

Challenging a VAT registration penalty

Reasonable excuse or mitigating circumstances



M Revenue & Customs (HMRC) imposed a VAT penalty for late registration on one of our German clients.

The challenge

The penalty amounted to over £220,000 and resulted from the fact that both the German supplier and its UK customer incorrectly and unwittingly treated the supplies as EU acquisitions from Germany, rather than UK supplies which required the German supplier to register for VAT in the UK.

The error only came to light two years later when the German supplier attempted to recover some VAT incurred in the UK under the 8th Directive refund procedure. When the position was eventually corrected, our client was required to issue VAT invoices covering a two year period and to declare the VAT on its returns, only for the customer to recover the same amount of VAT on its respective returns. The net effect of this, in terms of money payable to HMRC, was nil. That was, however, until they issued the late registration penalty.

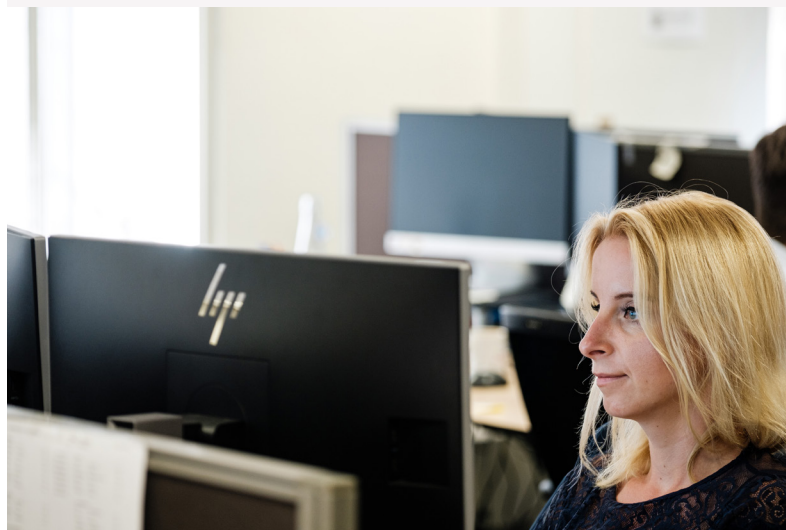
How did Blick Rothenberg help?

Blick Rothenberg took up the case and HMRC immediately agreed to mitigate the penalty by 90%. Although welcome, this still left an amount of £22,000 payable by our client. HMRC's internal reconsideration rejected our appeal on the grounds of reasonable excuse, which left the client with no option other than to appeal the matter to an independent Tribunal.

An appeal to a Tribunal is an expensive process, but our client agreed to lodge the appeal and for Blick Rothenberg to have a final attempt to argue the case. Although there was no overall tax loss, this in itself is not grounds for reasonable excuse. However, the argument that there was doubt about the liability of the client's supplies was reiterated.



Our client was delighted with the outcome, especially as the issue only related to the timing of the registration and not to a loss of tax.



The outcome

This doubt, which existed even after HMRC's rejection of the 8th Directive claim, resulted from the different rules applying in different EU member states over the place of supply of goods under arrangements referred to as "call off stock". Even so, it was not until the matter reached HMRC's solicitors office, for preparation of their statement of case that the Department decided to withdraw the penalty in full. Our client was delighted with the outcome, especially as the issue only related to the timing of the registration and not to a loss of tax.



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