



TC04750

Appeal number: TC/2014/06413

*VAT – Repayment claim under Thirteenth VAT Directive (86/560/EC) –
Incorrect supporting documents provided – Claim re-submitted with correct
documentation – Whether claim made within statutory time limit – No –
Appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

COMORETEL HOLDINGS LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JOHN BROOKS

**As both parties consented and the Tribunal considered that it was able to
determine the matter without a hearing this appeal was determined on 9
November 2015 on the papers without a hearing pursuant to Rule 29 of the
Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009**

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DECISION

1. Comoretel Holdings Limited (the “Company”), which has its registered office in the State of Nebraska, United States of America, appeals against the decision of HM Revenue and Customs (“HMRC”) to refuse part of a claim made under the Thirteenth VAT Directive (Directive 86/560/EC) for the refund of VAT incurred in the United Kingdom during the period between 1 February and 31 December 2013.

2. Under the Thirteenth VAT Directive traders registered for business purposes outside the European Union are able to reclaim VAT paid on goods and services in the United Kingdom provided that they are not registered or liable to be registered for VAT in the United Kingdom, have no place of business or other residence in the European Union and make no supplies in the United Kingdom (other than transport services related to international carriage of goods, or services where VAT is payable by the person in the United Kingdom to whom the supply is made).

3. Insofar as it is applicable to the present case Article 3(1) to the Thirteenth VAT Directive provides:

I. The refunds referred to in Article 2.1 shall be granted upon application by the taxable person. Member States shall determine the arrangements for submitting applications, including the time limits for doing so, the period of which applications should cover, the authority competent to receive them and the minimum amounts in respect of which applications may be submitted. They shall also determine the arrangements for making refunds, including the time limits for doing so. They shall impose on the applicants obligations as are necessary to determine whether the application is justified and to prevent fraud, in particular the obligation to provide prove that he is engaged in an economic activity.

4. This has been implemented into domestic (UK) law by s 39 of the Value Added Tax Act 1994 under which HMRC may provide for the repayment, to persons carrying on business in other Member States of the European Union and persons carrying on business in other countries, of VAT on supplies to them in the UK which would be input tax if they were taxable persons in the UK; such provision is by means of a scheme embodied in regulations.

5. The Regulations which embody the scheme are contained in the Value Added Tax Regulations 1995 (and all subsequent references to Regulations, unless otherwise stated, are to these Regulations).

6. Under Regulation 191(1) a person making a claim under the Thirteenth Directive is required to:

(a) complete in the English language and send to the Commissioners either the form numbered 9 in Schedule 1 to these Regulations [i.e. the VAT 65A Form], or a like form produced by any official authority,

containing full information in respect of all the matters specified in the said form and a declaration as therein set out, and

(b) at the same time furnish

5 (i) a certificate of status issued by the official authority of the third country in which the trader is established either on the form numbered 10 in Schedule 1 to these Regulations or on a like form produced by the official authority; ...

7. Regulation 192 provides:

10 A claim shall not be made later than 6 months after the end of the prescribed tax year in which the VAT was charged

8. Under Regulation 185(1):

A “prescribed year” means the period of 12 months beginning on the first day in July in any year (see regulation 185(1)).

15 9. In this case, the Company’s claim was in respect of VAT incurred on three items purchased in the UK on 10 June 2013 (incurring VAT of £3,839.03), 19 June 2013 (incurring VAT of £350.30) and 10 July 2013 (incurring VAT of £309.20). It therefore spanned two prescribed years, namely 1 July 2012 to 30 June 2013 and 1 July 2013 to 30 June 2014.

20 10. The claim was submitted to HMRC on 18 September 2013. Enclosed with it was a “certificate of status” from the State of Nebraska. However, the claim was rejected by HMRC because, according to HMRC’s letter of 1 October 2013 to the Company, it:

25 ... does not constitute a complete and/or valid claim for the reasons indicated below (see boxes marked X). It has therefore not been accepted or entered as a claim at this stage and all documentation/paperwork submitted is here returned.

