



Neutral Citation: [2025] UKFTT 00274 (TC)

Case Number: TC09443

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Heard at Taylor House, London

Appeal reference: TC/2023/16056

VALUE ADDED TAX – Effective Date of Registration - whether output tax is payable on supplies from the date of receipt of the VAT registration Number – no – or from the effective date of registration – yes – appeal dismissed

Heard on: 23 January 2025

Judgment date: 28 February 2025

Before

**TRIBUNAL JUDGE MICHAELA SNELDERS
SHAMEEM AKHTAR**

Between

SAMMY GARDEN LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Robert Demczuk of Polish Bureau Financial and Social Service

For the Respondents: David Corps, litigator, of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. This is an appeal against:
 - (1) the denial of a repayment of Value Added Tax (VAT) credit of £2,183.16, claimed by the Appellant (SGL) in its 08/21 period VAT return; and
 - (2) the assessment of VAT due from SGL for the 08/21 period in the amount of £19,400.84.
2. The point at issue is the date from which SGL became liable to account for and pay output tax on its taxable supplies. The Respondents (HMRC) contend that the relevant date is 9 March 2021, SGL's effective date of registration (EDR) for VAT. SGL contends that it is 27 July 2021, the date HMRC issued SGL's VAT Registration Number (VRN).
3. Both parties agree that SGL is entitled to credit the input tax it paid on its purchases from the EDR.

BACKGROUND AND FACTS

4. The documents to which we were referred were contained in a hearing bundle of 583 pages. Daniela Meden, an officer of HMRC, gave evidence at the hearing and was cross examined by SGL's representative, Mr Demczuk.
5. From the hearing bundle, witness statement and submissions made by the parties' representatives at the hearing, we make the following findings of fact.
6. Mr Tomczak is a landscape gardener who had previously operated as a sole trader. SGL was incorporated on 9 March 2021. Mr Tomczak became a director of SGL and transferred his landscape gardening business to SGL on 9 March 2021.
7. SGL was advised and represented by Polish Bureau Financial and Social Service (PLB) from at least 20 May 2021.
8. Under cover of a letter dated 20 May 2021, PLB submitted a VAT 1 form to HMRC on behalf of SGL to register SGL for VAT.
9. The VAT 1 form states on the top of page 6 under the heading "Reason for registration"

"Look at each reason for registering and put an X in the box that applies.
You should select only one reason for registering."
10. SGL put an X in box 5 which stated:

"You are registering for VAT because you've either:

 - taken over (or are about to take over) a business (or part of a business) as a going concern
 - changed or are about to change the legal status of a VAT registered business."
11. Box 5 then goes onto read

"If you've selected this option, enter the date the transfer or change took place or is intended to take place. This will be your effective date of registration."

The date entered is 9 March 2021.

12. Despite the VAT 1 form clearly stating that only one reason for registration should be selected, SGL also indicated by putting a cross in box 8 that the reason for registration is that SGL:

“had an expectation on any date that your taxable turnover would go over the registration threshold in the next 30 days alone.”

13. SGL entered the date of 20 June 2021 as the date on which it **had** an expectation that its taxable turnover would go over the registration threshold in the next 30 days. However at the time of submitting the VAT 1 form 20 June 2021 was a date in the future. This reason should only be selected where the expectation has already occurred, so the date entered should be the date of the application or earlier. This box has therefore been selected in error or the date entered is an error.

14. In box 17 of the VAT 1 form the applicant is asked to estimate its taxable supplies in the next 12 months, and here it states that this is £200. Clearly this is unlikely to be correct if box 8 had been correctly selected and it expected that its taxable turnover would exceed the registration threshold within 30 days.

15. PLB included with the VAT 1 form, documentation in support of the application including a number of invoices issued by SGL, seven of which included a separate charge for VAT. The invoices showing a charge for VAT were dated 18 May 2021, 14 May 2021, 7 May 2021 (three invoices) and 25 April 2021.

16. HMRC registered SGL for VAT based on the information provided by SGL in box 5, that it was required to register for VAT as a result of taking over a going concern on 9 March 2021 that was either registered or registrable for VAT at the date of transfer.

17. It took HMRC two months to process the VAT 1 form and notify SGL of its VAT registration number (VRN). The only explanation provided by HMRC for this delay was a lack of resource at HMRC.

