More than 'patch repairs' can still be a revenue expense

Following hot on the heels of the Cairnsmill Caravan Park Case (Cairnsmill Caravan Park v HMRC [2013] UKFTT 164 TCO 2580), the taxpayer has enjoyed another victory in arguing that expenditure should be treated as a revenue expense as opposed to a capital purchase.

The recent case in question, *Hopegear Properties Ltd v HMRC* [2013] UKFTT 331 (TCO2734), concerned expenses on the repairs and widening of the main entrance road to an industrial estate. The expenses comprised the repairs and widening of the main entrance road itself, repairs to footpaths and re-laying of fibre optic cables, related landscaping costs, changes to an existing car park, and the construction of a temporary access road for the duration of the repairs. A small amount of the expenditure relating to the temporary diversion costs necessary to carry out the road works had already been capitalised by the taxpayer.

HMRC argued that the entire amount of the expenditure was capital in nature, being one overall alteration to the industrial estate. The Tribunal, however, found the HMRC's objections surprising, going so far as to comment 'there should have been no dispute as to deductibility of these costs and it is surprising that [the HMRC] objections have been raised'.

In reaching its decision, the Tribunal had separated the expenditure into three separate headings:

Road works

The Tribunal rejected the HMRC view that 'the road could have been patch repaired, and the fact that this was not done makes the expenditure capital'. Given that a small amount of the temporary diversion costs had already been capitalised, the Tribunal accepted that the remaining amounts were revenue expenditure, which were incidental to expenditure on the main entrance road.

Cable works

The Tribunal found that the costs associated with the cable works were all revenue in nature, as the work only affected part of the cabling system on the site, and should therefore be seen as one entire asset. The Tribunal went on to say that 'the installation of new cabling was of such a minimal amount that it cannot be said that it created a new capital asset'. The costs were therefore allowed as a revenue expense.

Work to car park and footpaths

The expenditure incurred under this heading comprised work on the front car park and the reinstatement of footpaths. Again, the Tribunal found that the whole amount of these costs were revenue in nature. Accordingly, the Tribunal allowed the taxpayer's appeal and summarised its views with the following statements:

'There is no scheme of alteration. The expenditure, as itemised, can be considered individual pieces of work and allowable as revenue deductions'.

'The relevant entirety (the road network, cable network and Bankside House) is the asset being repaired. The nature and extent of the work shows that there has not been a reconstruction, replacement or renewal of the asset or substantially the whole of the asset. The character of the assets has not changed when the overall effect of the work is examined'.

'The expenditure is clearly identifiable and sufficiently itemised. The concept of notional repairs is not a relevant consideration. It is accepted by the Tribunal that the widening work on the road is a capital expenditure and other expenditure directly relating to that widening would also be a capital expenditure. These have been indicated in the decision above'.

The work on the car park and footpath were thus deemed to be a repair.

With the success of *Pratt* (2011) UKFTT 416, *Cairnsmill* and now *Hopegear*, there is now every reason for farmers and landowners to be positive about the deductibility of the repair expenditure they incur. Each one of these cases offers the taxpayer a little more clarity as to what actually constitutes a revenue expense, and any repairs currently under consideration should be examined in context with the details and comment contained within the results of these recent decisions.

The key is to plan ahead and to consider the entirety of the planned works, what was there before, and the valuation before and after the project has taken place. It will not be enough to take a broad-brush, general approach. It is recommended that a complete review of proposed work relating to repairs and renewals is undertaken, to ensure these costs are analysed correctly and split into capital or revenue expenditure accurately. Farmers and landowners can then be sure that the best tax position is achieved, particularly in light of the recent rulings alluded to above.

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