

Business tax round up

(Lecture B1121 – 17.33 minutes)

Capital allowances and grain storage facility

Summary - Expenditure incurred on the construction of a facility for the purposes of drying, conditioning and storing grain qualified for plant and machinery capital allowances.

In 2010, after he had been in a farming partnership with his brother for some 10 years, Stephen May had the opportunity to set up his own business. A large part of the new business involved grain production for sale to local farms and feed mills.

He needed a facility for drying and conditioning the grain that he grew after it had been harvested, and for storing the grain until it was sold. He had this facility constructed on his land in about 2011. The quote for construction stated that the structure was: “to manufacture and supply a Grain store building purposely designed for customer to include control of temperature and moisture levels for grain”. They argued that the structure served a specific function and that the facility was a “silo provided for temporary storage” within the meaning of s23 list C CA 2001” which excluded it from being a building and so eligible for plant and machinery capital allowances.

HMRC considered the facility to be a “building” not eligible for capital allowances. They argued that the grain was stored for up to 10 months so that its storage was not temporary.

Decision

The First Tier Tribunal found that the facility was built for the storage of grain, but also for drying it and maintaining it in an optimal condition. It was specifically designed for these purposes, with a pitched roof, thick walls and air inlets. It was therefore a silo.

The Tribunal concluded that the storage was temporary. It observed that it was in Stephen May’s interest to sell the grain as soon as possible after it was harvested and that the silo was empty for two months every year to allow for cleaning, which was an impediment to indefinite storage.

The Tribunal held that the facility was 'plant and machinery', as it performed a particular function.

Stephen May and others v HMRC (TC06928)

No change of basis period

Summary – The 18 month test contained within s217(3) ITTOIA 2005 had not been satisfied and so the actor’s change of accounting date was not effective for tax purposes.

Rupert Grint was an actor who prepared annual accounts to 31 July each year but wanted to change his accounting date to 5 April. He prepared accounts for the 12 months to 31 July 2008 that were taxed in 2008/09.

He then prepared two sets of accounts both of which ended in 2009/10 for his tax return figures:

- 2009 Schedule Accounts (12 months to 31 July 2009);
- 2010 Schedule Accounts (8 months to 5 April 2010).

Under s197 ITTOIA 2005 the 'accounting date' in relation to a tax year is the date in the tax year to which accounts are drawn up, or if there are two or more such dates, the latest of them. On this basis, the correct accounting date for 2009/10 was 5 April 2010 and he would be taxed on the 12 months of profits to this date.

Using the two sets of accounts referred to above and adopting this change of accounting date, Rupert Grint understood that he would be accelerating the 8 months of profit from 1 August 2009 to 5 April 2010 to be taxed in 2009/10. With no change of accounting date, these profits would have fallen into the old year ended of 31 July 2010 and been taxed a year later in 2010/11. This meant that he avoided these profits being taxed at the new higher rate of 50% that was introduced in 2010/11.

However, under s216(4), if the conditions in s217 are not met, the basis period for the tax year is the period of 12 months ending with the old accounting date. So in other words, as if the change in date had not occurred. So key to this case was whether s217 applied and more specifically whether the 18 months test in s 217(3) was satisfied.

Under s217(3), the 18 month test is met if the period of account ending with the new accounting date in the tax year in which the change of accounting date occurs is not longer than 18 months. Following a VAT control visit in 2011, HMRC discovered that Rupert Grint's accountants had also prepared another set of accounts referred to as the Long Accounts covering the full 20 months from 1 August 2008 to 5 April 2010. Rupert Grint had signed these at a meeting in October 2010. HMRC reasoned that the "period of account" for the purposes of s989 ITA 2007, being the "period for which the accounts of the business are drawn up", was the period covered by the Long Accounts and was therefore longer than 18 months. HMRC argued that there had been no change of accounting date for tax purposes.

Decision

The Upper Tribunal agreed with the First Tier Tribunal finding that the Long Accounts better fitted the description in s 989 ITA 2007 of being 'the accounts of the business'. They were the accounts drawn up to discuss with Mr Grint how he was doing and would enable him to compare his performance from year to year. The Tribunal concluded that the 'period of account' was longer than 18 months, and the test in s217(3) was not satisfied.

The Upper Tribunal found that tax return entries do not automatically change an accounting date; it is the underlying accounts drawn up to the new accounting date that effect this change, provided that the change of accounting date legislation is followed. The self-employment supplementary page entries had been arrived at by simply time apportioning the Long Accounts. Equally, Rupert Grint could not substitute the New Accounts, which did not exceed 18 months as these accounts were drawn up by his advisors during the HMRC enquiry so after the filing of Mr Grint's 2009/10 return.

