



TC05041

Appeal number: TC/2015/02670

VAT – online filing –religious objection – appeal refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BRIAN HARVEY t/a SUN ICE AIR CONDITIONING SERVICES Appellant

- and -

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

**TRIBUNAL: JUDGE SARAH ALLATT
MR IAN ABRAMS**

Sitting in public at Fox Court on 6 April 2016

The Appellant in Person

Mr D Ridley, Officer of HMRC, for the Respondents

DECISION

5 1. The appellant trades as 'Sun Ice Air Conditioning Services' and has been VAT registered since 1990.

2. Compulsory VAT online filing was introduced for all businesses with a turnover of over £100,000, and any newly registered business, with effect from 1 April 2010 and for all businesses with effect from 1 April 2012. HMRC refers to businesses liable to registered for online filing from 1 April 2010 as "first tranche" and those
10 10 required to be registered from 1 April 2012 as "second tranche".

3. The appellant in this case was in the second tranche. His turnover was below the limit for tranche 1.

4. The Appellant received notice from HMRC on 8 February 2012 informing him he would be required to file his VAT return online.

15 5. The Appellant wrote back to HMRC on 19 April 2012 stating he 'did not wish to entertain' submitting his return electronically. In the letter he referred to 'note 1b' and also to fraud and security concerns. 'Note 1b' refers to HMRC's 'Information about filing VAT returns online and paying electronically' leaflet, in which it is stated
20 20 'There will be two, very limited, categories of customer who, by law, are not required to file online. These are a).....and b) businesses run exclusively by people who are practising members of a religious group whose beliefs are incompatible with the use of computers.

6. HMRC replied to Mr Harvey on 30 April 2012 refusing his request to be exempted from submitting VAT returns online, basing the decision on 'information
25 25 on our records as well as the additional comments in your letter'. HMRC also provided further information about security.

7. The Appellant wrote to HMRC again on 26 June 2012 repeating his desire not to file electronically. HMRC replied on 24 July 2012 requesting further details of Mr Harvey's religious beliefs. The Appellant replied on 7 August 2012 (although by
30 30 mistake the letter was dated 7 July). He stated 'there is only one person who can determin (sic) my religious beliefs and that is me and no other. You are (or other) not qualified to make such as decision on my behalf.' On 28 August HMRC replied to Mr Harvey explaining that HMRC was requesting information in order to be able to determine whether the exemption (on religious grounds) applied to him.

35 8. The Appellant replied to HMRC on 26th September, stating 'we have provided the information required to your mandation review team, who as indicated are not qualified to judge my religious beliefs....Unfortunately I cannot concur with your statutory regulations as these have been voted for by members of parliament, who have sworn an allegiance to the HM Queen, who is head of the Christian Church of
40 40 England, which is not my choice of faith.'

9. There were a number of subsequent exchanges of letters (in which no further evidence surrounding Mr Harvey's beliefs were given), culminating in an appeal by the appellant to this Tribunal. HMRC offered the use of telephone filing to the Appellant in 3 letters dated 15 July 2015, 11 August 2015 and 2 November 2015.

5 **The facts**

10. Mr Harvey gave evidence to the Tribunal and was cross-examined by Mr Ridley. The Tribunal made it clear to Mr Harvey that the onus was on him to provide evidence to show that his religious beliefs were incompatible with the use of electronic filing.

10 11. Mr Harvey re-stated his position that his religious beliefs were incompatible with filing VAT returns online. Mr Harvey acknowledged that he did not belong to any religious society. Mr Harvey said he did own and use a computer but found its use difficult, as it caused him eye problems once he had been using a computer for longer than around 10 minutes. He was also concerned about security when using the internet. In response to direct questioning he stated he did not use internet banking, 15 nor tax his car online. However, he did not expound on his religious reasons, or (despite being asked) describe any other areas of his life in general (other than online filing) where his position with regard to electronic communications caused problems and explain how these were overcome.

20 12. Mr Harvey was asked about an email address and a number of domain names that HMRC had discovered belonged to him. Mr Harvey stated that the email address had been provided to him by Virgin Media when putting in a business phone line for him, but he did not use it. The domain names had been purchased some time ago purely as an asset for the business should he wish to sell it on in the future.

25 13. When asked about the use of telephone filing, Mr Harvey stated he did not want to need to wait in for a telephone call from HMRC in order to file his return, as he had a business to run and waiting for such a call would be inconvenient. He simply wished to continue to file on paper.

30 14. We accept Mr Harvey's evidence surrounding the use of the internet, email and the purchase of the domain names.

15. We do not accept that Mr Harvey has beliefs that amount to 'religious beliefs' that are incompatible with the use of electronic communications.

