



[2016] UKUT 209 (TCC)
Appeal number UT/2010/00024

Claims for repayment of VAT – whether further claims for refunds were amendments to an earlier claim made within the time prescribed by s. 121 Finance Act 2008, or were separate claims out of time and barred by s. 80(4) Value Added Tax Act 1994 – held that the claims were separate claims and out of time - appeal dismissed.

**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

BETWEEN:

GRAND ENTERTAINMENTS COMPANY (a firm)

Appellant

and

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

Tribunal: MR. JUSTICE SNOWDEN

**Sitting in public at The Royal Courts of Justice, Rolls Building, Fetter Lane,
London EC4A 1NL on 7 March 2016.**

Mr. Geoffrey Tack (of DLA Piper UK LLP) for the Appellant firm

**Mr. Brendan McGurk (instructed by the General Counsel and Solicitor to HMRC)
for the Respondents**

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DECISION

1. This appeal raises the issue of what amounts to an amendment of an existing claim for repayment of overpaid VAT for the purposes of section 80(4) of the Value Added Tax Act 1994 (“VATA”). If the relevant communications sent on behalf of the Appellant to HMRC were amendments of an existing claim, they would be regarded as made within the statutory time limit; if they were new claims, they were made outside the statutory time limit.

Background

2. The Appellant firm is a partnership that ran a bingo and social club. The case relates to a number of games that the Appellant offered to its customers between 1973 and 1996, and in relation to which it accounted to HMRC for output tax upon participation fees received. These were as follows,
 - i) Main Stage Bingo ("MSB") was bingo played in the traditional way with the customer using a “dabber” or pen on a paper ticket from a book purchased from a sales counter in the club, with 15 numbers to be drawn from a pool of 90 selected by a random number generator and announced by a caller;
 - ii) Mechanised Cash Bingo ("MCB") was bingo played on a plastic board containing numbers set into the tables within the club, with 16 numbers to be drawn from a pool of 80 selected by a random number generator and announced by a caller. MCB was played during intervals between the MSB games. On it being announced that a game was to be played,

customers could decide whether or not to participate, and would do so by inserting a coin or coins representing their stake into a slot mechanism in the tables which would activate the board containing a number of bingo games; and

iii) Amusements With Prizes ("AWP") and Jackpot Machines ("JM") were, as their names suggest, different types of electronic gaming machines (sometimes referred to as "slot machines").

3. The background to the case is that in 2008, Rank Group plc, which also operated bingo and social clubs, succeeded in appeals to what was then the VAT Tribunal against HMRC's refusal of claims for repayment of output tax in relation to participation fees for MCB, AWP and JM. Those claims for repayment were essentially based upon the argument that MCB and slot machines were treated differently for the purposes of exemption from VAT from certain other types of gaming machines, but that from the consumer's point of view they were identical supplies. Accordingly, it was said, the differential treatment breached the principle of fiscal neutrality under EU law, which requires that similar supplies should be treated in the same way for tax purposes so as to avoid any distortion of competition. Rank's success before the VAT Tribunal naturally prompted other bingo and social club operators, including the Appellant, to make similar repayment claims.

The statutory regime for repayment of VAT

4. Repayment of overpaid VAT is not automatic. Above a certain level which can be corrected on subsequent VAT returns, credit or repayment of significant amounts of overpaid VAT requires the taxpayer to make a

qualifying claim pursuant to section 80 VATA. At the material times, that section provided in relevant part as follows,

