



TC01699

Appeal number: TC/2010/07656

VAT – Bed & Breakfast business carried on by one Appellant who is also partner in farm with other Appellant – Self-catering accommodation part of farm business – Direction to treat both business as a single taxable person — VATA 1994 Sch 1 paras 1A, 2 – s 84(7) — Whether direction reasonably made — Yes—Appeal dismissed

FIRST-TIER TRIBUNAL

TAX

**HOWARD ROWLAND PATRICK and
JENNIFER ROSEMARY PATRICK**

Appellants

- and -

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

Respondents

**TRIBUNAL: JOHN BROOKS (TRIBUNAL JUDGE)
NORAH CLARKE (MEMBER)**

Sitting in public at Eastgate House, Newport Road, Cardiff CF24 0YP on 7 December 2011

Francis Golden of Highmead VAT Consultants for the Appellants

Gloria Orimoloye of HM Revenue and Customs, for the Respondents

DECISION

1. East Hook Farm in Pembrokeshire is run as a partnership by Mr Howard Patrick with his wife, Mrs Jennifer Patrick. The business, which is VAT registered, includes
5 the traditional farming activities of beef and sheep production as well as a haulage operation and the provision of self-catering accommodation in an outbuilding that has been converted into a holiday cottage.

2. In addition to, and quite separate from, the farm partnership, Mrs Patrick operates a Bed and Breakfast (“B&B”) business as a sole trader. The farmhouse is used to
10 accommodate B&B guests with two additional rooms, in the same building as the self-catering cottage, used for those guests unable to use stairs or requiring disabled access. As its turnover was below the then threshold (£61,000) requiring registration this business was not registered for VAT.

3. Following a visit to East Hook Farm, on 24 February 2009, by Mr Jeffrey
15 Harrison, a Higher Officer of HM Revenue and Customs (“HMRC”), and subsequent correspondence Mr and Mrs Patrick received, by way of a letter from HMRC dated 22 January 2010, a Notice of Direction that the farm partnership (Mr and Mrs Patrick) and Mrs Patrick’s B&B:

20 ... will be treated as a single taxable person carrying on the business activities of Farm, Haulage, Holiday Cottage and Bed and Breakfast at East Hook Farm and registered for the purpose of VAT with effect from 22 February 2010.

4. This appeal by Mr and Mrs Patrick is against that direction.

5. The statutory provisions which under which the direction was made are contained
25 in paragraphs 1A and 2(2) of schedule 1 of the Value Added Tax Act 1994 (“VATA”) which, insofar as are relevant to this appeal, provide:

30 *1A(1) Paragraph 2 below is for the purpose of preventing the maintenance or creation of any artificial separation of business activities carried on by two or more persons from resulting in an avoidance of VAT.*

35 *(2) In determining for the purposes of sub-paragraph (1) above whether any separation of business activities is artificial, regard shall be had to the extent to which the different persons carrying on those activities are closely bound to one another by financial, economic and organisational links.*

40 *2(1) Without prejudice to paragraph 1 above, if the Commissioners make a direction under this paragraph, the persons named in the direction shall be treated as a single taxable person carrying on the activities of a business described in the direction and that taxable person shall be liable to be registered under this Schedule with effect from the date of the direction or, if the direction so provides, from such later date as may be specified therein.*

(2) *The Commissioners shall not make a direction under this paragraph naming any person unless they are satisfied—*

(a) that he is making or has made taxable supplies; and

5 *(b) that the activities in the course of which he makes or made those taxable supplies form only part of certain activities, the other activities being carried on concurrently or previously (or both) by one or more other persons; and*

10 *(c) that, if all the taxable supplies the business described in the direction were taken into account, a person carrying on that business would at the time of the direction be liable to be registered by virtue of paragraph 1 above;*

6. It is clear from the letter to Mr and Mrs Patrick, dated 3 December 2009, that HMRC “accept that separate businesses [the farm partnership and B&B] exist as a matter of fact. Also, it would appear to be common ground that the conditions in
15 paragraph 2(2) schedule 1 VATA apply. Therefore the issue between the parties is whether the separation of the business activities, in particular the self-catering holiday cottage and B&B, is artificial having regard to whether the different persons carrying on those activities are closely bound to one another by financial, economic and organisational links.

