



TC02589

Appeal number: TC/2012/04741

*APPEAL – whether appealable matter – S.83 VATA 1994 – No – Appeal
Dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

STUART CROSS T/A EUROMARQUES

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE DR K KHAN

Sitting in public at Bedfordshire on 25 January 2013

The Appellant represented himself.

**Gloria Orimoloye, Higher Officer at HM Revenue and Customs, for the
Respondents**

DECISION

Introduction

- 5 1. The Tribunal was asked to consider an application by the Respondents dated 12 June 2012 to have the Appellant's appeal struck out in accordance with rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal Tax Chamber) Rules 2009.
2. The Respondents say that the Application is made since the matter concerned is not an appealable matter under Section 83 of the Value Added Tax Act 1994
10 ("VATA") and as such the Tribunal has no jurisdiction to entertain the appeal.

The Relevant Facts

3. The Appellant was registered for VAT on 1 September 2000. His business involves the import and sales of used cars.
4. HMRC Officer Alison Jones undertook visits to the Appellant between July 2001
15 and March 2012. There were credibility and verification visits concerning repayment claims made by the Appellant in his return of 05/11. The Tribunal was not provided with any of the correspondence from Alison Jones. It appears that the Appellant had incorrectly accounted for VAT on the cars sold including "qualifying cars" (ex-
20 leasing cars), where VAT is normally due on both the finance charge and the service charge. Any input tax recovery would depend on how the car was used. VAT would normally be charged on the sale of the car
5. The cars that aren't VAT qualifying cars are dealt with under the margin scheme. The amount of VAT due is calculated by multiplying the gross margin (profit) by the VAT fraction. The profit margin is the amount by which the price at which the
25 person making the supply obtained the vehicle subtracted from the price at which sold. In other words the profit element.
6. Where a qualifying car is sold VAT is charged on the full amount of the sale. It therefore appeared that the Appellant was accounting for the wrong amount of VAT on the qualifying cars when he applied the VAT fraction in calculating the amount of
30 VAT due to HMRC. There was therefore a non-declaration of VAT for the relevant period. The total amount of VAT due was £32,357 plus £2,230.98 of interest at the rate of 3%. This made a total of £34,587.98.
7. The Appellant explained that he had only met with his Accountant once a year to discuss the paperwork but had communicated the with the VAT office in Oxford to
35 ask for assistance. He made a telephone call to the office in October 2005 and he was told by a "lady trainee" Officer that the system he proposed to use was correct. That system involved accounting for the VAT on the sales proceeds by applying the VAT fraction.

8. HMRC had no record of the call since their records did not go back to that period. The Appellant had some scribbles in his notepad which he showed to the Tribunal. The information written down was sparse and unreliable.

The Appellant's Case

5 9. The Appellant makes the following points;

10. That he was advised by HMRC to use the system he did and assumed this was correct. Given he had very irregular contact with his Accountant only at year end; he felt he had done the responsible thing by asking for advice. He felt he acted as a reasonable person but was given misleading advice and in the circumstances he should have a defence to any assessment of tax.

11. He queried why it took HMRC 14 years to discover the error.

12. The Appellant indicated that an assessment of this nature would lead to his personal bankruptcy and failure of his business.

Respondents Contentions

15 13. The Respondents contend that the Tribunal has no jurisdiction to consider the Appeal against the Assessment; it is not an appealable offence under Section 83 of VATA. Accordingly and pursuant to Rule 8(2) of the Tribunal Rules the Appeal should be struck out.

Conclusion

20 14. The Appellant has provided very little evidence on which the Tribunal can rely to make a decision.

25 15. A VAT registered business has an obligation to make themselves familiar with information that relates to their business. There are public notices which explain the second-hand margin scheme, the treatment of qualifying cars and gives advice on the recovery of input tax on purchases and expenses. These are readily available either online or through the local VAT office. There are help lines which are staffed by HMRC which give advice should the Appellant have any doubts. There is copious information on the internet and the Appellant had advisors who he could have consulted. It is unfortunate that the Appellant did not consult those advisors to get detailed advice on VAT matters and used cars.

30 16. There is evidence that he received Notice 718 dealing with margin schemes of second hand goods on 8 July 2012.

35 17. The Appellant made a formal complaint to HMRC and the complaint was not upheld. In the Tribunal's view, there is little evidence to support the Appellant's claim. The Tribunal offers the comments as observations on the case.

18. However, the Tribunal agrees with the Respondent that this is not an appealable matter. The Tribunal therefore has not jurisdiction to entertain the appeal.

19. Sadly, the Appeal is dismissed.

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.

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**DR K KHAN
TRIBUNAL JUDGE**

RELEASE DATE: 7 March 2013