



**TC01602**

*Value Added Tax - Costs appeal - Appeal allowed in part*

**FIRST-TIER TRIBUNAL**

**Reference no: LON/2002/0069**

**TAX**

**PSI ENGINEERING LTD**

**Appellant**

**-and-**

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

**Tribunal: HOWARD M. NOWLAN (Tribunal Judge)**  
**ANDREW PERRIN**

**Sitting in public at Vintry House, Bristol on 27 October 2011**

**William Lewis of William N Lewis Associates on behalf of the Appellant**  
**Alan Pattinson of Ashley Rose Ltd, Costs Draftsmen, on behalf of the**  
**Respondents**

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# DECISION

## *Introduction*

1. This was a costs hearing relating to two consolidated appeals originally brought by the Appellant, PSI Engineering Ltd, under Tribunal Reference numbers LON/2001/0069 and LON/2001/0383. A further costs hearing had been set down in relation to the costs of a different appeal but that had been settled on the day prior to the hearing.

## *The facts*

2. The claim for costs arose in a slightly complex manner. It appeared that approximately 18 appeals had originally been listed before the Tribunal, involving VAT disputes in relation to several associated companies. The companies had not all been wholly owned, directly or indirectly, by Mr. Lewis, who practised in giving VAT advice (without being either an accountant or solicitor), but Mr. Lewis told us that the companies were broadly associated, and effectively he controlled all of them. Most of the appeals had been dismissed by the Tribunal, and appeals to the Upper-Tier Tribunal were apparently pending.

3. We understood that HMRC had withdrawn its defence to the consolidated appeals with which we were concerned, and the Appellant had been awarded its costs.

4. William N. Lewis Associates alleged that it had invoiced PSI Engineering Ltd for costs of £12,779.35 and various small copying expenses. It appeared that HMRC had already paid £6,500 in respect of the claim for costs, and the Appeal before us was for the balance of the claimed costs. Mr. Pattinson of the Costs Draftsmen appearing for HMRC claimed that the whole claim had been unreasonable and that the interim payment made by HMRC had been generous. He contended that if we considered that the fair figure to award was no higher than the figure already paid by HMRC then he requested an order in favour of HMRC for the costs of the Costs Hearing itself.

5. There were two complications that we should mention, prior to summarising the short contentions and recording the decision that we gave orally at the hearing.

6. First, the original Appellant had been dissolved. It appeared however that immediately prior to its dissolution, it had assigned its claim for costs to another of the affiliated companies by what appeared to be a valid assignment. No issue was thus taken in relation to this, and we dealt with the Appeal as if the original Appellant was pursuing its claim, but of course on the basis that any award in excess of the figure already paid by HMRC would pass to the assignee.

7. The other complication was that the various Appellants had all originally been represented by William M. Lewis Associates. That firm was essentially a one-man business operated by Mr. Lewis. Mr. Lewis had been a businessman of some standing, having at one time been a director of Babcock & Wilcox. He was however not a professional accountant or solicitor. He admitted that he had gathered his VAT experience "on the job". The other relevant fact was that since he was very clearly related to, if not the owner of, the various appellant companies in the 18 appeals, the costs claimed by him were close to being costs of the various appellants' own time.

## *The contentions of the parties*

8. Having mentioned those two slight complications, we were not asked to reject the whole claim on any contention geared to it being a claim for “own party” costs. It was however contended on behalf of HMRC that we should reject the whole claim on the ground that no evidence had been advanced to establish that the original Appellant had actually been invoiced for the claimed costs anyway. Were we to conclude that the Appellant had been invoiced for the claimed costs, it was then contended that the time spent and the hourly rate were both excessive. It was suggested that no more than 10 hours should have been spent in relation to the appeal and that an hourly rate nearer to the rate of £9.25 (apparently being the rate allowed to successful litigants in person in civil proceedings) would be more appropriate.

9. For his part, Mr. Lewis contended that the time spent had all genuinely been spent and that the rate was reasonable. He suggested that he could not understand why the number of hours and the rate were now being queried when, in relation to some other appeals, the claimed figures had generally been accepted. We were not particularly concerned to understand the facts in relation to other appeals, but since most had been dismissed, with various costs orders in each direction being set-off against each other, it was not clear that material actual net payments had been made.

### *Our decision*

10. Whilst we would like to record that we found Mr. Lewis clearly to be an honest and straightforward man, there were some unsatisfactory aspects to the claim. Although a Schedule had been prepared of the time spent on each aspect of progressing the original Appeal, this Schedule had not been based on contemporaneous time records. At the time when the Appellant was said to have been invoiced by William M. Lewis Associates, Mr. Lewis had then calculated what he thought was the fair estimate of time spent. Whether this was accurate or not it was obviously impossible to say.

11. Another unsatisfactory feature was that, although Mr. Lewis acknowledged that he had realised that Mr. Pattinson was asking him to bring the original invoice to the Tribunal, Mr. Lewis had not done this. Indeed he conceded that there had not been one single invoice for the claimed amount, but that various different invoices had been levied, whenever the Appellant was likely to be in funds to meet the bills submitted. It was also not clear that all the various different invoices would aggregate to the figure of £12,779.35, because sometimes invoices would relate to two different matters, only one of which would be the matter with which we were concerned. We were also handed a pile of invoices that had been submitted by William M. Lewis to the Appellant but not one single invoice actually related to the relevant litigation at all.

12. Our decision, which we gave orally, was that £7,000 was the appropriate total figure, meaning that HMRC should simply pay an additional £500 in addition to the amount already paid. We arrived at this figure by assuming that, absent remotely reliable evidence, William M. Lewis had doubtless invoiced the Appellant for its services, but that the reconstructed time figure could well have been excessive. It is one of the disadvantages suffered by the claimant that fails to make or keep records that it thereby becomes more difficult to sustain its claim. We assumed that 80 hours had been worked, and we decided that, for a non-qualified person giving advice in the period 2001 to 2003, a realistic rate of charge was £80 an hour. Mr. Lewis said that he had not charged for his time, where he was essentially performing secretarial functions (in that he worked alone, and had no secretary), but we did consider that

some of the time charged might not, in the more usual context of a firm of accountants giving advice, have been time recorded by a partner or senior associate, but could have been time spent by a junior assistant. Mr. Perrin was familiar with the then applicable charging rates for partners and senior associates in small and medium accounting firms, and it was our belief that the figure of £80 an hour was realistic in the light of this reality.

13. We then added to the calculated figure of £6,400 a small amount for copying and associated costs and rounded the resultant figure up to £7,000. That is our award, and it follows that no claim by HMRC for the costs of the Costs Hearing itself is granted.

### ***Right of Appeal***

14. 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.

**HOWARD M. NOWLAN (Tribunal Judge)**

**Released: 28 November 2011**