



G PRATT & SONS V HMRC COMMISSIONERS [2011] UKFTT 416 (TC)
Tribunal Release Date: 24th June 2011

Summary

The taxpayers re-surfaced a farm drive and were successful in claiming a 'revenue' tax deduction for the cost of repairs.

Background

The taxpayers were a family partnership. They ran a mainly dairy farm, which had been in the family since the 1880s. They repaired 239 metres of the farm drive that ran to the nearest public road. The drive was also used by suppliers delivering to the farm and on a daily basis by a 20,000 litre milk tanker collecting from the farm's dairy.

Amongst other costs they spent £23,300 re-surfacing the drive with concrete. Originally the drive surface would have been stones laid on bare earth, but some time before had been covered by tarmac. The drive had last been surfaced about 30 years ago and had deteriorated to the point that the local refuse collectors had refused to drive up it.

The repairs took four weeks. They comprised removing the top layer of tarmac until a stable sub-surface was reached, repairing the sub-surface potholes and creating a hard-core base over the original stone (using broken up pieces of the surface layers), and then re-surfacing with concrete. New kerbing was added to bring the drive up to modern standards. The drive was not widened and its load bearing capacity was not increased.

Relevant Law/ Practice

It is possible to write-off in full for tax purposes as 'revenue' any expenditure incurred on repairs and maintenance, as long as the relevant costs are expensed through (ie, charged to) the profit and loss account, rather than being capitalised as a fixed asset on the balance sheet.

To establish whether works are revenue for tax purposes it is necessary to consider several issues. Firstly, only subsidiary parts must have been renewed (rather than replacing substantially the whole of the 'entirety') (*Lurcot v Wakely* [1911-13] All ER Rep 41). Also, the asset must only have been replaced with its like-for-like 'nearest modern equivalent' (rather than being enhanced and improved).

In the tax return the taxpayers treated all of the works as repairs. After some initial disagreement HM Revenue & Customs ('HMRC') accepted that this was appropriate for some of the costs. However, HMRC disagreed that the re-surfacing works were tax-deductible. HMRC argued that the drive was an 'entirety' in its own right that had been replaced and the effect of the re-concreting was to provide an entirely new and better surface than existed before.

Tax Tribunal Decision

The first-tier tribunal found in favour of the taxpayers.

It held that there was not a renewal of the entirety of the drive, but a repair to an existing asset. Before the work on the drive the dairy sent 20,000 litre tankers for milk collections and that situation continued following its completion. Similar considerations applied to deliveries by suppliers to the farm. However, the tribunal noted that it might have taken a different view if the drive had been altered to accommodate larger milk tankers or supply lorries (which it had not).

Therefore, the expenditure was 'revenue' and an allowable tax deduction from profits.

Our View

In our view the taxpayers' position was reasonable and supported by well-established law. The dispute was about a relatively modest amount and we were surprised that HMRC's internal processes supported taking the dispute to the tribunal, at no doubt considerable time and cost to the department.