



TC01600

Appeal number: TC/2010/08524

Value Added Tax – Liability to be registered – Threshold – Construction services – Whether place of supply in UK – No – Balance of Probabilities – Appeal Allowed

FIRST-TIER TRIBUNAL

TAX

ROBERT CARVILLE

Appellant

- and -

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

Respondents

**TRIBUNAL: DR K KHAN (Judge)
RICHARD THOMAS**

Sitting in public in London on 19 July 2011

Colin Cunningham, Accountant, for the Appellant

Lynne Ratnett, Higher Officer, HMRC, for the Respondents

DECISION

Introduction

5 1. This is an appeal against a decision by HM Revenue and Customs (“the
Commissioners”) that the Appellant should have been registered for value added tax
for the period 1 September 2006 to 30 April 2008. The decision was notified to the
Appellant on 17 June 2009. The Appellant’s Notice of Appeal is dated 20 October
2010.

10 2. The Respondents alleged that the Appellant was not registered for VAT for the
period and failed to make returns which would have enabled the Respondents to
assess the amount of tax payable for the period in the sum of £13,170 (which included
penalties).

15 3. The issue for determinations was whether the Appellant was a taxable person
and should therefore have been registered for value added tax for the relevant period
of 1 September 2006 to 30 April 2008.

20 Legislative provisions

4. The relevant legislative provisions are:

25 1. Section 3 and 4 of the Value Added Tax Act 1994 (“VATA
1994”) as follows:

Section 3

3 Taxable persons and registration

30 (1) A person is a taxable person for the purposes of this Act while he is, or is
required to be, registered under this Act.

(2) Schedules 1 to 3A shall have effect with respect to registration.

35 (3) Persons registered under any of those Schedules shall be registered in a
single register kept by the Commissioners for the purposes of this Act; and,
accordingly, references in this Act to being registered under this Act are
references to being registered under any of those Schedules.

(4) The Commissioners may by regulations make provision as to the
inclusion and correction of information in that register with respect to the
Schedule under which any person is registered.

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Section 4

4 Scope of VAT on taxable supplies

5 (1) VAT shall be charged on any supply of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

(2) A taxable supply is a supply of goods or services made in the United Kingdom other than an exempt supply.

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2. Schedule 1 VATA 1994 provides

Liability to be registered

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15 (1) Subject to sub-paragraphs (3) to (7) below, a person who makes taxable supplies but is not registered under this Act becomes liable to be registered under this Schedule—

(a) at the end of any month, if the value of his taxable supplies in the period of one year then ending has exceeded £73, 000; or

20 (b) at any time, if there are reasonable grounds for believing that the value of his taxable supplies in the period of 30 days then beginning will exceed £73,000.

(The rate at the relevant time was £61,000)

25 3. Schedule 11 VATA 1994 which deals with Administration, collection and enforcement

30 4. Regulation 25 of the Value Added Tax Regulations (SI 1995/2518) which creates an obligation on those registered or obliged to register for VAT to make VAT quarterly returns.

35 5. Article 5 of the Value Added Tax (Place of Supply of Servicers) Order (SI 1992/3121) which provides that “any works of construction, demolition, conversion, reconstruction, alteration, enlargement, repair or maintenance of a building” are treated as made where the land in question is situated.

Factual background

40 5. The facts in this case are largely not in dispute.

6. The Appellant operates as a sole practitioner from Blackheath, South East London with a business of carpentry and joinery. He had been self-employed since

1980. The business was not registered for VAT because sales were below the VAT threshold.

5 7. The Appellant was advised and represented by Capital Accounting Services, whose proprietor is Mr Colin Cunningham, an accountant.

10 8. Based on figures submitted by Capital Accounting Services showing the monthly turnover breakdown figures, the Commissioners advised the Appellant that he had breached the VAT threshold. In a letter dated 31 March 2009, the Respondents advised the Appellant that there had been no reply to a request made to Capital Accounting Services for a formal inspection of the business records of the business, and, in their view, he should have been registered for VAT in the relevant period. In a letter dated 16 April 2009, Trevor Garrett, Higher Officer HMRC, made a further request for monthly turnover figures for the period April 2005 to March 15 2006 and May 2007 to December 2008. In a letter dated 15 June 2009, Capital Accounting Services provided monthly turnover figures for years to 5 April 2006 and 5 April 2008.

20 9. On 17 June 2009, Officer Garrett stated that the Appellant had a liability to be registered for VAT for the relevant period. He made the following observations:

- 25 (i) The Appellant's cumulative twelve month turnover exceeded the VAT threshold in force at the time of £61,000 during the month of July 2006.
- (ii) This gave a requirement to register for VAT with effect from 1 September 2006.
- (iii) The cumulative turnover remained above the threshold until 30 April 2008.
- 30 (iv) The period of VAT registration should have been 1 September 2006 to 30 April 2008.