20 7. The Tribunal’s jurisdiction in relation to an appeal against a direction is derived from s 83(1)(u) VATA and is limited by s 84(7) VATA which provides:

25 *Where there is an appeal against a decision to make such a direction as is mentioned in section 83(1)(u), the tribunal shall not allow the appeal unless it considers that HMRC could not reasonably have been satisfied that there were grounds for making the direction.*

The effect of s 84(7) VATA is that we can only allow Mr and Mrs Patrick’s appeal if we consider that HMRC could not reasonably have been satisfied that there were grounds for the decision to issue the direction.

30 8. We heard from Mr Jeffrey Harrison, the HMRC officer who visited East Hook Farm, who explained that the decision to issue the direction had been made after taking account of the following matters:

(1) The bank accounts for the farm partnership and B&B are both joint accounts in the name of H & J Patrick although the B&B account is “T/A East Hook B&B”.

35 (2) Putting the holiday cottage into the partnership keeps the B&B below the VAT registration limit.

(3) Although separate records are kept, the same bookkeeper is employed for both businesses.

40 (4) Money is sometimes transferred from the B&B bank account to the farm account to ease cash flow and is then transferred back (Mr Harrison did however accept when asked by the Tribunal that he would not necessarily expect to see formal arrangements in place where, as in this case, the parties concerned were

husband and wife and that he had taken this into account when considering whether a direction was appropriate).

(5) The self-catering cottage and B&B were included on the same website where they are presented as one business.

5 (6) Although advertised in separate sections of the *Farm Stay* website and brochure they appear to a potential customer to be part of the same business.

(7) The same building (a converted outbuilding) is used for both B&B and self-catering.

10 (8) There is a combined insurance policy in the names of both partners which specifically mentions the B&B.

(9) The farm/haulage business is loss making and would not be viable without the holiday business.

15 (10) The properties are all owned jointly by Mr and Mrs Patrick and there are no charges for rent or for the use of fixtures and fittings by Mrs Patrick (However, when giving evidence Mrs Patrick told us that she did pay rent to the farm partnership for the use by the B&B of the two rooms which are in the same outbuilding as the self-catering cottage).

20 (11) The purchase of the farm and refurbishment of the farmhouse to make it suitable for B&B was financed by mortgages in the joint names of Mr and Mrs Patrick together with the proceeds of sale of their previous property.

(12) Mrs Patrick deals with all the bookings for the B&B and self-catering.

(13) The same invoice book is used for the B&B and self-catering.

25 9. Mrs Jennifer Patrick, who also gave evidence, explained that she and her husband had sold their farm in Herefordshire to buy East Hook Farm in 1997. Their reason for doing so was to move to Pembrokeshire, a tourist area, to enable her to run her own B&B business while bringing up her two young children. She had used her own money, cashing in ISAs etc., to ensure that the farmhouse was brought to a suitable standard for her B&B guests. Following the foot and mouth outbreak in 2001 she, and not the farm partnership, had received a grant from the Welsh Tourist Board to further
30 upgrade the property to its present four star grading.

10. Mrs Patrick told us that the self-catering cottage had been kept within the farm partnership as it had been converted from a farm outbuilding at a cost to the farm.

35 11. She agreed that she did handle the bookings for the cottage and the B&B which was a simple process as most clients booked and paid in advance of their stay via the website and because of this it was rare for a manual invoice to be issued. However, she accepted that on occasions the same invoice book had been used for both B&B and self-catering clients and explained that this would have been for those who had not booked in advance.

40 12. At the time of Mr Harrison's visit to East Hook Farm there had been a single business website which referred to both the B&B and holiday cottage. Mrs Patrick said that there were now separate sites for the B&B and holiday cottage. She

explained that 80% of the bookings came through *Farm Stay* and that the B&B and self-catering holiday cottages were advertised separately on the *Farm Stay* website and in its brochure.

