



**TC05286**

**Appeal number: TC/2014/6301**

*INCOME TAX – whether appellant met criteria in s 217 ITTOIA for a change in accounting date – meaning of ‘accounts’ – whether various financial statements were accounts - appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**RUPERT GRINT**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S      Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE BARBARA MOSEDALE**

**Sitting in public at the Royal Courts of Justice, London on 27-29 June 2016**

**Mr P Soares and Mr I Afzal, Counsel, for the Appellant**

**Ms S Choudhury, Counsel, instructed by the General Counsel and Solicitor to  
HM Revenue and Customs, for the Respondents**

## DECISION

1. The appellant appeals against amendments made to his tax returns for the years ended 2010 and 2011 in closure notices issued by HMRC.

### 5 **The dispute**

2. Without considering the sections in detail, as it was not in dispute, a trader pays tax on his profits from a trade in relation to 'basis periods'. The normal basis period is the 12 months ending with the accounting date which falls in the tax year. So in this case, as the appellant had an annual accounting date of 31 July, he paid tax in tax year 08/09 on his profits in the 12 month period to 31 July 2008; and there was no issue with HMRC with respect to that year. If he left his accounting date unaltered, he would be liable to pay tax in tax year 09/10 on the profits of the 12 months' to 31 July 2009. But the basis period alters if the accounting period is effectively altered for tax purposes.

3. In 2009/10 the appellant decided on advice to change his accounting date to 5 April and so bring into account in that tax year income earned in the 20 month period 1 August 2008 to 5 April 2010. In other words, he intended to have a 20 month, rather than 12 month, basis period in 09/10.

4. Tax law recognises changes in accounting dates if certain conditions are met. Section 216 Income Tax (Trading and Other Income) Act 2005 ('ITTOIA') permitted the appellant to bring into account for tax purposes the income he earned from 1 August 2008 to 5 April 2010 (20 months) in tax year 2009/2010 *if* the conditions set out in s 217 ITTOIA were met. If they were not, the change in accounting date would not be recognised.

5. Having the change in accounting date recognised would have the effect for the appellant, as I have said, that 20 months' income would fall to be taxed in 2009/10. In other words, the effect would be to bring forward the appellant's liability to tax on 8 months' income which, if he had not changed accounting date, would not have been subject to tax for another 12 months, in tax year 10/11. (And the effect continues through the tax years, bringing forward to the earlier year liability to pay tax on income earned between 1 August (the day after the end of the old accounting date) and 5 April (the new accounting date).)

6. At first glance, it might not seem advantageous to a taxpayer to do this but the quid quo pro of bringing forward to 2009/10 the liability to the tax on this eight months' worth of income was that this took that income out of tax year 2010/11. This was advantageous because a new top rate of 50% took effect in 2010/11, whereas 2009/10 was the last year where the top rate remained 40%. Therefore, if the change in accounting date was effective, this would result in a saving of 10% of the income.

7. HMRC did not challenge in any way the appellant's right to change his accounting date: the dispute arose because HMRC did not accept that the appellant

had actually effected a change in his accounting date. The dispute centred on whether or not the conditions in s 217 ITTOIA were met.

### **The law**

8. Section 217 ITTOIA so far as relevant provided:

5                                   **Conditions for basis period to end with new accounting date**

(1) The conditions in this section are met if –

(a) the person carrying on the trade gives appropriate notice of the change of accounting date to [HMRC] (see subsection (2)),

(b) the 18 month test is met (see subsection (3)), and

10                               (c) either condition A or condition B is met (see subsections (4) to (6)).

9. There was no dispute as to the meaning of accounting date, which was contained in s 197 ITTOIA as follows:

(1) In this chapter ‘accounting date’, in relation to a tax year, means–

(a) the date in the tax year to which accounts are drawn up, or

15                               (b) if there are two or more such dates, the latest of them.

10. It was accepted that notice of the change in accounting date was given in the appropriate form to HMRC so condition 217(1)(a) was met; it was also accepted that Condition A was met so condition 217(1)(c) was met. Condition A required the date of any previous change in accounting date to be more than 5 years earlier: the  
20                               appellant had not changed his accounting date since he commenced trading in 2000 and so Condition A was met.

