



TC04665

Appeal number: TC/2014/04995

VAT – input tax wrongly claimed for accommodation and travel expenses legitimately incurred in the course of business outwith the United Kingdom but elsewhere within Member States of the European Union; availability of other remedy for recovery of VAT on such expenses.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Ppig LIMITED

Appellant

- and -

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

**TRIBUNAL: JUDGE J GORDON REID QC FCI Arb
 EILEEN A SUMPTER, WS**

**Sitting in public at George House, 126 George Street, Edinburgh on
15 September 2015**

James Ian MacMillan for the Appellant

Bernard Haley, Officer of HMRC, for the Respondents

DECISION

Introduction

5 1. This is an appeal against a VAT assessment seeking recovery of sums wrongly
declared as input tax in the appellant's returns, over several years, for legitimate
accommodation and other expenses incurred by the appellant in the course of its
business outwith the United Kingdom but within other countries of the European
10 Union. The sum at stake is in the order of £63,000 plus interest, although most of it
has been repaid. The figures are not in dispute.

2. There are no relevant grounds of appeal stated in the Notice of Appeal. At the
hearing on 15 September 2015, James MacMillan, the director of the appellant,
appeared on its behalf and acknowledged that there was no basis for resisting the
assessment although he did not formally withdraw the appeal.

15 3. Bernard Haley, an experienced HMRC officer, appeared on behalf of the
respondents (HMRC). No formal evidence was led. We took note of information
provided by the parties in the course of the hearing, to which neither party objected.
Mr Haley produced a short skeleton argument to which he spoke and referred to
various documents in the bundle put before us.

20 4. Apart from about £12,000, the appellant has paid HMRC the sums claimed in
the assessment. No hardship application was sought until about November 2014. At
one stage, "time to pay" arrangements were in force.

Factual Background

25 5. Mr MacMillan, (who holds a mechanical engineering degree) is a technical
consultant. He initially carried on business as a sole trader but since 2002 has done so
through his company, the appellant, which is registered in Scotland and has a place of
business at Largs, Scotland. He provides technical advice on manufacturing
efficiency, monitoring and implementing changes, training and process and packaging
30 improvement services to a variety of large companies such as Diageo, bottling plants,
and manufacturers of consumer goods such as crisps. Much of his business activities
is carried on outwith the United Kingdom but within other Member States of the
European Union, principally the Czech Republic and Italy. While there he incurs
legitimate travel and accommodation expenses for the purposes of the appellant's
business.

35 6. Mr MacMillan was registered for VAT purposes in 2000. The registration was
transferred to the appellant with effect from 1 October 2002. Mr MacMillan prepares
the appellant's VAT returns. He uses the services of a large firm of accountants for
the preparation of corporate accounts and tax returns, and his own personal tax
returns.

7. The appellant is not registered or liable to be registered for VAT in any other Member State. It has no known place of business or seat of economic activity in any other Member State.

5 8. A routine inspection of the appellant's books and records took place on about 1 December 2013. It was noted the appellant was seeking the recovery, as input tax, of the VAT element of various expenses legitimately incurred while Mr MacMillan was working on behalf of the appellant in various countries outwith the United Kingdom but within other member states of the European Union.

10 9. HMRC accepted that these expenses were legitimately incurred and that what had occurred was a genuine mistake on the part of the appellant. Nevertheless, HMRC said that the wrongly claimed input tax had to be repaid. Mr MacMillan accepted this. There were also a few other minor corrections relating to zero rated or exempt purchases which required to be made.

15 10. It was explained to Mr McMillan by HMRC that once the input tax had been repaid in full it would or might be possible to claw it back directly from the Member States concerned through what was referred to at the hearing as the *EU Refund System*. This is a reference to HMRC Notice 723A *Refunds of VAT in the European Community for EC and non-EC Businesses, 2012, updated December 2014*. This document was not produced at the hearing.

20 11. Following correspondence, a Notice of Assessment, dated 17 April 2014, in the sum of £67,168 (plus interest of £4,124.09 ie in total £71,302.09), was issued. It covered the quarterly tax periods from 03/10 to 06/13.

12. Mr MacMillan subsequently agreed, on behalf of the appellant, a 12 month repayment plan to which he appears to have adhered with difficulty.