35 10. The Commissioners asked Capital Accounting Services if the Appellant intended to raise invoices for the "liable" period and asked for a breakdown of the input tax for the same period.

40 11. On 17 August 2009, Capital Accounting Services replied that the Appellant did not intend raising VAT invoices, the reason being that the majority of the customers were private individuals who were not registered for VAT. On 25 August 2009, Officer Garrett advised that an assessment for arrears of VAT would be issued in the sum of £13,170 including penalties. In a letter dated 13 September 2010 to the Commissioners, Capital Accounting Services stated that the Appellant had supplied only labour (no materials) and had carried out the work in the Republic of Ireland. They said that the Appellant had not exceeded the VAT threshold given that in both 2006 and 2007 the jobs were carried out outside the UK and so were not taxable 45 supplies in the UK. They were outside the scope.

12. The Respondents wrote on 23 April 2010 to Capital Accounting Services requesting documentary evidence of supplies made including customer contracts with customer details, sales invoices and bank statements showing payment receipts for the work undertaken. On 8 July 2010 Capital Accounting Services provided thirteen
5 invoices relating to four customers with addresses in the Republic of Ireland and covering the months between July 2006 and August 2007.

13. The Appellant contends that he carried out labour-only jobs and purchased no materials and therefore was unable to provide any information relating to material
10 costs which had been requested. On 2 September 2010, Officer Garrett stated that he had insufficient evidence to revise the original assessment and said that consideration would be given to any evidence available regarding the location of the services supplied. He said that the evidence should be in addition to the supplied invoices. He asked the Appellant to provide “bank statements showing evidence of invoice
15 payments received”.

14. At the Tribunal hearing on 19 July, the Appellant was given an opportunity to provide the requisite bank statements (these had not been provided to HMRC before the hearing) and this was done on 29 July. The bank statements showed receipt of
20 payments between July 2006 and August 2007 comprising approximately eight payments and totalling approximately £60,000. The Appellant also provided copy of his sales book for the period April 2007 to April 2008 and May 2006 to March 2007.

15. Capital Accounting Services provided on 8 July 2010 a list of the records showing the work carried out in the Republic of Ireland as well as sales invoices for the period July 2006 to August 2007. These payments also appeared on bank statements provided for the relevant period.
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The Appellant’s contention

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16. The Appellant’s contention is simple. He says that the relevant work was undertaken in the Republic of Ireland. This constitutes export sales and is not subject to VAT. They have provided copies of the relevant invoices to the Respondents as well as bank statements to support the fact that those invoices had been paid to the
35 Appellant. In the circumstances the Appellant should not have been registered for VAT. They have also provided a reconciliation statement matching the sales invoices with the bank statements. These were provided after the hearing had been completed.

17. The Appellant’s main argument is that the invoices clearly demonstrated Mr Carville undertook work in the Republic of Ireland. The invoices were sent to clients in the Republic of Ireland and were paid by them.
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The Respondents’ contentions

45 18. The Respondents contend that the Appellant had exceeded the VAT threshold during July 2006 thus giving an effective date of registration of 1 September 2006.

The Respondents calculated that the Appellant was liable to remain registered until 30 April 2008, at which point the Appellant's turnover fell below the threshold limit.

19. The Respondents contended that no evidence has been provided of work carried out in the Republic of Ireland. The invoices which were provided gave insufficient details of work undertaken and of the supplies made. Therefore in the absence of evidence to show that the work was carried out in the Republic of Ireland, the place of supply will be treated as the UK where the business is based and standard rated for VAT purposes.

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20. The Respondents contend that the Appellant's turnover exceeded the VAT threshold of £61,000 in July 2006. Consequently, the Appellant had an obligation to be registered for VAT.

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21. Following the hearing, the Respondents made further submissions on 22 August after having reviewed the bank statement provided by the Appellants and the reconciliation of the bank statements to the sales book. The Respondents say that this does not show that the work was carried out in the Republic of Ireland. The bank statements either show the transaction as a "deposit" or for one named individual the transaction is shown as a "bank giro credit". The Respondents say that the explanations given by the Appellant are not plausible. They say that the Appellant had the opportunity to provide credible evidence at the hearing to explain the full circumstances surrounding the assertion that work was carried out in the Republic of Ireland. The Respondents contend that the Appellant has failed to provide sufficient supporting evidence to establish that the work was carried out in the Republic of Ireland. They dispute the addresses on the invoices (no postcodes) and have difficulty with the invoices issued in Sterling rather than Euros. They say that the Appellant was liable to be registered for VAT in the period 1 September 2006 to 30 April 2008.

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Evidence

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22. The Tribunal received a ring binder of documents and legislation together with a file of correspondence. There were two witnesses who provided witness statements on which they were cross-examined. The witness statements were provided by the Appellant, Robert Carville, which was unsigned (but sworn to by the Appellant at the hearing), and Trevor Garrett, Higher Officer HMRC dated 27 June 2010.