The Appeal

35 16. The Appellant considers firstly, that he is entitled to an exemption under religious grounds, secondly, that refusal to allow him to file on paper breaches his Human Rights and thirdly (at the hearing and explored with agreement by HMRC) that he may fall under the new category of exemption for age, disability, remoteness of location or any other reason.

The Law

17. Section 135 of the Finance Act 2002 permitted HMRC to make secondary legislation requiring VAT registered persons to file online. The primary legislation provided as follows:

- 5 (1) s 135 Mandatory e-filing 25 (1) The Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") may make regulations requiring the use of electronic communications for the delivery by specified persons of specified information required or authorised to be delivered by or under legislation relating to a taxation matter.
- 10 (2) Regulations under this section may make provision –
- (a) as to the electronic form to be taken by information delivered to the Revenue and Customs using electronic communications;
-
- (e) for treating information as not having been delivered unless 35 conditions imposed by any of the regulations are satisfied;
- 15 (4) Regulations under this section may –
- (a) allow any authorisation or requirement for which the regulations may provide to be given or imposed by means of a specific or general direction given by the Commissioners;
- 20 (7) The power to make provision by regulations under this section includes power –
- ...
- (c) to make different provision for different cases.
- (8) References in this section to the delivery of information include 10 references to any of the following (however referred to) –
- 25 (a) the production ... to a person of any information, account, record or document
- (d) the making of any return, claim, election or application.

- 30 18. HMRC laid secondary legislation in accordance with its powers under s 135 before Parliament. This became new regulation 25A of the Value Added Tax Regulations 1995/2518 ("VAT Regulations"). This provided that with effect from 1 20 April 2012 as follows

25A VAT Regulations

- 35 (1) Where a person makes a return required by regulation using electronic communications, such a method of making a return shall be referred to in this Part as an 'electronic return system'.

(2) Where a person makes a return or a final return on the relevant form specified in a notice published by the Commissioners such a method of making a return shall be referred to in this Part as a 'paper return system'.

5 (3) Subject to paragraph (6) below, a person who is registered for 30 VAT must make a return required by regulation 25 using an electronic return system whether or not such a person is registered in substitution for another person under regulation 6 (transfer of a going concern).

(4) In any case where an electronic return system is not used, a return must be made using a paper return system.

10 (5)

(6) However a person –

(a) who the Commissioners are satisfied is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications, or

15 (b) to whom an insolvency procedure as described in any of paragraphs (a) to (f) of section 81(4B) of the Act is applied ...

is not required to make a return required by regulation 25 using an electronic return system.

(7)

20 (8) A direction under paragraph (8) above may in particular – (a) modify or dispense with any requirement of Form 4 or Form 5 (as appropriate), (b) specify circumstances in which the electronic return system may be used, or not used, by or on behalf of the person required to make the return. For the purposes of sub-paragraph (b), the direction may specify different circumstances for
25 different cases.

19. Following the case of LH Bishop Electric Company and Others [2013] TC02910, the legislation was amended with effect from 1 July 2014. The amendments provided a new category c) under s25A (6)

30 c) for whom the Commissioners are satisfied that it is not reasonably practicable to make a return using an electronic return system (including any electronic return system that person is authorised to use) for reasons of age, remoteness of location or any other reason,

and further provided explicitly that a direction by the Commissioners may

35 (10) c) approve telephone filing as a form of electronic return system for use by specified categories of persons.

20. As explained above, Mr Harvey asked for, and was refused, an exemption on religious grounds as provided for under 25A (6) (b) above. As his failure to file electronically spans the period after 1 July 2014, and as HMRC had offered the use of

telephone filing, the Tribunal also considered the application of the new legislation to his circumstances.

Religious grounds

21. To meet the exemption for religious grounds there are 2 conditions in 25A (6)
5 b).

The Commissioners are satisfied

22. The exemption is only available to those ‘who the Commissioners are satisfied’
fulfil the terms of the exemption. HMRC did not claim that this in any way limited the
jurisdiction of the Tribunal and in particular HMRC were not claiming that our
10 jurisdiction was supervisory only. Other First Tier Tribunals in similar cases have
therefore read regulation 25A(6)(a) as if the words ‘who the Commissioners are
satisfied’ were simply not there. This case is slightly different as the Appellant has
provided very little evidence one way or the other about his religious beliefs. It was
explained to the Appellant that the burden of proof was on him to do this. One of
15 HMRC’s points was that it was impossible for them to be satisfied on the evidence
given to them up to this point. We agree with HMRC in this matter, however, as
other First Tier Tribunals have not limited their jurisdiction to being supervisory only,
and in justice to the Appellant to have his full case heard, we also consider the
remaining points.

