KEY CASES

CASE REFERENCE : Telfer v HMRC [2016] UKFTT 614 (TC)

KEY POINTS

What is the issue?
First principles still apply to claiming plant and machinery even if it has been accepted before

Who does it affect?
All looking to claim plant and machinery allowances

What does it mean for you?
HMRC may seek to restrict the level of your claim

How can I apply this to me?
Ensure you can justify the reasoning for including an item of plant other than it has been claimed before

An employee's tax case concerning claiming capital allowances on expenditure on two caravans may appear to have no relevance to many of our readers. However, this recent case is a reminder that we cannot assume what will qualify as plant and machinery based on prior claims, we must always go back to first principles.

THE FACTS OF THE CASE

The issue put before the Tribunal was as to whether the expenditure incurred by Mr Telfer in acquiring a caravan qualified for plant and machinery allowances.

The Appellant, Mr Paul Telfer, had purchased two caravans at different times in order to provide accommodation for himself and his spouse whilst employed by the Caravan Club Limited, under a series of contracts as assistant wardens.
The appeal case stemmed from HMRC refusing capital allowances for the year ended 5 April 2011 and for the year ended 5 April 2012, against the caravans.

The Appellant argued, his claim to capital allowances should be allowed because he carried on a qualifying activity, had incurred qualifying expenditure on the provision of the caravans for the purposes of that qualifying activity, and that he owned the two caravans as a result of incurring the qualifying expenditure thereby meeting the requirement of Section 11. Mr Telfer argued that the qualifying activity for capital allowances was in accordance with Section 15(1)(i), as an employment or office, i.e is employment with the Caravan Club. Mr Telfer also included in his statement that he knew of cases where colleagues, working in the same roles as his, had had their claims for capital allowances in relation to their caravans accepted by HMRC.

THE ARGUMENTS

There were a number of arguments put forward by counsel for HMRC in support of their rejection of the capital allowances claims. Their main argument was that of Section 36(1)(b) which denies plant and machinery allowances to employees unless the item, in this case the caravan is "necessarily provided for use in the performance of the duties of the employment or office". HMRC argued that the provision of a caravan by an assistant warden was

"…the caravans where not something by means of which those duties were in part carried out on… but where merely the place within which they were carried on."

not for use in doing the work of the employment and was not necessary for the performance of the duties of the employment. The Tribunal held in favour of the Appellant and that his duties required him to be on site and therefore logically needed to live on site.

A rather surprising argument put forward by HMRC was that the caravans should be treated as either a building under Section 21 or a structure under Section 22 because only "caravans provided mainly for holiday lettings" were included in List C of Section 23 at item 19 and therefore only such caravans were excluded by List C from being treated as a building or a structure. We feel this is a flawed argument as caravans are neither buildings or fixtures so these clauses could not apply, and the Tribunal agreed and rejected HMRC stance on this point.

However, the most fundamental issue being dealt with by the Tribunal and a poignant one when assessing if an item qualifies for plant and machinery allowances - whether the caravans were plant based on ordinary case law principles. HMRC argued that in accordance with the dicta of Benson v Yard Arm Club Ltd [1975-81] the caravans were excluded from being plant or machinery because they played no part in the carrying out of the employment duties but were only the place within which they were carried out.

Even if Mr Telfer had carried out some of the duties in his caravans, HMRC argued that the caravans would not have been apparatus with which those duties were performed but would instead have been the place or setting within which they were performed. The Tribunal agreed with this argument and held that they were not plant.

SUMMARY

At first glance, the case of Mr Paul Telfer v HMRC may seem to have little relevance for the property industry, however, the arguments and principles will be relevant for owners and occupiers seeking to claim capital allowances for fixtures within buildings.
The question of whether something is or is not plant always depends both on the nature of the assets and the use to which that asset is being put; in this case the caravans were functioning as premises and not as apparatus, and therefore not plant.

It was also interesting to note that the tribunal did not appear to give any weight at all to the statement by Mr Telfer, that other taxpayers in similar circumstances had had capital allowances claims accepted by HMRC.

When preparing our client's claims, the fact it has been claimed before is never an argument that we use to support the inclusion of an item as plant. We always use sound legal arguments are treating an item as plant.

ABOUT US

At Ċavetta Consulting our directors have considerable experience advising businesses, property investors, landlords and occupiers on all capital allowances implications that impact their business.

Our fee structure is tailored to take account of the tax status of the individual or business and is designed to add value to your business.

We offer free advice to small businesses at the pre-planning stage of their business to make them aware of the benefits the tax system allows and a no obligation review of completed or potential schemes in order to determine whether a viable claim for property

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