dominion from £6,215.10 to £5,387.10. This error arose because when HMRC had calculated the amount of output tax due they had wrongly done so on the basis that the sales and commission figures were exclusive, rather than inclusive, of VAT.

RELEVANT LAW

36. Section 4 of the Value Added Tax Act 1994 (VATA 1994) provides that VAT is chargeable on taxable supplies of goods and services made in the UK by a taxable person in

the course of their business. A taxable supply means a supply of goods or services made in the UK that is not an exempt supply for VAT purposes, and a taxable person means a person who is, or is required to be, registered for VAT.

37. Taxable persons must file VAT returns, and are required to keep records for this purpose. Under VATA 1994, s 73, where a person fails to keep records, or it appears to HMRC that their VAT returns are incomplete or incorrect, they may assess the amount of VAT due to the best of their judgment. An assessment under VATA 1994, s 73 must be made within four years of the end of the accounting period concerned.

38. The classic statement of the test as to whether an assessment is made to the best of HMRC's judgment is set out in the judgment of Woolf J in *Van Boeckel v C&E Comrs* [1981] STC 290 ("*Van Boeckel*") (at p292f–293a), where he said:

> "As to this the very use of the word 'judgment' makes it clear that the commissioners are required to exercise their powers in such a way that they make a value judgment on the material which is before them. Clearly they must perform that function honestly and bona fide. It would be a misuse of that power if the commissioners were to decide on a figure which they knew was, or thought was, in excess of the amount which could possibly be payable, and then leave it to the taxpayer to seek, on appeal, to reduce that assessment.
>
> Secondly, clearly there must be some material before the commissioners on which they can base their judgment. If there is no material at all it would be impossible to form a judgment as to what tax is due.
>
> Thirdly, it should be recognised, particularly bearing in mind the primary obligation, to which I have made reference, of the taxpayer to make a return himself, that the commissioners should not be required to do the work of the taxpayer in order to form a conclusion as to the amount of tax which, to the best of their judgment, is due. In the very nature of things frequently the relevant information will be readily available to the taxpayer, but it will be very difficult for the commissioners to obtain that information without carrying out exhaustive investigations. In my view, the use of the words 'best of their judgment' does not envisage the burden being placed on the commissioners of carrying out exhaustive investigations. What the words 'best of their judgment' envisage, in my view, is that the commissioners will fairly consider all material placed before them and, on that material, come to a decision which is reasonable and not arbitrary as to the amount of tax which is due. As long as there is some material on which the commissioners can reasonably act then they are not required to carry out investigations which may or may not result in further material being placed before them."

39. In *Rahman t/a Khayam Restaurant v C&E Comrs* [1998] STC 826, Carnwath J considered the above passage and commented:

> "I have referred to the judgment in some detail, because there are dangers in taking Woolf J's analysis of the concept of 'best judgment' out of context. The passages I have italicised show that the tribunal should not treat an assessment as invalid merely because it disagrees as to how the judgment should have been exercised. A much stronger finding is required; for example, that the assessment has been reached 'dishonestly or vindictively or capriciously'; or is a 'spurious estimate or guess in which all elements of judgment are missing'; or is 'wholly unreasonable'. In substance those tests are indistinguishable from the familiar Wednesbury principles (see *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1

> KB 223). Short of such a finding, there is no justification for setting aside the assessment."

40. In *Queenspice v HMRC* [2010] UKUT 111 (TCC) ("*Queenspice*"), Lord Pentland commented on the requirements on HMRC is making a "best judgment" assessment, saying at [14]:

> "…properly understood, the respondents' task under s 73(1) of the 1994 Act is not…of a strictly mathematical or statistical nature at all; no doubt, any calculations forming part of the assessment have to be arithmetically accurate, but the power given to the respondents under statute is to make an estimate or an assessment to the best of their judgment on such information as is available to them. This necessarily allows the respondents a substantial margin of error. They are entitled to make what one might describe as an educated guess. They are not required to carry out exhaustive investigations."

41. On the question of whether an error in an assessment inevitably means that the assessment was not made to the best of HMRC's judgment, in *Rahman (t/a Khayam Restaurant) v C&E Comrs (No 2)* [2003] STC 150 ("*Rahman (2)*"), Chadwick LJ said at [32] that:

> "…the relevant question is whether the mistake is consistent with an honest and genuine attempt to make a reasoned assessment of the VAT payable, or is of such a nature that it compels the conclusion that no officer seeking to exercise best judgment could have made it".

