



**TC05990**

**Appeal number: TC/2016/00590**

*VAT - claim for bad debt relief - whether or when debts written off - out of time – yes - appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**GLADSTONE F1 LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE SCOTT**

**Sitting in public at Glasgow on Monday 17 October 2016**

**Written submissions for the Appellant dated 18 November 2016 and 6 April 2017**

**Response from HMRC dated 16 May 2017**

**Mr R Jenkins, for the Appellant**

**Ms D Williams, Officer of HMRC, for the Respondents**

## DECISION

### The issue

1. On 21 August 2015 the appellant lodged a claim for bad debt relief in a total  
5 sum of £27,090.32 relating to invoices issued in 2007 and 2008. HMRC rejected that  
claim by letter dated 30 September 2015 on the basis that the claim was out of time.

### Procedural matters

2. Following the hearing in Glasgow on 17 October 2016, I issued Directions in  
10 agreed terms to the effect that evidence should be provided as to the date(s) when the  
bad debts at issue in this appeal were written off in the appellant's accounts.

3. On 18 November 2016, the appellant furnished the Tribunal with copies of the  
Balance Sheet, Trading and Profit & Loss Account and an analysis of Administrative  
Expenses for the year ended 31 March 2013 (The Administrative Expenses are  
described as "Administration Expenses" in the Trading and Profit & Loss Account.)

- 15 4. Subsequent Directions were issued and it was pointed out that bad debts had  
been written off in the accounts for the year ended 31 March 2012 as opposed to the  
year ended 31 March 2013 as stated in the appellant's email of 18 November 2016.

5. Further Directions were issued reiterating the issues with the accounts and  
seeking further submissions. The appellant responded on 6 April 2017. HMRC  
20 confirmed on 16 May 2017 that their decision remained unchanged.

6. Both parties have confirmed that they wish the appeal to be decided on the basis  
of the evidence lodged and with no further hearing.

### Findings in Fact

7. The appellant was previously known as Home Claim Repair Limited and its  
25 effective date of registration for VAT was 1 January 2010. It has also previously been  
known as MJ Lomax Ltd.

8. Prior to that date the appellant had been the representative member of a VAT  
group with a different VAT registration number and that group consisted of the  
30 appellant (trading under its previous name), M J Lomax Builders Limited ("MJLB")  
and GFI Services Limited. MJLB went into liquidation in 2008 and the liquidator  
pursued the appellant for various claims relating to VAT repayments. That litigation  
continued during the period from 19 November 2008 until it was settled on  
8 February 2011. MJLB was finally dissolved on 2 December 2014.

9. On 9 July 2015, the appellant wrote to HMRC intimating that it wanted to make  
35 a claim for bad debt relief for invoices raised by the appellant in the name M J Lomax  
Limited to Multi Assistance, CET Safehouse Limited and Homeserve Property  
Repairs Limited. The following table sets out the quantum of the invoices and the  
VAT. All of the invoices in question were raised in either 2007 or 2008. In fact, there

were substantially greater bad debts but the appellant had not been able to vouch them so the claim had been restricted.

	<b>Gross</b>	<b>Net</b>	<b>VAT</b>
Multi Assistance	£32,965.66	£28,055.88	£4,090.78
CET Safehouse	£119,785.27	£101,944.91	£17,840.36
Homeserve	£29,141.23	£24,801.05	4,340.18
<b>Total</b>	£181,892.16	£154,801.84	£27,090.32

10. Mr Jenkins, for the appellant, stated that he had not been able to make this claim for bad debt relief earlier because of the litigation with the liquidator and also long periods of illness.

11. HMRC responded on 3 August 2015 pointing out that since the debts related to supplies made in 2007 and 2008, the claim might well be out of time. The appellant replied stating that it had been difficult to determine which companies were legally entitled to claim and that all three of the customers had been wound up in the interim. The bad debt relief sought related to the VAT returns for the periods 24 April 2008 and 29 July 2008.

12. On 30 September 2015, HMRC wrote to the appellant rejecting the claim on the basis that it was outwith the time limit and HMRC had no discretion to extend the statutory time limit. They relied on Regulation 165A (2), the terms of which are set out below.

