HMRC - VATREG25400 - Change Of EDR To An Earlier Date

You may receive requests from businesses which are already registered to amend their EDR to an earlier date. This is usually because they have discovered that they can’t claim back their pre-registration input tax because it is out of time.

When the business applied to register, it had the opportunity to negotiate its EDR: in the absence of a provision in Schedule 1 of the VAT Act 1994 explicitly permitting retrospective amendment of the EDR, our policy is generally to refuse such requests.

Exceptionally, however, we can use our discretionary care and management powers in Schedule 11(1) to agree to an EDR change request where it would be unreasonable for us not to do so.

The eligibility criteria we usually apply when we are considering exercising that that discretion are:

the existing EDR must have been backdated. In other words, when it applied to register for VAT, the business must have chosen an earlier EDR

the registered person must be able to demonstrate that, when they were filling in the application form, they had genuinely not understood the implications of their choice of EDR, or they had filled the form in wrongly by mistake. This criterion does not extend to registered persons who made an error of judgement by, for example, miscalculating their expected liability. If the application to register was completed on the business’s behalf by an accountant, or other professional representative, this criterion does not apply. If a business has lost out on pre-registration input tax which it would otherwise have been able to reclaim because its representative made a mistake, it should pursue the representative, not HMRC, for financial redress.

the request must be made before the due date of the first VAT return (that is, one month after the end of the first period), and the return must not yet have been rendered.

You are not expected to work on the mechanistic basis that every business which does not meet all three of the change eligibility criteria must automatically have its change request refused. You should consider each trader’s circumstances separately and think about how a First Tier Tribunal judge might regard those circumstances should the trader appeal against your decision to refuse the request.

The test of any decision is that it is reasonable and proportionate in all the circumstances of the case.

It is important that you:

look at each case on its own merits

take account of all the relevant factors

don’t allow any irrelevant factors to prejudice your judgement

weigh the impact (if any) on overall tax yield of granting the request against the impact on the business of refusing the request.

take care not to use minor non-compliance – for example, the late submission of a return – as a reason to refuse the request. There are penalties for late submission, late notification, and so on. It’s not appropriate to penalise the business financially by preventing it from claiming back pre-registration input tax which it incurred on legitimate business expenditure.

You should keep a written record of every decision - this is particularly important where you have refused the request. This should include the factors you considered and any other relevant information that you took into account. Save the record to EF so that, if the trader appeals against your decision, your appeals team colleagues will be able to see how you reached it.

You should discuss cases of difficulty with your team leader. In cases of doubt, or where you feel that there is a need to do so, you should submit a Technical Advice Request (TAR) with full details and a reasoned recommendation to the VAT Advisory policy team.

Guidance about the process for submitting requests to the VAT Advisory policy team can be found in VPOLADV

If you do grant the trader’s request, the new EDR date must not be more than four years earlier than the current date.

Additionally, there will be circumstances in which you need to correct an EDR (rather than change an EDR at the trader’s request). These will occur when:

there has been an element of Departmental error with regard to the EDR when the trader’s application was originally processed

you are dealing with a belated notification case and the trader is already registered

an assurance visit reveals that a trader should have been registered before their recorded EDR.

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