42. The courts have also made clear that in a "best judgment" appeal, the Tribunal should consider not only whether the assessment should be set aside, but whether it is in the right amount. In *C&E Comrs v Pegasus Birds Ltd* [2004] All ER (D) 465 (Jul) ("*Pegasus Birds*") at [29], Carnwath LJ said:

> "In my view, the Tribunal, faced with a "best of their judgment" challenge, should not automatically treat it as an appeal against the assessment as such, rather than against the amount. Even if the process of assessment is found defective in some respect applying the *Rahman (2)* test, the question remains whether the defect is so serious or fundamental that justice requires the whole assessment to be set aside, or whether justice can be done simply by correcting the amount to what the Tribunal finds to be a fair figure on the evidence before it. In the latter case, the Tribunal is not required to treat the assessment as a nullity, but should amend it accordingly."

DISCUSSION

43. Dominion disputed the assessment on the following grounds. Some of the original grounds of appeal related to the penalty assessment which has now been dropped, and so are no longer applicable.

(1) HMRC's decision to assess the VAT was arbitrary, an abuse of power, vindictive, punitive, biased and capricious.

(2) The amount of VAT charged is incorrect.

(3) The amount of commission on cargo sales was not 15% in all cases, but was 15% for small commissions and 10% for large commissions.

(4) Mr Olagunju uses his car primarily for business purposes, as he makes deliveries to the homes of elderly customers in the areas surrounding his business premises. Mr Olagunju has a disability (a deformity of his right leg and deafness in his right ear)

meaning that he cannot make these deliveries on foot. For HMRC to describe some of his petrol receipts as for personal purposes had elements of a personal vendetta.

(5) For the Tribunal to rule against Dominion would amount to indulging HMRC in a culture of negligence, errors and laxity.

(6) HMRC should not have used codes 18 and 26 in the VAT assessment.

(7) HMRC should have checked the VAT returns to prevent inappropriate claims.

(8) If there was an under-declaration it was the responsibility of the accountant and not Dominion. The accountant misplaced relevant records.

(9) The business cannot afford to pay the tax. HMRC accepted the company was in financial hardship in March 2019 and are contravening their guidelines on special circumstances published as "Compliance checks - penalties for inaccuracies in returns or documents - CC/FS7a".

(10) Dominion and Mr Olagunju have suffered harassment from HMRC's debt collection agencies.

(11) HMRC have a duty to support small and medium enterprises (SMEs), and ruling against Dominion would do great damage to SMEs' efforts to reduce or bring down unemployment in the private sector of the UK economy.

44. I take these submissions in turn.

45. I have seen no evidence that HMRC's decision to assess the VAT was an abuse of power, vindictive, punitive, biased or capricious, or had any element of a vendetta.

46. I found Ms Poomun Muree to be a truthful witness. While elements of her recollection may have faded over time, I found no evidence that she bore any ill-will towards Mr Olagunju or his business, or was motivated by anything other than a desire to assess the correct amount of tax.

47. In this context it is worth recalling some of the main undisputed facts in this case. Dominion declared no sales at all in the VAT returns for the periods under appeal, despite making multiple sales in these periods, and reclaimed VAT on purchases with little or no regard to whether they were for business purposes. Following ADR, HMRC dropped all penalties and allowed VAT to be reclaimed on rent invoices that were not addressed to the business. They have not disputed Mr Olagunju's analysis as to which purchases were for business use (other than in relation to petrol, which I cover below), and have accepted that his handwritten lists of sales were complete and accurate. Against this background Mr Olagunju would find it difficult to convince me that HMRC's actions were an abuse of power, vindictive, punitive, biased or capricious, or had any element of a vendetta, and he has not done so.

48. Regarding the submission that the assessment was arbitrary, I remind myself of the guidance in *Van Boeckel*, that a "best judgment" assessment requires HMRC to fairly consider all material placed before them and, on that material, come to a decision which is reasonable and not arbitrary as to the amount of tax which is due.

49. In this case, the input tax component of the disputed assessment (for periods 07/14 to 01/14) is not based on "best judgment" at all but on figures provided by Dominion, including (other than in respect of petrol) Mr Olagunju's own analysis of which purchases were for use in the business.

50. Regarding VAT on petrol, Mr Olagunju submitted that HMRC were wrong to state that his home was only five minutes from his business premises; according to Mr Olagunju, it is an eight-minute drive.