Witness statement of Robert Carville

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23. This witness statements made the following points:

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1. That he was self-employed as a carpenter and joiner trading under the name Carville Construction. The business had operated since 1980.

2. The statement gave the chronology of events from March 2008 to September 2010 and confirmed the various correspondence, assessments and representations made to the Commissioners.

3. He confirmed the following:

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“I undertook several large jobs in the Republic of Ireland in 2006 and 2007 as the country was experiencing a massive boom in construction at that time and there was a desperate shortage of skilled labour.

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My accountant informed me that he would write to HMRC immediately to inform them of the work undertaken outside the UK. I replied that I hadn’t been aware that the location of work carried out was relevant and that this was the reason I hadn’t mention it to him before”.

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24. He also confirmed the following:

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“In September 2010, following a request from my accountant I informed him by telephone that the jobs undertaken in the Republic of Ireland were labour only and that the materials required were provided by locally based building contractors. I provided my own tools for these jobs”.

Witness statement of Trevor Garrett

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25. Mr Garrett’s witness statements included the following:

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1. There was a chronological explanation of the history of the case and correspondence between the parties.
2. The following observations were made in paragraph 37 of the witness statement:

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“Having reviewed this information, I considered that further evidence was required to fully test the credibility of the information supplied. This is a routine check carried out by VAT Assurance Officers. The specific reasons for additional information being required were:

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(a) No mention of the Republic of Ireland work was made prior to my Decision letter on 25 August 2009;

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(b) The Schedule showing VAT expenses provided by Capital Accounting Services with their letter dated 17 August 2009 included claims for several months when it stated that Mr Carville was working in the Republic of Ireland. This is especially true in April 2007 when he invoiced for work performed in the Republic of

Ireland totalling £14,000 but also claimed in the same month £1,423.99 input tax which would involve expenses totalling in excess of £9,400 (VAT exclusive);

(c) Some of the supply addresses shown on Mr Carville's sales invoice appeared to be incomplete;

(d) It was considered somewhat unusual for work conducted in the Republic of Ireland to be billed in sterling rather than Euros".

26. Mr Garrett explained that he considered that the evidence provided by the Appellant to support their contention that the work was undertaken in the Republic of Ireland was insufficient.

27. At paragraph 41 he makes the following observations:

"Following my telephone contact with Capital Accounting Service on 19 November 2010, I issued a letter dated 1 December 2010 confirming details of the telephone agreement where they agreed to establish whether further evidence of payment received exist in respect of the Republic of Ireland work".

Discussion

28. There is one simple point in this case. The core question is whether the Appellant should have been registered for VAT in the relevant period and should have accounted for VAT on the supplies made during the period 1 September 2006 to 30 April 2008. It is accepted by the parties that if the Appellant's turnover exceeded the VAT threshold in force at the time of £61,000 during the month of July 2006 then he should have been registered for VAT. That gives a requirement to be registered with effect from 1 September 2006. If the cumulative total remained above the threshold until 30 April 2008, then the registration should have continued until that time. This means that the period of VAT registration should have been 1 September 2006 to 30 April 2008. If the Appellant had to be registered in that period then there is also an obligation to make VAT returns to enable the Respondents to assess the amount of tax payable for that period. If there has been a failure by the Appellant to notify of their liability at the appropriate time then this would have rendered the Appellant liable to a penalty under section 67(1) VATA 1994 at the rate of 15% of the net liability (this has been reduced in mitigation for co-operation by 25%).

29. However, the Appellant disputes the facts as presented by the Respondents. He claims that there was no obligation to register for VAT since the work was undertaken in the Republic of Ireland, and so is outside the scope of VAT for UK purposes.

30. The Appellant says that an investigation of his books and records and bank statements revealed that the following work was carried out in the Republic of Ireland and was therefore not subject to VAT. The sums are as follows:

5 **Invoice Details**

	July 2006	B Kemp	£4,891.00
	September 2006	James Davies	£5,500.00
	January 2007	R Bateson	£6,000.00
10	February 2007	R Bateson	£9,000.00
	April 2007	Bill Radmore	£14,000.00
	July 2007	James Davies	£5,000.00
	July 2007	Bill Radmore	£5,000.00
	August 2007	Bill Radmore	£10,000.00

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31. From the chart above it is clear that an invoice was issued to a person for a sum of money and that sum of money was paid in the same month the invoice was issued and appeared on the bank statement of the Appellant. The Tribunal has seen copies of the invoices and all the parties who were invoiced have addresses in the Republic of Ireland. The date of invoice and the amount of payment requested corresponds with the amount which was deposited in the Appellant's bank account at Lloyds TSB. The sums were also paid in the same month as the invoice date.

