

Business tax round up

(Lecture B1141 – 17.36 minutes)

Late CIS returns – HMRC evidence lacking

Summary – With no evidence provided by HMRC to support their appeal, only one of the penalty notices imposed on the company for the late filing of CIS returns was valid.

ESE Rendering Solutions Limited was incorporated on 26 March 2015 as a plastering and rendering contractor. It was registered as an employer and contractor for CIS purposes on 14 April 2015. It has two directors, one of whom was Katie Langton.

The Notice of Appeal, dated 26 September 2017, sought to challenge 34 separate penalties, totalling £6,900, imposed by HMRC on the company for the late filing of Forms CIS 300 for a succession of periods from August 2015 to January 2017.

HMRC stated that:

"The penalty notices were issued to the Appellant and their representative on the dates detailed to the addresses held on record. None of the notices were returned as undelivered."

However, the company claimed that they had not received any penalty notices.

On 7 September 2017, HMRC sent a letter setting out all the penalties said to have been issued but there was nothing in that letter to substantiate the source of the information. Moreover, the table did not match the table in the Statement of Case, and there was no evidentially admissible explanation for the inconsistencies.

At the hearing, the company produced two letters from Debt Management dated 16 December 2016 and 23 January 2017 respectively relating to a CIS Fixed Penalty of £200 for the period ended 5 August 2016 and a CIS Fixed Penalty of £100 for the period ended 5 October 2016.

Both letters were headed 'Construction Industry Scheme amount due' and had a schedule headed 'Statement of Liabilities'. However, neither letter referred to anything other than the £200 for August 2016, and £100 for October 2016.

Decision

The Tribunal did not understand why, if HMRC was owed money in relation to other penalties, why those were not mentioned in the two letters produced as evidence and so were not apparently being pursued.

As no other documentary evidence was produced by HMRC to support earlier penalties, the Tribunal concluded that there was no evidence before 16 December 2016 of any penalties being issued at all and so the earlier penalties were discharged.

The Tribunal found that HMRC did give notice of the remaining two fixed penalties (August and October 2016), However, since the £200 penalty for the period ending 5 August 2016 did not appear in HMRC's Schedule of amounts payable, this penalty was also discharged.

The Tribunal were satisfied that the one remaining fixed penalty of £100 for the period October 2016 was valid. The company had been made aware of it, through its accountants, in December 2016. The monthly return for that period was due by no later than 19 October 2016, but was not received (as part of a batch of returns) until 29 June 2017.

ESE Rendering Solutions Limited v HMRC (TC07137)

Partnership losses and dissolution

Summary – The taxpayer's draft accounts did not contain any analysis that could justify the current year loss claim, which meant that the losses claimed as carried forward to subsequent years were also disallowed.

From 14 April 2004 Douglas Shanks LLP carried on the profession of accountancy with two members: Douglas Shanks and Celestial Accounting Limited, a dormant company. On 30 June 2008, Mr Shanks ceased practicing with the LLP and he became a partner in a series of other LLPs.

His 2008/09 tax return included partnership pages for the LLP where he claimed a current period loss of £221,667 and carried forward other losses of £235,298.

His 2008/09 and later returns contained no partnership pages for his share of profits from the new LLPs that he was involved with but instead self-employment pages where he reported the profits that he was entitled to. In the white space of these returns he wrote that throughout, his income should be treated as from one profession, and that his trade had continued throughout.

Douglas Shanks LLP was dissolved on 13 October 2009. Mr Shanks claimed deductions for the brought forward losses sustained in Douglas Shanks LLP against his income in the tax years 2009/10 and 2010/11. He argued that he had a single source of consultancy income throughout his professional career, providing the same services to a continuing and consistent body of clients. Losses sustained in earlier years could be carried forward and offset against profits in later years.

HMRC disagreed arguing that the loss relief claim for 2008/09 was not allowable. The deadline filing date for the Douglas Shanks LLP partnership tax return was 31 January 2010 and any amendment needed to be made by 31 January 2011. The amended 2008/09 return was not filed until filed 11 October 2012 and so was out of time and filed about three years after the LLP had been dissolved. Draft accounts of the LLP were not filed until 11 September 2014 – around five years after dissolution, and around two years after the amended tax return was filed. No finalised accounts were submitted – probably because, having been dissolved in 2009, there was no legal entity in existence to finalise financial statement. For all these reasons the purported losses were unsubstantiated.

