



TC04505

Appeal number: TC/2014/4521

VAT – Deregistration- para13 sch1 VATA

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

HAYLEY MUNDY T/A HAYLEY'S HAIR DESIGN Appellant

- and -

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

**TRIBUNAL: JUDGE CHARLES HELLIER
JOHN COLES**

Sitting in public in Bristol on 3 June 2015

Hayley Mundy in person

Jane Ashworth, for the Respondents

DECISION

5 1. Mrs Mundy appeals against HMRC's refusal to deregister her for VAT purposes with effect from 8 April 2014.

2. HMRC accept that Mrs Mundy's turnover was such that from 8 April 2014 she was no longer liable to be VAT registered, but they say that the effect of schedule 1 VAT Act 1994 is that they do not have the power to deregister her until they received a request to do so, and that they did not receive her request until 3 June 2014. Thus
10 HMRC deregistered her from 3 June 2014 and not 8 April.

3. Mrs Mundy's VATable supplies in the period from 8 April 2014 to 3 June 2014 were £10,170. The delay in her deregistration meant that she was liable to additional VAT of some £1,322 (being 13% of the turnover - since she operated a flat rate VAT scheme).

15 **The facts.**

4. Mrs Mundy put her case clearly and eloquently. We find the following facts which we take principally from her evidence.

5. Mrs Mundy owned and ran a hairdressing salon. After a while she opened a beauty salon. The turnover of the two salons was such that she became liable to be
20 VAT registered, and she became so registered.

6. When Mrs Mundy decided to start a family she concluded that she would not thereafter be able to manage both salons effectively. So at about Easter time 2013 she sold the beauty salon. Her accountant then advised her to monitor her turnover regularly so that she might deregister for VAT as soon as possible.

25 7. On 8 April 2014 Mrs Mundy's inspection of her records indicated that her turnover was below the relevant threshold. She rang her accountant who told her that he would send her the form to fill in for deregistration.

8. Her accountant did not act promptly. Some five weeks later, on 13 May 2014, he wrote to her enclosing the deregistration form and giving instructions for its
30 completion. He asked her to return it to him.

9. Mrs Mundy completed and signed the form on Tuesday 20 May 2014. As her accountant had asked that she return it to him, she did so. Initially Mrs Mundy thought she had posted it to him, but then she remembered that she had taken it to his office at the end of the day. We accept that that is what she did.

35 10. Thus it is likely that the accountant opened the mail on the morning of Wednesday 21 May 2014 and found the completed form.

11. The earliest date on which the accountant could have dispatched the form to HMRC was therefore Wednesday, 21 May 2014. If there had been evidence that he

had posted it, properly stamped and addressed, on that date, then, on the basis that the VAT Act permits the request to be made in writing, section 7 Interpretation Act 1978 would deem the form to have been received by HMRC on the date it would have arrived "in the ordinary course of the post" unless proved contrary. In our view first class mail posted in time is likely to arrive on the next business day. Thus if the form had been posted to HMRC by the accountant first class in time to catch the post on the 21st it would in the ordinary course of the post have arrived on 22 May. However as we had no direct evidence as to when the accountant dispatched the form to HMRC, we could not apply the presumption provided by the Interpretation Act.

12. HMRC's copy of the form is stamped "Received 3 June 2014", a Thursday. Mrs Ashworth told us that usually mail received by HMRC was stamped on the day it was received, but she could not say categorically that this particular form had been received and stamped on the day on 3 June 2014.

13. We find it likely that the form was actually received on that date¹.

15 **Discussion.**

14. Our obligation is to determine this appeal on the basis of the facts as we find them and the relevant legislation. We do not have any discretion. We therefore start with the terms of the legislation.

15. Schedule 1 VAT Act 1994 deals with registration and deregistration. Paragraph 1 makes a person "liable" to be registered if her taxable supplies for the year ending at the end of any month exceeded the relevant threshold².

16. Paragraph 9 permits a person to register voluntarily even if her supplies are not at a level to make her liable to registration under paragraph 1. (A person might for example wish to take advantage of this provision if she made zero rated supplies and wished to obtain repayment of her input tax).

17. Paragraph 9 provides as follows:

"Where a person who is not liable to be registered under this Act and is not already so registered satisfies the Commissioners that he -

(a) makes taxable supplies; or

(b) is carrying on a business and intends to make such supplies in the course or furtherance of their business,

¹ On this basis it seems likely that Mrs Mundy's accountant posted the form on Tuesday 1 June or Wednesday 2 June 2014, a week and a half after receiving it, a delay not inconsistent with earlier delay in sending the form to Mrs Mundy.

² And subparagraph (3) prevents a person being so liable if she can satisfy HMRC that in a following 12 month period her taxable supplies are likely to be less than a lower threshold.

they shall, if he so requests, register him with effect from the day on which the request is made or from such earlier date as may be agreed between them and him."

18. Paragraph 13 deals with the cancellation of registration ("deregistration"). There are four sub paragraphs of that schedule which are relevant in this appeal. They provide:

“(1) Subject to subparagraph (4) below [not relevant in this appeal], where a registered person satisfies the Commissioners that he is not liable to be registered under this Schedule, they shall, if he so requests, cancel his registration with effect from the date on which the request is made or from such later date as may be agreed between them and him.

“(2) Subject to subparagraph (5) below, where the Commissioners are satisfied that a registered person has ceased to be registrable, they may cancel his registration with effect from the date on which he so ceased or from such later date as may be agreed between them and him.

...

“(5) The Commissioners shall not under subparagraph (2) above cancel a person's registration with effect from any time unless they are satisfied that it is not a time when that person would be subject to a requirement, or entitled, to be registered under this Act.

