



TC04667

Appeal number: TC/2014/00596

VAT The VAT Margin Scheme on second-hand cars and other vehicles; MOT test certificates; consideration for supply; whether cost of test should be excluded from consideration for supply of certain second-hand motor cars and treated as a disbursement; whether a separate supply; No; quantification of assessment; whether assessment excessive; Yes; appeal allowed in part.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RICHARD J FINNEY

Appellant

- and -

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

**TRIBUNAL: JUDGE J GORDON REID QC, FCI Arb
IAN CONDIE, CA**

Sitting in public at George House, Edinburgh on 18 August 2015

The appellant appeared in person

Mrs Elizabeth McIntyre, Officer of HMRC, for the Respondents

DECISION

Introduction

5 1. The issue in this appeal is whether, in the appellant's business as a second-hand
car dealer, the consideration for the sale of certain motor cars should include the cost
of obtaining an MOT test certificate in calculating output tax pursuant to the VAT
Margin Scheme on second-hand cars and other vehicles, which the appellant has
operated for a number of years; or whether that cost falls to be treated as a
10 disbursement separate from the sale price for the purposes of calculating output tax.

2. In general, at least, the sale of a second hand motor car with an MOT test
certificate is regarded as a single supply and the sum attributable to the MOT test
certificate cannot be deducted from the total sale price. Such disputes may raise the
often difficult and much litigated question whether what has been supplied is a single
15 supply. Here, however, the relatively brief facts admit to only one answer on that
question.

3. Where, in addition to the purchase of the second-hand motor car for a specified
price, the customer wishes an MOT certificate then, in those circumstances, when the
trader charges the customer the same amount as the MOT tester charged the trader,
20 the amount payable by the trader may be regarded as a disbursement by him for VAT
purposes.

4. The treatment of MOT certificates, how and when Mr Finney charged his
customers and whether or how he accounted for VAT thereon are in dispute. HMRC
have issued an assessment for tax which is said to have been un-declared because of
25 Mr Finney's operation of the Margin Scheme.

5. The amended assessment, which is the subject of the appeal, is in the sum of
£7,082.00 plus interest. Mr Finney has already paid that amount. Only part of the
amended assessment is in issue. The amount in issue is now £2,373.88.

6. A hearing took place at George House, Edinburgh on 18 August 2015.
30 Mr Finney represented himself and gave evidence. Mrs Elizabeth McIntyre, Officer
of HMRC appeared on their behalf and led the evidence of Roger Smith, an HMRC
officer, who has been a visiting VAT officer since 1996.

Statutory Background

7. S50A VATA 1994 is the source of the Margin Scheme which applies *inter alia*
35 to motor cars.¹ VAT is accountable on the profit margin on the supply instead of the
value of the goods supplied. The profit margin, on which VAT is accountable, is
calculated, essentially, by reference to the trader's purchase and selling prices.² The

¹ VAT (Cars) Order 1992 SI 1992/3122 Regulation 2(1) as amended, defines *motor car*

² *Ibid*, Regulation 8

VAT Margin Scheme on second-hand cars and other vehicles is further explained in HMRC Notice 718/1, December 2009. Paragraph 10.2 of the Notice provides as follows:-

If you sell a second-hand car with an MOT, you are making a single supply.

5 You should not deduct the value of the MOT from your Margin Scheme selling price.

You should record the full selling price, including the MOT, in your stock book, and you should use this figure for calculating the margin on the sale.³

8. Paragraph 25.4 of Notice 700, the VAT Guide (May 2012), provides that if the motor trader acts as an agent in arranging the MOT test on behalf of the customer, and the customer is aware of this, the motor trader may treat the cost of the MOT test certificate as a disbursement and outside the scope of VAT. Further provision is made about disbursements in paragraph 25.1.1.

