



TC05003

VALUE ADDED TAX — partial exemption — taxpayer with agreed PESH joining VAT group — HMRC failing to direct cessation of PESH — whether automatically revoked — no — rejection of new proposal of no effect

Appeal number: TC/2015/03537

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BETWEEN

DYNAMIC PEOPLE LIMITED

Appellant

- and -

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

Respondents

**Tribunal: Judge Colin Bishopp
Mr John Woodman**

**Mr Martin Kaney, of EA Associates, chartered accountants, for the appellant
Mrs Rita Pavely, Presenting Officer, for the respondents**

DECISION

1. This appeal came before us as one against HMRC's rejection of a proposed partial exemption special method ("PESM"). The appellant, Dynamic People Ltd, is a partially exempt trader. It took the view that the standard method, for which reg 101 of the Value Added Tax Regulations 1995 ("the Regulations") provides, for calculating the proportion of the input tax it incurred was inappropriate, and some time before 1 May 2014 (the exact date is not clear to us) it agreed with HMRC on a PESM which was based on the use of floor space. At that time the appellant was not part of a VAT group.
2. On 1 May 2014 it joined a VAT group. HMRC's position was that, in consequence, it was necessary for it to agree a revised PESM. Shortly afterwards the appellant's accountants proposed a new PESM which was substantially, though we think not wholly, the same as the old method. HMRC did not consider that the proposed method would lead to a fair and reasonable rate of recovery of allowable input tax and they accordingly rejected the proposal, a rejection which was upheld on review. It was that rejection which led to the appeal before us.
3. At the beginning of the hearing we asked Mrs Rita Pavely, the presenting officer who represented HMRC, whether the appellant's previously agreed PESM had been the subject of any direction by which its use was to be terminated, a direction which HMRC may make by virtue of reg 102(3) of the Regulations. She told us that it had not, and she was also unable to direct us to any legislative provision by which a previously agreed PESM is automatically revoked, or in some other way ceases to have effect, when a taxable person using it joins a VAT group. We are not aware that there is any such provision.
4. In those circumstances it seemed to us that the appeal had reached us on a false premise. The appellant still has an operative PESM which it is obliged to continue to use, also by virtue of reg 102(3), until HMRC approve or direct the termination of its use. It is, we assume, content to continue to use that PESM, since it embarked on the attempt to agree a replacement only because of HMRC's contention that it was necessary to do so and, as we have said, the proposed replacement is materially the same as the method currently used.
5. It follows from what we have said that the proposal of a new PESM was based upon a misunderstanding, and that same misunderstanding undermines HMRC's rejection of the proposal. We do not see how we can properly deal with an appeal against a decision which was based upon such an error and in consequence we cannot make any adjudication. If HMRC remain of the view that the existing PESM is inappropriate they must (as we imagine they will do) issue a direction requiring the appellant to discontinue its use whereupon, we hope, the parties will be able to agree upon a replacement.
6. 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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**COLIN BISHOPP
TRIBUNAL JUDGE**

RELEASE DATE: 5 APRIL 2016