### **The Legislation**

13. Section 36 VAT Act 1994 (“VATA”) sets out the conditions for bad debt relief and the relevant portions read as follows:-

#### **“36. Bad debts**

(1) Subsection (2) below applies where—

(a) a person has supplied goods or services and has accounted for and paid VAT on the supply,

(b) the whole or any part of the consideration for the supply has been written off in his accounts as a bad debt, and

(c) a period of 6 months (beginning with the date of the supply) has elapsed.

(2) Subject to the following provisions of this section and to regulations under it the person shall be entitled, on making a claim to the Commissioners, to a refund of the amount of VAT chargeable by reference to the outstanding amount.

(3) In subsection (2) above ‘the outstanding amount’ means—

(a) if at the time of the claim no part of the consideration written off in the claimant's accounts as a bad debt has been received, an amount equal to the amount of the consideration so written off,

5 (b) if at that time any part of the consideration so written off has been received, an amount by which that part is exceeded by the amount of the consideration written off;

and in this subsection 'received' means received either by the claimant or by a person to whom has been assigned a right to receive the whole or any part of the consideration written off."

14. The relevant regulation is Regulation is 165(A) of the VAT Regulations 1995 SI 1995/2518 and that reads as follows:-

10 "165A Time within which a claim must be made

(1) Subject to paragraph (3) ... below, a claim shall be made within the period of 4 years and 6 months following the later of—

15 (a) the date on which the consideration (or part) which has been written off as a bad debt becomes due and payable to or to the order of the person who made the relevant supply; and

(b) The date of the supply.

(2) A person who is entitled to a refund by virtue of section 36 of the Act but has not made a claim within the period specified in paragraph (1) shall be regarded for the purposes of this Part as having ceased to be entitled to a refund accordingly."

## 20 Discussion

15. The onus of proof is on the appellant to show that it has an entitlement to claim bad debt relief. There was no dispute that if there was compliance with the relevant statutory provisions then the appropriate adjustment could be made to the VAT returns. There is no doubt that the appellant had made the supplies in question and accounted for and paid VAT thereon and that a period of six months beginning with the date of the supply had elapsed.

16. The primary issue was whether or not the whole or any part of the consideration for the supplies had been written off in the accounts as a bad debt; in other words whether the appellant had a valid claim in terms of section 36 VATA. Unfortunately the appellant's accountant has very sadly died and it has not proved possible to clarify issues with him.

17. The appellant's Balance Sheet as at 31 March 2013 shows debtors of £969,668.82 with "Provision for doubtful debts" of £898,990.17 leaving a carrying value of debtors of £70,678.65. The equivalent figure for 2012 was £100,681.08.

18. That is what is called a general provision for bad debts.

19. The Trading and Profit & Loss Account which has been produced for the year ended 31 March 2013 shows a figure for "Administration Expenses" of £24,546.48. The analysis of that figure has been produced. There is a typographical error in that both columns in the comparative analysis are headed 2012 whereas the left-hand column

should be headed 2013. The cumulative totals match those for the comparative figures in the Trading and Profit & Loss Account.

20. That analysis makes it quite clear that in 2012, bad debts of £32,818.48 were written off. Therefore, in that year there was a specific provision for bad debts.

21. Unfortunately for the appellant the figure for bad debts in 2013 is £0.00. On 6 April 2017 the appellant responded to my Direction highlighting the analysis of the Administrative Expenses. The appellant confirmed that the bad debts in 2012 were not those to which this appeal relates. He argued that the provision in the balance sheet should suffice to show that the bad debts had been written off.

22. In layman's terms a *general* provision for bad debts reduces the asset value in the accounts. It can be, and often is, changed on a regular basis as the trading position alters. A *specific* provision for bad debts, that is to say, when the bad debts are written off, reduces the profit. That is what happened in 2012 but did not happen in 2013.

23. Accordingly, there has been no compliance with section 36 (1) (b) VATA, there cannot be a valid bad debt relief claim and there can be no entitlement to a refund of tax.

24. I have no discretion and must apply the law. Although these debts may well have been included in the "Provision for doubtful debts" they were not written off as bad debts in either 2012 or 2013. Accordingly, the appeal cannot succeed and I must uphold HMRC's decision to reject the claim for bad debt relief.

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 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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**ANNE SCOTT  
TRIBUNAL JUDGE**

**RELEASE DATE: 04 JULY 2017**

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