

It Might Very Well be Green, But is it Plant or Machine?

The Issue

In this day and age, environmental considerations are often at the forefront of building design and construction. In order to encourage “eco-friendly” buildings, the government continues to use a variety of different measures, such as building regulations, the climate change levy and of course capital allowances. A building might very well be designed and built to a strict code of energy efficiency, but that doesn't mean that it is necessarily tax efficient. To put it another way, just because a building is “green” does not mean it will attract a greater level of capital allowances. This was borne out very clearly from the decision in the recent case of Mrs. M. E. McMillin -v- HM Revenue & Customs (2011).

Background to the McMillin case

The taxpayer, Mrs. McMillin, built a house and four holiday cottages on some land that she owned in Cockermouth. The completed development was known as Southwaite Green and Mrs. McMillin claimed that it was an “eco holiday development, which is meant to demonstrate the benefits of green design, technology and living.”

The first holiday let of one of the cottages started on 31 March 2007 and in her income tax return for the tax year ended 5 April 2007 she claimed capital allowances. It was agreed between Mrs. McMillin and HM Revenue & Customs (HMRC) that expenditure on various items was machinery or plant, but agreement could not be reached on the following:

- Stone floors.
- Windows.
- Paint and decorating.
- Earth bund.

The total amount of expenditure in dispute for the tax year was £53,835 and Mrs. McMillin contended that the expenditure on the above items should be allowed as losses against her total income. The argument put forward by the taxpayer was that either the whole site, other than the shell of the buildings, should be classed as plant or, alternatively, each item should be classified as plant or machinery. HMRC contended that each item is excluded from the definition of plant or machinery by statute. The case before the Tax Tribunal was heard on 8 November 2010 and the decision date was 19 January 2011.

Is the entire site plant?

The Capital Allowances Act (CAA) 2001, contains general exclusions from the definition of plant or machinery for buildings and structures, but it also provides that, notwithstanding the general rules, certain buildings, parts of buildings and structures may be plant or machinery. These exclusions from the general rules are set out in List C at Section 23 of CAA 2001.

One of the items in List C is caravans. The argument was put forward by Mrs. McMillin that holiday cottages were analogous to caravans and should, therefore, be accepted as plant. Not surprisingly, this argument was rejected by the Tribunal. As there was no item in List C for holiday cottages, the Tribunal found that they could not add holiday cottages or “eco holiday developments” into that list. The taxpayer's claim that the cottages themselves were plant was rejected.

The Tribunal then considered each of the individual items in dispute to see whether any of them might qualify as plant. It should be noted at this point that it was not necessary for the Tribunal to consider existing case law because each item had first to overcome the exclusions in the statute concerning buildings and structures. If the items were not covered by List C, then the question of whether they could be plant in accordance with case law was irrelevant.

Stone floors

Each of the four stone cottages had under-floor heating. The heat was pumped through pipes situated underneath all the floors to the properties. On the ground floor the pipes were laid under slate and on the upper levels the pipes were under wooden floors. The claim for allowances related to the slate floors only and not the wooden floors.

The Tribunal rejected the argument put forward by Mrs. McMillin that the stone/slate floor was part of the heating system because energy consumption is reduced when stone flooring is used. Instead, the Tribunal found that the stone floor should be treated as part of a building and was not covered by item 3 of List C as a floor forming part of a heating system.

It should be noted that HMRC did allow the screed beneath the stone flooring, after initially resisting the claim, the Tribunal stated that they did not seek to disturb that agreement.

Windows

The claim for windows as plant was based on the assertion that they help to control the level of heat in the buildings because they are argon filled and faced south. It was argued by Mrs. McMillin that if solar shading can be classed as plant, then so should windows.

The Tribunal found that not only did not all the windows face south, but most of them could be opened, which would defeat the object of the insulation. As they could not be classed as part of the heating system under item 3 of List C, they must be regarded as windows and as such are part of the buildings and therefore, excluded from being plant.

Paint and decorating

The argument put forward by Mrs. McMillin for this item was that the paint applied to the walls of the cottages helped to keep the air clean. She referred to the Australian case of Wangaratta Woollen Mills Ltd -v- Federal Commissioner of Taxation, where paint applied to the walls of a dye house was held to be plant.

The Tribunal found that the function of the paint did not extend beyond that of covering the walls and making them easier to clean and the paint has not retained a separate identity from the walls onto which it has been painted. As the paint had become part of the premises, it cannot be plant. As it is part of the walls, it is excluded by Section 21 as part of the building and does not appear anywhere on List C.

Earth bund

The earth bund was created out of spoil from demolition and building works and the top of the earth bund formed a sitting out area near large north facing windows of one of the holiday cottages. It was claimed by Mrs. McMillin that the earth bund was plant under item 22 of List C, as “the alteration of land for the purpose only of installing plant or machinery.”

The Tribunal decided that the earth bund was created to allow for the disposal of waste/spoil from the building works, which made it unnecessary to incur the cost of removal. A secondary effect of the earth bund was to provide insulation to the side of one of the cottages.

Even if it was created for the purpose of installing plant or machinery, there were at least two purposes for the earth bund and therefore, it was not created for the purpose only of installing plant or machinery. As the earth bund did not satisfy the requirements of item 22 of List C, it is therefore excluded from being plant by virtue of being a structure under Section 22.

Conclusions

In our view, this case should never have been brought before the Tax Tribunal. The fact that it was may be due to the fact that the taxpayer was a partner at one of the big four accountancy firms and she was able to represent herself.

The taxpayer’s arguments seemed to be totally reliant on the fact that the items in dispute formed part of an “eco-friendly” development. We are not aware of any cases where the taxpayer was successful by contending that the capital allowances legislation should be read in any way other than the way it is written. To argue a holiday cottage is a caravan, a stone floor and a window are part of the heating system and paint is some sort of air filter displays a degree of optimism that an accountant should perhaps only have in regard to their own tax return.

Finally, in response to Mrs. McMillin’s argument that the capital allowances legislation favours those who develop buildings in non friendly ways, the Tribunal responded as follows:

“It is not within the jurisdiction of this Tribunal to amend the legislation and we do not propose to comment on the level of “eco-friendliness” used in the development at Southwaite Green or the fairness or otherwise of the legislation.”

To sum it all up — it might very well be green, but is it plant or a machine?

For further advice concerning any of the issues raised, please contact one of our key individuals detailed below, or alternatively call our helpline on 0800 526262. Information on other property tax related topics can also be found on our website at <http://bankingtaxfinance.davislangdon.com>.

London

Paul Farey
+44 (0)20 7061 7139
paul.farey@
davislangdon.com

Scotland

Michael Murray
+44 (0)131 550 9473
michael.murray@
davislangdon.com

North

Christine Weaver
+44 (0)161 819 7600
christine.weaver@
davislangdon.com

Midlands

Tim Beresford
+44 (0)121 710 1333
tim.beresford@
davislangdon.com

South

David Rees
+44 (0)23 8068 2801
david.rees@
davislangdon.com

Ireland

Lois Stirling
+44 (0)28 9024 9800
lois.stirling@
davislangdon.com

Program, Cost, Consultancy

<http://bankingtaxfinance.davislangdon.com>
www.davislangdon.com
www.aecom.com

Whilst every effort has been made to ensure accuracy at time of publication, dated March 2011 [revised July 2011], information may be subject to legislative changes and may not reflect individual circumstances. Recipients should, therefore, not act on any information without seeking professional advice.