



**TC03553**

**Appeal number: TC/2013/04501**

*VAT – £120,683 reclaimed by Appellant on refurbishment of property – Appellant connected to recipient of supply – HMRC using market value rules – Appellant appealing on basis that relied on advice from an HMRC officer – HMRC application to strike out appeal in reliance on Noor – Appellant liquidated before hearing – appeal struck out.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**WIMPOLE INTERIORS LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE REDSTON  
MR DUNCAN MCBRIDE**

**Sitting in public at Bedford Square on 10 April 2014**

**Mrs PA Newman and Mr CW Pattison, director and company secretary of the Appellant, for the Appellant**

**Mr Philip Rowe of HM Revenue and Customs Appeals and Reviews Unit, for the Respondents**

## DECISION

1. This was HMRC's application to strike out the appeal of Wimpole Interiors Limited ("the company") on the grounds of lack of jurisdiction. The Tribunal allowed the application and struck out the appeal, but for reasons other than those put forward by HMRC.

### Background to the appeal

2. The company was incorporated on 24 January 2012, with Mrs PA Newman as the director and Mr CW Pattison as the company secretary. It registered for VAT.

3. Mr Pattison is a self-employed cardiac surgeon operating from premises he owns at 42 Wimpole Street. His supplies are exempt and he is not VAT registered.

4. At some point during 2012 the company contracted with Mr Pattison to refurbish 42 Wimpole Street. The company's purchases relating to the refurbishment totalled £603,418 plus VAT of £120,683.

5. The purchases were funded by means of a loan from Mr Pattison to the company. The company invoiced Mr Pattison £30,000 plus VAT of £6,000 for the refurbishment.

6. The company made repayment claims to recover the VAT on the purchases over three periods, 06/12, 09/12 and 12/12. The first of these repayment claims was for £26,652 and was paid by HMRC.

7. On 4 February 2013 Miss Brookes of HMRC issued a decision that the value of the supply to Mr Pattison had been understated. She relied on the fact that the company and Mr Pattison were connected parties, and recalculated the value of the supply made to Mr Pattison as £633,418 plus VAT of £126,683. These figures were arrived at by adding the company's purchase costs of £603,418 to the £30,000 fee it had charged. On 4 February 2013 she reduced the value of the company's two later VAT repayment claims and on 11 February 2013 issued an assessment to recover the £26,652 already repaid to the company.

### The appeal to the Tribunal

8. Mrs Newman and Mr Pattison, on behalf of the company, appealed Miss Brookes' decisions to the Tribunal. Their grounds of appeal were that in running the company they had relied on the advice of a HMRC officer; that Miss Brookes had behaved arrogantly and that a third HMRC officer had authorised the repayment. As a result, they said, the three HMRC officers had behaved inconsistently with each other; furthermore, Miss Brookes had been unreasonable. The grounds of appeal did not challenge the open market value calculated by Miss Brookes.

9. The appeal was received by the Tribunal on 4 July 2013, more than 30 days after 22 May 2013, the date of HMRC’s review letter upholding Miss Brookes’ decisions. HMRC did not take any issue with the late appeal, and did not require the company to deposit the disputed VAT.

5 10. However, on 12 November 2013 HMRC applied to the Tribunal to strike out the appeal. The strike out application said:

10 “the grounds of appeal...do not fall within the jurisdiction of the Tribunal in that they are related to possible misdirection or conflicting advice given by HMRC and as such fall to the HMRC complaints procedures to resolve.”

11. On 9 December 2013 Mrs Newman and Mr Pattison wrote a joint letter to the Tribunal on behalf of the company saying that they were “firmly committed to attend a tribunal.”

### **HMRC’s application to strike out the appeal**

15 12. Shortly before the application hearing began, Mr Rowe provided the Tribunal with his speaking notes. These said HMRC was relying in particular on the cases of *HMRC v Hok* [2012] UKUT 363(TC) and *HMRC v Noor* [2013] UKUT 071(TC).

20 13. However, when he opened the case for HMRC, Mr Rowe informed us that the company had in fact been liquidated on 14 January 2014. He provided a printout of the relevant page from the Companies House website.

14. Mrs Newman and Mr Pattison confirmed that the company had been dissolved and said that this was in accordance with advice from an accountant. They said they had no intention of seeking the company’s restoration to the register and asked us to confirm that creditors were now unable to collect any outstanding sums.

25 15. The Tribunal has no jurisdiction to hear a case when the appellant is no longer in existence. As a result, the company’s appeal must be struck out, albeit for reasons other than those put forward by HMRC. For completeness we record that the Tribunal heard no submissions on the case law put forward by HMRC.

30 16. The Tribunal informed Mrs Newman and Mr Pattison that we were unable to make any comment on whether or not a creditor would be able to collect any outstanding debts. That is a matter on which they may wish to take professional advice, should a creditor seek to commence legal action.

### **Decision and appeal rights**

35 17. As a result of the foregoing, we allow HMRC’s application and direct that the appeal of Wimpole Interiors Limited be struck out.

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.

- 5 19. 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.

**ANNE REDSTON**

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**TRIBUNAL JUDGE**

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**RELEASE DATE: 6 May 2014**