



TC02673

Appeal number: TC/2011/07471

VAT – Appeal against compulsory registration – Whether transfer as a going concern from taxable person – Yes – Appeal dismissed – section 49 and schedule 1 Value Added Tax Act 1994

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KATE SALISBURY

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE JOHN BROOKS
RAYNA DEAN FCA**

Sitting in public at Prestatyn Magistrates Court on 11 February 2013

The Appellant did not appear and was not represented

Susan Ellwood of HM Revenue and Customs, for the Respondents

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DECISION

Introduction

1. Ms Kate Salisbury appeals against a decision of HM Revenue and Customs (“HMRC”) to compulsorily register her for VAT from 6 April 2009 on the grounds
5 that she acquired her business, *Valley Fish & Chip Shop*, by way of a transfer of a going concern from a taxable person, a partnership operated by her parents. Ms Salisbury was notified of the decision in a letter from HMRC dated 23 May 2011. The decision was upheld following a review and Ms Salisbury was notified of this by HMRC in a letter dated 22 August 2011.

10 2. Although Ms Salisbury did not attend the hearing and there was no answer to telephone calls made by the Tribunal clerk to both her home and business numbers, we were satisfied, having seen a letter from the Tribunal, dated 8 February 2013 to HMRC to explain that her application for a postponement of the hearing had been refused, that Ms Salisbury had been notified of the hearing. As we considered that it
15 was in the interests of justice to do so we proceeded with the hearing in Ms Salisbury’s absence in accordance with Rule 33 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009.

Law

3. Section 49(1)(a) of the Value Added Tax Act 1994 (“VATA”) provides that, for
20 the purposes of determining whether a person who acquires a business carried on by a taxable person as a going concern is liable to be registered for VAT, he or she shall be treated as having carried on the business before as well as after its transfer.

4. If the person to whom the business is transferred as a going concern is not
25 registered for VAT, he or she is required to register under paragraph 1(2) of schedule 1 to VATA if the taxable supplies of the business in the year to the transfer exceed the VAT threshold. However, paragraph 1(3) provides that there is no requirement to register if HMRC are satisfied that the turnover in the 12 months after the transfer will not exceed the de-registration threshold.

5. Although a person who is liable to register for VAT is required by paragraph to
30 notify HMRC within 30 days of the transfer of the business, HMRC shall register such a person from the time when the business is transferred irrespective of whether such notice has been given (see paragraph 7 schedule 1 VATA).

6. A “taxable person” is a person who is or is required to be registered for VAT (see s 2 VATA).

Facts

35 7. Mr Ronald Salisbury and Mrs Helen Salisbury, Ms Salisbury’s parents, acquired the Valley Fish and Chip Shop business in 2004. Originally only Mrs Salisbury was registered for VAT but this was amended in 2005 to Mr and Mrs Salisbury trading as a partnership.

8. The turnover of the business in the four VAT accounting periods to 19 January 2009 exceeded the then VAT annual threshold of £67,000 and was as follows:

	04/08	£33,539
	07/08	£31,932
5	10/08	£34,244
	01/09	£14,115

9. On 19 January 2009 Mrs Salisbury sent an application to cancel the partnership's VAT registration, Form VAT 7, to HMRC in which she indicated that the legal status of the business was to be changed from a partnership to "a group of
10 individuals with company status" and gave the name of "Ms K Salisbury and others" as the new owner of the business.

10. Although a company, Valley Fish & Chips Limited was incorporated on 19 January 2009, with Mr and Mrs Salisbury and Ms Salisbury as its directors, a letter to HMRC from Mr Salisbury, dated 2 September 2009 explains that:

- 15 (1) the trading partnership ended on 19 January 2009;
- (2) it had been intended to separate Mr and Mrs Salisbury's interests into a limited company and a part of the business to be taken on by Ms Salisbury but this did not happen;
- 20 (3) the assets of the partnership business, including the shop premises, were still owned by Mr and Mrs Salisbury who will charge rent to the succeeding business for their use;
- (4) Ms Salisbury had already registered her new venture with her own tax office;
- 25 (5) Mr and Mrs Salisbury may "at some future optional point" resume a business interest; and
- (6) the company, Valley Fish & Chips Limited, was not operating. It did not have any assets or a bank account and was without funds and effectively dormant.

30 In his letter to HMRC of 5 March 2010, Mr Salisbury confirmed that Valley Fish & Chips Limited had not traded and was in the process of being dissolved. The company was struck off the Companies Register on 15 June 2010.

35 11. The "new venture" of Ms Salisbury, to which Mr Salisbury refers in his letter, was the operation, by her of the fish and chip shop business. This is confirmed by Ms Salisbury in the Form, CWF 1, dated 16 February 2011, in which she notified HMRC that she had become self-employed as a "fish fryer" trading with the same name, "Valley Fish and Chip Shop" and from the same premises as her parents had previously done.

12. Valley Fish and Chip Shop remained open without any break in trading whilst the transfer of the business from Mr and Mrs Salisbury to Ms Salisbury took place.

13. Despite requests to do so, other than assert that it did not exceed the VAT threshold, Ms Salisbury did not provide details of the business turnover to HMRC. As HMRC could not be satisfied that registration was not required Ms Salisbury was compulsorily registered for VAT on 23 May 2011 with an effective date of registration from 6 April 2009.

14. In the absence of the submission to HMRC of any VAT returns by Ms Salisbury, on 27 September 2011 an assessment was issued by HMRC in the sum of £44,476. This was based on the turnover of the business when it was operated by Mr and Mrs Salisbury.

15. In June 2012 Ms Salisbury submitted tax returns to HMRC showing turnover of her self-employed business for the three years ending 5 April. The turnover shown, and the relevant thresholds for VAT de-registration, are as follows:

Year	Turnover	VAT de-registration threshold
2010	£66,976	£66,000
2011	£68,952	£68,000
2012	£69,943	£71,000

Decision

16. Given the circumstances described above we have no hesitation in finding that there was a transfer of the business as a going concern by a taxable person, the partnership of Mr and Mrs Salisbury. Therefore, as the turnover of the partnership exceeded the VAT threshold, unless HMRC were satisfied that Ms Salisbury's turnover in the 12 months after the transfer would not exceed the de-registration threshold, which at the time of the transfer of the business was £65,000, Ms Salisbury was required to register for VAT in accordance with paragraph 1(2) schedule 1 VATA.

17. Ms Salisbury's assertion that the turnover of the business is below the VAT threshold, an approach she maintained in her appeal, is clearly not sufficient to satisfy HMRC that she was not required to be registered for VAT. Moreover, the turnover which Ms Salisbury returned to HMRC is above the de-registration threshold. Accordingly we find that HMRC were obliged, under paragraph 7(2) of schedule 1 VATA, to register her for VAT.

18. As such the appeal cannot succeed and is dismissed.

19. We note that this appeal was against the VAT registration and not the assessment and would urge Ms Salisbury to provide HMRC with the information requested which may possibly lead to a reduction in that assessment.

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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**JOHN BROOKS
TRIBUNAL JUDGE**

RELEASE DATE: 25 April 2013

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