SQUIRE PATTON BOGGS

END OF TRADE

August 2015

The Upper Tribunal has recently heard the appeal of *Keyl v HMRC [2015] UKUT 383* which concerned the increasingly controversial subject of when a trade ceases – or more accurately in this case, when the trade is permanently discontinued.

The reason this was significant is because Mr Keyl incurred some expenditure in the year ended 31 March 2009 which in principle qualified for capital allowances. However, the allowance is not given if:

> "*the expenditure was incurred in the chargeable period in which the qualifying activity is permanently discontinued*".

Mr Keyl carried on a business as a sole trader installing air conditioning systems and on 1 April 2009 the business was transferred to a company. The question was: when did his sole trader business cease?

Mr Keyl claimed that his business continued throughout the chargeable period – until the very end of the last day of the accounting period - and that the business started to be carried on by the company immediately thereafter on 1 April.

The First Tier Tribunal decided that the old trade must have ceased immediately before midnight on 31 March and the new trade commenced by the company immediately after midnight. Therefore the trade ceased in the year ended 31 March and the allowance was not available.

That sounds really tough – but the Upper Tribunal explained that this was an inevitable conclusion.

Did the trade cease in the year ended 31 March 2009 or did it cease in the year ended 31 March 2010? Obviously it could not be in the year ended 31 March 2010 because the trade was not carried on at all in that year so it must have ceased in the previous year. This seems inescapable and was enough to deny relief to Mr Keyl.

Nevertheless, it seems like a trap for the taxpayer and it might more helpfully be said that expenditure does not qualify for relief if it is incurred in the final period of trading. There are few people who would instinctively consider that a trade ceased in a period when it continued until the very end of that period.

It is possible that the case of *A Debtor v CIR [1992] STC 549* might have been helpful to Mr Keyl as in that case HMRC argued that a business continues until all the debts of the business incurred in the course of trade have been paid. This may have afforded Mr Keyl an opportunity to argue that his business did not cease until all the liabilities had been discharged.

However, there may have been another argument available to him because Section 6 Capital Allowances Act 2001 (which applied at the time) defined a chargeable period for this purpose as the period for which accounts are drawn up for the purposes of the trade. Had Mr Keyl been aware of this troublesome interpretation, he might have decided to draw up his accounts to an earlier date which might have secured him full relief for the expenditure.

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