



TC01886

Appeal number: TC/2010/06740

VALUE ADDED TAX – voluntary disclosure claiming repayment of output tax wrongly charged – HMRC refusing to repay any amount in respect of tax accounted for more than 3 years before the voluntary disclosure was made – section 80(4) VATA ‘capping provisions’ – where section 80(4) applies there is no liability to make a repayment – repayment in respect of periods not covered by the ‘capping provision’ already made – no jurisdiction to consider the question of whether HMRC should make a further ex gratia payment in respect of periods covered by the ‘capping provision’ – appeal struck out

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SPECTRUM LEGAL SERVICES LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE & CUSTOMS**

Respondents

TRIBUNAL: JUDGE JOHN WALTERS QC

Sitting in public at Peterborough on 7 March 2012

Paul Moyses, for the Appellant

Bruce Robinson, HM Revenue and Customs, for the Respondents

DECISION

5 1. Spectrum Legal Services Limited (“Spectrum”) carries on a business from offices in Peterborough of carrying out legal searches and supplying the official results of them to conveyancing lawyers. The business was started in 2000, when Spectrum became a franchisee of “The Property Search Group” (“PSG”). Spectrum trades under the PSG name.

10 2. The results of one type of search are contained in an official form, called an LCC1 form.

3. Mr Moyses (whom Mr Robinson chose not to cross-examine) told me that, when Spectrum started trading, the provision of a LCC1 form to a customer (a conveyancing lawyer) was treated for VAT purposes as a disbursement. That is, no VAT was charged by Spectrum on the provision of the LCC1 form.

15 4. Mr Moyses also told me that another company (quite unconnected with Spectrum as a matter of ownership or control) called Esse Investments Limited (“Esse”) trades in the same way as Spectrum, under the PSG name, but from offices in Telford, and (obviously) is also a franchisee of PSG.

20 5. In 2002, an officer of Customs and Excise, Mrs Violetta Davies, advised Esse that this was the incorrect VAT treatment for the provision of LCC1 forms and that VAT should be accounted for on the basis that the LCC1 forms were the subject of a standard rated supply by Esse.

25 6. Esse accepted this advice and began to charge VAT accordingly. Mr Moyses told me that because PSG is a franchise organisation, the advice was circulated to all franchisees. Spectrum received an email from Mr Ward-Clayton, the relevant officer of Esse, and Spectrum began to charge VAT accordingly on its provision of LCC1 forms. Mr Moyses made the point that all franchisees of PSG are obliged to adopt similar procedures.

30 7. Some considerable time later, Mr Ward-Clayton became aware that Mrs Violetta Davies’s advice was or might be wrong and took the point up. Eventually Customs and Excise, or HMRC, accepted that the advice was wrong (having taken the opposite view in the meantime). Esse put in a claim for repayment of the VAT wrongly accounted for on the basis of Mrs Davies’s advice (a voluntary disclosure), and I have seen a letter from HMRC (Local Compliance Complaints Team) to Mr
35 Ward-Clayton dated 15 June 2010 in which HMRC accepted that Mrs Davies’s advice was wrong, and that there were grounds for a claim that Esse had suffered actual financial loss in connection with its implementation. The letter goes on to advise that HMRC will allow an *ex gratia* payment to be made.

40 8. The letter also goes on to say that HMRC will allow an *ex gratia* payment to recognise the loss suffered by Esse certainly back as far as 2002 (although 1 January 2000 is mentioned in the letter). The significance of this is that HMRC is proposing

to compensate Esse for losses incurred in periods more remote than those for which repayments are permitted under the ‘capping’ provisions.

5 9. The ‘capping provisions’ referred to are those of section 80(4) and (4ZA) VAT Act 1994 (“VATA”), pursuant to which HMRC’s obligation to credit a person with an amount wrongly accounted for as output tax or repay such an amount does not apply if the claim made for the purpose (see: section 80(2) VATA) was made more than 3 years (from 1 April 2009, 4 years) after the ‘relevant date’ determined by application of section 80(4ZA) VATA – in this case the end of the prescribed accounting period for which the amount was wrongly accounted.

10 10. Spectrum became aware in the normal course of the franchise operations of Esse’s perception that Mrs Violetta Davies’s advice was or might have been wrong and itself made a voluntary disclosure on 19 December 2008. The claim was for £37,040 and covered the period from February 2001 (which I note is before 2002) to April 2007.

15 11. In response to Spectrum’s claim (again after some hesitation as I understand it) HMRC have agreed to accept the voluntary disclosure for the period *not* prohibited by the ‘capping provisions’. That is, to quote from Mr Robinson’s Skeleton Argument, HMRC accepts that ‘repayment is correctly due for overpayments arising in prescribed accounting periods from 1 February 2006’.

20 12. I understand that such repayment has been made.

13. Mr Moses, however, contends that Spectrum should be entitled to full repayment, going back beyond periods not prohibited by the ‘capping provisions’ on the same basis as Esse obtained a commitment to a full *ex gratia* payment.

25 14. I explained to Mr Moses that this Tribunal has no jurisdiction to consider the basis on which an *ex gratia* payment might be made to Spectrum. This Tribunal can only consider the relevant VAT law, and section 80(4) VATA is clear that HMRC are not liable as a matter of VAT law on a claim in respect of periods for which a credit or repayment *is* prohibited by the ‘capping provisions’. On that basis Spectrum’s appeal must be struck out pursuant to rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 which provides that the Tribunal must strike out
30 the whole or a part of the proceedings if the Tribunal does not have jurisdiction in relation to the proceedings or that part of them.

35 15. However, submissions at the hearing of the appeal both by Mr Moses and by Mr Robinson made it clear that HMRC had taken the point that while they (through Mrs Violetta Davies) had misdirected Esse, they had not misdirected Spectrum.

40 16. I questioned this. It seemed to me that HMRC may well have effectively misdirected Spectrum as well as Esse by advising Esse that it should follow an incorrect VAT procedure directed by Mrs Violetta Davies, if she knew or should have known (a) that Esse was a franchisee of PSG and (b) that the PSG franchise operated on the basis that all franchisees were obliged to follow the same procedures in relation to VAT and (c) that there were other companies who were also franchisees of PSG to

whom HMRC's direction would in normal course be communicated and (d) that such other companies would also in normal course apply the direction.

5 17. Further, it seemed to me likely that Mrs Violetta Davies knew or ought to have known all these things if she had (as was suggested) conducted a VAT assurance visit at Esse.

10 18. With the agreement of Mr Robinson, I undertook to make this point in the Tribunal's Decision Notice. I hope and expect that HMRC will reconsider their position on the question of making an *ex gratia* payment to Spectrum on the same basis as they have offered one to Esse. In such reconsideration I would expect what I have said above to be taken into account.

19. The appeal however must be struck out for the reasons given above.

15 20. 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.

20

JOHN WALTERS QC

TRIBUNAL JUDGE

RELEASE DATE: 12 March 2012

25