Additionally HMRC argued that the losses could not be carried forward against the profits of other LLPs. Douglas Shanks LLP was separate from that of the other partnerships. Therefore any losses from the former could not be carried forward against profits from the latter.

Douglas Shanks appealed.

Decision

The First Tier Tribunal rejected HMRC's argument that the dissolution of a firm before the filing of a partnership return reporting the results of its actual trade disqualified Douglas Shanks from reporting the results of his notional trade.

However, the Tribunal acknowledged that he had only provided draft accounts and that these did not contain any analysis that could justify the loss claim. It therefore dismissed the appeal against the 2008/09 closure notice. This meant that the losses claimed as carried forward to subsequent years were also unsustainable, so that the appeals against the 2009/10 and 2010/11 closure notices also failed.

The Tribunal found that Mr Shanks was a partner in a succession of partnerships that meant that the basis on which he had reported his income in those returns was incorrect. However, the inaccuracy was not deliberate. He had taken a view and followed it accurately in all his returns, explaining it in the white space. He had not been careless; he had taken considerable care when reporting the information, including white space statements in his returns. No inaccuracy penalty was therefore due.

Mr Douglas Shanks v HMRC (TC07118)

Ceroc dancing

Summary - The teaching of Ceroc dancing was not purely recreational and fell within the education exemption.

Anna Cook had taught Ceroc dancing classes under a franchise agreement with Ceroc Enterprises. The teaching of Ceroc uses a form of pairs dancing that incorporates moves from many other styles of dance (ballroom, salsa, jive, hip hop and tango), and involves a particular methodology for learning those moves.

She had neither registered for VAT, nor paid any VAT.

The issue was whether her tuition fell within the education exemption Sch 9 Group 6 Item 2 VATA 1994 as 'the supply of private tuition, in a subject ordinarily taught in a school or university'.

Decision

Referring to Haderer (Case C-445/05), the First Tier Tribunal noted that the exemption is not limited to education which leads to examinations for the purpose of obtaining qualifications, or which provides training for the purpose of carrying out a professional trade. It includes other activities, provided that those activities are not purely recreational.

As dance was a subject ordinarily taught in schools, the first question was whether teaching Ceroc dance was the same as teaching dance. On the basis that Ceroc involves at least 500 moves and is a methodology to teach dance, the First Tier Tribunal found that teaching Ceroc was the same as teaching dance.

The Tribunal also found that Ceroc was not purely recreational, as classes involved the transfer of knowledge and skills from teacher to pupil. They included an educational content.

The appeal was allowed.

Anna Cook v HMRC (TC07149)

Adapted from Tax Journal (7 June 2019)

Registration and the Flat Rate Scheme

Summary – The First Tier Tribunal lacked jurisdiction to vary the 9.5% FRS rate used to calculate the VAT liability and HMCR’s assessment. However, given the circumstances, the Tribunal asked HMRC to consider allowing the taxpayer to withdraw retrospectively from the scheme.

Peter Hartigan had been self-employed since 2005/06, repairing and fitting gates. He undertook no new-build housing work.

Despite his online accounting system showing turnover of £89,635 for the year to 31 March 2015, Mr Hartigan had never been VAT registered. On 9 December 2015, HMRC wrote to Mr Hartigan to request details of his income and expenditure and a copy of his bank statements. There followed responses from Mr Hartigan in December 2015 and January 2016, giving the requested information to cover the period from April 2011 to March 2014.

From HMRC’s schedule listing the actual monthly sales from April 2011 onwards, Mr Hartigan’s rolling 12-month turnover was at £78,486.50 by October 2012, when the registration threshold stood at £77,000, making The Effective Date of Registration (‘EDR’) 1 December 2012.

Mr Hartigan claimed he had never been advised to register for VAT by his accountant. He knew little about tax and when asked of his understanding of VAT, he said that he believed VAT was to be taken into account when profit (not turnover) was over a certain threshold and that he had never charged VAT on his jobs. This was why he had engaged the service of an independent accountant, Alan Henderson, to undertake his accounting and tax work.