51. I am happy to accept Mr Olagunju's assessment of the distance between his home and his business, but the important point here is that the car was used for both personal and business purposes. In these circumstances, even if the business use is greater than the personal, Dominion could reclaim VAT on fuel only if there were detailed mileage records separating business from personal use (Mr Olagunju did not suggest he had kept any such records), or by paying the road fuel scale charge. It was Ms Poomun Muree's undisputed evidence that she had discussed the road fuel scale charge with Mr Olagunju and advised him against using it, on the basis that the charge would be greater than the amount of VAT on the petrol.

52. Mr Olagunju also had not quantified the VAT which he says that Dominion should be allowed to reclaim on petrol. Although at the hearing, during Ms Donovan's closing submissions, he performed a calculation and produced a figure, I explained that I could not accept a number that had been produced on the spot and for which neither HMRC nor the Tribunal had provided with an explanation supported by evidence.

53. In these circumstances I consider it was right for HMRC not to allow Dominion to reclaim VAT on the cost of petrol.

54. Regarding output tax on business centre sales, for 16 of the 20 months under appeal HMRC used figures provided by Dominion. For the remaining four months, HMRC used an estimate that was an average of the sales in months for which this figure was known, which were 22 of the 27 months from February 2014 to April 2016. This was not a case of figures from a short period of time being extrapolated across a much longer time period, such as in *Van Boeckel* where an assessment for three years was based on takings for a test period of five weeks, or *Queenspice* where cash-ups for just two days were used to find that turnover had been under-declared for six years. In the case of Dominion's business centre sales, the time for which actual figures are available is significantly longer than the time for which those figures are missing.

55. There are two elements to the VAT assessment relating to cargo commission: the total amount of cargo sales each month, and the percentage commission retained by Dominion. For the total amount of cargo sales, HMRC used Dominion's figures for 8 of the 20 months under appeal. For the other 12 (February 2015 to January 2016) they used an estimate that was an average of the actual figures provided by Dominion for the 12 months from February 2014 to January 2015. Again, this was not a case of figures from a short period of time being extrapolated across a much longer period.

56. Mr Olagunju's wife attended the hearing and I allowed her to make a submission on this point. She said that the reason that no figures were provided for cargo sales for the other 12 months may have been that no such sales were made in those months. I understood that she was suggesting this as a possibility rather than asserting that this is what happened.

57. If Dominion made no cargo sales at all from February 2015 to January 2016, then Mr Olagunju had ample opportunity to tell HMRC that this was the case. I am unable to make a finding that this is what happened based on a suggestion made at the hearing that is not backed up by any evidence or documentation.

58. It is Mr Olagunju's case that HMRC were wrong to use the figure of 15% to calculate the amount of commission made by Dominion on the cargo sales. He submitted that the real figure was 15% for small commissions, but 10% for large commissions. He said he had

repeatedly told HMRC that this was the case, but he did not supply HMRC or the Tribunal with his own figures for the amount of cargo commission in the disputed periods. He said that he thought the documentation that would allow him to separate the cargo sales into "large" and "small" categories had been given to HMRC by his accountant. Ms Poomun Muree said she had no knowledge of this.

59. It was put to Mr Olagunju in the hearing that he had signed the ADR agreement in which 15% is given as the correct figure. He said that this was an oversight and he did not notice that this figure was in the agreement.

60. The objectives of this Tribunal include dealing with cases in ways which are proportionate to the importance of the case, the anticipated costs and the resources of the parties. In this context it is relevant to note that the amount of VAT in issue on this point is small. HMRC calculated, using the 15% figure, that the amount of commission made by Dominion in the relevant period averaged £35.63 per month. Output tax is charged on this amount using the VAT rate of 20%. By submitting that instead of using a commission rate of 15% across the board, HMRC should have used 10% in some cases and 15% in others, Mr Olagunju is seeking to reduce the output tax charge on cargo commission by less than a third.

61. In light of this, I do not consider it is proportionate to require HMRC to expend further resources agreeing a revised figure for the amount of cargo commission. I also cannot overlook the fact that Mr Olagunju signed the ADR agreement in which he agreed to the figure of 15%. He says this was an oversight, but the 15% was in the first line of an agreement that only contains five short points. I would expect an experienced businessman such as Mr Olagunju, when signing an important document such as an ADR exit agreement, to review its contents and note anything that he did not consider reflected the terms of the agreement that had been reached.

62. Considering all of the above, I am satisfied that HMRC had material on which to base the VAT assessment, and that the assessment was based on that material.