9. Neither party disputed the accuracy of the statements in these Notices and Guide.

15 **Facts**

Background and history of dispute

10. Mr Finney is a motor trader. He has been registered for VAT purposes since 1988. He mainly buys from and sells second-hand motor cars to consumers. From time to time he deals with other motor traders. He does not deal in commercial vehicles. He sells up to about 600 motor cars each year and makes a reasonable profit. His books and records are generally in good order. He has operated, the Margin Scheme for a number of years.

11. Most of the motor cars he buys in to sell are bought in with an existing MOT certificate. Some have no MOT certificate. It is well known (and parties proceeded on this basis) that in general at least, a motor car which is more than three years old must have a valid MOT test certificate certifying its roadworthiness. Where there is no valid MOT certificate in force, Mr Finney has the motor car put into a condition in which an MOT certificate can be obtained. The car is then examined by a third party MOT tester and an MOT certificate is issued in due course. Only then, is the motor car exposed for sale by the appellant. The selling price includes the MOT test certificate. The MOT test certificate is not shown or treated as a disbursement.

12. When a vehicle has a valid MOT certificate which is due to expire in more than about seven or eight months, no difficulty arises here. The cost of the MOT test certificate is not shown or treated as a disbursement by Mr Finney.

³ The March 2011 version of this Notice is in the same terms. The May 2003 version, paragraph 19.6 is in substance the same although the layout and grammar is slightly different.

13. Where a motor car has a valid MOT certificate which is due to expire in less than about seven months, the customer is offered the opportunity of a fresh 12 month MOT certificate being acquired for the car in which he is interested. This question generally arises and is answered before Mr Finney and his customer have reached overall agreement. Thus, generally they “shake hands” on the deal once the overall price is agreed which, in some cases, will include obtaining a *fresh* MOT test certificate. The charge by the third party tester to Mr Finney is simply passed on to the customer (ie without any mark-up). The invoice sent to the customer shows separately the sale price of the vehicle and the price for the MOT test certificate. The total of these two sums is shown as the total amount payable by the customer. Here, the cost of the MOT test certificate is shown or treated as a disbursement by Mr Finney in his operation of the Margin Scheme.

14. The tester’s invoice should not include VAT as the supply of an MOT test certificate is regarded as outwith the scope of VAT. However, we were provided with one invoice in which the tester charged VAT. Mr Finney said, and we accept his evidence, that this was a mistake which he had not noticed. The mistake does not affect the outcome of this appeal.

15. Following correspondence between October 2008 and January 2009, HMRC carried out a routine visit on 4 February 2009 to check the accuracy of Mr Finney’s returns. The supply of warranties and MOTs was discussed between him and the visiting officer, Mrs M S Paton. She referred Mr Finney to *inter alia* Notice 718⁴ section 19.6. She followed this up with a letter dated 5 February in which she pointed out that under certain circumstances it was possible to treat MOTs as a disbursement. The letter noted that the invoices used by Mr Finney were compliant with the Margin Scheme for second-hand vehicles and that *The new invoices in use by you are suitable for this type of transaction.*

16. There was a further visit on 1 August 2012 carried out by John Shields, an HMRC official and colleague of Mr Smith. Mr Shields examined Mr Finney’s records and formed the view that the prices for warranties and MOT certificates were not being included in the sale prices used to calculate the profit margin under the Margin Scheme and that the calculation of the output tax payable was too low. This was followed by correspondence between August 2012 and May 2013.

17. In that correspondence, Mr Finney asserted that his invoices and records relating to warranties and MOTs had, in effect, been approved by Mrs Paton and that she approved of his deduction of the cost of MOT test certificates when operating the Margin Scheme. By letter dated 14 August 2012, HMRC requested *inter alia* the following information:-

2) the total sales value appearing on invoices for the same vat (sic) periods above (sc 06/09 [1/4/09 to 30/6/09] to 06/12 [1/4/12 to 30/6/12] inclusive).

⁴ Margin schemes for second-hand goods, works of art, antiques and collectors’ items, May 2003.

