Capital allowances: plant or premises?[1]

The demarcation between premises and plant remains rather elusive

Cases on capital allowances do not seem to crop up that much these days – still less industrial buildings allowances which used to be such fun (at least I remember they were fun, but even going out to get an injection is fun these days).

Recently we had *Immarsat Global Ltd v HMRC* [2020] UKUT 59, which was concerned with the everyday issue of allowances for satellites – but perhaps more relevant was the case of *Cheshire Cavity Storage Ltd v HMRC* [2021] UKUT 50.

The company spent a good deal of money on creating cavities to hold gas under pressure and they claimed capital allowances on the basis that the cavities were plant. These cavities are apparently much better than gasometers (they hold 300 times as much gas) and they are underground rather than being an unattractive feature of the landscape. Their function was to store gas so that it could be safely held and released to the National Grid when required.

There are so many cases on capital allowances, many of them in conflict, that it is really difficult to work out whether or not something qualifies as plant. In this case, the First-tier Tribunal decided that the expenditure on the cavities was not plant. They said that the whole issue was whether the expenditure was on plant or premises, and they decided that the predominant function was storage which was a premises function. The Upper Tribunal confirmed the position.

The company had some support for their view: for example, *Schofield v Hall* [1975] STC 353 where grain silos were held to be plant. The silos were plant because they played a part in the process of reception, distribution and discharge of the grain. This sounded pretty good as it seems exactly the same as the position with the gas.

And there is *Cooke v Beach Station Caravans* [1974] STC 402 where swimming pools were held to be plant. They were empty spaces filled up with water (rather than grain or gas). They were plant because they were 'part of the means whereby the trade is carried on and not merely the place at which it is carried on'. Even better.

There was also the House of Lords decision in the celebrated case of *IRC v Barclay Curle & Co Ltd* [1969] 1 All ER 732 which held that a dry dock (another structure involving a large space), was in the nature of a tool of the taxpayer's trade and therefore plant. Indeed, the House of Lords said that whilst not every structure which fulfils the function of plant must be regarded as plant, you have to find a good reason for excluding such a structure.

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Pretty good, but no cigar. The Upper Tribunal pointed to *Benson v The Yard Arm Club Ltd* [1979] STC 266 which concerned a floating restaurant which had been held to be the setting in which the business was carried on (it sounds a bit like a dry dock, really).

In *Bradley v London Electricity* [1996] STC 450, an electricity sub-station was held not to be plant. This is an interesting decision because the judge said that the Special Commissioners had described the sub-station as 'more appropriate to describe the structure as apparatus to carry on the business than as the premises in which the business is conducted' but they did not mention what plant-like function they had in mind. (That was a shame because the principle was clearly enunciated).

The Upper Tribunal made numerous references to *Attwood v Anduff Carwash Ltd* [1997] STC 1167 where a carwash had been held to be premises (even thought it might have seemed to be the means by which the trade was carried on – or perhaps a tool of the taxpayer's trade).

The Upper Tribunal explained the overall conclusion that where something functions as premises and as plant, you have to identify which is the more appropriate description. Is it 'apparatus with which the business was carried out or premises in which the business was carried out'?

It is clearly challenging to apply this principle to some of the decided cases. In the end, it is one of impression, and tribunal's impression was that the expenditure by Cheshire Cavity Storage was on premises and not on plant – although it is a bit difficult to see what part of the trade was actually carried on in those premises. Notwithstanding its shortcomings, this is the test we must apply, despite the demarcation line between premises and plant being rather elusive.

Peter Vaines

Field Court Tax Chambers