- “(1) Where a person -
- (a) has accounted to the Commissioners for VAT for a prescribed accounting period (whenever ended), and
 - (b) in doing so, has brought into account as output tax an amount that was not output tax due,
- the Commissioners shall be liable to credit the person with that amount ...
- (2) The Commissioners shall only be liable to credit or repay an amount under this section on a claim being made for the purpose. ...
- (3) It shall be a defence, in relation to a claim under this section by virtue of subsection (1) or (1A) above, that the crediting of an amount would unjustly enrich the claimant.
- (4) The Commissioners shall not be liable on a claim under this section -
- (a) to credit an amount to a person under subsection (1) ... above ...
- if the claim is made more than 3 years after the relevant date ...
- (4ZA) The relevant date is—
- (a) in the case of a claim by virtue of subsection (1) above, the end of the prescribed accounting period mentioned in that subsection ...
- (6) A claim under this section shall be made in such form and manner and shall be supported by such documentary evidence as the Commissioners prescribe by regulations; and regulations under this subsection may make different provision for different cases.
- (7) Except as provided by this section, the Commissioners shall not be liable to credit or repay any amount accounted for or paid to them by way of VAT that was not VAT due to them.”

5. The regulations to which section 80(6) VATA refers are the Value Added Tax Regulations 1995 (SI 1995/2518) (the “VATR”), regulation 37 of which provided at the relevant time:

“A claim under section 80 of [VATA] shall be made in writing to the Commissioners and shall, by reference to such documentary evidence as is in the possession of the claimant, state the amount of the claim and the method by which that amount was calculated.”

6. The introduction of time limits for the making of claims for repayment of VAT were the subject of the decision of the House of Lords in Fleming v HMRC [2008] UKHL 2. The House of Lords held that such time limits could not lawfully be imposed in relation to vested rights without an adequate transitional period. This prompted Parliament to enact section 121 of the Finance Act 2008 which provided that the 3-year cap in section 80(4) VATA did not apply to,

“a claim in respect of an amount brought into account, or paid, for a prescribed accounting period ending before 4 December 1996 if the claim was made before 1 April 2009.”

The Claims in this case

7. The evidence of Mr. Tim Deeming, a partner in the Appellant firm, was that,

“Following the decision in the Fleming case, in March 2009 I was instructed by my tax advisor to make a claim in respect of overpaid output VAT on mechanised cash bingo and gaming machines.”

8. A claim for repayment of overpaid VAT was therefore made to HMRC by the Appellant's tax advisers, Dains LLP, by letter dated 19 March 2009 ("the Original Claim"). The Appellant's claim was for £158,459.21 of output VAT overpaid over the period between 1 November 1980 and 4 December 1996. The amount claimed was itemised quarter by quarter and also broken down into annual amounts for each of (i) MCB and (ii) AWP and JM.

9. The Original Claim letter described the claim as being made,

"in respect of Mechanised Cash Bingo, AWP and Jackpot Machines as detailed in sections 14, 31 and 34 of the Gaming Act 1968."

Section 14 of the Gaming Act 1968 dealt with charges for gaming, and sections 31 and 34 appeared in Part III of the Act which specifically related to gaming by means of machines constructed or adapted for the playing of a game of chance and which had a slot or other aperture for the insertion of money or money's worth in the form of cash or tokens: see section 26 of the Act.

10. The decisions of the VAT Tribunal in the Rank case were appealed to the High Court, which, on 8 June 2009, upheld the decision of the VAT Tribunal in relation to MCB: see HMRC v The Rank Group plc [2009] EWHC 1244 (Ch). That decision was then the subject of a number of Revenue & Customs Briefings. In Briefing 40/09 (14 July 2009), HMRC indicated that businesses could submit claims for repayment of output tax wrongly accounted for on MCB participation fees; and in Briefing 55/09 (20 August 2009) HMRC stated that it did not accept that the ruling extended beyond MCB to encompass participation fees charged on all bingo games.