25 13. However, when Mr MacMillan came to invoke the *EU Refund System*, he was told that it could only be applied to the year immediately preceding the making of a claim for a refund. This effectively prevented the appellant from clawing back the wrongly claimed input tax (which it has had to pay to HMRC) for the three years from 2010 to 2012. He has therefore been unable, thus far, to recover any significant sum
30 under that *System*. Had he identified or been advised about the *EU Refund System* at an earlier stage he could and would have saved a considerable sum of money.

14. The appellant has, however, made a claim through the tax authorities of the Czech Republic and hopes, eventually, to obtain a refund of about £6,000.

Procedure

35 15. A Notice of Appeal was lodged late with the Tribunal on or about 10 September 2014. Nothing has been made by HMRC of this and we have therefore treated the appeal as validly made. In the circumstances of this case, it makes no difference.

16. The principal ground of complaint stated in the Notice of Appeal is the hardship caused by not being aware of and not following the *EU Refund System*. This appears to have motivated the appellant to make a hardship application to HMRC.

5 17. By letter to the appellant dated 11 December 2014, HMRC granted the hardship application. At that stage, £12,168 of the sum assessed remained outstanding. HMRC also noted that a time to pay arrangement was in place.

18. In January, 2015 it came to the attention of HMRC that the assessment, insofar as relating to the VAT period ended 3/10 was out of time. It is now accepted by HMRC that the assessment is time barred or capped insofar as it relates to that period.
10 This reduces the assessment by £3,817 to £63,351, plus interest.

Statutory Framework

19. It was asserted by HMRC and accepted by the appellant that the VAT element incurred on such expenses in other Member States could not be considered as input tax as it was not VAT charged in the United Kingdom (see VATA s1(1)(a) [VAT charged on the supply of goods or services in the United Kingdom], 3(1) [definition of taxable person], and 24(1)[meaning of input tax].
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20. Notice 723A (*The EU Refund System*) describes the electronic cross-border refund system that enables a business that incurs VAT on expenditure in a Member State where it is not established and makes no supplies there (subject to exceptions) to recover that VAT directly from the Member State. The refund period claimed must not be more than one calendar year or less than three calendar months (subject to exceptions which are not relevant here). Applications have to be submitted by 30 September of the calendar year following the refund year.
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Discussion

25 21. It is clear that the appeal must be dismissed. Mr MacMillan makes no complaint about the conduct of HMRC. He expressly stated that he found them to be, in the main, helpful and sympathetic. He said, and we accept, that he received less sympathy from HMRC debt recovery department.

22. It is unfortunate that the appellant has been unable to recover and will not now recover a large portion of the assessed sum. Had he been aware of the *EU Refund System* at an earlier stage, the appellant could probably have recovered most of the sum assessed through that *System*.
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23. It may be that HMRC would be prepared to suspend any further enforcement proceedings for the remaining sums outstanding (about £12,000) until the appellant's claims under the *EU Refund System* have been resolved. Should they further exercise their enforcement powers, we urge them to do so with restraint and leniency.
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24. Mr MacMillan appears to operate a successful and profitable business. He submits his returns regularly and duly pays his and his company's taxes. It is unfortunate that an innocent mistake has had severe financial consequences for him

and his company. Although he did not describe these circumstances in detail or vouch them, we are generally satisfied that he was being candid and truthful. Had he ascertained or been advised about the appropriate procedures at an earlier stage, he and his company would not have encountered such difficult financial circumstances.

5 These are matters Mr MacMillan may wish to take up with his accountant, particularly to ensure that these mistakes are not made again.

25. It may also be that some of the appellant's corporation tax returns can be amended to its benefit. Expenses incurred in other Member States may have been brought into account on a net basis (excluding VAT) on the erroneous assumption that

10 "VAT" would be recoverable through VAT returns. The opportunity for recovery through the *EU Refund System* now appears to be limited.

Result

26. The appeal is dismissed.

27. 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

15 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)"

20 which accompanies and forms part of this decision notice.

J GORDON REID QC FCI Arb

25 **TRIBUNAL JUDGE**
RELEASE DATE: 15th October 2015