

Business tax update (Lecture B1336 – 21.09 minutes)

Change for the bus

Summary – Takings were not being suppressed. It was reasonable to accept that the till was being opened by staff to provide bus passengers with change as well as a number of other legitimate explanations.

Quality Convenience Store Limited was incorporated in 2016 selling groceries, tobacco, newspapers and other convenience store items. It also ran a post office branch within its premises.

Cash taken by the shop and banked was reconciled daily to till receipts. Till reports which identified the use to which the buttons on the tills had been put were available every day but were only checked when there was a problem.

HMRC conducted unannounced visits to the premises in December 2016 and March 2017. During this time the officer established that staff could, and often did, use the 'no sales' button to open the till and remove cash. In fact HMRC calculated that between 1 May 2016 and 30 April 2017 the no sale button was used on 22,580 occasions so in excess of 60 times a day.

The company explained that the no sale button was used to open the till:

- to provide change, particularly to schoolchildren, for the bus;
- to enter change into the till;
- for counting cash prior to handing over the till at a shift change;
- for counting cash following a shift change; and
- for counting cash at the end of the day.

Believing the use of the button to be excessive, HMRC raised VAT and corporation tax best judgement assessments on the basis that the company was suppressing sales. HMRC determined the average transaction value by taking the gross sales figure from audit trail reports provided, deducting Pay point and lottery income, and dividing the resulting figure by the number of transactions. This resulted in an average transaction value of £5.96. HMRC allowed a daily 'no sales' button usage of 16 and then calculated that between 1 May 2016 and 31 January 2018 the company had suppressed takings by £153,976.60.

Following HMRCs visits, staff were told that they should no longer use the 'no sales' button for providing change and that if people wanted change, they would have to purchase an item at the shop. Initially, staff switched to using the 1p sales button for the purposes for which they had previously used the no sales button but this was quickly rectified.

The company notified that despite not using these two buttons on the till, there had been no significant increase in the reported quarterly sales. In their defence, the company stated that:

- in the period ended 30 April 2018, the 'no sales' button was used 1,939 times and the 1p sales button 980 times, and turnover was approximately £224,999
- in the period ended 31 October 2019, the no sales button was used 55 times and the 1p sales button only twice, turnover was £225,233.

Decision

The First Tier Tribunal accepted that HMRC's logic for raising the assessments was rational and valid but disagreed with the quantum of those assessments.

When presented with the company's later explanations and supporting figures, HMRC had produced little additional evidence to support their case.

The First Tier Tribunal concluded that on the balance of probabilities, the company's story was more likely to be correct.

It was clear from the facts that the shop was in an area surrounded by bus stops, and that it was perfectly plausible that the company provided change for those using the buses. HMRC's estimated usage allowance of 15 or 16 per day rather than the average of approximately 61 uses per day was an arbitrary figure. In light of the company's evidence, the Tribunal thought it more likely to be approximately 61 uses per day. Consequently, the First Tier Tribunal concluded the business had not suppressed takings.

The appeal was allowed.

Quality Convenience Store Limited v HMRC (TC8530)

SEISS to be repaid

Summary – As the taxpayer incorporated his business just before the COVID lockdown, he was not entitled to sums paid under the Self-Employment Income Support Scheme.

When Joshua Taylor filed his 2018/19 tax return in September 2019, he disclosed that he had ceased self-employment as a fitness trainer in July 2018. From that date, he had been employed by his company, Coach JT Limited.

On 14 May 2020, Joshua Taylor applied for the first Self-Employment Income Support Scheme grant and a payment of £2,426 was made on 18 May 2020.

On 20 August 2020, he applied for the second Self-Employment Income Support Scheme grant and a payment of £2,123 was made on 24 August 2020.

In October 2020, HMRC sent him an email stating that because he had not been self-employed, he was not eligible to receive a Self-Employment Income Support Scheme grant and that he needed to repay the money that he had incorrectly claimed.

In a telephone call that took place in February 2021, Joshua Taylor stated that he understood that to be eligible for the grant, the only criteria was that he had traded as a self-employed individual in the years 2016/17 to 2018/19.