“(6) In determining for the purposes of subparagraph (4) or (5) above whether a person would be subject to a requirement, or entitled, to be registered at any time, so much of any provision of this Acts as prevents a person from becoming liable or entitled to be registered when he is already registered or when he is so liable under any other provision shall be disregarded.”

19. Finally paragraph 18 of the schedule provides that "registrable" means "liable or entitled to be registered under this Schedule".

20. It will be seen that subparagraphs (1) and (2) provide two routes to deregistration. Under subparagraph (1) a person's registration must be cancelled from the day the request is made (or a later agreed date) if she can show HMRC that she is no longer "liable to be registered". Under subparagraph (2) if a person can satisfy HMRC that she has "ceased to be registrable" her registration may be cancelled from the date she so ceased (or a later agreed date).

21. In the circumstances of this appeal, the effect of subparagraph (5) is to reinforce the requirement that the person has ceased to be “registrable” on the relevant date. But subparagraph (5) is to be interpreted in the light of subparagraph (6) which, as we shall explain, may cause subparagraph (5) to override paragraph (2). This legislation is unfortunately not particularly easy.

22. The difference between the conditions for the operation of subparagraphs (1) and (2) lies in the difference between "liable to be registered" and "registrable”.

23. The difference between "registrable" and "liable to be registered" is that "registrable" means either liable to be registered or entitled to be registered. Thus subparagraph (1) applies only where the person is not trading above the threshold and so is not liable to be registered, but subparagraph (2) applies only when a person is
5 *both* not trading above the paragraph 1 threshold (and so not liable to be registered) *and* not able to register voluntarily under paragraph 9.

24. We therefore consider each subparagraph in turn.

Subparagraph (1).

25. HMRC accept that from 8 April 2014 Mrs Mundy was not "liable" to be
10 registered. Thus the first part of the paragraph is satisfied. The second part says that HMRC shall:

"if he so requests cancel his registration with effect from *the day on which the request is made*". [our italics]

26. So in this appeal in relation to this subparagraph the question is: what was the
15 day on which Mrs Mundy made her request?

27. It seems to us that in ordinary usage a "request" is something one person makes to another and that a request is not "made" until it has been communicated to the person to whom it is addressed. A request could be made orally - in which case it would be "made" when heard by the recipient, or it could be made in writing in which
20 case it would, in our judgement, be made when the writing was received. We consider that a written request should be treated as made when delivered, even if not considered by the recipient at that time.

28. On this basis we conclude that Mrs Mundy's request was unlikely to have been made before 3 June 2014. As a result we conclude that subparagraph (1) does not
25 permit her deregistration to take effect until that date.

29. We therefore conclude that subparagraph (1) cannot assist Mrs Mundy.

Subparagraph (2).

30. This subparagraph, if its conditions are satisfied, could assist Mrs Mundy since it requires deregistration to be backdated (if necessary) to the date the person ceased
30 to be registrable, so that the date of deregistration is not determined by the time of receipt of a request or a form by HMRC.

31. The condition for the operation of this subparagraph is that Mrs Mundy ceased to be "registrable". That condition appears in both subparagraph (2) and in
35 subparagraph (5). As we have noted "registrable" means either liable to be registered or entitled to be registered. So for the condition to be satisfied she must have ceased to be both liable to be registered and entitled to be registered.

32. So far as "liable" is concerned, it is accepted that Mrs Monday ceased to be liable to be registered on 8 April 2014. That therefore leaves the question of whether or when she ceased to be *entitled* to be registered.

5 33. We have set out paragraph 9 above. It provides an entitlement to a person who "is not already registered" and who makes taxable supplies to register. But Mrs Mundy is not to be treated as entitled to be registered under paragraph 9 because she was already registered and therefore did not satisfy the words "is not already registered". On this basis Mrs Mundy would not have been entitled to register and so could rely on sub paragraph (2) so long as subparagraph (5) does not have effect. .

10 34. But paragraph 13(6) changes that. It provides that, for the purposes of the test in paragraph (5) that any provision of the Act (which would include paragraph 9) which prevents a person from being entitled to be registered because she is already registered shall be disregarded.

15 35. Therefore in applying paragraph 9 for the purposes of the sub paragraph (5) test, paragraph 13(6) requires us to disregard the words "is not already registered" in paragraph 9. When that is done one sees that paragraph 9 means that Mrs Mundy must be treated as entitled to be registered for the purposes of subparagraph 13(5) because she was making taxable supplies. Thus for the purposes of paragraph 13(5) Mrs Mundy is to be treated as entitled to be registered. Thus paragraph (5) applies to prevent Mrs Mundy being deregistered under subparagraph (2).

20 36. Although subparagraph (6) applies only for the purpose of subparagraph (5) and not for the purposes of subparagraph (2) – so that for the purposes of subparagraph (2) Mrs Mundy *did* cease to be registrable – subparagraph (5) prevents deregistration under subparagraph (2) because for the purposes of subparagraph (5) she was to be treated as registrable!

25 37. We conclude that Mrs Mundy cannot rely on subparagraph (2).

The Result.

38. We conclude that Mrs Mundy cannot be deregistered under subparagraph (2) and can be deregistered under subparagraph (1) with effect only from 3 June 2014.

30 39. We therefore dismiss the appeal.

35 40. We recognise that this is an unfortunate result, and that may well be seen as unfair. We, and we understood Mrs Ashworth, had considerable sympathy for Mrs Mundy who had acted reasonably throughout. But it is the result which follows from the legislation Parliament has enacted. That legislation leaves no room for leniency on the grounds of reasonable excuse or of reliance on another person or another person's delay.

Right of appeal.

41. 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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CHARLES HELLIER

TRIBUNAL JUDGE
RELEASE DATE: 29 June 2015

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