

INTRODUCTION TO EXAMPLE

This is a particularly bad example of a very significant failure by HMRC we have greyed out areas that “les relevant” and omitted the pleadings at the end completely.

XXXXXXXXXXXXXXXXXXXX

Appellant

And

HER MAJESTY’S REVENUE & CUSTOMS (HMRC)

Respondent

XXXXXXXXXXXXXXXXXXXX

STATEMENT OF CASE BY THE APPELLANT

Background

1. The business is a partnership of two motor vehicle mechanics, Mr and Mr , involved in the repair and rental of black cab taxis. Both partners describe themselves as hands on “spanner” men, mechanics with no knowledge of business bookkeeping.
2. It is agreed that core documents such as invoices were not properly kept The failure to maintain proper business records does not however automatically mean that there was an under declaration of sales, deliberately of otherwise..
3. Similar considerations do not however apply to the written records of the business transactions. These were maintained by a friend of the proprietor, and apart from the underlying issue of three months cash transactions no issue have been raised to those written records.

Underlying Issue 1; Missing Cash Purchases

- a. a. That cash material purchases were recorded in respect of 3 quarters 10/03, 01/04 and 04/04.
- b. That no cash material purchases were recorded in the quarter 31/07/2004.
- c. That none of the explanations afforded to HMRC explain the absence of the cash material purchases in the 07/2004 quarter.

Our Response

We had discussed this in detail with the client over time and he had been extremely reluctant to offer any logical explanation. It was only when he finally realised the seriousness of the situation that he was persuaded to come forward with the full explanation.

- i. The quarter in question was when he hit a particular personal “low” in relation to his ongoing divorce with his wife. He had been sleeping in the “shed” at the yard, drinking excessively and had simply failed to give the invoices to his bookkeeper who accordingly did not record them. There might have been a slight overlap of this omission in the previous and subsequent quarters.
- ii. There was not an under declaration of sales at that time. He is an inherently honest man and the necessary addition to sale estimated at £7,000 must be matched by a corresponding addition to purchases, thus restoring the status quo.
- iii. The comparison of the quarter in question with the other 3 quarters at Doc MFA x clearly indicates the comparability of the figures.
- iv. Appropriate medical evidence is at Doc MFA y.

Underlying Issue 2; Cost of Sales HMRC’s Stance and explanations thereto.

4. The business maintains both its own fleet of vehicles and also repairs cars brought to it by owner drivers. HMRC has stated that it does not accept that the business spent of the order of £2,600 per car, annually, maintaining and repairing the 22 hired cabs owned by the business.
5. HMRC has calculated that expenditure on non owned vehicles is £376.75.
6. HMRC has thus concluded that the expenditure on its own own vehicles must equate to the equivalent expenditure on non owned vehicles. £376.75.
7. Deriving from this it follows according to HMRC that the residue of expenditure has been spent undertaking additional third party work, yielding substantial additional income.
8. This really is one of the more ridiculous contentions that I have seen HMRC put forward, and I respectfully suggest that the Tribunal, having appraised itself of the facts, mat well come to the same conclusion.
9. In support of this contention HMRC has raised the following specific points.
 - a. That the business spent an average of £376.75 repairing cabs brought to them by other owner drivers for repair.

Our Response

The comparison is without foundation and meaningless. They repair and maintain every aspect of their own vehicle. Taxi drivers tend primarily to maintain their own vehicles, and the taxpayers undertake only ad hoc repairs requested of them to other vehicles.

- b. That only one repair job attracted a sales invoice in excess of £1,500 in respect of third party repairs, which is at odds with “own vehicle repair and maintenance expenditure of £57,570”.

Our Response

There is no rationale underlying the “conclusion” which is meaningless.

- c. That numbers of parts used in repairs were acquired from often seized up old, free taxis, and purchases of spares were made only in respect of non reclaimable parts.

Our Response

The inference is clear but there is no defined quantifying rationale underlying the statement.

In any event The meeting notes have not been agreed by the taxpayer and we would respectfully suggest to the Tribunal that information derived from such speculative questions requiring speculative and undefined answers is of little use.

Underlying Issue; Cost of Sales, Taxpayer’s Explanation

10. The maintenance of a public transport taxi vehicle with its stop start operations is completely different from the maintenance of a conventional car. A taxi will typically drive 50,000 miles in a year, taking onboard 1000’s of individual loads of passengers.
11. We have attached at MFA Doc A details of the fitness standards required by The Public Carriage Office. These fitness standards are rigidly enforced and vehicles are subject to frequent inspections The fitness standards are very high, for example a tear in the fabric of a seat which would be acceptable in a private vehicle would not be acceptable in a public service vehicle. The replacement of the cover on a back seat for example would be £400.
12. We have attached at MFA Doc B a handwritten schedule of the costs attributable to the maintenance of one vehicle produced by the taxpayer. We have discussed the detail of this with the taxpayer, and from this have formulated a typical schedule of **fixed annual mechanical maintenance costs** which is at MFA Doc C. We have incorporated in this an estimate of the costs that could be attributed to” seized” used vehicles.
13. Using the same MFA Doc B supplied by the taxpayer we have produced at Doc MFA D a schedule of the **additional annual mechanical maintenance and repair costs** that might typically be incurred. We have incorporated in this an estimate of the costs that could be attributed to” seized” used vehicles.
14. Using the same Doc MFA B supplied by the taxpayer we have produced at Doc MFA E a schedule of the **annual bodywork maintenance costs** that might typically be incurred. We have incorporated in this an estimate of the costs that could be attributed to” seized” used vehicles.

15. In producing the aforementioned data we attest that we have not “lead” the taxpayers to a figure but have simply produced a schedule on the basis of what we have been told. From the schedules provided we calculate the average annual repair and maintenance costs to be **£2900.00**.

Penalty Considerations; Cooperation HMRC Mitigation 15% / 40%

16. HMRC in its assessment of penalties has failed to make the Tribunal aware of numbers of issues underlying this. With one exception the taxpayer cooperated significantly with HMRC. A significant issue was the taxpayer’s and his agent’s sheer frustration at HMRC’s inability / deliberate disinclination to accept explanations offered.

Cost of Sales

17. In all of our dealings with XXX Associates, the taxpayer’s accountants we have found them to be an efficient and competent. Yet our engagement, at a substantial cost to the taxpayer, derived from XXX’s complaint that HMRC “simply will not listen”.
18. In relation to the maintenance cost of the owned cabs we are not particularly astute, but we were able to grasp completely, without having prepared the foregoing data the point made by the taxpayers that maintenance costs would be substantial.

The collective members of HMRC staff involved in this investigation must have a significant degree of experience. One member of staff described herself as having experience of the motor industry. Given the numbers of taxpayers in xxxxxxxx alone who are self employed taxi drivers HMRC have a massive tranche of information to draw on internally as to the maintenance costs “typically” incurred by taxi drivers.

On the basis of the foregoing it is difficult, perhaps even impossible to understand how any balanced objective review could have possibly have come to the conclusion it has as regards the “Cost of Sales” Issue.

Property £75,000

19. The Tribunal has not been involved in the issue of the £75,000 accountancy adjustment in respect of property which was another ongoing issue. It was a simple accountancy adjustment which any accountant would understand

A problem here is that HMRC staff are not trained to interpret accounts, and it was only after a prolonged expiation that the situation was eventually understood.

HMRC staff do however have access to internal accountants for advice as discussed at the meeting on 23 June 2010, (something that was not reflected in the meeting notes) but HMRC chose not to seek that advice.

Business Use of Private Vehicles