18. On 27 July 2021 HMRC wrote to SGL notifying it that it was registered for VAT with an effective date of registration (EDR) of 9 March 2021. This letter also stated:

“We can confirm that you have been registered with effect from 09 March 2021..... Your effective date of registration is backdated . This means that you have to account for and pay any tax due from the date you first became liable to be registered and not just from the date:

- you notified on form VAT1 Application for registration
- you receive your VAT registration certificate.”

19. In the period from 9 March 2021 to 31 August 2021 SGL made taxable supplies of £176,070 and received taxable supplies of £60,023.16.

20. On 4 January 2022 HMRC received SGL’s first VAT return covering the period 9 March 2021 to 31 August 2021 (period 08/21). This return showed taxable supplies made by it of £176,070 on which £7,760 output tax was payable (VAT charged by SGL on taxable supplies for the period 27 July 2021 to 31 August 2021) and taxable supplies received by it of £60,023.16 from which it claimed £9,943.16 input tax credit (VAT paid by SGL on taxable purchases from 9 March 2021 to 31 August 2021). SGL had credited its input tax of £9,943.16 against its output tax of £7,760 resulting in a credit due from HMRC to SGL of £2,183.16.

21. HMRC notified SGL by letter dated 13 January 2022 that they would be checking SGL’s first VAT return for the period 08/21 and asked the Respondent to complete a questionnaire.

22. PLB completed the questionnaire on behalf of SGL and submitted it to HMRC on 11 February 2022. In that questionnaire the reason given by PLB for the repayment claim is as follows:

“- VAT form was sent to HMRC on 20/05/21 with date of registration 09/03/21

- HMRC letter with VAT number was issue 27/07/21 therefore our claim include repayment from purchases.”

23. The questionnaire response also stated that the VAT Return had been completed and submitted by PLB.

24. HMRC issued an assessment to SGL pursuant to section 73 of the Value Added Tax Act 1994 (VATA) on 9 June 2022. This assessment was based on the figures provided by SGL for their taxable supplies and taxable purchases, but it calculated the VAT due on the basis that SGL was liable to account for and pay output tax on all its taxable supplies from the EDR (9 March 2021) and not only on taxable supplies it made from the date it received its VRN (27 July 2021). As a result, the output tax due from SGL increased from £7,760 to £29,344. From this output tax the agreed input tax was deducted of £9,943.16 making the amount of VAT payable by SGL under the section 73 assessment £19,400.84, instead of a VAT credit due to SGL of £2,183.16, as it had submitted on its return.

25. This letter of assessment also offered a review, explaining that if SGL does not agree with the assessment it can accept the offer of a review or appeal to an independent Tribunal. In either case, the letter informed SGL, it must do so within 30 days of the date of the assessment.

26. PLB did not accept this offer of a review at that time but instead made a complaint to HMRC by letter dated 23 June 2022. In this letter PLB asserted that HMRC “ignored the law” and “backdated sales invoices from 09/03/2021 adding VAT” and that “As a consequence of unlawful calculation HMRC officer is chasing client to pay him £19,400.84”.

27. HMRC did not respond to this complaint but issued a further demand for payment dated 13 October 2022.

28. PLB responded to the 13 October 2022 demand on 14 November 2022 by making another complaint in which they asserted:

“HMRC officer **illegally increased** VAT amount from sales”

“I am asking you again investigate this case and provide me with tax law allowing backdating invoices from sales”

29. HMRC replied on 25 November 2022 (referring to the original letter of complaint dated 23 June 2022). This reply is very short and quotes the guidance on the gov.uk website which states:

“You cannot include VAT on your invoices until you get your VAT number but you can increase your prices to account for the VAT you’ll need to pay to HMRC.”

30. HMRC issued a further demand for payment on 13 January 2023. PLB’s response to that demand was to issue a letter of complaint to the Chief Executive of HMRC on 23 February 2023 in which they assert “4 months invoices were backdated by Mr/Mrs Meden, but unfortunately this procedure is against the law.”

31. HMRC responded to the 23 February 2023 complaint by letter dated 21 March 2023, rejecting the complaint.

32. PLB replied on 4 April 2023, making another complaint headed “HMRC VAT OFFICE -BREAKING THE LAW REQUESTED SUM £29,149.65”. This letter states:

“Mr Monroe made his decision on the basis of guidelines not on the law, confirming my debut about VAT fraud from Sammy Garden ltd by illegally backdating invoices from 09/03/2021.”