11. HMRC rejected the Appellant's Original Claims in respect of AWP and JM and the Appellant appealed this rejection on 16 September 2009. On 20 October 2009 HMRC authorised payment of that part of the Original Claim that related to MCB.
12. Mr. Deeming's evidence was that,

“My advisors came to me later in 2009 and said that following an HMRC Briefing issued it was apparent that on reviewing [the Original Claim] it had come to their attention that I could also claim for [MSB]. I therefore instructed my advisor to submit an amendment to the existing claim for the same period to include income received from [MSB].”
13. Following such instruction, by a letter dated 9 November 2009 from Dains LLP to HMRC, the Appellant submitted what was expressed to be “an amendment” to the Original Claim. This claim (“the November 2009 Claim”) was for overpaid VAT on MSB in respect of the same quarterly accounting periods as the Original Claim, and was for a total of £92,167.58.
14. On 8 December 2009 HMRC issued a further Briefing 75/09 which for the first time accepted that (subject to the outcome of the pending appeal to the Court of Appeal) the High Court judgment in the Rank case had a wider application than HMRC had previously acknowledged. HMRC indicated that claims for repayment of VAT on participation fees for other types of bingo in addition to MCB would therefore be considered.
15. By letter dated 12 January 2010, the Appellant then submitted a further claim (“the January 2010 Claim”) which was expressed to be “a further amendment” to the Original Claim. The January 2010 Claim covered a different period

from 1 April 1973 to 31 October 1980, and was for overpaid output VAT on MSB, MCB, AWP and JM for a total of £40,963.23. The January 2010 Claim letter stated that,

“This additional further element to the claim is in relation to the years 1973-1980 inclusive which were not included in the initial claim made (which covered 1981 – 1996), due to an oversight in terms of the available records that my client possessed (we have subsequently found Annual Accounts data in archive).”

Mr. Deeming’s evidence was that the January 2010 Claim was submitted because he had “accidentally found” accounting records relating to 1973-1980 in the loft at the Appellant’s premises whilst renovation work was being done.

16. HMRC rejected both the November 2009 Claim and the January 2010 Claim as being out of time, on the basis that they were new claims made after 1 April 2009 and barred by the 3-year cap in section 80(4) VATA.

The Appeal

17. By Notice of Appeal to the First Tier Tribunal (Tax) dated 19 February 2010, the Appellant appealed against HMRC's decisions to reject the November 2009 Claim and the January 2010 Claim. The Appellant claimed that the November 2009 Claim and the January 2010 Claim were to be regarded as amendments to the Original Claim that had been made in March 2009, and thus that they were not subject to the 3-year cap.
18. The appeal was stayed for a lengthy period to await the outcome of the appellate litigation in the Rank case (which reached the ECJ and was decided on 10 November 2011: HMRC v The Rank Group plc, Cases C-259/10 and C-260/10). The appeal was also stayed pending the decision of the Upper

Tribunal in Reed Employment Limited v HMRC [2013] UKUT 0109 (TCC) (Roth J) (“Reed”) which concerned amendments to VAT repayment claims.

19. On 12 May 2014, the First Tier Tribunal dismissed the Appellant’s appeal: [2014] UKFTT 610 (TC) (Judge Poole and Mrs. Gable). The Appellant now appeals pursuant to permission granted by Judge Timothy Herrington on 29 January 2015.

The law on amendment of claims for repayment of VAT

20. There are no rules or regulations dealing with the question of amendment of claims under section 80 VATA. In that respect, the position contrasts, for example, with CPR Part 17 which deals with amendment of statements of case in civil proceedings and, in CPR 17.4, with amendments after the end of a relevant limitation period.
21. The interpretation of section 80 VATA in relation to amendment of repayment claims was considered by Roth J. in Reed. Reed concerned the unjust enrichment defence in section 80(3) VATA rather than the 3-year cap in section 80(4). That unjust enrichment defence applies to claims made after 26 May 2005. The dispute was whether such a defence could be applied by HMRC to a claim for a VAT repayment made in 2009. The claimant contended that the 2009 claim was an amendment to a claim made in 2003 so that the unjust enrichment defence did not apply, whereas HMRC contended that the claim in 2009 was a new and distinct claim to which the unjust enrichment defence applied.

