Key Cases

CAVETTA CONSULTING
Unlocking Capital Allowances

DUNDAS HERITABLE LIMITED v HMRC

An interesting First-Tier Tribunal (FTT) case, that could have us re- thinking what the time limits are for making capital allowances claims, and allowing them to be made, no matter how late the tax return

THE FACTS OF THE CASE

The appellant's main activity was the operation of public houses and bars. The appellant's tax return for the periods to 31 March 2012 and 31 March 2013 were received by HMRC on 3 February 2015 and 26 November 2015 respectively.

These returns included a claim for capital allowances of £317,535 and £369,207, which should have been lodged by 31 March 2014 and by 31 March 2015.

In order to remove the late claim from the self-assessment, Her Majesty's Revenue and Customs (HMRC) opened enquiries into the capital allowance claims in the returns, and HMRC duly amended the assessment to disallow the capital allowance claims. The Appellant appealed against the amended assessment.

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Key Points

What is the issue?
The time limit for making capital allowances claims. According to the FTT capital allowances claims can be made regardless of how late the tax return is made.

Who does it affect?
Those with potential capital allowances claims and tax returns passed their due date for filing.

What does it mean for you?
Capital allowances claims maybe claimed at a later date than what has previously thought.

How can I apply this to me?
Review any capital allowances claims to be made to see if they can be made in earlier years.

Key Thoughts

HMRC Argument

"...whether a claim was valid by reference to the time limit applicable when it was made..."

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.

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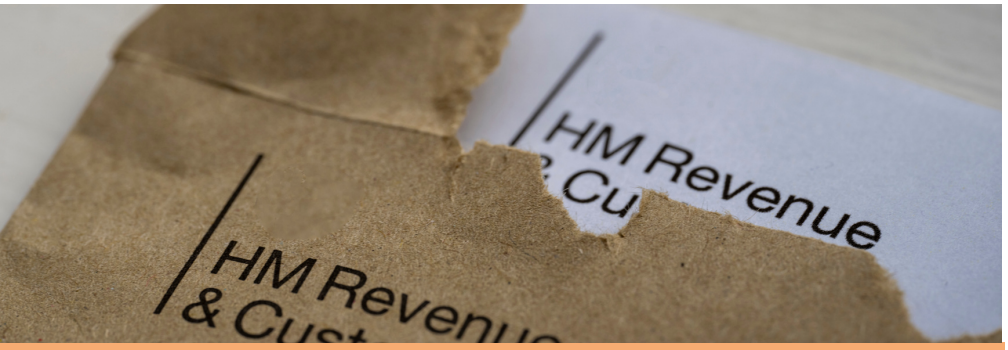

THE ARGUMENTS

It was not disputed that at the time the returns were submitted to HMRC they were late, and the capital allowances claims were therefore late in terms of paragraph 82(1)(a) Schedule 18. It was also not disputed that, if, or had, the capital allowances claims been lodged on time then they would have been justified.

The only issue was the question of the time limits and therefore the interpretation of paragraph 82 Schedule 18 as detailed below:

- *"82.—(1) A claim for capital allowances may be made, amended or withdrawn at any time up to whichever is the last of the following dates—*
- *(a) the first anniversary of the filing date for the company tax return of the claimant company for the accounting period for which the claim is made;*
- *(b) if notice of enquiry is given into that return, 30 days after the enquiry is completed;*
- *(c) if after such an enquiry the Inland Revenue amend the return under paragraph 34(2), 30 days after notice of the amendment is issued;*
- *(d) if an appeal is brought against such an amendment, 30 days after the date on which the appeal is finally determined.*

HMRC argued the key point was whether a claim was valid by reference to the time limit applicable when it was made. Only one time limit was relevant to a claim. In this case, no enquiries were open when the claims were made so the time limits in Sch 18 para 82(1) (b) to (d) did not apply.

The appellant did not dispute that the returns were submitted late, but argued that HMRC had misinterpreted the meaning of paragraph 82(1) and that a strict meaning of the section should be followed, in which case the time limits at paragraph 82(1)(b) et seq apply and therefore the capital allowance claims are valid.

It was further argued that there are four possible dates and a claim will be submitted in good time if lodged "at any time" before the last of them. And the view was offered that logically, Parliament would not have said in the preamble that a "claim...may be made ...at any time" up to the last of the dates, if it was intended that only a claim that had been validly made in the first instance could be subsequently amended.

The FTT held that the enquiry into the corporation tax return retrospectively, extended the time limit for making the capital allowance claims to whichever is the latest of the dates given by sub paragraphs 1(b), 1(c) and 1(d) of para. 82. That means, 30 days after the enquiry is completed or 30 days after notice of the amended assessment is issued or 30 days after any appeal against the amended assessment is finally determined. Therefore, the capital allowance claims had therefore been made in time and the appeal was allowed.

Summary

This decision highlights a "Catch 22' situation in the corporation tax self-assessment legislation in Sch. 18 FA 1998 in relation to late claims for capital allowances included in a company's self-assessment. HMRC can only either (i) remove the late claim from the self-assessment by opening an enquiry into the claims and amending the assessment, but, following this decision, that will extend the time limit for making the capital allowance claims, or (ii) issue a discovery assessment under para. 41 of Sch. 18 but in that case, under para. 65 of Sch. 18, the company is entitled to the benefit of any reliefs which are subject to a claim being made, which claims are deemed to have been made in time.

As this is only an FTT case, HMRC will probably appeal the decision or possibly just continue with their current practice guidelines. We will have to watch that space.....

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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