63. As to Mr Olagunju's submissions regarding HMRC's negligence, laxity and errors, I have found that HMRC did indeed make mistakes in this case, some of which only came to light as a result of being queried by Mr Olagunju. It appears that this is partly what has encouraged Mr Olagunju to pursue this litigation, as in his witness statement and opening submissions he said that every time he reacts to something he has received from HMRC, they reduce the amount he is said to owe.

64. The history of this case reveals that there is some justification in this remark. The terms of the ADR agreement meant, although this was not spelled out in the agreement, that the penalty should have been removed entirely, but this was not done until Mr Olagunju pointed it out. It was also unfortunate that the assessment was calculated using figures that were exclusive, rather than inclusive, of VAT, and that this was not corrected until October 2023.

65. However, although these errors were unfortunate, they have now been corrected, and based on the evidence I have seen I am satisfied that they were genuine mistakes. I find that these mistakes were (as required by *Rahman (2)*) consistent with an honest and genuine attempt to make a reasoned assessment of the VAT payable. I am also satisfied that the amount of tax HMRC now asserts to be due is (as required by *Pegasus Birds*) a fair figure on the evidence before me.

66. It follows from the above that I am satisfied that the assessment was made to the best of HMRC's judgment and so should not be set aside. I also do not consider that I should alter the amount of the assessment.

67. Mr Olagunju took issue, in Dominion's notice of appeal, with some codes used by HMRC in their assessment: namely, codes 18 and 26. These codes are used for HMRC's internal purposes; Ms Donovan explained that Code 18 means "input tax disallowed – evidence unsatisfactory" and Code 26 means "under-declaration of outputs". Dominion's notice of appeal said that the use of the codes was "very outrageous and an act of wickedness to a struggling business such as mine".

68. The codes indicated the reasons for making the VAT assessment: that input tax (VAT on purchases) had been disallowed, and outputs (sales) underdeclared. This is an accurate description of HMRC's reasons for making the VAT assessment: input tax had been claimed when it should not have been (because part of it was on personal expenditure), and sales had been underdeclared, because no sales at all were entered on the VAT returns for the relevant periods. The codes did not affect the calculation of the amount of tax due. I find that no cause of appeal arises in respect of HMRC's use of these codes.

69. I can address Mr Olagunju's other submissions more briefly.

(1) Mr Olagunju submitted that HMRC should have checked Dominion's VAT returns before making payments, to prevent inappropriate claims. However, HMRC are not obliged to conduct checks of VAT returns before processing claims for repayment, and I do not have the power to allow this appeal on the grounds that HMRC should have carried out a compliance check earlier than they did. Mr Olagunju may wish to consider following HMRC's complaints procedure if he wishes to take matter this further.

(2) As for any under-declaration and misplacing of records being the responsibility of the accountant, the question of who was responsible for the inaccuracies in the returns is not one that arises in this appeal. The Tribunal often considers questions about the reliance placed by taxpayers on their advisers, but this is normally in the context of penalties. HMRC are no longer charging Dominion with penalties in this case, and considerations as to how the under-declaration came about do not affect the amount of VAT that Dominion is due to pay.

(3) Mr Olagunju also submitted that Dominion is in financial hardship and cannot afford to pay the disputed VAT. However, the question to be answered by the Tribunal in this appeal is not about Dominion's ability to pay, but is whether the assessment was made to the best of HMRC's judgment, and whether it was in the right amount. Ms Poomun Muree, in her correspondence with Mr Olagunju, suggested that he might wish to contact HMRC's debt management department to arrange a time to pay agreement. He may now wish to consider pursuing this option.

(4) The financial hardship application that was granted in March 2019 was for the specific purpose of establishing whether the appeal could proceed without the disputed tax being paid upfront, while HMRC's guidance "Compliance checks - penalties for inaccuracies in returns or documents - CC/FS7a" is about penalties, which are no longer being assessed in this case. Neither is relevant to the current appeal.

(5) The treatment of Dominion and Mr Olagunju by HMRC's debt collection agencies is also a question that Mr Olagunju would need to raise through HMRC's complaints procedure, as it is not a matter that can be considered by the Tribunal in this appeal.

(6) The contribution of SMEs to the UK economy is not a factor which I can take into account in this appeal, which is about the amount of VAT correctly due from Dominion.

70. For all of these reasons, the appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

71. 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.

RACHEL GAUKE
TRIBUNAL JUDGE

Release date: 12th SEPTEMBER 2024