22. Roth J. first made the point that (as well as there not being any rules governing amendment of claims) there was no relevant definition of “claim” in section 80 VATA at all. He said, at paras 30-31,

“30. There is no statutory definition of “claim” for the purposes of s. 80 that would provide a basis for distinguishing an amendment to an existing claim from a new claim ... Nor is there any authority on this question, save for two VAT Tribunal decisions holding that once a claim has been paid, any further demand cannot constitute an amendment to that claim. This was accepted by Reed in this case....

31. In those circumstances, I consider that “claim” should here be given its ordinary meaning. In this context, it means a demand for repayment of overpaid tax. It may relate to one accounting period or many, to one particular supply or many, and to a part of the taxpayer’s business or the whole of its business. There is no reason, in my view, why any of these cannot constitute a self-standing claim.”

23. Roth J. then continued,

“32. The FTT approached the question of whether a further demand is an amendment to an existing claim by adopting the test of whether it was shown to be “in essence as one with an earlier claim”: para 110. In my judgment, there is nothing wrong with this test, but I am not sure it advances the matter significantly, and I do not think it is appropriate to add a gloss to the statutory wording. The FTT proceeded to hold as follows:

“111. That test, in our view, will be satisfied only if the later claim arises out of the same subject matter as the original claim, without extension to facts and circumstances that fall outside the contemplation of the earlier claim. Without deciding matters outside of this appeal, we consider, for example, that this would generally include cases where a particular computation was not made at the time of the original claim, but the subject matter of the claim was sufficiently identified for such a calculation made subsequently to be related back to the original claim. Simple calculation errors would similarly be included. It should also cover, we think, cases where particular items within the category of the subject matter of the original claim are unknown or not fully identified at the time of the original claim,

and would but for that fact have been included in the original claim, but only subsequently come to light.”

33. If subsequent to the submission of a claim, the taxpayer sends in the correction of a mistake, whether that be an arithmetical error or through the omission of some supplies that were clearly intended to be included, then I consider that would clearly not be a new claim but an amendment. Further, if the taxpayer making a claim says that he is not yet able to calculate the full figures and gather all the documentation as required by reg 37, but is in the course of doing so and will provide such further details as soon as possible, such further submission would not constitute a new claim but fall within the scope of the existing claim. Thus I consider that what is an amendment is very much a question of fact and degree, judged by the particular circumstances. I therefore respectfully agree with the test set out by the FTT in the first sentence of para 111. However, of the examples given in that paragraph, I would not wish to approve in the abstract the final example: that would be for consideration on the particular facts of the case should it arise.

.....

35. I should add that the fact that [a claim for repayment] is drafted in the form of an amendment to [an earlier repayment claim] cannot serve to constitute it as such an amendment if in substance it is not.

....

38. Mr Peacock gave the example of a claim for a particular accounting period in respect of supplies in London, where the taxpayer subsequently wrote to ask for repayment in respect of supplies made for the same accounting period in the rest of England. However, in my judgment, unless there was some express reservation in the initial claim of the kind that I have indicated, the later request would clearly constitute a separate claim. So also if Reed initially sought to claim reimbursement of allegedly overpaid VAT only for its placement services in the healthcare sector, and subsequently made a demand for repayment as regards another part of its business, notwithstanding that this was for the same accounting period and arising out of the same error.”

24. Roth J. then held that the demand submitted in 2009 was not an amendment of the claim submitted in 2003. The first claim had been made in respect of

supplies to clients of Reed in what was referred to as “the irrecoverable sector” (clients who were wholly or partly exempt from VAT and who would have to bear all or part of the input VAT), whereas the later claim was made in respect of supplies to those in “the recoverable sector” (clients who could deduct input VAT from their output VAT). Roth J. concluded on the evidence that the 2009 demand “was a new claim, covering supplies to a different category of clients...who had been consciously excluded from the 2003 claim”.