33. HMRC provided a substantive response to this complaint on 1 June 2023. In their response, HMRC acknowledged that PLB and SGL had not received the level of service that they should have in that there had been delays in HMRC responding to their letters of complaint, but also explained that the complaints procedure is separate to the procedure to appeal against an assessment. HMRC invited SGL to accept the original offer of a review that accompanied the 9 June 2022 assessment.

34. There was some further correspondence including a letter from PLB dated 3 August 2023 in which PLB state:

“I am aware of the provisions of the VAT law in the United Kingdom, which require businesses to charge and collect VAT only after registering as VAT payers and obtaining a valid VAT registration number from HMRC. In Sammy Garden’s case, director received company VAT registration number from HMRC 4 months and one week after the date of VAT registration.”

“Since the receipt of Company VAT registration number, director Mr Tomczyk has promptly adjusted his invoicing practices to include the appropriate VAT charges in compliance with the law. However, the VAT office persists in applying VAT charges for a period preceding the receipt of VAT registration number, which is in contravention of the current regulations.”

35. On 8 August 2023, PLB, on behalf of SGL, accepted HMRC’s original offer of a review dated 9 June 2022.

36. HMRC issued their review conclusion letter on 19 September 2023, upholding HMRC’s decision to issue the assessment dated 9 June 2022. Key parts of this letter are as follows:

“In the VAT1, application to register for VAT form, you declared that you took over a business as a going concern, from a taxable person. Essentially, you have declared that you became a taxable person, within the meaning of section 3, VATA94 and were required to be registered from the date of the transfer, 9 March 2021, as per the legislation in section 49 and Schedule 1, paragraph 1(2), detailed in the appendix. As such, you are required to account for VAT from that date, the EDR

.....

Contrary to what PLB seem to believe, the date on which a taxpayer is notified of its VRN has no bearing on the date from which it is required to account for VAT. VAT must be accounted for on taxable supplies made on or after the date on which the taxpayer became registrable, i.e the EDR. Section 25, VATA94 provides that a taxable person must account for and pay VAT by reference to prescribed accounting periods, which in this case is 9 March 2021 to 31 August 2021.

To be clear, it is not the issuing of a tax invoice that creates a taxable supply. A supply is taxable in accordance with section 4, VATA94. Namely that it is a taxable supply, made by a taxable person, in the UK and in the course or furtherance of business. Further, the taxpayer is required to account for VAT

on such taxable supplies in its VAT returns, whether or not it has issued tax invoices or charged any VAT to its customers.”

37. Also in the review conclusion letter under the heading “**Other Matters (EDR)**” HMRC wrote:

“HMRC accepted at face value the declaration you made in Box 5 of the VAT1 form. However, if in retrospect you consider that the information you supplied was incorrect and has led to an incorrect EDR being notified, you may wish to contact the case officer (whose details are given below) to discuss further what remedial action (if any) may be taken.”

38. There is nothing in the hearing bundle to suggest, and neither party made any submissions that, PLB or SGL contacted the case officer to inform her that the information supplied in the VAT 1 form was incorrect.

39. PLB submitted SGL’s appeal to the Tribunal on 13 October 2023 in which it made the following statements:

“2. HMRC provided Sammy Garden Ltd with a registration number on 27/07/2021, effective from 09/03/2021, the date requested for registration.

...

5. Sammy Garden Ltd’s turnover exceeded £83,000 on 13 June 2021, not in March 2021, altering the VAT registration implications.”

APPELLANT’S ARGUMENT

40. SGL’s arguments as put forward by PLB in their correspondence and the appeal to the Tribunal are summarised as follows:

(1) SGL could not include VAT on its invoices until it had received its VRN. In support of this assertion, PLB rely on paragraph 2 of Schedule 41 to the Finance Act 2008 which provides that a penalty is payable by anyone who issues an invoice including VAT before they are VAT registered as follows:

“(1) A penalty is payable by a person (P) where P makes an unauthorised issue of an invoice showing VAT.

(2) P makes an unauthorised issue of an invoice showing VAT if P–

(a) is an unauthorised person, and

(b) issues an invoice showing an amount as being value added tax or as including an amount attributable to value added tax.

