**[2019] UKUT 0208 (TCC)**

**Appeal number: UT/2018/0131**

***CORPORATION TAX — capital allowances – time limit for claims – Finance Act 1998, Schedule 18, paragraph 82 – claims for capital allowances submitted more than 12 months after filing dates – notice of enquiry given – whether claims timeous because submitted before enquiry completed – yes – appeal refused.***

**UPPER TRIBUNAL**
**(TAX AND CHANCERY CHAMBER)**

**ON APPEAL FROM THE**
**FIRST-TIER TRIBUNAL (TAX CHAMBER)**

**THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS**

**Appellants**

**v**

**DUNDAS HERITABLE LIMITED**

**Respondent**

**TRIBUNAL: LORD TYRE**
**JUDGE DEAN**

**Sitting in public at George House, 126 George Street, Edinburgh on 12 June 2019**

**Ross Anderson, Advocate, instructed by the Office of the Advocate General for Scotland, for the Appellants (HMRC)**

**Philip Simpson QC, instructed by the Houston Partnership, for the Respondent (Dundas Heritable Limited)**

## DECISION

### Introduction

1. The respondent ("the company") carries on a business of operation of public houses and bars. It has claimed certain capital allowances for the periods to 31 March 2012 and 31 March 2013. If those claims were timeously made, it is not in dispute that the company is entitled to the allowances claimed. The time limit, in respect of a company, for making a claim for capital allowances is set out in paragraph 82 of Schedule 18 to the Finance Act 1998. The issue that arises in this appeal is whether, on a proper construction of paragraph 82, the claims were timeously made.

### Statutory provisions

2. Schedule 18 to the Finance Act 1998 contains the current statutory code for company tax returns, assessments and related matters. The following paragraph references are to that schedule.

*Company return and notice of enquiry*

3. Every company which is chargeable to tax for an accounting period must submit a return which (in terms of paragraph 7) includes a self-assessment of the amount of tax payable for that period, on the basis of the information contained in the return and taking into account any reliefs and allowances due. The filing date, ie the date by which the return must be submitted, is normally 12 months after the end of the period for which the return is made (paragraph 14(1)(a)). Following submission of its return, the company may amend the return by notice to an officer of HMRC, but except as otherwise provided, an amendment may not be made more than 12 months after the filing date (paragraph 15).

4. Unless the conditions for a discovery assessment are met, an officer who wishes to go behind a company's self-assessment may only, as Lord Hodge noted in *HMRC v Cotter* [2013] 1 WLR 3514 (paragraph 27) in the context of an individual's self-assessment, do so by one of two routes. The first is paragraph 16, which permits the officer to amend a company tax return so as to correct obvious errors or omissions (whether errors of principle, arithmetical mistakes or otherwise), or anything else in the return that the officer has reason to believe is incorrect in the light of available information. However, if such "correction" is made, it is of no effect if the company rejects it, either by amendment of its return or by giving notice of rejection.

5. The second route available to the officer, under paragraph 24, is to open an enquiry into the return by giving notice of enquiry to the company within the time allowed, which time varies according to whether the enquiry concerns the return itself or an amendment to the return, and whether or not the return was delivered by the filing date. In terms of paragraph 25(1), an enquiry may relate to anything contained in the return, including any claim or election. If, however, the notice of enquiry is given as a result of an amendment by the company of its return, and at a time when it would no longer be possible to open an

enquiry into the return itself, paragraph 25(2) limits the enquiry to matters to which the amendment relates or which are affected by it.

6. An enquiry is completed by the officer issuing a closure notice, ie a notice informing the company that he has completed the enquiry and stating his conclusions (paragraph 32). In terms of paragraph 34, the closure notice must either (a) state that, in the officer's opinion, no amendment is required of the return, or (b) make the amendments of the return that are required to give effect to the conclusions stated in the notice. The company has a right of appeal to the First-tier Tribunal ("FTT") against an amendment of its return.

