New for old

Julie Butler and Libby James review a recent tribunal decision that highlighted the importance of reconciling the treatment of expenditure on equipment for accounts and tax purposes.


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In transport and farming businesses there has been much debate on the definition of tractors and equipment and their correct accounting and tax treatment. The recent First-tier Tribunal (FTT) case of *Turners (Soham) Ltd* (TC6997) showed the need for accounts and tax teams to work together. It was decided that the cost to a haulage company of replacing tractor units (the heavy-duty engine and driver's cab), tankers and trailers was not tax deductible as expenditure under the heading of 'implements, utensils and articles' in TA 1988, s 74(1)(d) or as 'tools' in the successor legislation, CTA 2009, s 68.

Let's look at the definition of these items.

- Implements – a tool, utensil, instrument or appliance.
- Utensils – a tool, container or other article, especially for household use.
- Articles – an item or object.

Turners (Soham) Ltd carried on a road haulage trade and had incurred costs replacing tractor units, tankers and trailers over a period of years. Over the four years ended 31 December 2013, the company incurred expenditure totaling £33m on replacement tractor and trailer units – a significant amount. The units were included as tangible fixed assets in the company's statutory accounts.

In Turner's corporation tax computations for the years ending 31 December 2009, 2010 and 2013, the expenditure incurred on the replacement of tractor units and trailers used in its road haulage trade was claimed as a deduction. In the 2008 corporation tax return, the appellant first claimed capital allowances on the expenditure, but subsequently submitted an overpayment relief claim (under FA 1998, Sch 18 para 5(1) on the basis that deductions for these items were authorised by TA 1988, s 74(1)(d), and for the tax years 2009, 2010 and 2013 by CTA 2009, s 68.

HMRC refused the deductions on the basis that they were not authorised by either statutory provision in its understanding and the tribunal concurred with this view.

Key points

- Tractor units, trailers and tankers were shown as fixed assets in company accounts.
- The business also claimed the full costs of such assets as a tax deduction.
- The statutory renewals basis could not apply to costs not shown as a deduction in accounts.
- The original 2008 corporation tax liability was calculated in accordance with the practice generally prevailing at the time.
- The renewals basis had been withdrawn due in part to perceived abuse of the rules.
- On the basis of ordinary English usage, the tractor units, tankers and trailers could not be described as 'implements, utensils and articles'.

Capital expenditure

The First-tier Tribunal concluded that TA 1998, s 74(1)(d), commonly known as the 'statutory renewals basis' did not allow a deduction for the cost of such expenditure because no deduction for the costs of the tractor units, trailers and tankers appeared in the company accounts, which were prepared for each period under generally accepted accounting practice (GAAP). In other words, in the accounts they were shown as fixed assets which would make the balance sheet stronger. The tribunal agreed with HMRC's argument when concluding that the meaning of an 'expense' incurred under CTA 2009, s 68 was limited to a debit in the company accounts – prepared in accordance with GAAP. No such debit had been made. The tribunal also found that the costs were not deductible because they were capital in nature and, even if it was agreed that s 74(1)(d) could authorise a deduction for the relevant items, the section was concerned with expenditure on 'implements, utensils and articles'. On the basis of ordinary English usage, the tractor units, tankers and trailers could not fall within the definition of these items (see above).

On whether s 74(1)(d) authorised the deduction of the costs of replacement items, the tribunal found no authority.

Referring to *Brown v Burnley Football and Athletic Co Ltd* [1980] STC 45, it was considered that the case 'operated negatively to limit deduction rather than to provide for' one.

Mistake claim

Turners' appeal was on the basis that in 2008 it claimed capital allowances for the costs of replacement tractor units, tankers and trailers and then in 2011 made a 'mistake claim' (under FA 1998, Sch 18 para 51) which disclaimed these allowances and claimed instead a deduction under TA 1988, s 74(1)(d). Under FA 1998, Sch 18 para 51A, a person can claim repayment of tax believed to have been paid in error to HMRC, but case G in para 51A(8)(b) provides that no claim can be made if the 'liability was calculated in accordance with practice generally prevailing at the time'. HMRC refused the appellant's 'mistake claim' on the basis that TA 1988, s 74(1)(d) did not authorise a deduction, and even if it did the claim was prevented by case G, para (b) – the practice prevailing at the time.

The tribunal found that the liability to corporation tax computed in Turners' original tax return for 2008 was calculated in accordance with the practice generally prevailing at the time, GAAP, for claiming capital allowances on items such as tractors and trailer units, and so the original treatment fell within Case G para (b). The appeals by Turners were dismissed by the tribunal.

UK GAAP is the body of accounting standards and other guidance published by the UK's Financial Reporting Council (FRC). The new UK GAAP includes FRS 100, FRS 101, FRS 102 and FRS 105 and is the overall body of regulation establishing how company accounts will be prepared in the UK together with applicable company law. UK GAAP should also incorporate 'best practice'.

The new GAAP was effective from 1 January 2015 and the transition from the old GAAP was complicated. The *Turner* case highlights the need for advisers to understand accounting standards and to keep up to date with changes in all areas of tax compliance and planning.

Renewals basis

The case is significant for the way the tribunal looked at the interaction between the GAAP accounting and expenditure on capital items. There is much in the case which is important for those dealing with business tax accounts and illustrates the need for accounts and tax strategies to work together.

In the *Turner* case, a point to consider is the 2016 budget. Then, the government announced that it would withdraw the 'renewals basis', due in part to perceived abuse of the rules. It was stated at the time: 'Some businesses have recently sought to obtain relief under the renewals allowance provisions for expenditure on very large and expensive items of equipment. The renewals allowance was never intended to apply to expenditure of that nature and the measure protects that position.'

The renewals basis was subsequently repealed for expenditure incurred on or after 1 April 2016.

Planning point

Advisers should ensure that the implication and effects of accounting policies are fully understood for tax purposes and that these two aspects are compatible.

Move to FRS 102 and tax

The First-tier Tribunal decided that the costs were not deductible because they were capital in nature and, even if it was found that s 74(1)(d) could authorise a deduction for the relevant items, the section was concerned with expenditure on 'implements, utensils and articles'. On the basis of ordinary English usage, the tractor units, tankers and trailers could not fall within this definition as mentioned above. It can be argued that the appellant wanted to 'have their cake and eat it'. In this case, including the tractors, trailers and tankers in fixed assets with relatively low rates of depreciation thereby making the balance sheet strong, while claiming a full write off for tax.

In 2019, it is important to consider the provisions of FRS 102 which states that assets must be shown at 'fair value' and the accounts don't always have to follow the tax treatment, for example the 'herd basis' which can show a different accounts and tax treatment.

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What to take away

The case does not just show the problems of treating tractors as tools, the update on the renewals basis plus GAAP and FRS 102, it also shows the importance of accounts in both tax compliance and tax planning. Further, it emphasises the need for the disciplines of accounts and tax to work together on accounting policy and tax treatment as a team.

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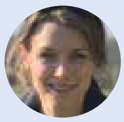

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