5 13. Mrs Patrick told us that, other than the bookings, her only involvement with the holiday cottage was to clean it once a week after the guests had departed and before the new guests had arrived. Its maintenance was the responsibility of Mr Patrick and this was often carried out by a farm employee.

10 14. Although the B&B bank account had been in joint names at the time of Mr Harrison's visit Mrs Patrick told us that this was a mistake which had now been rectified and despite Mr Patrick's name being included on the account he had never been involved in the operation of the B&B.

15 15. With regard to the transfer of money from the B&B to the farm business Mrs Patrick explained that this had occurred after her husband had suffered a stroke in 2006 and had been unable to manage the farm and haulage business profitably and thought this was why Mr Harrison had considered that the farm and haulage business was loss making and would not be viable without the holiday business. However, Mr Patrick was now recovering and able to return to work and the business was slowly getting back on its feet.

20 16. We were provided with a copy of the 2010 *Farm Stay Wales* brochure. In the section headed "How to use this Brochure" it is explained that the "entries in this brochure are colour coded". This refers to a coloured bar, above a photograph and description of a property, in which the location, map reference and grading of the property concerned are shown. A red bar identifies those businesses that are Bed and Breakfast only and a blue bar signifies self-catering cottages. The section continues,
25 "a split colour bar indicates members advertising other types of accommodation elsewhere in the guide."

30 17. Although the B&B and holiday cottage are shown separately in the brochure the colour bar above the B&B is predominantly red with a blue section. This indicates "Bed and Breakfast with separate Self-Catering Cottages entry". The colour bar for the self-catering cottage is predominantly blue with a red section signifying that it is advertised by a member who has "Self-Catering Cottages with separate Bed and Breakfast entry."

35 18. We also note from the "Farm Combined Policy Schedule" that the insurance policyholders are Mr and Mrs Patrick. Under the heading "Business" the schedule refers to "Mixed Farm, Bed and Breakfast Proprietor and Property Owner."

40 19. Mr Golden, who appeared on behalf of Mr and Mrs Patrick, explained that all expenses had been apportioned and that there was not any artificial separation of the B&B and Farm business, which included the self-catering cottages. He emphasised how Mrs Patrick had financed the refurbishment of the farmhouse to make it suitable for the B&B business and that funds were only transferred to the farm because of Mr Patrick's decline in health. He contended that, other than this, there was no inter-

connection between the B&B and the farm. Mr Golden also explained the detrimental effect of the direction on the B&B business which had seen a 43% decline in bookings and a fall in profit as a result of having to charge VAT.

5 20. For HMRC, Mrs Orimoloye contended that having regard to financial, economic and organisational links closely binding the B&B and farm, particularly the self-catering cottage, there was an artificial separation of business activities which resulted in the avoidance of VAT. For this reason she submitted that it was reasonable for HMRC to issue the direction that Mr and Mrs Patrick be registered for VAT as a single taxable person with effect from 22 February 2010.

10 21. As we have previously noted (in paragraph 7, above) the effect of s 84(7) VATA means that we can only allow Mr and Mrs Patrick's appeal if we consider that HMRC could not reasonably have been satisfied that there were grounds for the decision to issue the direction. It is not sufficient that we might ourselves have reached a different conclusion.

15 22. In *Lindsay v Commissioners of Customs and Excise* [2002] STC 508 Lord Phillips of Worth Maltravers MR (as he then was) said, at [40]:

“the Commissioners will not arrive reasonably at a decision if they take into account irrelevant matters, or fail to take into account all relevant matters”

20 23. Having carefully considered the evidence and submissions of the parties we find that in making the direction HMRC have not taken into account irrelevant matters or failed to take into account all relevant matters. As such we consider that HMRC could reasonably have been satisfied that there were grounds for making the direction and cannot allow the appeal (see s 84(7) VATA).

25 24. The appeal is therefore dismissed.

25. 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
30 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: 30 December 2011