*Claims for capital allowances*

7. Part IX of Schedule 18 applies to claims for capital allowances made for corporation tax purposes. Paragraph 79 requires any claim to be included in the company's tax return for the accounting period for which the claim is made; it may either be included in the original return or by amendment (of the return). A claim once made can be amended or withdrawn only by amending the return (paragraph 81).

8. Paragraph 82 is entitled "Time Limit for Claims". As it is central to this appeal we set it out in full:

> "(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 an officer of Revenue and Customs 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.
>
> (2) A claim for capital allowances may be made, amended or withdrawn at a later time if an officer of Revenue and Customs allow it.
>
> (3) The time limits otherwise applicable to amendment of a company tax return do not apply to an amendment to the extent that it makes, amends or withdraws a claim for capital allowances within the time allowed by or under this paragraph.
>
> (4) The references in sub-paragraph (1) to an enquiry into a company tax return do not include an enquiry restricted to a previous amendment making, amending or withdrawing a claim for capital allowances. An enquiry is so restricted if —
>
> > (a) the scope of the enquiry is limited as mentioned in paragraph 25(2), and
> > (b) the amendment giving rise to the enquiry consisted of the making, amending or withdrawing of a claim for capital allowances."

**The issue in the present appeal**

9. The filing date for the company's tax return for the period to 31 March 2012 was 31 March 2013. The return was received by HMRC on 3 February 2015. The filing date for the company's tax return for the period to 31 March 2013 was 31 March 2014. The return was received by HMRC on 26 November 2015. Both returns contained claims for capital allowances. Both claims were therefore submitted more than 12 months after the relevant filing date and so after the date specified in paragraph 82(1)(a). Because of this, HMRC opened enquiries into both returns, restricted to the capital allowances claims. The company contended that both claims were timeously made because they were made before the date specified in paragraph 82(1)(b) (30 days after completion of the respective enquiries), and therefore made during the time up to whichever was the last of the dates listed in paragraph 82(1).

10. This argument was rejected by HMRC, and on 16 September 2016 closure notices were issued, amending the company's returns by deleting the capital allowances claims. The company appealed against the closure notices to the FTT, which allowed the appeal. The FTT considered that the language of paragraph 82(1) was clear: a claim was timeous if lodged at any time before the last of the four possible dates. HMRC now appeals to the Upper Tribunal against that decision.

**Argument for HMRC**

11. On behalf of HMRC it was submitted that the FTT had erred in law in its construction of paragraph 82(1). There could not have been an enquiry if there had not been a return, and a claim for capital allowances had to be made in a return. Paragraph 82(1)(a) was therefore the core provision for the making of a timeous claim, and the claims in the present case had been made outside the period specified in that subparagraph. HMRC had accordingly been justified in giving notices of enquiry and subsequently issuing closure notices amending the returns by deleting the claims for capital allowances. But those actions could not affect the proper construction of paragraph 82(1)(a). There was no warrant for an automatic retrospective validation of the claims by virtue of the opening of the enquiry and/or the issue of the closure notices. In oral submissions it was further submitted that a claim made outside the time limit in subparagraph (a) was equivalent to no claim being made at all.

12. A purposive construction of paragraph 82(1) required meaning and content to be given to each of its sub-paragraphs. An analysis which permitted an out of time claim to be validated by the very process required for corrective action was entirely circular and rendered the initial time limit in subparagraph (a) otiose. It had to be assumed that Parliament had had some purpose in enacting subparagraph (a), but no purpose could be discerned from the interpretation favoured by the FTT.

13. Once a claim had been "made" for the purposes of paragraph 82(1) and refused, it could not be re-made. Although it could be amended, repetition in the same terms of an out of time claim was not amendment. In any event, even if a claim could be re-made, that had not been done in the present case. The problem for the company in this case was that no claim had been made which complied with any of subparagraphs (a), (b) or (c).

