FIELD COURT TAX CHAMBERS

Generally accepted accounting practice [1]

When it comes to the crunch, what is correct accounting practice is a matter to be determined by lawyers, not accountants

I was interested to see a recent advertisement for the latest edition of a guide to UK GAAP by one of the 'big four' accounting firms. I am sure that there are other guides written by the other three – all of which are hugely authoritative. Indeed, what could be more authoritative than guidance from the big four on what represents generally accepted accounting practice in the UK? Who would argue with that? Well, actually, HMRC for a start.

In the First-tier Tribunal case of *Ball UK Holdings Ltd v HMRC* [2017] UKFTT 457, the taxpayer company prepared its accounts in accordance with UK GAAP. At least, it thought so. The details do not really matter – at least not here – but the principle is important because compliance with GAAP is a statutory requirement for tax purposes under CTA 2009 s 46, subject to any adjustment required or authorised by law. FRS 23 was the appropriate accounting standard, and the company believed that their accounts were prepared in accordance of FRS 23 and therefore complied with UK GAAP.

The company had good grounds for their belief. PwC said it was compliant, Deloitte prepared a report in support, and the company also had two experts from KPMG. Sounds pretty good. However, HMRC said they were all wrong.

The tribunal agreed with the conclusion of HMRC, saying that 'no accountant could reasonably have read FRS 23 in that manner'. This was an interesting point of view, given the number and stature of the highly experienced accountants who did exactly that.

Following an appeal by the company, the Upper Tribunal has now considered the position further ([2018] UKUT 407). Although the UT expressly distanced themselves from the above comments of the FTT, it did not reverse the decision of the FTT. The UT upheld the decision on the grounds that the meaning and application of FRS 23 are questions of fact and not law; and of course, an appeal lies only on a point of law. The FTT had heard the expert witness evidence on which they based their conclusion; it was entitled to reach its conclusion, which was a matter of fact, and there was no error of law which could be overturned by the Upper Tribunal. End of story.

A possibility arises that the UT might have been able to take a different view and to have 'remade' the decision of the FTT under the authority of the Tribunals, Courts and Enforcement Act 2007 s 12(2)(b)(ii)). If this had applied, and been followed by the UT, it would have been able to:

> (a) make any decision which the FTT could make if the FTT were remaking the decision; and

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(b) make such findings of fact as it considers appropriate.

It is clear that the UT considered that this power did not apply (or was not appropriate) in this case.

However, it did make the most beautifully phrased observation that when one is reading the FTT judgment, it is necessary:

> "to avoid an incorrect impression being obtained that the FTT was expressing legal views about the correct accounting approach, rather than making findings of fact".

Despite this elegant disclaimer, the UT decision reinforces an uncomfortable truth – that when it comes to the crunch, what is correct accounting practice is a matter to be determined by lawyers and not by accountants.

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