(3) In sub-paragraph (2)(a) “*an unauthorised person*” means anyone other than–

(a) a person registered under VATA 1994,

(b) a body corporate treated for the purposes of section 43 of that Act as a member of a group,

(c) a person treated as a taxable person under regulations under section 46(4) of that Act,

(d) a person authorised to issue an invoice under regulations under paragraph 2(12) of Schedule 11 to that Act, or

(e) a person acting on behalf of the Crown.”

(2) There is no statutory requirement on SGL to reissue invoices including VAT to its customers where those invoices had been issued without VAT after the EDR but before it received its VRN.

(3) HMRC are relying on guidance in the form of section 5.1 of its guidance Notice 700/1 to require SGL to backdate invoices for VAT for the period prior to receipt of its VRN.

(4) Backdating invoices is potentially a criminal offence under section 17 (false accounting) or section 19 (false statements by company directors) of the Theft Act 1968.

(5) HMRC have backdated the invoices issued by SGL prior to receipt of its VRN which is potentially a criminal offence.

(6) SGL would have been subject to a penalty if it had included VAT on its invoices before it received its VRN and if it reissues those invoices to include VAT after receiving its VRN it will potentially be committing a criminal offence. SGL is therefore not liable to account for and pay VAT on its taxable supplies that it invoiced customers for from the EDR to the day before it received its VRN.

41. The oral submissions made at the hearing by Mr Demczuk on behalf of SGL are summarised as follows:

(1) This is an exceptional case because it usually takes a couple of weeks for HMRC to issue a VRN but in this case it took 4 months.

(2) It was impossible for SGL to charge VAT on its invoices until SGL received its VRN and it is in fact illegal to charge VAT before it had a VRN.

(3) SGL provides quotes before he obtains work, so he was in a difficult situation from the EDR until he received his VRN because he couldn't quote for VAT.

(4) HMRC provided no guidance on how to deal with this and SGL was almost bankrupted as a result.

(5) SGL crossed the VAT threshold on 13 June 2021.

(6) Mr Tomczak, the director of SGL, has limited English language and understanding of VAT.

(7) Legislation should be applied and taxes paid but this case is unique as SGL was waiting a number of months for the VRN from HMRC and it is unreasonable for HMRC to expect SGL to charge VAT during this period

(8) The Tribunal should decide the case on a human level and exercise its discretion to disapply the legislation or amend the EDR in the application.

RESPONDENTS' ARGUMENT

42. HMRC assert that SGL must account for all output tax on taxable supplies it made from the EDR, irrespective of when it receives its VRN. In support of this assertion HMRC rely on sections 3, 4 and 25 of VATA. The relevant parts of these sections provide as follows:

“3(1) A person is a taxable person for the purposes of this Act while he is, or is required to be, registered under this Act.”

“4(1) VAT shall be charged on any supply of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

(2) A taxable supply is a supply of goods or services made in the United Kingdom other than an exempt supply.”

“25(1) A taxable person shall –

(a) in respect of supplies made by him,

...

account for and pay VAT by reference to such periods (in this Act referred to as “prescribed accounting periods”) at such time and in such manner as may be determined by or under regulations and regulations may make different provisions for different circumstances.

(2) Subject to the provisions of this section, he is entitled at the end of each prescribed accounting period to credit for so much of his input tax as is allowable under section 26, and then to deduct that amount from any output tax that is due from him.”

43. HMRC assert that it is not in dispute that SGL was registered under VATA from the EDR, 9 March 2021, and that it made taxable supplies in the course or furtherance of its business from the EDR. Pursuant to section 3(1) of VATA therefore SGL was a taxable person from the EDR and pursuant to section 4 of VATA, VAT is chargeable on all the taxable supplies that it made from that date which, pursuant to section 25 of VATA, it must account for and pay.

44. There is no statutory provision that limits the effect of sections 3, 4 or 25 of VATA to chargeable supplies made by a taxable person after it has received its VRN.

45. HMRC further assert that there is no statutory requirement for SGL to invoice its customers for the chargeable VAT before it will become liable to pay that VAT.