14. In response to an invitation to provide an illustration of circumstances in which one of the time limits in subparagraphs (b), (c) and (d) might apply, counsel instanced a timeous claim for a particular allowance – say, annual investment allowance – which was refused by HMRC following the giving of a notice of enquiry, but where as a consequence of the disallowance the company became entitled to a different allowance at a lower rate. In that situation, the company could utilise subparagraph (b) to make a claim for the other allowance within 30 days after the enquiry was completed, or, indeed under either subparagraph (c), if a closure notice was issued, or subparagraph (d), if the matter had gone to appeal. In other words, the purpose of those subparagraphs was to allow a late claim for a different allowance from the one originally claimed and refused.

**Argument for the company**

15. On behalf of the company it was submitted that the wording of paragraph 82(1) was clear: a claim was timeous if submitted at any time before the last of the four dates mentioned. That was the end of the matter. The statute was drafted in plain English and words such as "made" should not be given a technical meaning. Where there was no ambiguity, it was not the task of the courts to modify the plain words of a statute to enable it to meet some presumed purpose. If Parliament had intended paragraph 82(1) to be treated as a standalone provision, the legislation could have been drafted to that effect: reference was made by way of comparison to paragraphs 83E, 83K and 83W. It would make no sense to reject a claim made before an enquiry was opened, because there was nothing to prevent a new claim being made after the enquiry was opened. Such a new claim would obtain the benefit of the time limits in subparagraphs (b), (c) and (d), unless it fell within paragraph 82(4). The fact that Parliament had carved out this exception demonstrated its intention that any other enquiry, including an enquiry into an original return, engaged these time limits.

16. The policy underlying paragraph 82(1), as with other tax legislation, was to ensure that the correct amount of tax was charged and paid. Clearly there had to be finality at some point, but the company's interpretation of the paragraph 82(1) was not inconsistent with finality at a time after any appeal had been determined. There was no absurdity in a provision that prevented a valid claim being refused only because it was made late. The fact that anomalies could be identified did not indicate that Parliament had made a mistake.

**Decision**

17. In our opinion the submissions on behalf of the company are to be preferred. The words of paragraph 82(1) are clear and unambiguous: a claim for capital allowances may be made at any time up to whichever is the last of the four dates specified in subparagraphs (a), (b), (c) and (d). If one focuses specifically on subparagraph (b), it clearly and unambiguously provides, when read together with the introductory words of paragraph 82(1), that a claim for capital allowances may be made at any time up to 30 days after an enquiry into the tax return of the claimant company for the accounting period for which the claim is made.

18. That being so, we consider that the observations of the House of Lords in *Stock v Frank Jones (Tipton) Ltd* [1978] 1 WLR 231 are in point. At page 235, Viscount Dilhorne stated:

> "The existence of anomalies, if they exist, cannot limit the meaning to be attached to clear language in a statute".

At page 237, Lord Simon of Glaisdale observed:

> "…In a society living under the rule of law citizens are entitled to regulate their conduct according to what a statute has said, rather than by what it was meant to say or by what it would have otherwise said if a newly considered situation had been envisaged…"

To the same effect, Lord Scarman stated (page 238):

> "[Counsel] for the appellants sought to give the words a meaning other than their plain meaning by drawing attention to what he called the 'anomalies' which would result from giving effect to the words used by Parliament. If the words used be plain, this is, I think, an illegitimate method of statutory interpretation unless it can be demonstrated that the anomalies are such that they produce an absurdity which Parliament could not have intended, or destroy the remedy established by Parliament to deal with the mischief which the Act is designed to combat."

In *R v J* [2005] 1 AC 562, Lord Bingham of Cornhill (at paragraph 15) similarly emphasised that even if a statute was regarded as having deficiencies, the court was not absolved from its duty to give effect to clear and unambiguous provisions.