VAT Notice 701/41: Sponsorship

Sponsorship is a payment to a charity, social project or a business for which the sponsor receives something in return. Payment may be in the form of money, goods and services or a combination of money with goods and services.

This notice explains how VAT applies if a taxpayer gives or receives sponsorship. A new section on crowdfunding has been added.

Receiving sponsorship as a taxable supply

Sponsorship is a taxable supply where money is received and in return the taxpayer is obliged to provide the sponsor with a significant benefit. Examples include:

- naming an event after the sponsor giving the sponsor a business benefit;
- displaying the sponsor's company logo or trading name (not if connected to a government agency or charitable foundation);
- participating in the sponsor's promotional or advertising activities;
- giving free or reduced price tickets;
- allowing access to special events such as premieres or gala evenings;
- providing entertainment or hospitality facilities;
- giving the sponsor exclusive or priority booking rights.

Where the benefit provided in return for the payment is an exempt supply for VAT purposes, the exemption will apply and the income received will not be taxable.

Receiving sponsorship that is not a taxable supply

Receipt of financial or other support in the form of donations or gifts will be outside the scope of VAT if given freely or for something insignificant in return

Examples include:

- giving a flag or sticker;
- acknowledging the donor in a list of supporters in a programme or on a notice;
- naming a building or something else after the donor;
- giving a certificate which acknowledges a person's donation;
- payments for buying clothing that supports a campaign but cannot realistically benefit the donor.

Receiving mixed sponsorship and donation

Provided the donation is entirely separate from the sponsorship agreement, the business does not need to account for VAT on any donation or gift but it must be clear that any benefits the sponsor gets are not conditional on making the donation or gift.

Providing sponsorship

Where sponsorship is provided in the form of goods or services rather than in money, this will be treated as making taxable supplies if the following are provided:

- goods and services to somebody who, in return, is making a taxable supply;
- goods to somebody as a gift or donation, these may be caught under the business gift rules (see VAT Notice 700/7);
- services to somebody as a gift or donation, then no VAT is due.

Value of any taxable supplies

Having decided that an amount is a taxable supply, the business must account for VAT that value. If the sponsorship amount is agreed without allowing for VAT, the amount received is treated as VAT inclusive.

Crowdfunding

Crowdfunding is the process of raising funds for a project through the internet on specifically designed platforms. The VAT treatment of supplies is no different to normal sponsorship monies so where:

- nothing is given in return for the funding, it will be treated as a donation and not liable to VAT – the position is the same where all that the funder receives is a bare acknowledgement, such as a mention in a programme or something similar;
- the funder receives goods or services that have a real value associated with them (e.g. tickets), VAT will be due;
- the payment is for a combination of a donation and goods or services and it is clear that the donation element is optional then that part of the sponsorship is treated as a non-taxable donation.

Where the funder is entitled to a financial return such as interest, dividends or profit share, this is treated as an investment and any payment due to the funder will not normally be liable to VAT. However, where the arrangement is more by way of a royalty based on a supply of intellectual property or some other benefit, the 'profit share' is likely to be consideration for a supply.

Loyalty scheme and input tax

Summary - VAT incurred on fees paid by a subsidiary of the Tesco group to third party suppliers as part of a loyalty scheme was deductible.

This appeal concerns the VAT treatment of one feature of the 'Clubcard' loyalty scheme operated by Tesco PLC. Participating customers accumulate Clubcard points when they buy goods at from Tesco's stores or other Partners.

Provided the Clubcard member has accumulated sufficient points, their points are converted into vouchers that can be used in one of two ways:

1. Vouchers are used to obtain a discount against purchases of goods in Tesco stores or online;
2. Vouchers can be exchanged through a Tesco subsidiary, Tesco Freetime Ltd, for 'Reward Tokens' which may then be used to acquire goods or services from third parties, such as museums, cinemas or restaurants, known as Deal Partners.

This case considered the VAT position of Tesco Freetime Ltd under this second option.

Typically a Reward Token will have a face value higher than the voucher for which it is exchanged so, for example, a Clubcard member may be able to exchange a voucher conferring an entitlement to a £2 discount in Tesco stores for a Reward Token that gives the holder a £4 discount on a meal at Pizza Express.

Under this scheme, Tesco Freetime Ltd pays the Deal Partners a 'Deal partner' fee calculated as a percentage of the face value of the Reward Tokens

The question raised by this appeal was whether Tesco Freetime Ltd is entitled to deduct the VAT paid on the Deal Partner Fees as input tax.