HMRC explained that those were the years upon which the grant was calculated.

HMRC went on to say that as part of the claim process he was asked to confirm that he traded in 2019/20, intended to continue to trade in 2020/21 and the business had been adversely affected by Coronavirus. The taxpayer denied ever seeing the screens asking him to confirm these details. He argued that HMRC had full access to his tax returns and therefore could or should have checked that information before making the grants.

On 19 March 2021, HMRC issued the assessment to reclaim the sum of £4,549.

Joshua Taylor appealed.

Decision

The First Tier Tribunal agreed that, at all relevant times, Joshua Taylor was a fitness coach. He was self-employed until the end of July 2018 and from then, he traded through a company.

Joshua Taylor was not eligible to make claims under the Self-Employment Income Support Scheme as he was not self-employed at the relevant time. The Tribunal stated that it was clear who was eligible for the grant, stating “Bluntly, the clue is in the name”. It was a grant for the self-employed.

For completeness, Joshua Taylor had claimed that HMRC had stated that they had checked his claim at a time when, had they looked at his Self Assessment returns, they would have known that he was trading through a company. The Tribunal stated that it had no jurisdiction in relation to matters of legitimate expectation. The facts were that Joshua Taylor did not qualify for support payments and in those circumstances the law gives HMRC the authority to raise an assessment. HMRC had raised a valid assessment within the applicable time limits.

The appeal was dismissed.

Joshua Peter Taylor v HMRC (TC08576)

Drawings, not deductible expenses

Summary - There was no evidence that the expenses claimed were incurred, and even if they had been, they were not incurred wholly and exclusively for the trade but rather, they should be treated as drawings.

For the years 2004/05 to 2014/15, the Magnet Partnership traded as Rope Access designers or Magnet & Rope Access Designers. Regardless of turnover, the partnership's profits for these years were precisely zero.

The partners were the Ian Fada Partnership, the Haritou Partnership, the Fada Partnership and the Rhodes Partnership. Collectively these were known as the “Family Partnerships”. All commenced on 1 April 1999. None of these partnerships had a bank account. All income in each partnership was derived from Magnet.

The partners in Magnet had an annual meeting to determine how much each Family Partnership should receive for what was described as consultancy and design work. This income was then reduced by claiming estimated household and other private expenditure, including university costs for their children.

HMRC raised enquiries and issued discovery assessments for each year, denying that the expenses that had been deducted had actually been incurred, or alternatively that the expenses had not been incurred wholly and exclusively for the purposes of the partnership's trade. The direct costs paid to the family partnerships were in reality drawings by the partners.

The Magnet Partnership appealed.

Decision

The First Tier Tribunal found that there was an absence of accurate evidence to support the partnership's deducted expenses. With no bank account, there was no evidence that the payments claimed were paid at all. The Tribunal concluded that even if the payments were paid, they would not be an allowable deduction as they were not incurred wholly and exclusively for the purposes of the trade.

The Tribunal concluded that the amounts paid to the 'family partnerships' were drawings making them not deductible.

The appeal was dismissed.

The Magnet Partnership v HMRC (TC08570)

No refunds actually made

Summary – There was no legal basis for a VAT repayment because the credit notes issued did not result in a reduction in the amount paid by the customers.

London School Of Accountancy and Management Limited was incorporated on 26 June 2003 and provided higher education services to students on a commercial basis. The supplies of tuition were standard rated while the associated course materials were zero rated.

Typically, students prepaid some or all of the fees for tuition and course materials and invoices were issued accordingly.

In October 2012, as a result of commercial difficulties, the company entered administration and in June 2013, moved from administration to a creditors' voluntary liquidation.

Between April and June 2015, the joint liquidators created 'credit notes' for supplies made to around 4,000 former students, which were backdated to 30 September 2012. However, there were no repayments of the amounts in the 'credit notes'. Indeed, the liquidators indicated that former students were unlikely to receive refunds for their fees paid.

On 25 June 2015, a final VAT return was submitted by the liquidators for the period ending September 2012, which included an adjustment to reduce output tax by £782,505.76. The liquidators argued that as no services had been provided to the students, the VAT on the prepaid sums was repayable.

