

Business tax update (Lecture B1411 – 20.23 minutes)

Camping pods and capitals allowances

Summary – Basic camping pods used by children on school trips were eligible for capital allowances, while those used by their teachers were not.

Acorn Venture Ltd was a tour operator, providing residential adventure holidays for school children, mainly in the UK. Originally accommodation was provided in a mixture of tents and portacabins. The plan was that camping pods would eventually replace both tents and portacabins.

Needing to replace its old portacabins which were at the end of their useful life, the company bought 26 pre-constructed camping pods for their Breacon Beacons site:

- 20 basic pods to be used by children, with beds built into the pod but no other facilities;
- 6 teacher pods for use by the accompanying adults, which had flushing toilets, washing facilities, a small “kitchen” area and two beds in each.

The pods were sited where the former portacabins had been, with their base frames resting by their own weight on the ground, with each pod then anchored to the ground. Electricity was supplied to all of the pods using the standard connection method adopted for mobile or static caravans. The pods had a lockable door, providing a greater level of security than a tent.

The company claimed an Annual Investment Allowance totalling £354,489, representing what the company considered to be the qualifying capital cost of all 26 pods.

Following an enquiry lasting almost five years, HMRC issued a final closure notice reducing the AIA claim by £285,997.

Decision

The First Tier Tribunal noted that HMRC were not disputing that expenditure on the pods was capital in nature, incurred in relation to the company’s business. The issue was whether the expenditure should be disallowed as a result of s.21 – 23 CAA 2001.

Consequently, the Tribunal needed to consider:

1. Whether the pods were buildings and so excluded under s.21 CAA 2001;
2. If buildings, could they qualify under s.23 CA 2001 as moveable buildings intended to be moved in the course of business (List C);
3. Alternatively, if not a building, were the pods fixed structures such that the exclusion from capital allowances in s.22 CAA 2001 applied.

The First Tier Tribunal found that the basic pods for the children were not buildings. Like tents, they simply rested under their own weight on the ground, with the anchoring being no different to that used for a tent. These pods provided an “outdoor adventure experience”. They offered basic shelter only, with the same electricity supply as the tents. These pods were structures that were not fixed, meaning that capital allowances were available on these pods.

The teachers' pods were found to be fixed structures, which were also buildings. Due to the plumbing facilities being attached to the underground drain, the teachers' pods possessed a sufficient degree of permanence to become fixed. Further, they gave more facilities for living in, with greater comfort. Although these pods were moveable, the company had failed to show any intention to do so at the time of making the claim and so List C did not apply. Consequently, the expenditure on the teachers' pods did not qualify for capital allowances.

Acorn Venture Ltd v HMRC (TC09006)

Incorrect CIS status used

Summary - The company had failed to take reasonable care to comply with the Construction Industry Scheme regulations.

Access Contracting Services Ltd provided a range of tradespeople from general labourers to crane drivers through contractor companies.

The company was run by Michael Byrne who held an 80% equity interest in the company and his two sons, who each held 10%.

Michael Byrne ran the back-office with the help of an office manager. Between them, they looked after company's general compliance obligations, including completing the company's CIS returns.

The sons worked as project managers on site with the subcontractors. Whilst they were aware of the company's CIS obligations, they had little knowledge of the back-office function.

In 2008 Michael Byrne retired and handed over the compliance and administrative duties to the office manager, he believed to be fully capable of running the compliance function of the business, including completing the respective CIS returns and conducting the required diligence checks on gross payment status.

In 2014/15, the company started working with three new companies and the office manager contacted HMRC to obtain the CIS status of these companies. All three companies should have been paid net of tax but were actually paid gross, returning the payments as gross payments on the CIS return.

Following an enquiry, HMRC sought to recover £447,000 of under-deducted CIS deductions from the company and charged £97,000 of penalties on the basis of a careless inaccuracy with prompted disclosure.

The company appealed, claiming that Regulation 9 of The Income Tax (Construction Industry Scheme) Regulations 2005 applied. This would be the case if condition A of Regulation 9(3) applied. Under this condition the contractor must satisfy HMRC that:

- reasonable care was taken to comply with the CIS Regulations
- the failure to deduct the tax was:
 - due to an error made in good faith, or
 - there was a genuine belief a deduction was not due.

