



**TC02780**

**Appeal number: TC/2011/4062**

*VAT – transfer of VAT registration number – s 49 VATA 1994 – Reg 6  
General Regs 1995 – HMRC refusal to transfer VAT number – evidence of  
no transfer of a going concern – Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**BASSLABS LIMITED**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE PETER KEMPSTER  
MRS SHAMEEM AKHTAR**

**Sitting in public at Priory Courts, Birmingham on 6 June 2013**

**The Appellant did not attend and was not represented**

**Mr Bernard Haley (HMRC Appeals Unit) for the Respondents**

## DECISION

1. Prior to commencement of the hearing the Appellant's representative in a telephone conversation with the Tribunal's staff confirmed he had received notice of the hearing but his reminder system had not alerted him; he was not attending. The Tribunal noted that the hearing bundle and case file contained the grounds of appeal and representations made by the Appellant, and considered that it was in the interests of justice to proceed with the hearing, pursuant to Tribunal Procedure Rule 33.

2. The matter for determination by the Tribunal concerns the refusal by the Respondents ("HMRC") to transfer the VAT number of a Mr Mumtaz Hussain, trading as Basslabs ("the Sole Trader") to the Appellant ("the Company").

### Facts

3. On 28 November 2007 HMRC chased the Sole Trader for four outstanding VAT returns.

4. On 6 December 2007 the Sole Trader's agent replied, "... [the Sole Trader] ceased activity on 31<sup>st</sup> March, with the aim of relocating. A suitable site for recommencement has still to be decided upon." On 4 February 2008 the agent wrote, "... the above business has temporarily ceased operations and Mr Hussain the owner is looking out for a suitable place to relocate."

5. On 15 July 2008 the agent wrote stating that the Sole Trader had "been incorporated as" the Company. On 30 July the agent wrote enclosing a Form 68 - "Transfer of a business as a going concern - Request for transfer of a registration number" - and a Form 1 (registration application). The Form 68 stated, "I took over the business as a going concern on 15/7/08". The Form 1 described the business activities of the Company as, "General wholesale, marketing and distribution of household products. Import and export."

6. On 7 August 2008 HMRC acknowledged the application but stated:

"Before we can proceed with the reallocation of your VAT registration number, please complete the outstanding VAT returns for the periods ended 11/2006, 02/2007, 05/2007, 08/2007, 11/2007 and 02/2008. ... I cannot transfer the VAT number to the [Company] until this matter is settled."

7. On 14 August 2008 the agent replied giving the figures (but no return) for the first missing period (11/2006) but stating, "We had previously advised you that [the Sole Trader] was dormant. Activity was suspended to relocate if necessary by restructuring the organisation. That has been done now." And "No VAT is payable for any of the other periods listed in your letter."

8. On 21 August 2008 HMRC wrote requesting again the missing returns and stating:

“If no trading has occurred the returns still need to be completed as Nil.

This matter is now becoming urgent, and without your VAT account being brought up to date, and any outstanding balances satisfied your VAT number cannot be reallocated.

Please note that if the above criteria is [*sic*] not met your current VAT number will be deregistered and a new VAT number issued for [the Company] effective from 15 July 2008.”

9. On 5 September 2008 HMRC wrote to the Sole Trader stating that the agent had

“requested that we change the legal status of the business to that of limited. Unfortunately, this is not possible, as the business appears to be “non-active”. ... To enable a transfer of a VAT registration number, the business must be making taxable supplies. In the case of your business, according to our records, your business has not been trading. I understand that the business has been dormant; this was confirmed by your accountant ... Regarding the main business activity, the original business activity appears to relate to “car audios”, however the new main business activity appears to relate to “general trading”. To enable a reallocation of a VAT registration number to proceed, there should be a business link. I do not feel that there is a business link between these two activities.”

10. There was then a series of events involving HMRC Complaints Team, the Adjudicator’s Office, a Member of Parliament, and the Parliamentary Ombudsman. We consider that correspondence is not relevant to the matter before this Tribunal for determination.

## Law

11. All legislation is cited as in force at the relevant time.

12. Section 49 VAT Act 1994 provides, so far as relevant:

### “49 Transfers of going concerns

(1) Where a business, or part of a business, carried on by a taxable person is transferred to another person as a going concern, then—

(a) for the purpose of determining whether the transferee is liable to be registered under this Act he shall be treated as having carried on the business or part of the business before as well as after the transfer and supplies by the transferor shall be treated accordingly.

(2) Without prejudice to subsection (1) above, the Commissioners may by regulations make provision for securing continuity in the application of this Act in cases where a business, or part of a business, carried on by a taxable person is transferred to another person as a going concern and the transferee is registered under this Act in substitution for the transferor.”

13. Regulation 6 VAT Regulations 1995 (SI 1995/2518) provides so far as relevant:

## **“6 Transfer of a going concern**

(1) Where—

(a) a business or part of a business is transferred as a going concern,

5 (b) the registration under Schedule 1 or 1A to the Act of the transferor has not already been cancelled,

10 (c) on the transfer of the business or part of it the registration of the transferor under either Schedule is to be cancelled and either the transferee becomes liable to be registered under either Schedule or the Commissioners agree to register him under paragraph 9 of Schedule 1 to the Act, and

(d) an application is made in the form specified in a notice published by the Commissioners by or on behalf of both the transferor and the transferee of that business or the part transferred,

15 the Commissioners may as from the date of the said transfer cancel the registration under Schedule 1 or 1A to the Act of the transferor and register the transferee under Schedule 1 or 1A to the Act as appropriate with the registration number previously allocated to the transferor.”

### **Consideration and Conclusion**

20 14. We consider that the Company has a right of appeal to this Tribunal against HMRC’s refusal to transfer the VAT number by virtue of s 83(1)(a) VATA 1994: “... an appeal shall lie to the tribunal with respect to ... the registration or cancellation of registration of any person under this Act ...”. Regulation 6 provides that HMRC “may” transfer to the transferee the registration number previously allocated to the transferor. Given the discretion conferred on HMRC by Reg 6, we consider our  
25 jurisdiction in this matter to be what is often described as a “supervisory jurisdiction”. That is to say, we must consider whether in reaching her decision to refuse to transfer the VAT number the HMRC decision maker took into account all relevant matters; ignored irrelevant matters; directed herself correctly on the applicable law; and came to a conclusion that was reasonable and not arbitrary (see *HMRC v JH Corbitt*  
30 (*Numismatists*) *Limited* [1980] STC 231).

15. We consider that the decision maker was faced with two obstacles to being able to conclude that there was a transfer of a going concern for the purposes of s 49.

35 (1) First, the information that Nil returns would be submitted indicated that the Sole Trader’s business had ceased. Also the agent had confirmed that, and referred to the Sole Trader being dormant.

(2) Secondly, the nature of the business intended to be carried on by the Company (household products) was markedly different from that of the Sole Trader (car audios).

40 16. Both those factors (no ongoing business and a change in the nature of the business) point to there not being a transfer of a going concern for the purposes of s 49 – see *HMRC v Dearwood Ltd* [1986] STC 327. All the evidence available to the decision maker pointed to there not being a s 49 transfer. We conclude that the

HMRC decision maker took into account all (and only) relevant matters; directed herself correctly on the applicable law; and came to a conclusion that was reasonable and not arbitrary. While not relevant to our decision, we would also comment that in our view it was also clearly the correct decision.

5 **Decision**

17. The appeal is DISMISSED.

18. 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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20 **PETER KEMPSTER**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 8 July 2013**