

HMRC's liable not liable policy

(Lecture B1155 – 11.01 minutes)

What is the 'liable not liable concession'?

If a business is late registering for VAT, then the registration is backdated to when it first should have registered. This outcome will mean that a long period return will need to be completed between the registration date and the application date. However, it is possible that the business turnover might have fallen after the compulsory registration date, perhaps because of declining sales or a business owner working less hours, and this is where the 'liable not liable' concession becomes relevant i.e. HMRC will recognise time periods when the annual taxable sales fell below the deregistration threshold and therefore the business does not need to be treated as registered for this period during the long return window and therefore not account for output tax on its sales.

Secret policy

To add a twist to the tale, the 'Liable Not Liable' concession is not mentioned in HMRC's Registration manual, in other words there is no indication of how the months or years when it is applied are calculated. There is an allocation of policy notes between VATREG28050 and VATREG28550 but they all state: "This content has been withheld because of exemption in the Freedom of Information Act 2000". But it is important for advisers to be aware of it if any clients have a late registration problem. It is important to ask HMRC for the concession (if appropriate) in case they don't offer it.

Stanley Chmiel (TC7112)

This case produced a routine win for HMRC. His company called Kudos Building and Electrical Services Ltd was late registering for VAT, which HMRC decided was due to 'deliberate not concealed behaviour' so as well as assessing the company for belated tax of £12,143, the officer also issued a 35% penalty for 'deliberate not concealed' behaviour, which became the subject of a personal liability notice against the director when the company failed to pay the tax or penalty. HMRC can do this in the case of 'deliberate' behaviour, using powers given by para 1, Sch 41, FA 2008 and Mr Chmiel's appeal against the penalty failed.

However, the most interesting issue about the case was the way that HMRC applied its 'liable no longer liable' policy in relation to the late registration period:

- The company exceeded the compulsory threshold on 31 January 2012, so was liable to be registered from 1 March 2012. So far, so good.
- The company's rolling 12-month turnover thereafter continued to be above the deregistration threshold until the year ended 31 August 2013 (£79,000 at the time and turnover was £78,319). The deregistration threshold is £2,000 less than the registration threshold. But it then exceeded the threshold again for the final time in the year to 30 September 2013 (£80,289), thereafter being below.

HMRC therefore treated the late registration period as being from 1 March 2012 to 31 July 2013, even though the company continued to trade until March 2016.

The end result was that the 'liable no longer liable' concession meant that the company's belated period was treated by HMRC as being for just 17 months until July 2013. This is an excellent outcome compared to 49 months if it had not been applied.

Learning points

The interesting fact was how Kudos' period of registration ceased on 31 July 2013. I would have thought the fact that the annual sales figure to August 2013 was so close to the de-registration threshold, then exceeding it again in September 2013, would have produced a deregistration date of 30 September 2013 under the liable no longer liable process. A two-month bonus for the taxpayer, I feel. The later periods were more clearcut (e.g. turnover in the 12-month period to 31 October 2013 was a much reduced £55,041).

Tim Hughes (TC6609)

This case also produced a routine victory for HMRC – the taxpayer's guest house business should have registered for VAT on 1 July 2011 because he exceeded the threshold on 31 May 2011. And because it was not picked up until HMRC's Hidden Economy Team came knocking in 2015, he could not argue against a late registration penalty either.

Mr Hughes felt he had been given a bad deal by HMRC, an assessment for £9,685 and a late registration penalty of £1,937 (20% of the tax due). However, it could have been a lot worse:

HMRC generously applied the Liable Not Liable concession so that his actual period of registration was only between July 2011 and November 2012.

Mr Hughes turnover fell below the deregistration threshold after November 2012, so his registration period was cut short on this date rather than continued until 2015.

Key messages

- Be aware of the 'liable not liable concession' and see if it is relevant for any clients who are late registering for VAT;
- In some situations, it is not beneficial to utilise the concession, on the basis that all customers (or most customers) relevant to the late period are VAT registered and able to claim input tax, so will accept a VAT only invoice covering the late period. The business can then claim input tax on its own expenses for all of the late period, subject to the normal rules;
- As shown by the Chmiel case, HMRC can sometimes be extremely generous when making their calculations to work out the period when the business was not liable to be registered. It is important to encourage HMRC to adopt the best possible outcome for your clients when considering the figures for the late period – if you don't ask, then you don't get, so to speak!

Contributed by Neil Warren