46. HMRC do however acknowledge that the fact that taxable persons cannot invoice their customers for VAT until they receive their VRN can create difficulties for businesses, particularly where there is a delay, as in this case, between the EDR applied for and the VRN being issued. HMRC has therefore offered guidance on how this issue can be overcome practically in section 5.1 of its guidance Notice 700/1 ‘Who should register for VAT’, as follows:

‘You must start keeping records and accounting for VAT from the date you become liable to register. You may wish to increase your prices to include VAT. Do not show VAT as a separate item on any invoices you issue until you’ve received your registration number. You can explain to your VAT-registered customers that you’ll be sending them VAT invoices later. Once you’ve got your registration number, you should send them the necessary invoices showing VAT within 30 days.’

47. However HMRC are not relying on this guidance to support the charge to VAT in the period between the EDR and SGL’s receipt of its VRN. If SGL chooses not to follow this guidance, it is still required to account for and pay the output VAT that is chargeable on the supplies it made during this period.

48. HMRC further assert that it was reasonable for them to take the VAT 1 form submitted by PLB on behalf of SGL at face value. In that form SGL certified that it had taken over a going concern that was either registered or registerable for VAT on the date of the transfer. As a result SGL was VAT registrable pursuant to paragraph 1(2) of Schedule 1 to VATA which provides as follows:

“1(2) Where a business, or part of a business, carried on by a taxable person is transferred to another person as a going concern, the transferee is UK-

established at the time of the transfer and the transferee is not registered under this Act at that time, then, subject to sub-paragraph (3) to (7) below, the transferee becomes liable to be registered under this Schedule at that time if–

(a) the value of his taxable supplies in the period of one year ending at the time of the transfer has exceeded £85,000;”

49. When calculating the value of the taxable supplies for the purpose of this provision it is necessary to include both the value of the taxable supplies of the transferred business and the transferee pursuant to section 49(1) of VATA which provides:

“49(1) Where a business, or part of a business, carried on by a taxable person is transferred to another person as a going concern, then–

(a) for the purpose of determining whether the transferee is liable to be registered under this Act he shall be treated as having carried on the business or part of the business before as well as after the transfer and supplies by the transferor shall be treated accordingly;”

50. SGL stated in the VAT 1 form that the date of transfer was 9 March 2021 and the form makes clear that this date will be SGL’s EDR.

51. Although there is ambiguity in the information provided by SGL in the form, because it also indicated that its reason for registration was that on 20 June 2021 it **had** expected to breach the threshold in the next 30 days, HMRC submitted that they were correct to disregard this box because the date entered was a future date and therefore clearly an error.

52. There has been lengthy correspondence from PLB since January 2022, all of which is included in the hearing bundle and none of which requested an amendment to the EDR.

53. At no time prior to the hearing had SGL sought to amend the EDR. This is further supported by its behaviour as follows:

(1) Seven of the invoices it submitted with its VAT 1 application, dated 18 May 2021, 14 May 2021, 3 x 7 May 2021, 25 April 2021 showed a charge for VAT. This is evidence that SGL already considered itself VAT registered and accountable for VAT prior to submitting the VAT 1 form and before it received a VRN.

(2) In its return for the 08/21 VAT period it has claimed credit for the input tax it has paid on its purchases since the EDR, on the basis that it was VAT registered from that date.

54. The statement made by PLB in the appeal to the Tribunal that “Sammy Garden Ltd’s turnover exceeded £83,000 on 13 June 2021” is not an application to amend the EDR

55. In any event even if SGL had made an application to amend the EDR on this basis, HMRC submitted that they would have to reject such an application pursuant to paragraph 8 of Schedule 1 to VATA. This paragraph provides that where a business is registrable both because it has taken over a registered or registrable business and because its turnover has exceeded the registration threshold, HMRC must register the business on the basis of the business transfer.

56. Paragraph 8 reads as follows:

“Where a person becomes liable to be registered by virtue of paragraph 1(1) (a) above and by virtue of paragraph 1(1)(b) or 1(2) above at the same time, the Commissioners shall register him in accordance with paragraph 6(2) or 7(2) above, as the case may be, rather than paragraph 5(2) above.”

57. Paragraph 7(2) provides for the EDR to be the date of the transfer where the reason for registration is that the business has taken over a registered or registrable going concern. Paragraph 5(2) provides for the EDR where the reason for registration is that the turnover of the business has exceeded the VAT registration threshold in the previous 12 months. It follows that where a business is registrable both because it has taken over a registered or registerable business (paragraph 1(2)) and because it's turnover in the previous 12 months has exceeded the VAT registration threshold (paragraph 1(1)(a)) then the EDR must be the date of the transfer of the business.