Decision

The First Tier Tribunal stated that the term 'reasonable' must be looked at by considering the size of the business in terms of practical processes, checks for its size and the overall scale of the payments made.

The Tribunal found that in 2015/16, the payments totalled more than £700,000, a substantial sum. Systems should have been in place to ensure that compliance with legislation was adhered to. However, there was no evidence of checks or controls for CIS compliance and that the office manager did not document any CIS status checks performed.

The Tribunal concluded that the company had not exercised reasonable care and so the relieving provision potentially available under Regulation 9 could not apply.

However, as the company was in regular contact with HMRC and had provided all of the information needed by HMRC, the First Tier Tribunal found that the maximum penalty reduction for 'telling, helping and giving' should be applied.

The appeal was dismissed.

Access Contracting Services Ltd v HMRC (TC08994)

Live screening of plays

Summary - Live screenings of plays around the country were not the same as attending the performance in person, meaning that the fee charged was standard rated.

Group 13 Schedule 9 VATA 1994 states that admission charges to cultural events like theatre performances are exempt provided certain are met. However, cinema screenings are subject to standard rated VAT.

Derby Quad Limited ran a visual arts and media centre, art exhibition and cinema. The company contracted with the National Theatre and Royal Shakespeare Company to screen live theatrical performances taking place around the country.

As an eligible body, no VAT was charged on the basis that the screenings were supplies covered by Item 2, Group 13, Schedule 9 VATA 1994. The company argued that they were making live screenings, which were simply an extension of actual theatre performance using digital technology.

All parties agreed that the company was an eligible body but HMRC argued that:

- "performance" is different to "showing" or "screening";
- A theatrical performance means "a live performance happening in a natural setting rather than a dramatic performance on a screen";
- A theatrical performance takes place in a single location and it could not take place in more than one location at any one time.

Consequently, HMRC argued that the screenings were not live performances, making them standard rated. and issued assessments for VAT periods 03/17 to 12/18 inclusive.

Derby Quad Limited appealed against the assessments for the under declared VAT on admission charges to live event performances broadcast to other locations. Further the company argued that even if the Tribunal found that VAT was due, HMRC were out of time to raise the assessments.

Decision

The issue to be decided was whether by supplying live screenings of theatrical events Derby Quad Limited supplied the right of admission to a theatrical performance.

The First Tier Tribunal found that, despite similarities, live events were not the same as being at an actual theatrical performance because the actors cannot hear the audience and there is no audience and performer interaction.

The screenings were not theatrical performances and so standard rated VAT applied.

When considering whether the assessments raised were out of time, the First Tier Tribunal stated:

“HMRC require sufficient evidence, actually within their knowledge to justify making the assessment. The Tribunal should look at the last piece of evidence of the required facts that justified making the assessment.”

On that basis, the Tribunal found that the assessments had been validly made.

Derby Quad Limited v HMRC (TC08972)

Historic claim for ex-demonstrator cars

Summary – HMRC was entitled to reject a further overpaid VAT claim as an agreement reached under s.85 VATA 1985 precluded the claims from succeeding.

The two companies had originally accounted for VAT under the VAT margin scheme which was based on HMRC policy at the time.

Following the decision in *Commission v Italian Republic (Case C-45/96)*, it seemed that motor dealers could submit claims for VAT to be repaid. However, HMRC initially rejected the companies' repayment claims and so they had appealed to the First Tier Tribunal. The claims were eventually settled by agreement under s.85 VATA, based on tables published by HMRC. Tables were needed to estimate the claims figure to be paid as business records dating back to 1973 were likely to be lacking.

It later transpired that the tables used to calculate the repayments made contained errors and so the two companies submitted further repayment claims for additional amounts of overpaid VAT based on the revised tables.

HMRC denied these claims and the First Tier Tribunal rejected the companies' appeals.

Arguing that the First Tier Tribunal had erred in law by concluding the s.85 agreement was the final settlement, the companies appealed to the Upper Tribunal.

Decision

The Upper Tribunal found that the additional claims were not 'new' claims, outside the scope of the s.85 agreement saying:

'On the taxpayer's assertion that the 2009 claims were based on a different method of calculation, the tribunal disagreed saying if that were the case 'every slight change in the method of calculation during the course of negotiation of a claim would technically result in a new claim, with all the risks highlighted in the case law of the supposedly new claim falling foul of statutory time limits'.