The reason stated alongside the box marked X (with emphasis as stated in the letter) was that there was:

No valid **original** certificate of status

30 11. The position was made clearer to the Company by a subsequent, undated, letter from HMRC which explained that the appropriate certificate of status could be obtained from the Federal Certification Unit in Philadelphia and it was this Federal form, rather than the State form that had been provided, which was required. The letter also enclosed an example of a certificate provided by the Federal Authority.

35 12. The Company therefore applied to the Federal Authority and having received a certificate of status from the United States Internal Revenue Service on 16 December 2013, re-submitted its claim this time enclosing the Federal certificate of status. This was received by HMRC on 13 January 2014 but subsequently rejected.

40 13. HMRC’s letter of 15 July 2015 to the Company explains that this was because a copy and not the original invoice has been supplied in respect of the item purchased in

July 2013. In the case of the two other items, not only had the original June 2013 invoices not been provided but the statutory deadline had expired on 31 December 2013. The letter concludes by advising the Company of the information required “should you decided (sic) to resubmit the application for reconsideration”.

5 14. The Company did re-submit its claim on 29 July 2014, this time enclosing the original invoices for the items. By a letter dated 10 September 2014 HMRC notified the Company that £309.20 (in respect the July 2013 item) would be repaid as the VAT had been incurred in the prescribed year from 1 July 2013 to 30 June 2014. However, as the balance of £4,189.33 related to the previous prescribed year it was out of time
10 and the claim was rejected.

15 15. On 23 September 2014 the Company requested that HMRC review its decision. The review was undertaken and, by a letter dated 11 November 2014, HMRC informed the Company that the decision to reject its claim for £4,189.33 had been upheld.

15 16. On 3 December 2014 the Company appealed to the Tribunal on the grounds that it had supplied the certificate of status from the State of Nebraska on the understanding that this was what Regulation 191(1)(b)(i), required as the instructions on the claim form do not specify that a Federal Government certificate should be provided. The grounds, which we completed by the Company’s Director of Finance
20 Mr Jerome Sueper, continue:

25 When the information was returned to me with an example of the Certificate that was required I applied for one from the Federal Government and received one in late December. Since I had submitted a refund request in September and was now providing a different document than originally provided, I felt that I was still meeting the requirements when I sent the information back in early January. I did not feel that I was submitting a new claim.

30 I am not asking for an extension of time to file. As I stated, I felt I had met the requirements for filing on a timely basis and was continuing the filing process with a different document than the one I thought was the required document based on the instructions.

For the reasons above I request that the VAT refund of 4,189.33 GBP be reconsidered and refunded to my company.

35 17. As is clear from these grounds of appeal, Mr Sueper feels that the claims submitted to HMRC in December 2013 and July 2014 were a continuation of the Company’s claim made on 18 September 2013 and, as such, were within the six month time limited contained in Regulation 192. However, I am unable to agree. HMRC’s letter of 1 October 2013 states that the claim had “not been accepted or entered as a claim”. Therefore the re-submission of the claim by the Company in
40 December 2013 was a new claim which was correctly treated by HMRC as such. Similarly the rejection of that claim by HMRC resulted in a further new claim by the Company on 29 July 2014.

18. Therefore, as the claims (in respect of the June 2013 items which were submitted in December 2013 and July 2014) were made later than six months after the end of the prescribed tax year in which the VAT was charged they do not comply with the Regulations and were rightly rejected by HMRC who, like the Tribunal, have no statutory power or discretion to extend the time limit for making a claim.

19. I find support for this conclusion from the decision of the Tribunal (Sir Stephen Oliver QC and Mrs Cheesman) in *Areva T&D Protection et Controle and Others v HMRC* [2010] UKFTT 134 (TC), at [47]:

“The failure to provide HMRC with a certificate of taxable status by the deadline (the end of 2007) means that Lockton did not submit a valid application within time. The claim was not made under Regulation 191(1) unless and until all the documents required by Part XXI of the VAT Regulations are provided; that did not happen prior to the deadline date for making the claim. Consequently HMRC were, we think, correct in law in refusing the application.”

20. Therefore, for the above reasons, I dismiss the appeal.

21. 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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JOHN BROOKS

TRIBUNAL JUDGE

RELEASE DATE:11 NOVEMBER 2015

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