Later he engaged a second accountant, Tom Murray, who advised Mr Hartigan to join the flat rate scheme with retrospective effect from December 2012, applying a 9.5% flat rate that was relevant to his business.

HMRC calculated that tax of £21,335 was due for the period from 1 December 2012 to 31 March 2015 and assessed this amount. Mr Hartigan appealed.

Decision

The First Tier Tribunal concluded that Mr Hartigan had been let down by his accountants.

The first had not dealt with his client's VAT registration, despite the fact that his self-assessment returns clearly showed income that breached the threshold for over two years. The Tribunal added that it was unfortunate that Mr Hartigan had not been advised to make labour-only supplies, and to arrange for his customers to be invoiced directly by the suppliers for the materials, especially for the high-value items from catalogues. If he had been so advised, then his invoiced totals would not have pushed him over the VAT registration threshold in force for the relevant periods. The Tribunal had much sympathy for the taxpayer but stated that they can only apply the law to the facts of the case. There is no dispute that the income meant that the VAT registration threshold was breached by the end of October 2012, making registration compulsory as from 1 December 2012. This is the material fact.

The second accountant had ill-advised him to join the Flat Rate Scheme. The Tribunal highlighted that the VAT due of £21,335 was some 40% higher than it would have been had he remained outside the Flat Rate Scheme. However, the Tribunal lacked jurisdiction to vary the 9.5% Flat Rate Scheme rate used to calculate the VAT liability. Unfortunately, HMRC does not allow a retrospective Flat Rate Scheme withdrawal just because more tax has been paid. It followed therefore that they no other option but to confirm the VAT assessment for the period from 1 December 2012 to 31 March 2015 in the sum of £21,334.

However, in summing up, the Tribunal encouraged HMRC to allow Mr Hartigan to withdraw from the FRS back to 2012 in view of the exceptional circumstances, and to recalculate his liability accordingly.

Peter Hartigan T/A Striking Iron V HMRC (TC07109)

Production costs – direct + immediate link

Summary – Residual VAT recovery was possible relating to taxable supplies with a direct link to productions costs. These included catering, recording sales and certain production specific events. Other disputed supplies were denied.

The Royal Opera House Covent Garden, home of The Royal Opera, The Royal Ballet and The Orchestra of the Royal Opera House, produces internationally acclaimed opera and ballet.

Although as a charity the Royal Opera House does not expect to make a profit, the income from catering and retail sales, in addition to box office receipts and funding from Arts Council England, was required to support its artistic output. A visit to the Royal Opera House begins when booking a ticket on the website, but is extended to include the opportunity to reserve a table in the restaurant for the entire evening, purchase champagne, ice cream and programme vouchers. In addition, unlike the restaurants and bars, which were the preserve of ticket holders only, the shop was open to the public from 10am on Mondays to Saturdays and most evenings closed either at curtain, which was shortly after 7:30pm, or when there was not a performance at 6:00pm.

Tickets bought to see an opera or ballet are exempt from VAT under Group 13 Schedule 9 VATA 1994 (cultural services etc). The Royal Opera House also makes a number of taxable supplies such as catering, programme sales and production specific commercial sponsorship. With the Royal Opera House making both taxable and exempt supplies, the business is a partially exempt trader and as such, should be able to recover input VAT to the extent that it relates to taxable supplies.

On 15 December 2017 HMRC denied a claim by the Royal Opera House to recover input tax of £532,069 associated with the cost of staging productions (the Production Costs) at the Opera House between 1 June 2011 and 31 August 2012. The Production Costs were costs related to each production and not the costs of the Royal Opera House permanent staff or its fixed overhead costs. These included the fees for guest performers and conductors, creative teams, music costs, the cost of sets, props, costumes, transportation, extras and actors.

The issue in this case is whether there is a direct and immediate link between the Production Costs and the following taxable supplies (the “Disputed Supplies”) made by the Royal Opera House:

- Catering income (bars and restaurants) and ice cream sales;
- Shop income;
- Commercial venue hire;
- Production work for other companies.