HMRC's argued that the Deal Partner Fee was paid by way of third party consideration for supplies of Rewards made by the Deal Partners to Clubcard members and not to Freetime. It is not consideration for a supply of anything to Tesco Freetime Ltd and no part of the VAT element of the Deal Partner Fee can be deducted by them as input tax.

Alternatively, HMRC contended that the Deal Partner Fee is to be apportioned, so that as to (the smaller) part, it is payment for a service provided by the Deal Partner to Tesco Freetime Ltd and as to (the greater) part, it is payment for the supply of Rewards by the Deal Partner to Clubcard members. On this alternative case, Tesco Freetime Ltd would be entitled to deduct as input tax only the VAT paid by it on that part of the Deal Partner Fee that was apportioned towards the service provided by the Deal Partner to it.

Tesco Freetime Ltd contended that all of the Deal Partner Fee was paid in respect of services by the Deal Partner to them. In the contract between Tesco Freetime Ltd and the Deal Partners it was stated:

"The [Deal Partner] shall supply to Tesco Freetime the services (to include provision of Rewards to Tesco Clubcard Members) as required by Tesco Freetime to enable Tesco Freetime to perform and discharge its obligations to provide or procure the provision of Rewards to Tesco Clubcard Members in accordance always with the Terms and Conditions printed overleaf (Fulfilment Services)."

The provision by the Deal Partner of, for example, a cinema ticket or pizza to a Clubcard Member constitutes the supply of a “Fulfilment Service”, to Tesco Freetime Ltd with input tax being fully deductible.

The First Tier Tribunal found in favour of Tesco and so HMRC appealed.

Decision

Referring to Marriott Rewards [2018] STC 1144, the Upper Tribunal said that when considering the extent to which sums Tesco Freetime Ltd pays to Deal Partners constitute consideration for a supply of services to Tesco Freetime Ltd they should consider both the terms of the contracts between Tesco Freetime Ltd and Deal Partners as well as the commercial and economic reality of the arrangement as a whole.

The whole purpose of the scheme was to benefit Tesco Stores, by promoting customer loyalty. Tesco Freetime Ltd operated its business procuring Deal Partners to accept Reward Tokens in exchange for the provision of goods and services as rewards. Both the contracts and economic reality led the Tribunal to conclude that Tesco Freetime Ltd paid the Deal Partner Fee as consideration for Deal Partners agreeing to honour Rewards that Tesco Freetime Ltd has provided to Clubcard members in the course of its business. Neither the contracts nor economic reality suggested that only part of the sums that Tesco Freetime Ltd paid was consideration for services supplied to Freetime.

HMRC’s appeal was dismissed.

NOTE: Although the Tribunal found in favour of Tesco Freetime Ltd, this company is part of the Tesco PLC VAT group and so it is actually Tesco PLC, as representative member, that would be entitled to reclaim the VAT.

HMRC v Tesco Freetime Ltd and Tesco PLC[2019] UKUT 18

Single business or two separate businesses

Summary – From 1 December 2013, the floor screeding was a business carried on by the partnership that was separate from the plastering carried on as a sole trader business.

Darren Vaughan registered for self-assessment in April 1994 as a sole trader. In March 2012, he applied to Gwynedd Council for a local investment fund grant to purchase a liquid screed pump. His application stated that he was a sole trader who undertook “plastering, pebble dashing & liquid floor screeding”. He stated that the screed pump would “create more work & increase company turnover”. On 27 April 2012, the Council approved his application.

On 1 December 2013, Darren Vaughan and his wife registered for self-assessment as a partnership under the name “D & C Flooring”, with the business activity described as “flooring”. On 7 October 2014, HMRC received an application for VAT registration of the partnership. The application stated that the registration threshold had not been exceeded.

Having looked at his tax returns for 2012/13, 2013/14 and 2014/15 HMRC decided that the creation of the partnership was a disaggregation of an existing business that comprised two elements, flooring and plastering.

They considered that the business was required to register for VAT from 1 March 2013, but requested further information to enable them to determine the correct effective date of registration. This decision was subsequently upheld by HMRC in a review decision dated 12 May 2017.