The Decision in the FTT in the instant case

25. In the instant case, after referring to the facts, the First Tier Tribunal held,

“23. Applying normal English usage, as illuminated by the comments of Roth J in Reed, we have no doubt in reaching the conclusion that the November 2009 Claim and the January 2010 Claim were both new claims and not amendments to the Original Claim.

24. As was made clear by Roth J at [35] in Reed, the fact that the later Claims were expressed to be amendments to the Original Claim is irrelevant to their true nature.

25. The Original Claim was quite clearly on its face not intended to apply to Main Stage Bingo and it was also on its face quite clearly limited to the period from 1 November 1980 to 4 December 1996. On any interpretation, by clearly stating the categories of the supplies and the time period to which it related, it implicitly excluded any claim in respect of other categories of supplies and other periods of time. To seek to add such supplies and periods of time at a later stage can only sensibly be regarded as making entirely new claims (albeit claims that were, by their subject matter, closely linked to the Original Claim).

26. We are not here concerned with “the correction of a mistake, whether that be an arithmetical error or through the omission of some supplies that were clearly intended to be included”; the November 2009 Claim and the January 2010 Claim sought to do neither; instead they sought to extend the Original Claim to cover matters which, with hindsight, it would

have been preferable for it to have included. Nor had the Original Claim been submitted on an explicitly provisional basis, with the later claims merely providing the promised missing material; they covered entirely different matters.

27. In short, we have no hesitation in finding that the November 2009 Claim and the January 2010 Claim should both be regarded as standalone claims and accordingly the appeal must be dismissed.”

The Arguments on Appeal

26. As a preliminary matter, it was common ground between the parties that by reason of the Appellant’s outstanding appeal dated 16 September 2009 against rejection of the Original Claim in relation to AWP and JM, the Original Claim was still outstanding and hence capable of being amended when the November 2009 and the January 2010 Claims were made: see CCE v University of Liverpool [2000] VTD 16769 and paragraph 30 of Reed (above).

27. As I have indicated, the issue that divided the parties was whether the November 2009 and the January 2010 Claims should be treated as having been made as part of, or by way of amendment to, the Original Claim so as to fall within section 121 of the Finance Act 2008.

28. Mr. Tack argued first that the decision of the FTT failed to address the implications of what he contended was the fundamental point decided in Rank, namely that all of the supplies referred to in the Original Claim, the November 2009 Claim and the January 2010 Claim had to be treated in the same way for VAT purposes. He said that since such supplies had to be treated identically for VAT purposes, and had all been accounted for together, all of the claims for repayment in respect of them should in substance be

regarded as part of the same Original Claim rather than as three separate claims.

29. Secondly, Mr. Tack focussed on the example given at the beginning of paragraph 33 of Roth J.'s judgment in Reed, namely,

“If subsequent to the submission of a claim, the taxpayer sends in the correction of a mistake, whether that be an arithmetical error or through the omission of some supplies that were clearly intended to be included, then I consider that would clearly not be a new claim but an amendment.”

30. Mr. Tack submitted that it was clear that the Appellant would have intended to include in his Original Claim a claim in respect of all of the supplies for which he had overpaid VAT. Mr. Tack then submitted (i) that the reason that the claims for MSB in the November 2009 Claim were not included within the Original Claim was because of a mistaken view (of law) that they could not be included; and (ii) that the reason that claims for supplies prior to 1 November 1980 were not included within the Original Claim was because of a mistaken belief (of fact) that the necessary supporting documents to comply with regulation 37 VATR were not available to the Appellant. Mr. Tack said that any such mistakes, whether based upon a misapprehension as to law or fact, and even if only retrospectively apparent, would amount to a mistake which would permit the taxpayer to amend his claim.

Analysis

31. Applying the ordinary meaning of the word “claim” suggested by Roth J. in paragraph 31 of Reed – namely a demand for repayment of overpaid tax - it is obvious that the demands for repayment of the overpaid tax contained in the

November 2009 Claim and the January 2010 Claim letters were claims made after 1 April 2009. Prima facie, they do not fall within section 121 of the Finance Act 2008 and are therefore barred by section 80(4) VATA.

