Key Cases

CAVETTA CONSULTING
Unlocking Capital Allowances

CHESHIRE CAVITY STORAGE 1 LIMITED & EDF ENERGY (Gas Storage Hole House) LIMITED v HMRC

Hot on the heels of the SSE Generation case, we have another energy provider challenging the definition of what is and is not "plant".

Again, this case shows that the definition of what is and what isn't "plant" is not always clear and each case should always be reviewed on its own merits, especially where large amounts of expenditure have been incurred. In contrast to the SSE case, here the appellants case was dismissed and the items were not held to be plant.

THE FACTS OF THE CASE

The appellant's business was as an energy provider and both companies were part of the EDF Energy plc group of companies. One of the activities, as part of their business, was the construction and operation of gas-storage facilities. This claim involved the development of new underground cavities or adapting existing cavities on adjoining sites in Cheshire.

The works involved de-brining, and in some cases leaching the cavities, in order to ensure that they were suitable to store gas underground. The costs incurred by the two companies exceeded £40 million.

It was accepted that the expenditure was incurred in respect of a qualifying activity carried on by the appellants. The appellants successfully claimed capital allowances on the boreholes, pipework, control equipment and other items of plant.

The issue under appeal was their claim for allowances in respect of expenditure on leaching and de-brining the cavities, which required the cavities to be plant, so that expenditure on them qualified as capital expenditure on the provision of plant under CAA 2001, s11(4)(a).

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Key Points

What is the issue?
Further confirmation that the definition of "plant" is still not clear cut and HMRC guidance or opinions should not always be taken at face value.

Who does it affect?
Anyone making capital allowances claims.

What does it mean for you?
To ensure the value of your claim is not undermined by HMRC, it is import to obtain good capital allowances advice.

How can I apply this to me?
Always ensure you involve a capital allowance expert that has experience in your building sector.

Key Thoughts

HMRC Argument "HMRC were of the opinion that the cavities were in fact the housing, setting or premises from which the appellants' business was carried on and not plant with which it was carried on."

This briefing is intended to provide an introductory outline to certain aspects of the UK Capital Allowances regime. It should not be used instead of obtaining proper professional advice. The outline is for guidance only and is not an appropriate basis for decision-making.

Key Cases

THE ARGUMENTS

HMRC were of the opinion that the cavities were in fact the housing, setting or premises from which the appellants' business was carried on and not plant with which it was carried on.

However, the appellants maintained that the cavities were not passive, as they stored gas under pressure and in some circumstances that pressure was used to move the gas to the National Transmission Service ('NTS') for gas, i.e. the gas cavities had a plant-like function as quasi-pumps or pressure vessels. The appellant argued that even if the cavities were passive, the decision of Jarrold (HMIT) v John Good & Sons, Ltd (1962) 40 TC 681 gave authority to their claim that the cavities should be categorised as "plant".

After reviewing the usual authorities on what is plant the judges concluded that the function of the cavities, that the appellant put forward, were incidental to the main function of the cavities one of premises for storing gas. The Tribunal judges were of the opinion that it was clear, the case law on storage established that providing shelter and protection to plant or stock-in-trade or customers' possessions was a premises function, at least in respect of immovable property. They summarised by saying premises can be plant only where,

"Its plant-like function is more significant to the taxpayer's business than its premises-like function".

They found that on the above basis and given the finding that the appellants' main business was short- term storage of gas, the significant and predominant function of the cavities was shelter and confinement. Their ability to do so at high pressure meant merely that they were "very good premises for storing gas." The cavities were therefore not plant.

Although not necessary, the Tribunal also considered even if they were plant, they would be excluded from claiming allowances by s22 CAA and were also not saved by List C. Here, the tribunal said that list B and C were not intended by Parliament to be a test of function based upon what case law had found to be plant. The lists were definitive, and could not be applied by analogy. That is, it could not be said that the cavities were within list C because they were like storage tanks, for the list to apply they must be storage tanks. In addition, as the cavities were being used to store gas, the exemption at List B for structures "in use for the purposes of an undertaking for the extraction, production, processing or distribution of gas" did not apply. Applying list C, the cavities were not storage equipment, cold rooms, silos or storage tanks nor were they created for the installation of plant and equipment.

Summary

However, even though this is a case about a specific item, the Tribunal's thought processes are of interest and provide further guidance in assessing what assets will be plant. In reaching their conclusion, they drew on a wealth of court cases heard since 1887 where consideration has been given as to what constitutes plant.

The Tribunal's opinion on the application of List C, seems to be in contradiction to the decisions of the SSE Generation Case,where the court had found largely in favour of the taxpayer. It will be interesting to see the outcome, as the case has gone to appeal.

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 first principles and sound legal arguments when deciding upon the treatment of an item as plant.

ABOUT US

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

Our vision is:
"To produce robust tax saving valuations for businesses that are produced using state of the art methods, that are fully independent, reliable and HMRC Compliant thus allowing every business we work to be financially better off and help them realise their goals."

Our mission is:
"To help businesses become financially better off by helping then realise the value of the tax savings in their property that is not contained within an invoice"

Our values are:
We take on an appointment if we can make that client financially better off. We do not take any appointment if we feel an accountant can already do the job.

Our fee structure is tailored to take account of the tax status of the individual or company. We offer a no obligation review of completed or potential schemes in order to determine whether a viable claim for property tax reliefs can be claimed. And we never under take a valuation if your accountant could claim or we can't add value.

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