TC02044

Appeal number: TC/2011/08640

Value Added Tax – Flat Rate Scheme – Trader seeking to withdraw retrospectively – permission refused by Respondents – Whether refusal "reasonable" – Sections 83-84 Value Added Tax Act 1994 – Reg. 55 of VAT Regs. 1995 – Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

YEABSLEY FINANCIAL SOLUTIONS LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE KENNETH MURE, QC
MEMBER: EILEEN A SUMPTER, WS

Sitting in public at George House, Edinburgh on 4 May 2012.

Mr David Yeabsley for the Appellant and Mrs Susan Ellwood for the Respondents.

DECISION

1. In this Appeal Mr Yeabsley appeared on behalf of his company, the taxpayer and Appellant. Mrs Ellwood appeared on behalf of HMRC, the Respondents.

2. Helpfully, Mrs Ellwood indicated that she was prepared to lead, and she set out the factual background to the dispute and the relevant law.

3. The factual aspects are not disputed. Yeabsley Financial Solutions Ltd was registered voluntarily for VAT with effect from 1 June 2007. On 31 December 2007 Mr Yeabsley requested that the company be allowed to join the Flat-Rate Scheme ("FRS") for VAT purposes with effect from 1 June 2007, and this was granted retrospectively by HMRC. Significantly Mr Yeabsley had made a telephone enquiry beforehand on 27 December 2007 and was referred to the terms of Notice 733. We note in particular that para. 2.3 of that Notice explains that the election is not beneficial for all businesses.

4. The FRS allows a trader to pay a rate of VAT on its *gross* turnover, which is lower than the standard rate. The Scheme, however, precludes the deduction of input tax except in limited circumstances. The Scheme will tend to benefit financially a taxpayer who has limited taxable inputs. Its stated purpose, however, is not to produce a tax saving benefit, but rather to simplify VAT administration for the taxpayer.

5. By letter dated 26 April 2011 Mr Yeabsley was advised that HMRC intended to inspect his tax records and check his VAT Returns for parts of the period in which his company had been in business. Errors were found in these Returns, including the calculation of liability by reference to *net* rather than *gross* turnover. As a result supplementary assessments were made to VAT totalling £4,958. The accuracy of this calculation is not disputed by the taxpayer.

6. Thereafter, by letter dated 16 July 2011 Mr Yeabsley sought to have his company's registration under the FRS withdrawn retrospectively, and, if possible, to the date when it entered. However, he wished the company to remain in the Scheme for future periods. We refer to his further letter of 13 August 2011 to the Respondents. He explained that he had not understood the workings of the FRS and on reflection should not have entered into it.

7. The request for retrospective withdrawal from the FRS was refused by HMRC in terms of their letter dated 23 August 2011. A subsequent review by them confirmed that decision. We refer to the Respondents' letter of 27 September 2011. It is this refusal – and whether it was "reasonable" – which is the subject of this Appeal.

8. Mrs Ellwood guided us through the relevant legislation. She referred us generally to Regulation 55 of the VAT Regulations 1995, affecting "Flat-Rate Traders". She noted that under Reg. 55M(1)(g) a trader may opt to withdraw from the

Scheme, and in that event under Reg. 55Q(1)(e) that withdrawal takes effect from HMRC being so notified "or from such earlier date as may be agreed" (our emphasis). In other words, Mrs Ellwood submitted, the taxpayer could not insist on withdrawal from an earlier date.

9. Mrs Ellwood explained that it was HMRC's policy to allow backdating of withdrawal from the Scheme only exceptionally. No exceptional reasons had been shown in the present case. The taxpayer complained simply of the Scheme having proved financially disadvantageous. That was not enough. The purpose of the FRS was to simplify administration for the taxpayer, not to give him a financial benefit. To allow backdating of withdrawal would in the present case undermine the purpose of the Scheme, she argued. The decision to register was the responsibility of the taxpayer: Mr Yeabsley had been referred to Notice 733 detailing the nature of the FRS: presumably he made a considered decision to have his company join.

10. Mrs Ellwood then referred us to Sections 83-84 VATA 1994, which set out the power of the Tribunal in such appeal proceedings. In particular in relation to these appeals, Section 84(4ZA) provides that this Tribunal should not allow the Appeal "… unless it considers that HMRC could not reasonably have been satisfied that there were grounds for the decision …" to refuse retrospective withdrawal from the FRS. On the other hand it was insufficient for the Tribunal to disagree with HMRC's view and on that basis to substitute its own decision.

11. Mrs Ellwood referred us to an additional authority, *HMRC* v *Burke* (CH/2009/APP/0029) in support of her submission that the question for this Tribunal is fairly circumscribed, viz did HMRC act *reasonably* in reaching its decision? We cannot, however, substitute our own view as to the decision which should have been made, in the event of our disagreeing with HMRC's approach.

12. In these circumstances Mrs Ellwood invited us to dismiss the Appeal.

13. In reply Mr Yeabsley referred us to his Grounds of Appeal, which he adopted. Initially a colleague had told him about the Scheme. His election for the FRS had proved to be financially disadvantageous. He considered that HMRC could have been more helpful. In particular he had been submitting Returns for four years without enquiry from them. Had his error been pointed out earlier, he would have discovered the disadvantages of the Scheme earlier, and could have opted then to withdraw. However, the Scheme now suits his company and he wishes to remain in it for the future.

14. In our view we consider that HMRC did not act unreasonably in refusing to de-register the Appellant retrospectively. While we have a measure of sympathy for Mr Yeabsley, it was his responsibility to assess the full financial and other implications of joining the FRS. So too was the responsibility for completing the company's VAT Returns accurately. It may be that he would have discovered the financial disadvantage then of FRS to his company had these Returns been accurate. Mr Yeabsley had been referred by HMRC to their relevant publication, Notice 733, before the application was made. While it had proved financially disadvantageous, the Appellant has had the benefit of simplified administration, which was the purpose of the Scheme. There is nothing before us to suggest that the Appellant company was treated in a discriminatory or unfair way by HMRC.

15. For these reasons we refuse this Appeal. We thank both Mr Yeabsley and Mrs Ellwood for the manner in which they presented their arguments and enabling us to focus on the real issue between them.

16. 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.

TRIBUNAL JUDGE

RELEASE DATE: 29 May 2012