

## **Time limit for a capital allowances claim?**

### **(Lecture B1167 – 15.45 minutes)**

The rules which apply to capital allowances claims are somewhat different from those which govern other types of claim in the tax system. As a general principle, capital allowances have to be claimed as part of a tax return – free-standing claims are not permitted, unlike the position with certain other reliefs.

For income tax purposes, there is no express statutory guidance about the time limits for making or amending a capital allowances claim, although HMRC argue that, if a claim has to be made as part of a tax return, it follows that ‘the time limit for making a claim or amending a claim is the normal time limit for making or amending a tax return’ (see Para CA11130 of the Capital Allowances Manual).

For income tax purposes, the time limits for filing and amending a tax return for a given tax year are respectively:

- the first 31 January after the end of that tax year; and
- the following 31 January.

Thus a capital allowances claim for 2018/19 must normally be made in a tax return filed on or before 31 January 2020 and, once made, that claim can be amended at any time up to 31 January 2021. In practice, HMRC seem to take the view that the initial capital allowances claim can be made at any time up to 31 January 2021. However, if a taxpayer files his 2018/19 return later than 31 January 2021, it is thought that he has missed an opportunity and that he cannot claim capital allowances for that particular tax year.

For companies, the law is more specific. Para 82(1) Sch 18 FA 1998 states that ‘a claim for capital allowances may be made, amended or withdrawn at any time up to whichever is the last of the following dates’. FA 1998 then lists four dates, of which the first two are:

- the first anniversary of the filing date for the tax return of the company making the capital allowances claim (this will normally be two years after the end of the relevant accounting period); and
- where a notice of enquiry has been given into that tax return, 30 days after the enquiry is completed.

Dundas Heritable Ltd was a company with a 31 March year end which carried on the business of running public houses and bars. The recent Upper Tribunal decision in *HMRC v Dundas Heritable Ltd* (2019) is concerned with the company’s tax returns for the year to 31 March 2012 and for the year to 31 March 2013. The filing date for the company’s tax return for the year ended 31 March 2012 was 31 March 2013. It was received by HMRC on 3 February 2015. The filing date for the company’s tax return for the year ended 31 March 2013 was 31 March 2014. This one was received by HMRC on 26 November 2015.

Both returns contained claims for capital allowances (which for each year totalled more than £300,000 but which were otherwise uncontroversial) and both claims were submitted more than 12 months after the relevant filing date (i.e.. after the date specified in Para 82(1)(a) Sch 18 FA 1998). Because of this, HMRC opened enquiries into these returns, restricted to the capital allowances claims. The company contended that both claims had in fact been made in good time, given that they were made within the 30-day time limit following completion of HMRC's enquiries (i.e.. before the date specified in Para 82(1)(b) Sch 18 FA 1998).

HMRC rejected the company's argument. On 16 September 2016, closure notices were issued, amending the company's returns by deleting the capital allowances claims. In 2018, the company appealed to the First-Tier Tribunal which allowed their appeal. The gist of the judge's reasoning was unequivocal: a claim is timeous if it is lodged before the last of the dates stipulated in Para 82(1) Sch 18 FA 1998. This was not accepted by HMRC – they continued to assert that the company's claims were made out of time.

Before the Upper Tribunal, the company said that the plain wording of Para 82 Sch 18 FA 1998 provided that, in a case where there has been an enquiry, a claim for capital allowances is made in a timely manner if it is made at an earlier date than the '30 days after the enquiry is completed' time limit. This was the case for each of the company's capital allowances claims and so the claims were in time and should be allowed.

Having lost before the First-Tier Tribunal, HMRC developed their line of argument further. The key point, they asserted, was that the validity of a claim had to be determined at the time when it was made and by reference to the time limits which were then applicable. Nothing which subsequently took place could, they said, operate to 'post-validate' a claim which was invalid when made. It should be noted in passing that, in order to remove a late capital allowances claim, HMRC must first open an enquiry. The Upper Tribunal judges summarised the HMRC viewpoint as follows:

'An analysis which permitted an out-of-time claim to be validated by the very process required for corrective action was entirely circular and rendered the initial time limit in Para 82(1)(a) Sch 18 FA 1998 otiose.'

This sounds like a very fair point, but the Upper Tribunal again sided with the company, reasoning that the words of the legislation are quite clear.

One commentator has summarised the position thus:

'The decision is surprising. The effect seems to be to allow a company to make a capital allowances claim in any tax return, regardless of how late the tax return is made. For, in such a case, the claim can be challenged only by the making of an enquiry into the return and the very fact of the making (or, at least, completing) of the enquiry retrospectively extends the time limit for making the claim: a sort of Catch-22 against HMRC.

This can hardly have been the result that Parliament envisaged when enacting the provision.'

However, unless and until the law is changed or the case is reversed on appeal, that is how things now stand. Remember that a decision of the Upper Tribunal creates a legally binding precedent.

*Contributed by Robert Jamieson*