

## HMRC tried to go against the grain

### (Lecture B1138 – 21.00 minutes)

There have been many changes to the capital allowances legislation and case law since it was confirmed by the Court of Appeal in *Schofield v R & H Hall Ltd* (1975) that grain silos were plant for the purposes of capital allowances.

In that case, the Court reiterated the principle that something which was a building or structure could simultaneously be plant or machinery. Legislation was later introduced in FA 1994 in an attempt to draw a line between something being both:

- a building or structure; and
- plant or machinery.

This legislation now appears as Ss21 and 22 CAA 2001.

S21 CAA 2001 restricts expenditure on the provision of plant or machinery from including expenditure on the provision of a building. By the same token, S22 CAA 2001 restricts such expenditure from including expenditure on the provision of a structure or a similar asset. However, in order to preserve the integrity of the case law that existed in 1994, a list of exceptions to those restrictions was produced – see S23 CAA 2001 (List C).

List C includes, at item 28(a), the provision of silos for temporary storage. However, even if an item falls within List C, it must still qualify as plant or machinery in accordance with S11(4)(a) CAA 2001 which means that it has to satisfy the case law criteria for meeting the key requirement.

Some 44 years after the Court of Appeal handed down their verdict in the *Schofield* case, the First-Tier Tribunal had to decide in *May v HMRC* (2019) whether or not, in the light of present day legislation and case law, a modern facility for holding grain qualified as plant for capital allowances purposes.

In *May v HMRC* (2019), the taxpayer (M) incurred expenditure on the construction of a purpose-built facility for drying, conditioning and storing the grain that he grew and harvested on his 900-acre farm in Devon until such time as that grain was sold to local farms and feed mills.

M's facility consisted of a large steel-framed barn with a concrete floor and three-metre high walls. Piles of grain (being wheat, barley and oats) lay on the floor, separated by a permanent wall down the middle of the structure as well as a moveable barrier further to sub-divide the storage space. The ventilation equipment to dry the grain included an air inlet vent on one side of the building with an extractor fan opposite to draw air across and out of the space. Sitting on the floor and protruding through the levelled piles of grain were moveable vertical tubes (described by M as 'pedestals') with fans on the top. When the outside air was drier than the grain, a central control switched on the pedestal blowers and the drawn-up air then removed moisture from the grain.

Grain was held for up to 10 months in this silo before the facility was emptied and cleaned so that it could be made ready for the following year's harvest.

M claimed capital allowances on his expenditure in respect of the tax years 2011/12, 2012/13 and 2013/14. HMRC rejected the bulk of his claims and only accepted that certain items within the facility itself, equating to 20% of the expenditure, constituted plant. HMRC's conclusion was that most of the expenditure incurred on the construction of the facility for the purposes of drying, conditioning and storing grain did not attract plant or machinery allowances.

It was accepted by M and his advisers that the silo was a building under S21 CAA 2001. Therefore, when M could not reach an accommodation with HMRC, the First-Tier Tribunal judges had to decide two issues:

1. whether the facility was a silo 'provided for temporary storage' within the meaning of List C in S23 CAA 2001; and
2. whether the facility was 'plant or machinery' within the meaning of S11(4)(a) CAA 2001.

Para CA22050 of the Capital Allowances Manual states:

'Treat a grain silo as plant where, together with its attendant machinery, it performs a function in distributing the grain so that it acts as a transit silo rather than a warehouse.'

The cases where a structure was held to be plant show that a building or structure can be plant if and only if it is apparatus for carrying on the business or employed in the business rather than being the premises in which the business is being carried on.'

It is well known that HMRC manuals do not have the force of law, but most people, when reading the above quotation from the Capital Allowances Manual, would probably assume that the expenditure on M's silo was not a contentious matter. However, one intriguing aspect of this case is that evidence was given before the First-Tier Tribunal in support of M's argument by a Mr Doodney who had worked for HMRC as a capital allowances specialist until 2015. While within HMRC, Mr Doodney was asked to provide technical guidance on M's claim for his silo costs and he advised that the farmer's case had merit. He was then told that HMRC's policy was to 'hold the line' that such structures were not eligible. As a result, he produced a report for his employers, stating that the expenditure did not qualify!

The word 'silo' is not defined in the capital allowances legislation and so the parties agreed that it should take the dictionary meaning. They settled on a definition that a silo needed to have no purpose other than storage and it could include any structure built above ground (ie. the term was not confined to pits or underground chambers).

The First-Tier Tribunal found that M's building was specifically designed, built and used to store, condition and maintain grain through a continuous process of aeration. The cost was much greater than that of a general-purpose agricultural building and its features made it unsuitable for other agricultural uses. The judges were therefore satisfied that the building was a silo.

The case then turned on the question of 'temporary storage'. In Schofield (the only other reported capital allowances dispute about a silo), the grain was stored for up to seven days while it was in transit and so HMRC argued that, while this very short period was clearly 'temporary', holding the grain for up to 10 months (as M did) was much closer to being 'permanent'. The First-Tier Tribunal were unconvinced by this line. The judges noted that silos could be used to store all sorts of commodities, some of which might be retained indefinitely. Here, however, the grain could not be kept for longer than 10 months without deteriorating and was anyway only held until it could be sold. Given that M's business was growing and selling grain, holding his stock for the time being was simply part of that operation. The First-Tier Tribunal were happy that the storage was indeed 'temporary'.

Finally, the judges had to decide whether the silo qualified as 'plant' under general tax law. In other words, did the silo function as apparatus with which the farmer carried on his trade or did it represent non-qualifying business premises in which that trade was conducted? Their conclusion was that M's facility dried and conditioned grain and so all the components, including the structure, were integral to this and constituted business apparatus. The expenditure on the facility was eligible for capital allowances in full, even though it was regarded as a building.

It will be interesting to see whether HMRC appeal this case, in view of the fact that the tribunal's finding went so strongly in the taxpayer's favour.

*Contributed by Robert Jamieson*