32. I consider that the first of Mr. Tack's arguments to the contrary, based upon Rank, is misconceived. The relevant question is whether the demands for repayment of overpaid VAT contained in the November 2009 Claim and the January 2010 Claim were, or were not, barred by section 80(4) VATA. This depends upon whether those demands could be regarded as a *claim* made before 1 April 2009 so as to fall within section 121 of the Finance Act 2008. Logically, this is an entirely different question to the question raised in Rank of whether two separate *supplies* should be treated in the same way for the purposes of the exemptions from VAT and fiscal neutrality.

33. Although it is difficult to imagine a subsequent claim being regarded as an amendment to an earlier one unless they related to the same supplies, the converse is not necessarily the case. Even if a taxpayer only ever supplies one type of service throughout the course of his business, it does not mean that two claims for repayment made at different times and covering supplies made in different accounting periods must necessarily be regarded as one claim and an amendment to it. As Roth J. made clear in paragraph 31 in Reed, there is no reason why the two claims could not be regarded as self-standing. Moreover, a conclusion that a later claim could always be regarded as an amendment to an extant earlier claim in respect of the same or similar supplies would significantly undermine the effectiveness and purpose of the limitation period

in section 80 VATA, because it would not encourage accuracy and finality in the submission of claims.

34. I do not, therefore, think that the First Tier Tribunal erred in any way in not considering the impact of the decision in Rank.
35. As to Mr. Tack's second argument, I note that in Reed, Roth J. endorsed the point made by the FTT in the first sentence of paragraph 111 of its judgment, that the test of whether a subsequent claim should be regarded as an amendment of an original claim will be satisfied only if the later claim arises out of the same subject matter as the original claim, without extension to facts and circumstances that fall outside the contemplation of the earlier claim.
36. Put in those simple terms, it is clear that the Original Claim did not include and did not contemplate a repayment claim in respect of MSB, or a claim in respect of any supplies during periods prior to 1 November 1980.
37. As to a claim for MSB, the wording of the Original Claim could not have been clearer in referring only to MCB, AWP and JM. On any objective reading, the Original Claim did not include a claim in respect of MSB. Moreover, although I think that it is an objective test, it is apparent from the explanation that Mr. Deeming gave as to the advice he received before making that Original Claim and the subsequent advice he later received ("I was advised that I could also claim for MSB") that no-one thought that the Original Claim did include a claim for MSB. The subsequent decision to make a claim for MSB was the product of analysis by the Appellant's advisers in light of the Revenue Briefings following the decision of the High Court in Rank in June 2009.

38. It is also clear that when Roth J. referred in Reed to the correction of mistakes by amendment, “whether that be an arithmetical error or through the omission of some supplies that were clearly intended to be included”, he was referring to the correction of *accidental* errors or omissions. The concept of mistake in this context cannot include a *conscious* decision by a taxpayer not to include certain items in a demand. That is so even if, with the benefit of hindsight as to law or fact, it is subsequently appreciated by the taxpayer that it would have been preferable to have included further supplies and his earlier decision not to do so turned out not to be to his best advantage.
39. That conclusion is illustrated by the actual decision reached in Reed to which I have referred in paragraph 24 above. It is also illustrated by the examples given by Roth J. of mistakes that could be corrected by amendment. The concept of amendment of an earlier claim would plainly cover, for example, a demand for repayment for a number of supplies where one of the numerical amounts was, by clerical error, misstated; or where the total amount reclaimed was wrongly added up. Likewise, if the claim stated that the taxpayer was applying for a repayment in respect of VAT on supplies made in accounting periods 1-4, but by carelessness the amount in respect of supplies made in 4th period was omitted from the computation. But as Roth J. pointed out, the concept of amendment of an earlier claim would not cover a further demand made by reference to supplies made in a different geographical area, or in a different type of business than the one specified in the first claim in circumstances where, viewed objectively, there had been a conscious decision to limit the supplies which were the subject of the first claim.

