



TC02381

Appeal number: EDN/03/57

*Value Added Tax – Application to substitute another party as Appellant –
Rule 9, Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009
and Regulation 9, VAT Regulations 1995 – Application refused.*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TERESA ANNE MOONEY

Appellant

- and -

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

**TRIBUNAL: JUDGE KENNETH MURE, QC
S A RAE, LLB, WS**

**Sitting in public at George House, 126 George Street, Edinburgh on
1 November 2012**

Mr Crawford Herald, Jeffrey Crawford & Co CA for the Appellant

**Mr Ian Mowat with Ms E McIntyre, instructed by the General Counsel and
Solicitor to HM Revenue and Customs, for the Respondents**

DECISION

Preliminary

1. This Appeal has been sisted for an extended period pending the outcome of a lengthy litigation in the Court of Session involving the Appellant. This has now been concluded and the purpose of the Case Management Hearing today was initially to appoint a hearing date and regulate further procedure.

2. However, shortly before, the Appellant served an Application to have another party substituted in her stead because of a supervening change of circumstances. The background to this Appeal and the Court of Session litigation is that the Appellant's late domestic partner, Robert Lamont ("the deceased") owned a business, Glasgow Audio, in respect of which he was registered for VAT. After his death on 11 January 2002, in the belief that she would succeed to the business, the Appellant applied to be, and was, registered for VAT in relation to it on 13 February 2002. However, no Will was ever traced for the deceased and his estate devolved to his sister, Irene Lamont, who was appointed executrix-dative. In the meantime the Appellant did not complete VAT Returns and HMRC issued estimated assessments. The Court of Session action arose out of the competing interests of the Appellant and the deceased's sister. Essentially it was an action of accounting by the executrix against the Appellant in respect of the business' finances and a related counter-claim.

3. Although Miss Lamont was advised of today's hearing and the Appellant's application to have her substituted in this Appeal, she did not appear and was not represented. The Tribunal decided to proceed to hear the Application albeit with caution in case of causing possible prejudice to Miss Lamont in her absence.

4. Mr Herald argued that the outcome of the Court of Session proceedings and the appointment of Miss Lamont as executrix were a sufficient basis for adding her to this Appeal or substituting her as Appellant. He suggested that the Inner House had identified the executrix as being the party responsible for VAT. He referred us to the Opinion of the Temporary Lord Ordinary and, in particular, paragraph 201 thereof. He acknowledged that the Appellant regarded herself as "steward" of the business during the period in which she continued to run it after the deceased's death.

Submissions

5. Mr Mowat for HMRC submitted as a preliminary point that the Appellant did not have power to substitute another party in the Appeal having regard to the terms of Rule 9 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. He argued that having regard to paragraph (3) thereof, only Miss Lamont could seek this and, clearly, she did not wish to be substituted. He referred us to the commentary in *Hamilton: Tax Appeals* ch 14-40 *et seq.*

6. Further, as a substantive aspect, Mr Mowat argued that the Application to substitute Miss Lamont as Appellant should be refused since Regulation 9 of the Value Added Tax Regulations 1995 enabled HMRC in the event of the death of a

registered taxable person to treat as taxable any person carrying on the relative business. Moreover and in any event the Appellant had herself sought registration for VAT. None of this was in dispute, and if ultimately the Appellant should not have been registered for VAT purposes, she could pursue this in the present Appeal
5 irrespective of the executrix's being convened as a party. Thus the Appellant's interests would not be prejudiced if the Application were refused. Further HMRC were not, in any event, seeking to have Miss Lamount conjoined to or substituted for the Appellant in the present case.

Conclusion

10 7. We do not consider it appropriate to grant the Application. Our view proceeds essentially on the basis of Regulation 9 VAT Regulations 1995 and the admitted factual background, viz that of the Appellant's taking over the running of the business of Glasgow Audio on a day-to-day basis and, moreover, electing to register for VAT herself.

15 8. However, we should firstly comment on the procedural effect of Rule 9 of this Tribunal's procedural Rules. Mr Mowat relied heavily on the final sentence of the commentary in *Hamilton* at ch 14.43 – “The Tribunal has no power to compel a party to be joined.”

We are hesitant to adopt an interpretation which would unduly fetter the Tribunal's
20 powers to manage a hearing. On the other hand the selection of the correct taxpayer must lie ordinarily with HMRC. The terms of the Application refer simply to Rule 9 and not any particular paragraph thereof. Paragraph (2) would seem to confer a broad power on the Tribunal to call a third party as a *respondent* for their interest. We were referred to the decisions in *Barclays Bank plc v C&E Commissioners and Visa*
25 *International Services Association* [1992] VATTR 229 and *Stow v Stow* [2008] EWHC 495 (Ch) – both noted in the text of *Hamilton* – which seemed to prescribe some financial or proprietary interest before the conjoining of a third party to an Appeal, and that consideration in our view must be material in exercising the power under paragraph (2).

30 9. Next, consideration of Regulation 9 VAT Regulations arises. It seems entirely apt in the context of the present Appeal. It envisages circumstances as occurred in the present case. HMRC proceeded to assess the Appellant as they were entitled to do, and acted perfectly reasonably. The Appellant carried on the business even if, as discovered ultimately, as “steward” for another party, the deceased's sister. The
35 Appellant made sales and charged VAT for which she was accountable. And, what may be resolute of the matter, she registered voluntarily for VAT purposes. If, on reflection, the Appellant believes that she was not the correct party to be assessed or seeks to challenge the assessments otherwise, she can dispute that in the present Appeal without the involvement of the executrix as a party. We agree with
40 Mr Mowat's stance on that point.

10. There may ultimately be an issue of the Appellant having a right of relief against the executrix, but the present Appeal before this Tribunal does not seem to be

the appropriate *forum*. Pursuing a right of relief was noted by the Lord Ordinary at para 201 of her Opinion.

5 11. Given that, we do not consider that by refusing the present Application we have prejudiced the Appellant's interests. Further, had we introduced the executrix into this Appeal, she would have been occasioned expense.

12. Accordingly, we refuse the present Application. Parties should liaise with the Tribunal to appoint a mutually convenient hearing diet and settle any remaining procedural aspects.

10 13. 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)" 15 which accompanies and forms part of this decision notice.

20 **KENNETH MURE, QC**
TRIBUNAL JUDGE

RELEASE DATE: 20 November 2012