



TC05717

Appeal number: TC/2015/06887

VAT – flat rate scheme – change of rate – taxpayer duty to establish correct rate – HMRC duty to notify taxpayer – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

HYLTON HILL

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE IAN HYDE
MRS RAYNA DEAN FCA**

Sitting in public at Stoke on 4 October 2016

Mr Hill for the Appellant

Mr Haley, presenting officer, for the Respondents

DECISION

1. This appeal concerns liability for VAT on change of rate under the flat rate scheme for small businesses.

The facts

2. Mr Hill is a partner in the appellant and gave oral evidence at the hearing. HMRC did not challenge his evidence and this Tribunal accepts his evidence and finds the facts as set out below.

3. The appellant is an estate agency partnership that is registered for VAT and has operated the VAT flat rate scheme for small business (“the Scheme”) since 1 July 2006. The appellant has applied the same flat rate of VAT , 11%, since registering for the Scheme.

4. On 5 February 2015 HMRC undertook an assurance visit and identified that the wrong rate of VAT was being applied under the Scheme, the rate applicable to estate agent businesses from 4 January 2011 being 12% of turnover and the appellant was accounting for VAT at 11%.

5. On 25 February 2015 HMRC wrote to the Appellant enclosing a calculation of the VAT underpaid of £3,664 as a result of the appellant failing to apply the correct rate of 12%.

6. On 5 March 2016 the Appellant wrote to HMRC claiming that the unpaid VAT was not due as they had not been notified of the rate increase.

7. On 21 April HMRC notified to appellant that VAT of £3,420 plus interest was due and stating that establishing the correct amount of VAT was the responsibility of the taxpayer and that the correct rate of VAT was available on the HMRC website. The amount due differed from the amount shown in the letter of 25 February because VAT quarter ending 03/11 became time barred.

8. On 27 April 2015 HMRC issued a notice of assessment in respect of the periods 06/11 to 12/14 for the underpaid VAT of £3,420 plus interest (“the Assessment”).

9. On 18 June 2015 the appellant wrote to HMRC appealing the Assessment on the ground that it was not notified in writing of the rate change in the four years in which it was effective and that the respondent had failed to check that the correct rate was being used.

10. Following further correspondence on 19 August 2015 the appellant asked for an internal review.

11. On 23 October 2015 HMRC issued the outcome of the internal review, rejecting the Appellant’s application on the grounds that the rate was available on HMRC’s website and in HMRC guidance. HMRC also pointed out that the appellant would

5 have received, probably with the VAT return for period ending 09/10 a copy of VAT Notes 3 of 2010. A supplement with these VAT Notes explained the effect of the change in standard VAT rate from 17.5% to 20% effective from 4 January 2011. Paragraph 4 of the supplement advised that a new rate would apply to the Scheme and that taxpayers should visit the HMRC website to find the applicable rate. HMRC also stated that VAT was a self-assessed tax and it was the responsibility of the registered trader to pay the right amount of tax.

12. The appellant appealed the assessment to the Tribunal on 3 December 2015. The appeal was late but HMRC did not take the point.

10 **The Scheme**

13. The Scheme simplifies the VAT regime for small businesses by allowing them to account for VAT based on a percentage of turnover rather than accounting for output tax and input tax. The percentage differs from the standard rate of VAT and by sector and is intended to reflect in broad terms the net effect under conventional VAT accounting.

14. Section 26B Value Added Tax Act 1994 sets out the outline of the Scheme but provides for the detail to be set out in regulations, including the rate at which participants pay VAT for different categories of business.

15. Regulation 55H of the Value Added Tax Regulations 1995 provides;

20 “(1) The appropriate percentage to be applied by a flat-rate trader for any prescribed accounting period, or part of a prescribed accounting period (as the case may be), shall be determined in accordance with paragraphs (2) to (4) below and regulations 55J and 55K

25 (2) For the prescribed accounting period current at his start date, the appropriate percentage shall be that specified in the Table for the category of business that he is expected , at his start date, on reasonable grounds, to carry on...

30 (3) For any subsequent prescribed accounting period current at an anniversary of his start date, the appropriate percentage shall be that specified in the Table for the category of business that he is expected, on the first day of that prescribed accounting period, on reasonable grounds to carry on in the period.”

16. Paragraph 6.8 of Notice 733 of February 2004 governing the Scheme entitled “What happens if the Table of flat rates changes” provides;

35 “In general terms always use the flat rate given in the Table for your trade sector. From time to time we will make changes to the Table. If charges are made...then we will publish an amended Table of flat rates”

17. VAT Notes 3 2010 Supplement provides at paragraph 4;

“4. Flat Rate Scheme

From the 4 January 2011 new rates will apply to the Flat Rate Scheme too. If you use that scheme please check our website for your new flat rate. Go to

www.hmrc.uk/vat and enter Flat Rate Scheme into the Search box”

18. On 4 January 2011 at the same time as the standard rate of VAT increased from 17.5% to 20% the Scheme rate for estate agencies increased from 11% to 12%.

The parties' submissions

19. Mr Hill argued that HMRC had simply never notified him of the rate change. The February 2004 edition of Notice 733 which was the version Mr Hill used says that HMRC will “publish” any changes to the rate. Mr Hill argued that this meant that HMRC should have sent the appellant a written notification. The appellant did not receive any such notification. The appellant did not use computers and would not have seen anything on the internet. Further, HMRC did not visit the appellant for four years and so did not check that the appellant was paying the right VAT.

20. HMRC argued that the change in rate was notified on its website and in its published guidance. Further, whilst HMRC could not prove it had been received, the appellant would have been sent VAT Note 3 of 2010 notifying taxpayers of the change. The appellant was seen as a low risk and so did not have many visits from HMRC. However, VAT is a self assessed tax and it is for the taxpayer to check it is paying the right amount of tax.

Decision

21. This appeal is concerned with the relative duties of HMRC and the VAT registered trader to keep up to date with VAT changes. The appellant believes he should be told in paper form of any changes. HMRC argue that they have made the information available and, in any event, it is for the taxpayer to check.

22. Neither party could confirm whether VAT Note 3 of 2010 was delivered to the appellant but we accept that HMRC had made available through its website and guidance sufficient information on the change in rate. Whether it was or not a copy of VAT Note 3 was sent to the appellant, VAT is a self assessed tax and we find that as a VAT registered trader it had a responsibility to ensure it is paying the correct amount of tax. HMRC had made the necessary information sufficiently available and it is not a defence for a VAT registered trader to say that it is not familiar with computers or the internet. Had the appellant checked the VAT position it would have identified that the tax rate for the Scheme had changed.

23. The appellant's appeal is therefore dismissed.

24. 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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**IAN HYDE
TRIBUNAL JUDGE**

RELEASE DATE: 21 MARCH 2017

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