40. I also reject an argument advanced by Mr. Tack to the effect that the Appellant should not suffer for not including the MSB claims in its Original Claim, because at the time HMRC's published position was that VAT was chargeable upon participation fees for MSB and it would therefore have rejected a claim for MSB. A similar argument was advanced and firmly rejected in Leeds City Council v HMRC [2015] EWCA Civ 1293 at paragraph 43, where Lewison L.J. held that the fact that, at a relevant time, HMRC were advancing a view of the law which was subsequently conceded to be wrong does not preclude it relying on a limitation period. Lewison L.J. pointed out that ignorance of one's legal rights is not a ground for disapplying a limitation period: British Telecommunications plc v HMRC [2014] EWCA Civ 433 at [106] and [123].
41. As I indicated at the start of this decision, the onus is on the taxpayer to make and pursue a claim for repayment, and HMRC has no obligation to make a repayment unless a qualifying claim is made. Accordingly, if the Appellant in the instant case had been dissatisfied with HMRC's view of the law in relation to MSB, the appropriate and prudent course for it to have taken (especially given the impending cut-off date for claims of 1 April 2009) would have been to put in a claim for MSB and then appeal its rejection.
42. As regards the claims in respect of supplies prior to 1 November 1980, the simple fact, as identified by the FTT, was that the Original Claim was expressly made by reference to the period 1 November 1980 to 4 December 1996 and made no mention of any other accounting periods.
43. If, as I think it is, the key question is whether the Original Claim, viewed objectively, indicated any intention on the part of the Appellant to make a

claim for periods prior to 1 November 1980, the clear answer is “no”. And for the reasons set out in paragraphs 31-32 above, even though, for VAT purposes, the nature of the supplies included in the January 2010 Claim were the same as those included in the Original Claim, it does not follow that the subsequent claim in respect of different accounting periods must be regarded as being part of, or an amendment to, the earlier claim.

44. Further, although the wording of the January 2010 Claim letter sought to suggest that the limitation of the Original Claim to periods after 1 November 1980 was due to an “oversight”, Mr. Deeming’s evidence in fact makes clear that the Appellant did not originally intend to make a claim relating to the periods prior to 1 November 1980 because it did not think that it had the necessary supporting documentation. Nor does it appear that such a claim was in contemplation, because the necessary documents were not discovered as a result of a search in order to find them for a claim, but were only “accidentally found” at a later date.
45. Nor is this conclusion in any way unfair. Paragraph 33 of Roth J.’s judgment in Reed gives a very clear example of how a taxpayer who wished to make a claim, but was temporarily unable to calculate the full figures and provide the necessary documentation required by regulation 37 VATR, could legitimately make a claim, indicate that he was searching for the documents, and then amend that extant claim to supply a final calculation by reference to the supporting documents at a later date. To put it into the context of the instant case, if it had wanted to do so, the Appellant could have said in its Original Claim,

“We also make a claim for periods between 1 April 1973 and 31 October 1980. We have not yet been able to find the relevant documentation to be able to calculate the precise amount of the claim as required by regulation 37 VATR, but our best estimate of the claim is in the attached schedule. We shall continue looking for the documentation and will provide such further details as we are able to do as soon as possible.”

The key to such an approach would have been for the Appellant to have made a claim in respect of the additional identified periods, albeit with incomplete particulars, prior to the cut-off date of 1 April 2009. But the Original Claim did not include any wording that even suggested that the Appellant intended to make such a claim.

Conclusion

46. For these reasons, I consider that the FTT’s decision in this case was entirely correct, and I dismiss the appeal.

MR. JUSTICE SNOWDEN
RELEASE DATE: 3 MAY 2016