18. That request was repeated in a letter dated 25 October 2012, and in emails dated 18 December 2012 and 4 January 2013.

19. Further correspondence ensued and by letter to Mr Finney dated 23 April 2013, Mr Shields enclosed a schedule of sums to be included in an assessment of what he considered to be an under-declaration of VAT attributable to Mr Finney's treatment of warranties and MOTs in his records and VAT returns and his operation of the Margin Scheme. This formed the basis of an assessment issued on 29 April 2013.

20. Thereafter, Mr Finney pointed out that the cost of the MOTs used by Mr Shields in his calculations was too high. Mr Shields had used the sum of £54 for each MOT allegedly omitted and treated by Mr Finney as a disbursement. Mr Finney pointed out, and Mr Shields accepted, that the correct figure was £37. Mr Shields accordingly amended his assessment by reducing it to reflect the information provided by Mr Finney.

Assessment and Statutory Review

21. The assessment relates to the VAT quarters ending 06/09 through to 06/12. The original assessment for £8,159 plus interest included in its calculations certain sums in respect of warranties given by the appellant to customers and treated by him as disbursements. That issue is no longer in dispute (the appellant having conceded the point).

22. An amended assessment was issued on or about 31 May 2013 in the sum of £7,082.00 plus interest. This took account of the reduced cost of the MOT test certificates which Mr Shields had accepted on the basis of information provided by Mr Finney. This assessment proceeded on the basis that in all cases where the sum charged to the customer for a warranty had been omitted (thus reducing the profit margin for the purposes of calculating output tax), the sum charged to the customer for the cost of an MOT test certificate had also been omitted.

23. Mr Finney acknowledges that £4,708.12 is due. This is in respect of the under-declared tax relating to the warranties which he now accepts were wrongly treated as disbursements. This was his calculation which he set out in a manuscript addition to an HMRC schedule. HMRC have accepted that figure as accurate. The sum of £2,373.88 (£7,082-£4,708.12) therefore remains in issue. As already indicated, all the tax due under the amended assessment has been paid, so the question is whether Mr Finney is entitled to repayment of any part of the sum of £2,373.88.

24. The appellant requested a statutory review. By letter dated 16 August 2013, the amended assessment was upheld. The reviewing officer concluded on the information then available that the MOTs were not additional to the supply of the vehicles, where the MOT test was carried out before the sale was made. The sale was of a single *tested* vehicle. The value of the MOT should not be deducted from the Margin Scheme selling price.

25. The review acknowledged that where an MOT test is requested over and above the sale of the motor car ie in addition to the selling price of the vehicle, and

Mr Finney charges the customer the same price paid by him (Mr Finney) to the tester, that constituted a disbursement. However, the reviewing officer was not satisfied that this actually ever occurred and upheld the amended assessment.

Grounds of Appeal

5 26. Mr Finney accepted that the amended assessment, insofar as relating to warranties, was correct. However, he asserted that *the remainder payable on MOT's (sic) carried out after the point of sale with no uplift can be treated as a separate supply as per your guidelines. I have provided clear evidence of the MOT's (sic) being carried out after the point of sale ...and produced a random sales invoice*
10 *where the car was MOT'd after the date of sale with no uplift as per your guidelines.*

Discussion

27. As the appeal proceeded it became clear that despite the correspondence, the dispute related to only those sales in which Mr Finney offered and the customer accepted that a fresh MOT test certificate should be obtained, or where the customer
15 requested and Mr Finney agreed to arrange for a fresh MOT certificate to be obtained.

28. In evidence, which we accept, Mr Finney made it clear that the question of obtaining a fresh MOT certificate generally, if not always, arose with the customer before he and the customer shook hands on the transaction. When they shook hands, an overall price was agreed and a decision had been made whether or not to obtain a
20 fresh MOT test certificate. Where a decision had been made to obtain a fresh MOT certificate, the cost of doing so was included in and formed part of the overall price on which Mr Finney and his customer had agreed and on which they “shook hands.”