HMRC denied the claim, arguing that London School of Accountancy and Management Limited had received consideration for the courses and had made no refunds. There had been no price reduction.

Decision

Agreeing with HMRC, the First Tier Tribunal found that the credit notes were 'purely theoretical'. As there had been no refunds, or decrease in consideration, no output tax adjustment was available.

The appeal was dismissed.

As Neil Warren was quoted as saying in 'Taxation':

"The VAT legislation is very tight to ensure there is fairness in the system to prevent a situation where a business or entity can charge £100 plus £20 VAT, get paid £120 by a customer – and somehow wriggle out of paying the £20 VAT to HMRC. This verdict was a victory for the integrity of the VAT system."

London School Of Accountancy and Management Limited v HMRC (TC08559)

Prison healthcare

Summary – The prison healthcare service provided to a number of prisons in England was a single composite supply, wholly exempt from VAT.

Spectrum Community Health CIC supplied a range of healthcare services and related goods to prisoners in thirteen prisons in England. The services were supplied to NHS England under NHS Standard Contracts.

The services provided included medical care, the provision of prescription drugs and the supply of non-prescribed sexual health products. Some services were sub-contracted to third parties.

Under the contract, a single annual sum was paid, in monthly instalments. There was no individual service breakdown required.

It was common ground that Spectrum Community Health CIC made exempt supplies of medical care but Spectrum Community Health CIC also argued that when:

- dispensing prescription drugs, it made zero-rated supplies (Item 1, Group 12, Schedule 8 VATA 1994); and
- supplying non-prescribed sexual health products it was making reduced rate supplies (Item 1, Group 8, Schedule 7A VATA 1994).

Consequently, Spectrum Community Health CIC argued that it was required to be registered for VAT and was entitled to recover input tax attributable to its taxable supplies.

HMRC disagreed, arguing that the supplies were a single composite supply of care and/or medical treatment and, in connection with it, the supply of goods in or by a state-regulated institution. As a result:

- the supply was wholly exempt (Item 4, Group 7, Schedule 9 VATA 1994);
- VAT registration was not possible and no input tax could be reclaimed.

Spectrum Community Health CIC argued that if they were wrong, and this was a composite supply then it was exempt Item 1, rather than Item 4, as contended by HMRC.

Being exempt under Item 1 would mean that the supply of drugs and contraceptive products would be excluded from the supply and subject to VAT. This is on the basis that “These products are not strictly necessary at the time that the medical care is provided and are physically and economically dissociable from the supplies of medical care.”

Decision

The First Tier Tribunal found that Spectrum Community Health CIC made a single composite supply of medical care. It did not make separate taxable supplies of drugs or contraceptive products.

The First Tier Tribunal did not accept that Spectrum Community Health CIC was a state-regulated institution, similar in nature to a hospital or centre for medical treatment or diagnosis. Consequently, they did not meet the criteria for Item 4.

Moving to exemption under Item 1, the First Tier Tribunal stated that this required the provision of services by registered medical and paramedical practitioners. Spectrum Community Health CIC employed relevant professionals including doctors, nurses to supply their services meaning their supplies were exempt under Item 1. Article 132(1)(c) extended the exemption to cover supplies of goods that were strictly necessary at the time of the provision of medical care and that were physically and economically indissociable. The First Tier Tribunal did not agree with the taxpayer’s argument that the exemption did not extend to the provision of drugs and contraceptive products. As a result, Spectrum Community Health CIC was not entitled to be registered for VAT and its appeal was dismissed.

Spectrum Community Health CIC v HMRC (TC08557)

No valid invoice, no claim

Summary – With both the lease agreement and lease rental invoices in the name of the sole trader, input VAT included on rental amounts paid by the company were not reclaimable.

Mr Latifi ran a bed and breakfast business but was not registered for VAT.

In August 2013, he entered into a lease agreement with Oxford City Council, for quarterly rental amounts of £8,750.00, plus standard-rated VAT.

On 27 November 2013, his business was incorporated and the company registered for VAT.

Star Services Oxford Limited accounted for and claimed input VAT on the rent paid to Oxford City Council.