..is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications

23. There is an ambiguity in the legislation here in that it is not clear whether the
‘beliefs that are incompatible’ are those of the individual or those of the society or
25 order.

24. It is HMRCs view that it is the beliefs of the society and not those of the
individual that is relevant here, otherwise the words that refer to a religious society
are redundant. We agree with that wording of the legislation, as for public policy
reasons there needs to be an objective test (that of the beliefs of the society) rather
30 than a test on the personal beliefs of individuals.

25. Mr Harvey has acknowledged that he is not a member of a religious society or
order whose beliefs are incompatible with the use of electronic communications.

26. Therefore under that construction, and without the addition of 25A 6c, we find
that Mr Harvey is not entitled to the exemption from liability to file online.

35 27. However, in case we are wrong on that point, and again for clarity for the
appellant, we consider whether, in the absence of the ‘religious society’ requirement,
Mr Harvey’s beliefs are incompatible with the use of electronic communications.

28. Mr Harvey did not expound on his beliefs. He made it clear that he does use a telephone. He was reminded that the burden of proof was on him. We find that Mr Harvey has not discharged a burden of proof that his religious beliefs are incompatible with the use of electronic communications. We find as a fact that Mr Harvey does use electronic communications, namely telephones.

Human Rights grounds

29. Mr Harvey has read a number of newspaper articles and commentaries on the case of *LH Bishop and Others* referred to above. He has raised as a ground of appeal that his Human Rights are infringed by forcing him to file online (or indeed use any other method other than paper). He also indicated (but provided no evidence) at the Tribunal that he would wish also to claim an exemption under 25A 6 c.

30. Section 3 of the Human Rights Act 1998 provides as follows:

“3 Interpretation of legislation.

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section—

(a) applies to primary legislation and subordinate legislation whenever enacted;

(b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and

(c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

The effect of this is that primary and secondary legislation must be read in so far as possible as consistent with the European Convention on Human Rights (“the Convention”). To read Reg 25A compatibly with the Convention, we need to determine what the appellant’s human rights in this context are, in order to determine if giving a normal statutory interpretation to Reg 25A would breach them.

31. Article 9 of the Convention provides as follows:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of the rights and freedoms of others.

32. It is clear that Article 9 goes somewhat further than protecting only religious beliefs that are those of a ‘religious society or order’.

33. However, this Tribunal agrees with Judge Mosedale when she states in [2014] UKFTT 1103 (TC) ‘ *A Tribunal is very reluctant to assess the quality of a persons moral or religious beliefs. Nevertheless, it has to be the case that the law cannot protect every belief as that would be a licence to everyone to pick and choose which laws they choose to obey and those that they ignore.*’

34. Once again, Mr Harvey’s lack of evidence of the specific nature of his religious belief that prevents him from filing online does not help his case.

35. It is HMRCs case that, particularly since the addition to the legislation in 2014 referred to above, the legislation does not breach Human Rights.

36. We agree that in this case the Appellant’s Human Rights are not breached by the requirement to use an electronic method (including a telephone) to file on line. Reg 25A can be given its ordinary meaning and that reading is, as set out above, that the appellant is not entitled to an exemption from filing electronically.

‘a person for whom it is not reasonably practicable to make a return using an electronic return system....for reasons of age, disability,,,or any other reason’

37. Since 1 July 2014 the above exemption to the legislation has been added, (and the fact that an electronic return system explicitly includes telephone filing).

38. Although the application for an exemption pre-dates the addition to the legislation, as the refusal to file online or by telephone is ongoing, the Tribunal attempted to explore the possibility that an exemption under the new reg 25A 6 (c) may apply.

39. HMRC have offered the use of telephone filing to the appellant. Even though this was only offered in 2015, HMRC have indicated that, were telephone filing to be used, a ‘light touch’ approach to earlier failures to file electronically is likely to be adopted by them.

40. The appellant uses a telephone. He provided no reasons why telephone filing is either against his religious beliefs or in any way breaches his Human Rights.

41. The appellant did not provide any evidence as to any other matter which may be relevant for Reg 25A 6 (c) to grant him an exemption from electronic filing, particularly when that includes the use of telephone filing.

The Decision

42. This appeal is dismissed. We find that Mr Harvey does not belong to a religious society or order whose beliefs are incompatible with the use of electronic communications. We find that the burden of proof has not been discharged to prove that Mr Harvey personally has religious beliefs that prevent him from filing a VAT

return online. We find that the requirement to file online does not breach his Human Rights. We further find that Mr Harvey's personal beliefs do not preclude the use of a telephone, and hence (at least since 1 July 2014) would allow him to file in a manner set out in Reg 25A.

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43. 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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**TRIBUNAL JUDGE
SARAH ALLATT**

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