32. If these payments are taken out of the aggregate turnover of the Appellant then he would not be required to be registered for VAT.

33. Let us look at the analysis. The starting point is whether the supplies were made. There is no disputing that supplies were made, since a supply is anything done for a consideration. There is clearly the supply of construction services in the form of carpentry as provided by the Appellant and there has been the payment for those services as evident from the bank statements and invoices. There has been an invoice in respect of the work which was carried out by the Appellant. There was a contractual relationship between the parties as apparent from the fact that there was an invoice and the payment of that invoice. This would establish that there was a legal relationship between the parties and some sort of agreement. The payment must have been for the services which were provided. The party paying would have accepted that they had a legal obligation to pay for services which were rendered to them. By making the payment, the customer would be fulfilling his obligations to the Appellant pursuant an agreement, whether written or not, to make those payments.

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34. In the circumstances, it would appear to the Tribunal that, unless there is some reason for reaching a contrary conclusion, there is a supply of services to the customers. The Respondents have made no arguments suggesting a sham transaction or to that the transactions were not carried out. The basis of their objection is that the transactions were not carried out in the Republic of Ireland. It is clear however that the customers with addresses in the Republic of Ireland were the beneficiaries of work and paid for that work. The point made by HMRC that the addresses were incomplete

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was denied by the Appellant who pointed out that there are no postcodes in Ireland outside Dublin. It is possible for labour only to be provided without any materials with the customer providing the materials. There is nothing to suggest that the labour was in fact provided in the United Kingdom though that is possible, and the Appellant
5 accepted that some at least of the customers concerned also had UK addresses. But we saw no evidence to suggest that the labour was not provided in the Republic of Ireland. There was nothing raised in the arguments of the Respondents to suggest that the relationship between the parties was not bona fide or the work was undertaken on properties in the UK whether owned by the same individuals or others. What is clear
10 is that there was a legal relationship between the parties and reciprocal performance of obligations where one provided labour and one provided payment. There is a clear link between the payment made and the services which were provided.

35. The Respondents do not dispute that there was a supply of services for a consideration and it appears to the Tribunal that the proper recipients of the supplies were the parties named in the invoice. The customers were based in the Republic of Ireland though it is possible that they could have had second homes in the United Kingdom. However, as we have said, there is no clear evidence that the work which
15 was paid for was done in the United Kingdom. It would have been helpful to have written contract with terms and conditions outlining the schedule of work to be undertaken. However, sole practitioners do not always operate on this basis. The fact that there is no documentary evidence except the invoice and the bookkeeping entries and the invoices were paid by the parties named in those invoices (and based in the Republic of Ireland) would support the conclusion that there was at least some sort of
20 agreement between the parties, albeit unwritten, for which payment was received. We were provided with no other addresses where the work could have been carried out. The addresses appear credible and we know there are no postcode addresses in Ireland, outside Dublin. The Tribunal is also aware from its own experience that addresses in rural Ireland often do not have house numbers or obvious street names.
25 It is strange that the invoices were in Sterling rather than Euros but this is not conclusive that the work was done in the UK.
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36. On a balance of probabilities the Tribunal believed that the services which were provided were provided in the Republic of Ireland. The onus is on the Appellant
35 to show that he was not liable to be registered for VAT and the Tribunal believes that the Appellant has discharged that onus of proof. The balance of probability means that there is a greater probability that the event in question occurred than that it did not. It is more probable than improbable that the event, which is to say the supply of services in the Republic of Ireland, did occur and the evidence would suggest that this
40 is more likely the case than not.

37. The Respondents requested the bank statements of the Appellant and this was provided after the Tribunal hearing. It seems likely that if this was provided earlier, the Respondents would have taken a different view of this case. The Tribunal does
45 not agree with the Respondents' contention that the explanations given by the Appellant are not plausible. The Appellant was given an opportunity to adduce

credible evidence after the hearing and did so by providing a reconciliation of the invoice details, payments and bank statements.

5 38. I cannot think what further evidence the Appellant could have provided to satisfy the Tribunal as to the location of services which was supplied. There is no disputing that the supplies were made and the payments were made. The sole question was whether they were made in the Republic of Ireland. In the absence of any contrary evidence the Tribunal is of the opinion that the services were provided in that country and outside the scope of tax for UK purposes therefore the Appellant did not have to be registered for VAT in the relevant period. Without approximately 10 £60,000 turnover for that period arising in the United Kingdom, the Appellant would not have met the threshold for VAT registration in that period and therefore would not have to have been registered for VAT.

15 39. Considering all the circumstances, the Tribunal therefore allows the appeal.

40. The parties may apply separately on matters of costs.

41. 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 20 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)” 25 which accompanies and forms part of this decision notice.

30 **DR K KHAN**
TRIBUNAL JUDGE
RELEASE DATE: 15 November 2011