Did the s.85 agreement preclude the 'revised' additional claims from succeeding?

The Upper Tribunal considered it unlikely that parliament intended s.85 to permit a taxpayer to ignore that agreement if at a later date 'new facts which, if known to it earlier, would have enabled it to reach a more advantageous settlement'. On that basis, the original agreement precluded the companies from making amended claims in relation to the same period.

The appeal was dismissed.

*Cambria Automobiles (South East) Limited and Invicta Motors Limited v HMRC
[2023] UKUT 00249 (TCC)*

Errors in assessments

Summary – HMRC's best judgment assessment was adjusted to take into account errors made by HMRC who had excluded corporate sales from their workings.

Aleksander Vinni ran patisserie and sandwich bars from two premises in London. As well as the shop sales, there were a few bar stools for those wanting to eat on site and the business also provided sandwiches and other products to a small number of corporate clients.

VAT was paid under the Point of Sale VAT Retail Scheme (VAT Notice 727/3).

It was claimed that staff were trained to identify and record the different types of supply and always asked customers whether they intended to eat-in or take-away, and then record the sales in the tills as either standard or zero-rated sales for VAT purposes.

Aleksander Vinni's wife produce daily Z-reports from the till which were then used by the accountant to calculate the quarterly VAT returns.

HMRC's systems identified that the level of standard-rated sales for the business was "too low". This was on the basis that the historic records showed the proportion of standard-rated sales as being approximately 11%. Based on other businesses of a similar type, HMRC expected the figure to be between 25% to 35%. HMRC carried out an unannounced visit, which indicated a figure of 55% for standard-rated sales.

Aleksander Vinni was asked to carry out two weeks of self-invigilation, which indicated that standard rated sales represented 33.58% of total sales.

On the basis of the officer's best judgment, HMRC issued an assessment for £22,658 covering periods June 2014 to March 2018, with a six-month suspended penalty for £3,398 on the basis that:

- A list of standard-rated items should be displayed next to the tills and the staff's understanding of the VAT treatment would be checked every month;
- If the standard-rates sales in any VAT period fell below 29%, he would carry out a review of the Z reports to establish why this could be.

At the end of the suspension period, HMRC confirmed that the conditions for the penalty were met and so the penalty was cancelled.

At no point in this case did HMRC claim that takings had been suppressed.

Aleksander Vinni appealed to the First Tier Tribunal, claiming that the assessments were not made to the best of HMRC's judgment.

Decision

The First Tier Tribunal disagreed that the HMRC officer had acted 'dishonestly and capriciously' in arriving at HMRC's assessments. The Tribunal acknowledged that errors had been made and that "there were clearly some shortcomings in the approach of HMRC" but the "accusations of fraud and dishonesty were exaggerated and misplaced".

The First Tier Tribunal accepted that HMRC's figures did not take into account the effect of the corporate sales made by the business. Typically, these sales involved the supply of sandwiches and other cold food products, such as fruit, meaning that they would be zero-rated as supplies of food within Group 1 Schedule 8 VATA 1994.

The Tribunal acknowledged the HMRC officer had made some arithmetical errors in her calculations but some of these errors favoured HMRC and others favoured the taxpayer. In the Tribunal's view, the calculation for each period up to March 2018 should be recomputed such that the proportion of standard-rated sales applied to each period should be 26.72% being the proportion of standard-rated sales during the self-invigilation period if the corporate sales had been taken into account.

Aleksander Vinni v HMRC (TC08976)

Changes to the DIY Housebuilders Scheme

The DIY Scheme allows an individual who either builds their own home, or converts a non-residential building into their own home to reclaim the VAT incurred on qualifying building materials.

Two changes have been made to the scheme, which became effective from 5 December 2023:

1. Individuals now have the option of submitting their DIY housebuilders VAT refund claim digitally, although those wishing to submit a paper-based claim will still be able to do so;
2. The time limit for claims is extended from 3 months to 6 months after completion of the build.

<https://www.gov.uk/government/publications/vat-diy-housebuilders-scheme-digitisation-of-claims-and-extending-time-limit/vat-digitisation-of-claims-and-extending-time-limit-for-diy-housebuilders-scheme>