In June 2018 following a compliance visit, HMRC raised an assessment on Star Services Oxford Limited for £26,250. This covered the three-year period from 2014 to 2017 and related to the input tax incorrectly reclaimed on the rent paid to the council. HMRC stated that the VAT could not be reclaimed as the lease and invoices raised were to Mr Latifi and not the company.

Prior to HMRC raising this assessment, Mr Latifi had registered for VAT in his own name and applied for an option to tax (OTT).

Decision

The First Tier Tribunal agreed with HMRC.

Mr Latifi and the company were separate legal entities, needing separate VAT registrations.

The First Tier Tribunal found that it was Mr Latifi who had the lease with Oxford City Council and not his company. He was not registered for VAT at this time and so could not consider recovering the VAT.

Mr Latifi had effectively subleased the property to Star Services Oxford Limited which was an exempt supply. Input VAT on the invoice from Oxford City Council to Mr Latifi could not be recovered by a third party.

Note: At the time the assessment was raised, the HMRC officer commented:

“...a belated OTT has been applied for on the sole proprietor registration, & if that is granted in the future following provision of information requested, then any appropriate claim to input tax on the rent that may then be charged by the sole proprietor registration, can be made on a future return as appropriate.”

The issue in this appeal could have been avoided if Mr Latifi had been VAT as a sole trader, he had opted to tax the property and then charged VAT on the rent to Star Services Oxford Limited and the other tenants.

Star Services Oxford Limited v HMRC (TC08573)

Food split

Summary – The company failed to produce satisfactory evidence that HMRC’s best judgement assessments were excessive,

Peppermint Foods Limited ran two Essex-based Subway franchises. At both locations the company sold:

- hot toasted sandwiches; and
- cold food and drink.

Hot takeaway food as well as everything eaten on the premises was standard rated. Cold takeaway food, other than confectionary, should have been zero rated.

During an investigation, an experienced HMRC officer found that the average standard rated sales for the preceding four years was 58% which, in his experience, seemed low compared to other Subway franchises

As a result, in June 2018, he carried out a series of test purchases on two days at both venues. He discovered that items were being incorrectly recorded. In August 2018, HMRC shared the results of these test purchases with the company and was told that there had been some issues with the till which had been rectified. To check this, HMRC followed up their work by analysing Z-readings provided by the director for that month. This indicated that 78% of sales were standard rated. However, a further two days of invigilation checks were carried out in October 2018 and January 2019, which indicated that 94% of sales were standard rated.

HMRC concluded that Peppermint Foods Limited’s staff had incorrectly rung hot takeaway food into the till as cold takeaway food resulting in an underpayment of output VAT. Consequently, for the

VAT periods 05/15 to 02/19, HMRC raised assessments to collect output VAT due, initially calculated using the 94% rate that they had arrived at. This was later reduced to 86%, an average of the 78% and 94% rates. A final reduction was made to the amount assessed to recognise that the assessment for the June 2015 period was out of time.

By the time of the hearing, Peppermint Foods Limited were disputing assessments totalling £144,383 of VAT due. Peppermint Foods Limited argued that the invigilation exercises carried out by HMRC were 'wholly unrepresentative of the overall period assessed'. The company argued that HMRC should have undertaken a year of daily invigilations. Further, HMRC did not allow for staff errors, for the times during which the ovens were unavailable and gave no consideration to IT errors.

Decision

The First tier Tribunal concluded that HMRC's approach was evidence-based and took into account the impact of what might have been higher sales of cold food during the hotter month of August. In their view, the assessment was made to best judgment and was a valid assessment.

Having confirmed that the assessments raised were valid, the First Tier Tribunal then looked to the company to provide evidence to establish the correct amount of tax due. The tribunal stated that it was not for HMRC to 'conduct a year-long invigilation exercise', but rather was up to Peppermint Foods Limited to demonstrate that HMRC assessments were excessive. Indeed, the First Tier Tribunal was critical of the company for failing to provide 'contrary number evidence' to HMRC's figures.

The appeal was dismissed.

Peppermint Foods Limited v HMRC (TC08553)