Darren Vaughan's accountant maintained that there were two businesses, one being a plastering business which he had before he met his wife, the other being a new floor screeding business started in partnership with his wife. The intention was not to avoid paying VAT, but to make his business more competitive. The new flooring business related to new residential builds and was zero-rated. 75% of the cost of screeding is the material cost which included VAT. They needed to register for VAT to be able to reclaim the VAT. The reason for registering the new partnership business only would allow Darren Vaughan's general building and plastering business to continue unregistered which would benefit his customers as they in the main were unregistered householders. It would also help to keep him competitive as he stated that his competitors in this trade were all unregistered for VAT.

HMRC accepted that it is possible to split a business into two. They said that the Appellant's wife had the same responsibilities before and after the partnership was formed. There were examples of invoices, purchase orders and bank accounts relating to both businesses, showing that in reality there was no separation between them. The business structure and the way it operated were the same both before and after the partnership was formed.

Decision

The parties were agreed at the hearing that the only issue for determination by the Tribunal was whether there was one business or two.

The Tribunal considered it was a significant fact that the couple very clearly intended to separate the existing sole trader business into two businesses by registering a partnership and returning a share of the partnership profits in a partnership page in their self-assessment tax returns, with Mr Vaughan also returning the income from the plastering activities in a self-employment page in his tax return.

The Tribunal gave weight to a number of things including the plastering activities and the floor screeding activities having different customer bases, in largely different geographical locations. They noted that the wife did not have a more prominent role in the partnership; indeed her role in both businesses was similar. However, partners are not required to perform an equally prominent business role. In *Parker and Parker t/a Sea Breeze Café* (1999) it was said "we should not expect relationships between husband and wife to be wholly at arm's length or commercial". It is "part of the normal husband and wife relationship" that a wife might be involved in her husband's business.

Balancing the evidence as a whole, the Tribunal was satisfied that from 1 December 2013, the floor screeding activities were a business carried on by the partnership that was separate from the other activities carried on as a sole trader business.

The Tribunal expressed no view on the potential application in this case of paragraphs 1A and 2 of Schedule 1 to VATA. The Tribunal's finding of fact that there were two separate businesses implies no finding as to whether or not the separation into two businesses was artificial leading to a loss of VAT.

Fulfilment House Due Diligence Scheme

The government is aware that a number of Non-EU traders are shipping goods to the UK prior to sale and storing them in fulfilment houses close to their final delivery point. These goods, located in the UK, are sold on to UK customers through online marketplaces with the incorrect VAT and duty being accounted for.

In Budget 2016, the government proposed a package of measures to combat this problem, including a requirement to appoint a UK tax representative who will be liable for their VAT and/or seeking a security. Additionally, if these traders fail to comply and online marketplaces do not help stop the abuse occurring, the online marketplaces themselves become jointly and severally liable for the unpaid VAT.

The Fulfilment House Due Diligence Scheme complements the above measures, by ensuring that fulfilment houses who are part of this scheme perform proper due diligence on the goods that they fulfil.

Who it applies to?

Where a business stores goods in the UK for sellers who are established outside the EU, they will need to apply for the Fulfilment House Due Diligence Scheme if:

- the goods were imported from a country outside the EU;
- the goods are owned by, or stored on behalf of, someone established outside the EU; and
- the goods are being offered for sale and have not been sold in the UK before.

How to register

Details of how to register can be found using the link at the end of this article. Businesses, not their agent, must register before 1 April 2019. Failure to do so will mean that they will not be allowed to trade as a fulfilment business and there is a risk of a £10,000 penalty and a criminal conviction.

There is no need to register if the goods stored are the businesses own goods and their main business is transporting goods so that goods are stored temporarily as part of your transport services

Keeping records

From 1 April 2019, businesses must keep a record for six years of:

- overseas customers' names and contact details
- overseas customers' VAT registration numbers or their VAT exemption reference numbers
- the type and quantities of goods stored in the warehouse
- import entry numbers
- the country where the goods are delivered
- notices needed for overseas customers, explaining their UK tax and duty obligations

What you must check

Businesses must check all overseas customers' VAT registration numbers or VAT exemption reference number. HMRC will give more information on how to check these before 1 April 2019.

Where a business suspects that an overseas customer has not met its VAT or customs duty obligations, they:

- should work with them to help make sure they do in the future;
- must notify HMRC;
- must stop working with them if they do not start to comply with their obligations.

There are penalties of between £500 and £3,000 for failure to do so.

Changes once you're registered

Business must keep their online registered details up to date. Any changes must be notified online by the later of 30 April 2019 or within 30 days of the change.

If a business stops trading as a fulfilment business, they must tell HMRC within 30 days from the date that trading ceases.

<https://www.gov.uk/guidance/fulfilment-house-due-diligence-scheme>