

IT WAS THERE BEFORE

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A recent tax case G Pratt and Sons v HMRC (TC 1269) involved income tax relief on resurfacing a farm drive and the result should bring a smile to the farming community.

The facts

A farming partnership appealed against an amendment to the partnership tax return made by HMRC in May 2010 under TMA 1970, s 28B. HMRC wanted to treat the expenditure of repairing an existing drive as capital. This amendment increased the partnership income tax profit on the basis that it related to costs which were capital in nature, and therefore not allowable as a deduction in the accounts as income tax allowable expenditure.

The cause of the dispute with HMRC was the resurfacing of the farm drive at a cost of £23,300. HMRC argued that the farm drive should have been regarded as an 'entirety' in its own right, and that concreting it was to provide an entirely new and better surface than before. HMRC argued that it should therefore not be allowed as income tax expenditure.

However, the taxpayer, the farming partnership, argued that the new surface of the drive had been laid over the old tarmac surface, filling in potholes and replacing the old drive which was there before. The argument was that the work created a hard-core base over the original stone. The taxpayer held to his view that nothing new had been added to the drive; it was simply a repair.

Decision

The First-tier Tribunal agreed with G Pratt and Sons that the work on the farm drive consisted of a concrete surface being placed over the existing one and was a repair to an existing asset and therefore allowable for income tax. The appeal by the farming partnership was allowed by the Tribunal.

Commentary

The key tax planning point of this case has to be that there was an existing concrete track. Had there just been a "muddy path" HMRC would have had a much stronger argument. This highlights the need for all farm improvements and repairs to be fully reviewed by both the taxpayer and tax practitioners and ideally before the expenditure is incurred!

With some farming operations producing profits which have increased through improved diversification and diversification profits, there is much more money being "ploughed" (deliberate pun) into the farm operation.

At first glance the decision in *Pratt* might seem a reversal of the decision in the *Moonlight Textiles Ltd* case (*Moonlight Textiles v HMRC TC 755*). However, the same principle exists in both cases as there were substantial alterations in the *Moonlight* case, whereas in the *G Pratt and Sons* case as regards the concrete road "it was there before" and being repaired. In this case *Moonlight Textiles Ltd* arranged for building work at its premises which involved substantial alterations and claimed a deduction for the cost of this work as a corporation tax expense. Following an enquiry, HMRC issued an amendment on the basis that £34,000 of the alteration expenditure should be treated as capital.

Moonlight Textiles Ltd appealed on the basis that the expenditure should be treated as a repair. The First-tier Tribunal rejected this contention and dismissed the appeal. Applying dicta of Buckley LJ in the (non-tax) case of *Lurcott v Wakely & Wheeler, CA (1911) 1 KB 905*, 'repair is restoration by renewal or replacement of subsidiary parts of a whole. Renewal, as distinguished from repair, is reconstruction of the entirety, meaning by the entirety not necessarily the whole but substantially the whole subject matter under discussion.'

Conclusion

For practitioners, the complexity of the judgement calls that are required where there are major repair or alterations do show that in many cases it is not enough to make decisions based on invoices, there has to be a full understanding of what was there before and after. Site visits and photographs before and after the work would provide beneficial assistance in decision making and ensure the correct tax relief is claimed.

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