

## **Business tax round up (Lecture B1436 – 13.02 minutes)**

### **Research and development enhanced credit**

*Summary – An R&D expenditure claim was rejected as the company was unable to show any advance in science or technology.*

Flame Tree Publishing Limited was a publishing company that published books in bound paper form including encyclopaedias and music guides, all archived on CDs and DVDs.

With customers preferring access to material in digital form, the company undertook research to make its books available as searchable resources in digital form.

On 30 June 2020, it filed an amended Corporation Tax return for the period ended 30 June 2018, claiming an enhanced deduction of £266,644 in respect of expenditure on research and development. This reduced the corporation tax payable by £50,662.

HMRC enquired into the amended return, and on 1 July 2022, issued a closure notice refusing the claim and requiring the company to repay the £50,662.

Flame Tree Publishing Limited appealed to the First Tier Tribunal, initially arguing that it had carried out seven separate "projects", each of which had met the requirements published by the Department for Business, Innovation and Skills to be able to claim the relief. However, at the hearing the company argued its case on the basis that there had been only a single composite project.

#### *Decision*

The company's claim failed as the First Tier Tribunal found that its work did not result in an 'advance in science and technology' as defined in the guidelines, but rather that the technology had been invented by others and was merely new to the company. No one involved in the project possessed skills in software, programming or computing and no patents had been registered as a result of the project.

The appeal was dismissed.

*Flame Tree Publishing Limited v HMRC (TC09149)*

### **Entitlement to share in partnership assets**

*Summary – Following her resignation, the taxpayer remained entitled to her quarter share of the partnership assets, despite no financial terms having been agreed.*

The Procter family owned about 600 acres near Skelton consisting of farmland, a golf course, farmhouses and ancillary buildings. By the time of this case, and in an attempt to avoid the payment of tax, the land was "owned and managed through a complex web of trust, partnership and company structures".

Suzanne Procter and her brothers, Philip and James, were partners with their father. The mother had previously been a partner but she had retired from the partnership in April 1997, with her profit share being distributed to the three children, so that at the time of this case each partner held a quarter share.

In 2010, Suzanne Procter wrote resigning from the partnership. There was no provision in the partnership agreement for one partner unilaterally to resign, but the other three partners accepted she had ceased to be a partner. Nothing was discussed about any financial terms at the time of her resignation.

Following her father's death, in 2014, Suzanne Procter brought a claim in the High Court against her brothers and the other entities which owned or occupied the land. She sought her share of the value of the partnership's assets as at the date she had resigned in 2010. Her claim subsequently was limited to a quarter share in the then value of the 1994 tenancy over the land.

The brothers appealed to the Court of Appeal

### *Decision*

The Court of Appeal found that when a partner wishes to resign from a partnership, they are saying that they wish to cease to be a partner and no longer carry on business in common with the other partners.

In this case the other partners accepted this resignation but what was the effect on the outgoing partner's share in the partnership property?

The Court of Appeal found that since the partnership is a collective name for the partners trading together, the partners together own the partnership assets. That means that each partner has a proprietary interest in the partnership property.

What happens to this interest when a partner retires depends on what the parties have agreed.

In this case, there was no express provision in the partnership agreement for the outgoing partner to receive a payment in respect of their partnership share, or indeed that it shall vest in the continuing partners without payment.

There was no '*ad hoc* agreement' made at the time of resignation. As the judge stated Suzanne Procter 'never agreed that she would hand over her share in the partnership assets to the other partners without payment, and never agreed the terms on which she might do so.'

- By resigning, she was saying that she wished to cease being in partnership with her father and brothers, not that she was agreeing to give up her proprietary interest in the assets;
- By accepting her retirement all that the other partners were agreeing to was that she should cease to be a partner.

The Court of Appeal stated:

"The other partners have in effect taken over the assets, but she has not assigned or lost her interest in the net assets as they stood in 2010."

Had all of the partners retired and the partnership been wound up, she would have received her share of the assets and liabilities at that time. Consequently, the Court of Appeal concluded that she was entitled to her share of the assets and liabilities at the date of resignation or retirement based on their value at that time, together with 5% interest from 8 July 2010.

The appeal was dismissed.

## **Mega marshmallows**

*Summary - Mega Marshmallows were zero rated as they did not fall with Excepted item 2 of Group 1 Schedule 8 VATA 1994.*

Innovative Bites Limited supplied 'mega marshmallows' which they argued were zero rated food (Group 1 Schedule 8 VATA 1994).

HMRC disagreed, believing the product to be standard rated confectionery (Excepted Item 2). Assessments were issued to collect nearly £473,000 of VAT for supplies of the product between June 2015 and June 2019.

