Claim another day

Management of taxes

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Keith Gordon considers the time limits for a capital allowances claim

Key Points

What is the issue?

Dundas submitted tax returns which contained capital allowances claims which should have been made many months sooner. HMRC opened enquiries into the two tax returns, focusing on the capital allowances claims.

What does it mean to me?

The enquiries were subsequently closed, with the capital allowances claims duly removed. The company appealed against the closure notices and the matter was notified to the First-tier Tribunal.

What can I take away?

The case demonstrates that companies should not be dissuaded from making a capital allowances claim simply because their tax returns are more than a year late.

When claims are made for income tax or corporation tax purposes, the first section to consider is usually the Taxes Management Act 1970 (TMA), section 42. Within that section is the rule that claims should usually be included within a tax return (if it is or could subsequently be possible to do so). (For corporation tax purposes, the equivalent rule is found in the Finance Act 1998, Schedule 18, paragraph 57.) It is clear, therefore, that not all claims will be included in returns (i.e. when it is too late to make or amend return) and, indeed, Schedule 1A to the TMA provides a discrete code to deal with such claims.

With capital allowances, however, there is an additional rule, found in the Capital Allowances Act 2001, section 3(2). That provides unambiguously that any capital allowances claim ‘must be included in a tax return’ (although that rule is then subject to a number of exceptions referred to elsewhere in the section).

For corporation tax purposes, the rules are expanded upon in FA 1998, Schedule 18, Part 9. Most relevantly for present purposes is paragraph 82 which provides for time limits for capital allowances claims. The general rule is that such claims must be made by the first anniversary of the statutory filing date for the company’s tax return (paragraph 82(1)(a)). This corresponds with the time limit for making amendments to tax returns (paragraph 15) and therefore reinforces the idea that capital allowance claims should be made in tax returns or in amendments to such tax returns.

The recent case of *Dundas Heritable Ltd v HMRC* [2018] UKFTT 1146 (TC) considers what happens when a tax return (which includes a capital allowances claim) is submitted more than a year after the statutory filing date and therefore breaches the rule in paragraph 82(1)(a).

Facts of the case

Dundas Heritable Ltd (‘the company’) owns pubs and bars. Its tax return for the period ended 31 March 2012 was received by HMRC on 3 February 2015; its tax return for the year to 31 March 2013 was received by HMRC on 26 November 2015. Both tax returns contained capital allowances claims which (under paragraph 82(1)(a)) should have been made many months sooner.

HMRC opened enquiries into the two tax returns, focusing on the capital allowances claims. The enquiries were subsequently closed, with the capital allowances claims duly removed on the basis that they had been made late and were therefore invalid. The company appealed against the closure notices and the matter was notified to the First-tier Tribunal.

The Tribunal’s decision

The case was heard by Judge Anne Scott. She made it quite clear that the claim did not satisfy the rule in paragraph 82(1)(a). However, that was not the paragraph being relied upon by the company. Instead, the company’s case turned on paragraph 82(1) when read as a whole (and in particular in the light of paragraph (b) within that subparagraph (1)).

Paragraph 82(1) provides that capital allowance claims may be made ‘at any time up to whichever is the last of’ the dates that are determined by the following four paragraphs (a) to (d). As already noted, the date in paragraph (a) had already passed. However, paragraphs (b) and (c) both provide for later dates in cases where there is an enquiry into the company’s tax return (which was indeed the case here). In such situations, a later date is given, being 30 days after the end of the enquiry.

As the claims were clearly made before even the opening of the enquiries, the Tribunal found that they were made in time. The company’s appeals were therefore allowed.

Commentary

The decision is self-evidently right. The law is clear, as the Judge noted.

It is nevertheless a little odd that the law effectively allows a company to make a claim out of time on a tax return. Even if the claim is invalid (simply by being too late), the Self Assessment regime deems it to be valid (and therefore binding on HMRC) until such time as HMRC open an enquiry into the return and amend the return. However, under the statute, that process simply restarts the clock.

Despite the superficial oddity of the position, there are plenty of justifications for it and the law has been in place now for 20 years. Incidentally, the Schedule 18 provisions (which introduced the CTSA code) were the first experiment in the rewrite-style drafting to hit the statute book and therefore it cannot be said that the time limits were hidden away in an obscure and unintelligible provision.

Although I do not believe any appeal is under way, such an appeal would not avail HMRC because paragraph 82(1)(d) provides a further date by which time any capital allowance claim could be made, being 30 days after the final determination of the appeal.

Nevertheless, it is worth considering the possibility that the Judge’s decision were found to be wrong. In such a scenario, the company would now have had the benefit of the capital allowances claims. However, if those claims were not actually due in law, then there is an argument that the assets which were the subject of the claims (or the pool to which the claims related) have not actually been written down in accordance with the law, potentially allowing duplicate claims to be made. I would not advocate any taxpayer making such a claim, but it does highlight the risks to HMRC if they were to pursue this case any further.

Although the later time limits in paragraph 82(1)(b) to (d) appear to undermine the normal rule that claims should be made in a tax return, they appear to be consistent with it in that they focus on enquiries into the tax return, amendments to the return following such enquiries and appeals against such enquiries. Consequently, they appear to be clear exceptions to the normal rule.

What to do next

In short, the case demonstrates that companies should not be dissuaded from making a capital allowances claim simply because their tax returns are more than a year late.

The case will not avail taxpayers subject to income tax and who wish to claim capital allowances late, because there is no equivalent provision to paragraph 82. Such taxpayers are restricted by the rule that capital allowances claims must ordinarily be made on a tax return. Nevertheless, the principles will apply in respect of other claims which are not so restricted (e.g. entrepreneurs’ relief).