58. HMRC further submit that the role of the Tribunal in considering HMRC decision to make SGL's EDR 9 March 2021 is supervisory. In support of this HMRC referred the Tribunal to the following cases:

- (1) *Richard John Nash and Janet Nash* (1997) VTD 14944 at paragraph 19:

“the role of the tribunal in considering the Commissioners' considerations under paragraph (3) is supervisory and is as set out in Lord Lane's words in the case of *Commissioners of Customs and Excise v J H Corbitt (Numismatists) Ltd* 1980 STC 231. In considering the manner in which the tribunal should exercise its jurisdiction, Lord Lane said

"It could only properly do so if it were shown the Commissioners had acted in a way which no reasonable panel of Commissioners could have acted; if they had taken into account some irrelevant matter or had disregarded something to which they should have given weight."

- (2) *Irene Jean Middleton T/A Freshfields* [2011] UKFTT 316 (TC) at paragraph 13:

“The amendment of a trader’s effective date of registration is, as noted, a matter for the discretion of HMRC. The Tribunal has on past occasions accepted jurisdiction as falling within section 83(a). There being no statutory provision (other than “care and management”) that applies as the foundation of HMRC’s assumed discretion, the Tribunal’s role must be “supervisory” rather than appellate. The Tribunal must therefore examine the circumstances and determine whether the decision in question was one that no reasonable decision-maker could have reached. I refer for example to *Lead Asset Strategies (Liverpool) Ltd* [2009] UK FTT 115 (a decision of Judge Berner). For that purpose we take the route prescribed in *John Dee Ltd* [1995] STC 941, Court of Appeal. Hence, in deciding whether HMRC have rightly or wrongly exercised their discretion to refuse retrospective registration we have to consider whether they have acted in a way in which no reasonable panel of “commissioners” could have acted or whether they had taken into account some irrelevant matter or disregarded something to which they should have given weight. The Tribunal might also have to consider whether the commissioners had erred on a point of law. The Tribunal cannot exercise a fresh discretion or substitute its own decision. That is the statutory responsibility of the commissioners (HMRC).”

59. HMRC assert that they acted reasonably in registering SGL for VAT from 9 March 2021, as it had requested, and that the Tribunal does not therefore have the jurisdiction to substitute a different date for SGL's EDR.

60. HMRC therefore assert that as a result of SGL being liable to account for and pay output tax on its taxable supplies from 9 March 2021, not from 27 July 2021, its VAT liability as set out in the return submitted by SGL for period 08/21 was incorrect as follows:

VAT Return Box Number	Amount declared on	Adjusted Amount
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	Appellant's VAT Return	
Box 1 - VAT due on sales	£7,760.00	£29,344.00
Box 3 - Total VAT Due	£7,760.00	£29,344.00
Box 4 - VAT reclaimed on purchases and other inputs	£9,943.16	£9,943.16
Box 5 - Net VAT	-£2,183.16	£19,400.84

61. Section 73 of VATA (Failure to make returns etc.) provides (emphasis added):

“(1) Where a person has failed to make any returns required under this Act (or under any provision repealed by this Act) or to keep any documents and afford the facilities necessary to verify such returns **or where it appears to the Commissioners that such returns are incomplete or incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify it to him.**”

62. HMRC submitted that they were therefore correct to disallow the repayment credit claimed by SGL for this period of £2,183.16 and issue an assessment pursuant to section 73 for £19,400.84.

CONCLUSIONS

63. The underlying figures in this case are not in dispute. The parties agree that SGL made taxable supplies in the 08/21 period in the sum of £176,070 and made chargeable purchases in the period 08/21 in the sum of £60,023.

64. The issues between the parties are:

- (1) what is SGL's EDR for VAT; and
- (2) on what date did SGL become liable to account for VAT on the supplies it made.

EFFECTIVE DATE OF REGISTRATION

65. HMRC issued SGL with a VRN on 27 July 2021 with an EDR of 9 March 2021. HMRC used the 9 March 2021 as the EDR based on the information provided by SGL in the VAT 1 form that PLB had submitted on SGL's behalf on 20 May 2021.

66. There is nothing in the correspondence in the hearing bundle that constitutes a request from PLB or SGL to change the EDR. Indeed the appeal to the Tribunal confirms that the date SGL requested for registration was 9 March 2021.