Decision

The Tribunal concluded that the opera or ballet is central to everything the Royal Opera House does. Taking an economically realistic view, purpose of the Production Costs was not solely for the productions of opera and ballet but also to enable the Royal Opera House to maintain its catering income. There was a direct and immediate link between Production Costs and the catering supplies in the bars and restaurants of the Opera House. The same applied to the sale of ice creams.

The Tribunal also concluded Production Costs do have a direct and immediate link to the sale of recordings, both audio and visual, of Royal Opera House productions. The same could not be said of the remaining supplies that the shop made which had no more than a commercial link.

The Tribunal considered that there was a direct and immediate link between the Production Costs and production specific events, such as a Gala Dinner in support of a production by a sponsor. But this was not the case for other commercial events such as the Wimbledon Champions Dinner. In such circumstances there was no connection or link with any specific production and input tax recovery was denied.

The Royal Opera House receives orders from other opera and ballet companies to construct scenery and make costumes. In the Tribunal’s view, this was not a direct and immediate link with the Production Costs. This work was undertaken at a fixed price, which includes materials and labour, and as such the Production Costs could not be a cost component of these supplies.

In summary, there was a direct and immediate link between the Production Costs and the taxable catering supplies in the Royal Opera House’s bars and restaurants, sales of ice cream, shop (including online) sales of recordings of Royal Opera House productions and production specific commercial venue hire. There was no such link in the case of the remaining Disputed Supplies.

No VAT on payroll services

Summary – A Payroll Service to support disabled persons constituted a “supply of services closely linked to welfare work” and a supply of “services which are directly connected with the provision of care” and so were exempt

Section 1 Care Act 2014 sets out the general responsibilities of local authorities relating to care and support for adults and states that local authorities should promote the well-being of disabled individuals which includes helping the person to take control over day-to-day life. Disabled persons often require help in order that they can remain in their home and live independently. The help that is needed is usually provided by a carer or Personal Assistant, who visits the disabled person in their own home and assists them with everyday tasks.

The individuals concerned may be eligible for financial assistance, in the form of a personal budget, from local authorities to assist with their identified care and support needs. This budget may be managed in a number of ways, but the government's preferred approach is by a direct payment being made to the disabled person or their representative (“Direct Payments”). Direct Payments enable the disabled person to take control of and pay for their own support/health and wellbeing services, thus enabling them to live independently in their own homes.

Unfortunately, employing a carer requires the disabled person to act as an employer of the Personal Assistant, which entails legal and administrative requirements, including payroll and all that that entails

Cheshire Centre for Independent Living is a charity that provides a range of support services for disabled people, their families and carers. One of the services that they provide is such a Payroll Service.

On 11 January 2013 HMRC ruled that the Payroll Service supplied to the individual was standard rated for VAT, and did not qualify for the welfare services exemption in item 9 group 7 sch 9 VAT Act 1994. HMRC argued that the Payroll Service was one step removed from the actual care received by the recipient of care. The supplies related to the administration of the Direct Payments necessary to fund the care – and not to the actual care itself.

Cheshire Centre for Independent Living appealed. They argued that Direct Payments are an intrinsic feature of independent living. They are the means by which disabled people are able to purchase the support they need to be able to go to work, support their families and engage in everyday activities. Their object is to give vulnerable people control over the services they receive, enabling them to live independently in their own homes. The related payroll services are connected and so should be exempt from VAT.

Decision

The First Tier Tribunal stated that this type of Payroll Service must be viewed in the context of its provision to the recipients of Direct Payments, rather than by comparison with employers generally who may choose to engage a payroll bureau.

The First tier Tribunal stated that the dispute concerned whether the Payroll Service constitutes a “supply of services closely linked to welfare work” for art 132(1)(g) of the Principal VAT Directive, and a supply of “services which are directly connected with the provision of care” for item 9. The First Tier Tribunal concluded that to be exempt the payroll service needed to be closely linked to a principal exempt supply.

Without the Payroll Service, many disabled persons would have to forego taking a Personal Assistant as they could not cope with the employer responsibilities. This would contradict the Department of Health’s objective that disabled people should take ownership of their care planning.

The appeal was allowed.

Cheshire Centre for Independent Living v HMRC (TC07182)