19. We are reinforced in our view by the following considerations. First, we did not understand HMRC to offer any interpretation of subparagraphs (b), (c) and (d) of paragraph 82(1) that would disqualify any of them from applying to the circumstances of the present case. It was asserted rather that for the company to rely on subparagraph (b) amounted to retrospective validation of an invalid claim. But that analysis assumes, as HMRC appeared to contend, that subparagraph (a) has a more elevated status than the other three subparagraphs. We can find no justification for such an analysis. It was not, for example, suggested that subparagraphs (b), (c) and (d) could be interpreted as applying only to amendments and withdrawals and not to initial claims. On the contrary,

there is nothing in paragraph 82(1) to indicate that subparagraph (a) has a status different from the others; it is simply the date which in most (but not all) cases is likely to occur first. Nor do we see any indication in the terms of paragraph 82 that Parliament intended to restrict the benefit of subparagraphs (b), (c) and (d) to the situation suggested by HMRC, ie where a claim is made for a different allowance from one initially claimed and refused.

20. Secondly, it is in our view significant that paragraph 82(4) contains a specific exception where subparagraphs (b) and (c) and, by necessary implication, subparagraph (d) of paragraph 82(1), have no application. The purpose of this exception appears, as senior counsel for the company submitted, to be to prevent a never-ending repetition of the same claim after a successful refusal by HMRC. The effect of paragraph 82(4) is that if a taxpayer amends his return by making a claim for capital allowances, and an officer opens an enquiry restricted by virtue of paragraph 25(2) to that amendment, then the date of completion of that enquiry cannot qualify as a date falling within subparagraph 82(1)(b), (c) or (d), and the question whether the claim was made in time will fall to be determined by reference to subparagraph 82(1)(a) alone. The fact that Parliament saw fit to provide such an exception is in our view an indication that it did not see the need for any other restrictions on the use of the dates mentioned in subparagraphs (b), (c) and (d).

21. Thirdly, it seems clear that subparagraphs (b), (c) and (d) are capable of having applications which do not simply override that of subparagraph (a). For example, assume that an enquiry into a company's self-assessment return is opened on a matter not concerning capital allowances. In the course of the enquiry, more than a year after the filing date for the return, the company realises that it wishes to make a claim (ie not an amendment of a claim) for a capital allowance. The terms of paragraph 82(1) would permit it to do so despite the date specified in subparagraph (a) having passed. We can see no reason why a company in this hypothetical situation should be more favourably treated than a company in the position of the respondent in the present appeal.

22. We reject the submission by HMRC that the making of a claim more than a year after the filing date for the accounting period in question can be treated as equivalent to no claim at all. Counsel for HMRC tentatively suggested the analogy of an offside goal which is not a goal at all, but the true analogy with an out of time claim would be the fact of the ball having been put into the net from an offside position. That fact is not altered if the goal is disallowed; equally the fact that a claim is refused is not equivalent to no claim having been made. Again, HMRC's contention depends upon their analysis that primacy should be given to subparagraph 82(1)(a), an analysis that we have rejected.

23. When one turns to address the requirement to construe the statute purposively, we are not altogether persuaded by the argument of senior counsel for the company that the purpose of paragraph 82 is to ensure that company taxpayers pay the correct amount of tax. That can no doubt be said to be the purpose of company tax legislation in general, and of Schedule 18 in particular, but we are less convinced that such a purpose can be attributed

to a provision concerned solely with the imposition of a time limit for claims. This appeal is concerned with the somewhat narrower issue of interpretation of a provision that requires HMRC, where they wish to challenge a claim for capital allowances made more than a year after the filing date, to take action which on one view will itself provide the basis of an argument that the claim is in time. If it were treated as standing alone, subparagraph 82(1)(a) would impose a time limit for capital allowance claims which is significantly less generous than the time limits normally applicable to claims for reliefs and allowances. But the paragraph must be read as a whole, and it is not unreasonable to conclude that its purpose, thus read, is to provide what Parliament regarded as an appropriate period of time within which allowances may be claimed. Putting the matter at its lowest, that cannot in our view be described as an absurdity.

**Disposal**

24. For these reasons the appeal is refused.

**LORD TYRE** **JUDGE DEAN**

**RELEASE DATE 2 July 2019**