67. PLB does state on behalf of SGL in its appeal to the Tribunal that SGL's turnover exceeded £83,000 on 13 June 2021, not in March 2021, and that this alters the VAT registration implications. Further Mr Demczuk submitted orally at the hearing that SGL exceeded the VAT threshold on 13 June 2021 and that the Tribunal should exercise its discretion to amend the EDR.

68. However, (and putting to one side the fact that the registration threshold at that time was £85,000 and not £83,000) neither PLB nor Mr Demczuk has expanded on how this fact alters the VAT registration implications or what date they consider that the EDR should be amended to.

69. By putting a cross in box 5 on the VAT1 form SGL stated that it was registrable for VAT on the grounds that it took over a going concern on 9 March 2023 that was registered or registrable for VAT.

70. It is not clear what is meant by the assertion that SGL exceeded the registration threshold on 13 June 2021 or how this would change the earlier date of registrability, which takes into account the turnover of the business taken over by SGL on 9 March 2021.

71. SGL provided no evidence or explanation of what it meant by the assertion that it exceeded the VAT threshold on 13 June 2021.

72. We accept HMRC submissions that any amendment to SGL's EDR would be a matter of a HMRC discretion and that this Tribunal's role in relation to the exercise of that discretion is supervisory.

73. As such we find that HMRC have acted reasonably in accepting the VAT 1 form at face value, providing SGL with an EDR of 9 March 2021 as requested by it in the VAT 1 form and ignoring the information provided in box 8 which provides a date that is clearly an error.

74. PLB has had plenty of opportunity over three years to request an amendment to the EDR with a full explanation, supported by evidence, of why it is seeking a different EDR, but has failed to do so. We do not consider that the statement and submission referred to above constitutes a request to amend the EDR and even if we did we would find that it provides insufficient information or evidence on which HMRC could determine its merits.

75. For all the reasons set out above we find that SGL's EDR is 9 March 2021.

DATE FROM WHICH SGL IS LIABLE FOR VAT ON SUPPLIES

76. The legislation on this point is very clear as set out in HMRC's arguments above. A taxable person is liable to account for and pay VAT on its supplies of goods or services made in the United Kingdom where those supplies are taxable supplies made by a taxable person in the course or furtherance of any business carried on by it.

77. PLB on behalf of SGL accept that the landscape gardening services supplied by SGL are taxable supplies and that those services were supplied in the course or furtherance of the business of landscape gardening carried on by it.

78. SGL was registered for VAT with an EDR of 9 March 2021. SGL has therefore been a taxable person as defined by section 3 of VATA since 9 March 2021.

79. It follows from the above that SGL has a statutory obligation to account for and pay VAT on the taxable supplies it made from 9 March 2021 onwards.

80. Contrary to the oral submissions made by Mr Demczuk at the hearing, neither HMRC nor this Tribunal have the discretion to disapply that statutory obligation.

81. PLB are correct that SGL could not issue VAT invoices to its customers prior to receiving its VRN as it could be subject to a penalty for doing so. However statutory liability to account for and pay VAT on supplies is not dependant on SGL issuing invoices to its customers that separately charge for VAT.

82. Further HMRC's guidance at section 5.1 of its Guidance Notice 700/1 does not advise that invoices should be backdated, it simply suggests that invoices can be reissued within 30 days of receiving the VRN, breaking down the amount previously invoiced to show the VAT element. This then allows the VAT registered customers to claim input tax credit against their own VAT liability, but it does not increase the original invoice amount.

83. This guidance is however simply a pragmatic solution to the difficulty correctly identified by PLB where there is a delay between the EDR and receipt of the VRN. The liability to account for and pay VAT on supplies is not dependant on this guidance. It is a statutory liability that exists irrespective of whether SGL follows the pragmatic advice set out in the guidance.

84. Unfortunately PLB has mistakenly assumed that because a business may be subject to a penalty if it includes VAT on its invoices prior to receiving its VRN, that a business is not liable to account for or pay VAT on the supplies it makes before it receives its VRN. This assumption is not based on the legislation which is concerned only with the date from which a business is registered or registrable for VAT. As HMRC explained to PLB in correspondence on a number of occasions, the legislation makes no reference to the date of receipt of the VRN because this date has no impact on a business's liability to account for or pay VAT, which becomes chargeable solely by reference to the EDR.

85. For all the reasons set out above, the appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

86. 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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