

We have not had any capital allowances tax cases for a while, certainly not on the once-popular theme of whether expenditure is on plant or on the setting in which the trade is carried on.

Accordingly, it was interesting to read the case of *Rogate Services Limited v HMRC* TC03449 in which the question was whether expenditure on a car valeting bay was plant and eligible for capital allowances.

The First-tier Tribunal found as a question of fact that the expenditure was on a building. This is hardly surprising because the company sought permission for a double garage and expenditure was incurred on walls, a floor, a ceiling and a roof. It sounds a bit of a stretch to argue that this was not a building. The taxpayer claimed it could still qualify as plant because it fulfilled an active function, being used to apply glass coat finishes to cars.

The tribunal concluded that this particular building did not perform a function. It was a place of work which did not amount to plant.

This sounds like a close run thing. In this building the relevant process took place for the application of the glass coats to the cars. Was that an active function? The taxpayer may have taken comfort from:

- *Cooke v Beach Stations Caravans* [1974] 3 All ER 159 where a swimming pool provided an active function of “pleasurable buoyancy” for bathers;
- *Schofield v R&H Hall Ltd* [1975] STC 353 where a silo provided an active function of holding grain; and
- *Andrew v HMRC* TC00799 where a gazebo provided facilities for customers to sit and drink.

However, in *Brown v Burnley Football Club* [1980] 3 All ER 244, expenditure on a stand where people were able to sit and watch the game was not plant although in *O’Grady v Roscommon Race Committee* HC(I) 1992 (unreported) a race course stand where people were able to sit and watch was plant (This contrasts with *St John’s School v Ward* [1975] STC 7 where a gym was said not to have a functional purpose. Presumably sitting and watching is a functional purpose but carrying on gymnastic activity is not).

In *Benson v Yard Arm Club* [1979] 2 All ER 336 a floating restaurant did not fulfil an active function, although it is difficult to see why pleasurable dining is significantly different from pleasurable swimming.

Similarly, in *Atwood v Anduff Car Wash* [1997] STC 1167 a car wash was held not to fulfil an active function. My experience of car washes is not great, but I understand that they do a number of things actively (like wash, clean and dry your car) which sounds a tad more active than merely holding grain.

Having regard to all the above, the taxpayer might have thought that his expenditure on the building might be OK. However, I think the answer can be found from ss21 and 22, Capital Allowances Act 2001 which postdates all the above decisions.

Section 21 provides that expenditure on the provision of plant or machinery does not include expenditure on the provision of a building. Further, s22 provides that expenditure on provision of plant and machinery does not include expenditure on the provision of a structure.

Accordingly, it would not seem to matter any more that the building fulfils an active function. If it is a building or a structure (other than those specifically excluded) it is disqualified from being plant and that is the end of the matter.

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