29. This seems to us to be, without doubt, in substance and reality, one supply or at least a principal supply and an ancillary supply, whatever the terms of the invoice or
25 other records kept by Mr Finney. On no view could the cost of obtaining the MOT certificate in those circumstances be described as a disbursement in the light of the facts as we have found them to be. There was also no evidence that the MOT test certificate was separately commissioned or that a separate relationship of agency subsisted between customer and Mr Finney.

30. In these circumstances, it would be wholly artificial in this case to distinguish between the supply of the motor car and the supply of a fresh MOT test certificate.⁵ These were sales of motor cars with MOT test certificates which were as much
35 integral to the sale as were sales where the MOT test certificate had already expired and a certificate had been obtained before agreement had been reached on the overall price with the customer.

31. There was, however, an issue over the quantification of the tax under-declared. Mr Shields appears to have assumed that for every warranty treated as a disbursement

⁵ See *Depot Corner Car Sales Ltd MAN/99/945*; *VAT Decisions Archive 16907* paragraph 32; *Roger Herbert Hotchkiss Car Sales MAN/00/809*; *VAT Decisions Archive 17207* paragraphs 13-16

and excluded from the Margin Scheme, there was a sum attributable to an MOT test certificate which likewise had been excluded.

5 32. We have difficulty with that assumption. Mr Shields was unable to give evidence and his colleague, Mr Smith, was unable to explain the rationale. We considered whether this part of the amended assessment was made to best judgment as it has the flavour of being somewhat arbitrary. However, in the light of the fact that Mr Finney was requested and subsequently required to provide information on this point but did not provide full or complete information, we are prepared to accept that the assessment (as amended) was made to best judgment.

10 33. The *onus* lies on Mr Finney to show that the disputed part of the amended assessment is still excessive (he previously demonstrated that the original assessment was excessive). He gave evidence to the effect that about 60-70% of the sales over the period of the amended assessment were properly accounted for and only in about 30% were the costs of MOT test certificates treated as disbursements and excluded
15 from his calculations in the operation of the Margin Scheme. In his letter to HMRC dated 10 September 2013, he put the figure at 20% rather than the 100% *blanket calculation* (as Mr Finney put it) made by Mr Shields.

20 34. It is accepted by HMRC that Mr Finney keeps careful records. In an undated memorandum produced by HMRC they described his records as *extremely well kept and maintained*. They accepted his calculations. We accept that he has acted throughout in good faith and that there has been a genuine misunderstanding about disbursements and the cost of MOT test certificates in relation to the operation of the Margin Scheme and the accounting for tax due thereunder. The tone of Mr Finney's correspondence has been assertive but fair. He took professional advice and conceded
25 the issue relating to the warranties at an earlier stage. The same HMRC Memorandum noted that he was *very helpful and cooperative*.

30 35. We are therefore prepared to accept his evidence that the proportion of MOT test certificates which were wrongly treated as disbursements was about 30%. His evidence on this point was not seriously challenged. The amount involved is small (£2,373.88 x 30% = £712.16). He is therefore entitled to repayment of the difference, namely £1,661.72, plus interest. It would cost the parties significantly more than that if Mr Finney had to review his records once more and HMRC had to spend further time checking the documents and figures, and have a further hearing if parties remained in dispute.

35 36. Whether Mr Finney can adjust his procedures and records in the future to demonstrate to HMRC that the cost of certain MOT test certificates should be treated as a disbursement and thus a separate supply rather than an integral part of the sale of the motor car, remains to be seen.

Summary

37. The appeal is allowed in part. The amended assessment is excessive, and the remaining part of it in dispute (£2,373.88) falls to be reduced by £1,661.72 to £712.16.

- 5 38. 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
10 “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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**J GORDON REID QC, FCI Arb
TRIBUNAL JUDGE**

RELEASE DATE: 14 OCTOBER 2015