The First Tier Tribunal found in the company's favour. Having considered the marketing, packaging, size of the product, location in supermarkets and the seasonal fluctuation in sales, the Tribunal concluded that the marshmallows were sold and purchased as a product specifically for roasting and therefore qualified as a zero-rated cooking product.

HMRC appealed to the Upper Tribunal arguing the First Tier Tribunal had been incorrect by adopting its multi-factorial approach. It claimed that the marshmallows clearly fell within Note 5 which is a deeming provision and reads: "... 'confectionery' includes chocolates, sweets and biscuits ..... and any item of sweetened prepared food which is normally eaten with the fingers".

### *Decision*

The Upper Tribunal confirmed that Note 5 is not a deeming provision. Note 5 simply states that confectionery 'includes' followed by a list of items/descriptions.

Indeed, the Upper Tribunal noted that Note 5 has been amended over the years to include the term 'sweetened prepared food normally eaten with the fingers' to ensure that cereal bars that were not wholly or partly covered in chocolate were captured as well as other products that could be so described.

The Upper Tribunal considered if a multi-factorial assessment was required and concluded that it would depend on the situation. If a product clearly fell within Note 5, then such an assessment would not be needed. For example, a box of chocolates was confectionery.

However, a product could fall within Note 5 but there could be other relevant factors such as was the product used for other purposes. Alternatively, a product might not fall within the Note 5 description but might still fall within Item 2. In both cases, a multi-factorial assessment should be undertaken to determine whether the product is confectionery.

In this case, the Upper Tribunal concluded that the First Tier Tribunal were correct to adopt a multi-factorial assessment in reaching its decision. The Upper Tribunal upheld the First Tier Tribunal's decision. This product was found in supermarket barbecue aisles and was marketed as an item for roasting.

The First Tier Tribunal's conclusion was valid and HMRC's appeal was dismissed.

## Adequate invoice narrative

*Summary – Supplier invoices for ‘building works’ supporting input tax claims met the statutory requirements of the Value Added Tax Regulations, meaning the claims were allowed.*

Fount Construction Limited sought to recover input VAT relating to three invoices from Landcore Limited.

Each invoice:

- contained the description “Building Works at the above”;
- provided a box entitled “Job address” containing the building site address;
- stated that VAT was calculated at the standard rate;
- included a VAT-exclusive subtotal, the VAT amount, and the overall total.

HMRC denied the input tax claim stating that they did not meet the requirements set out in Value Added Tax Regulations, SI 1995/2518, reg 14(1)(g) and (h).

- reg 14(1)(g) requires 'a description sufficient to identify the goods or services supplied';
- reg 14(1)(h) requires 'for each description, the quantity of the goods or the extent of the services, and the rate of VAT and the amount payable, excluding VAT, expressed in any currency'.

HMRC believed that the invoice details were insufficient as it was not possible to tell from the narrative whether the work should be standard rated, or alternatively zero or reduced rated.

The company appealed that decision.

### *Decision*

The First Tier Tribunal stated the purpose of the description required by reg 14 was twofold:

1. To enable both the recipient and supplier of the supply to have a common understanding of which services the invoices relates to, so that they can complete their respective VAT returns accurately.
2. To provide HMRC with a means of understanding the essential nature of the supply and a means of identifying the supply in correspondence with the recipient or the supplier in order to seek more information as needed.

The Tribunal stated that HMRC has 'wide-ranging powers to seek further information in relation to the supply, and to refuse recovery of input tax if such information is not supplied.'

The Tribunal found that the supplier’s description was adequate and enabled HMRC to have 'a means of understanding the essential nature of the supply'. The company’s appeal was upheld.

*Fount Construction Limited v HMRC (TC09144)*

## **Revenue and Customs Brief 5/2024**

This brief sets out a technical change to the VAT treatment of business to business (B2B) wholesale supplies in relation to the Tour Operators' Margin scheme (TOMS).

The TOMS is a VAT accounting scheme for businesses which buy in and sell certain travel services, including passenger transport, hotel accommodation and car hire.

- It is mandatory for supplies to final consumers and under the TOMS, tour operators only account for VAT on their profit margin.
- Services supplied to another business for onward sale ('wholesale' supplies) have a choice as to whether they wish to fall within TOMS.

Previously 'wholesale' supplies were subject to normal VAT rules, but by concession these supplies could be included in the TOMS (see R&C Brief 5/2014)

HMRC has now concluded that B2B wholesale supplies are within the scope of the TOMS and by concession tour operators may opt B2B wholesale supplies out of the TOMS.

This is a technical change to the legal interpretation and will not affect tour operators' ability to choose whether to apply the TOMS or not to B2B wholesale supplies.

*<https://www.gov.uk/government/publications/revenue-and-customs-brief-5-2024-tour-operators-margin-scheme-for-business-to-business-b2b-wholesale-supplies>*