11. The dispute centred on condition 217(1)(b) and whether the 18 month test set out in 217(3) was met. That was as follows:

(3) The 18 month test is met if the period of account ending –

25                               (a) with the new accounting date in the tax year in which the change of accounting date occurs, ...

(b) [not relevant]

is not longer than 18 months.

12. The definition of ‘period of account’ was in s 989 Income Tax Act 2007 (‘ITA’) as follows:

30                               (a) in relation to a person, means any period for which the person draws up accounts,

(b) in relation to a trade, profession, vocation or other business, means any period for which the accounts of the business are drawn up....

35                               13. In other words, for the change in accounting date to be effective, the appellant had to show that his period of account to 5 April 2010 was not longer than 18 months, and

to do that he had to show that that the period for which he drew up accounts was not longer than 18 months.

14. The parties did not agree on the meaning of ‘accounts’ and did not agree on what was the period to which the taxpayer draw up accounts. The appellant considered it was 8 months; HMRC considered it was 20 months. If HMRC were right, the appellant failed the 18 month test as a 20 month period of account clearly exceeded 18 months.

## **Facts**

### *The evidence*

15. Many facts were agreed in this appeal. I also heard evidence from witnesses of fact, the appellant himself and his accountant, Mr Dan Clay.

16. It was established in cross examination that Mr Grint was not entirely responsible for his own witness statement. It appeared at least in part to have been written in the third person and Mr Grint accepted that he did not write it ‘completely’ and indicated he relied heavily on his advisers; in re-examination he accepted it was written by Mr Dan Clay, but said he (ie Mr Grint) was responsible for the ‘key points’ if not the wording.

17. Where someone else has written the witness statement, as appears was largely the case here, the Tribunal would ordinarily treat the witness statement with some circumspection but in this case Mr Grint was not then really challenged on specific aspects of his witness statement so, while it seems surprising that he recalled particulars in the detail described in his witness statement, especially when he made it clear that he placed his faith in his father and accountants to deal with his financial affairs, I must largely take his statement as read.

18. To a great extent, I also accepted Mr Dan Clay’s evidence but, for the reasons explained below, considered that his oral evidence on the Long Accounts (explained below) was not entirely reliable.

19. My findings of fact, recorded below, therefore come from either (or both) from the statement of agreed facts or the evidence of the witnesses: where I have rejected the oral evidence I explain below why I have reached the finding of fact I have made.

### *Findings of fact*

20. I find that the appellant started work as an actor on 20 September 2000 and prepared his accounts to 31 July each year, as I have said. This continued up to the 12 month period ending 31 July 2008 and there is no issue in respect of that or earlier years. In July 2009 the appellant appointed Clay and Associates Ltd to act as his accountants.

21. *The first meeting:* At some point in early 2010, Mr Grint and his father met with Mr Nigel Clay and Mr Dan Clay from Clay & Associates at which meeting Messrs Clay proposed and Mr Grint agreed to a change in accounting date in order, as I have said, to advance his tax liability on some 8 months' worth of income into the 9/10 year thus avoiding the new high rate of tax on that income.

22. *The second meeting:* There was a meeting on 18 October 2010 between the appellant and his accountants in which an accounting report prepared by his accountants using Sage software and covering a 20 month period from 1 August 2008 to 5 April 2010, which I shall refer to as the 'Long Accounts', was produced to and signed by the appellant.

23. *The preparation of the Schedule Accounts:* the tax department at Clay & Associates took the Long Accounts and time apportioned them between two periods, 1 August 2008 – 31 July 2009 and 1 August 2009 – 5 April 2010. This was done using an excel spreadsheet. The figures derived were inserted into 'accounts' which I shall here refer to as the 2009 Schedule Accounts and 2010 Schedule Accounts. Drafts of the Schedule Accounts were prepared before the meeting with Mr Grint on 18 October 2010 but they were not shown to him at that meeting.

24. The Schedule Accounts were not shown to HMRC until they were produced to HMRC as part of the exchange of documents in this appeal in May 2015.

25. *The Tax return:* The information in the Schedule Accounts was inserted into Mr Grint's draft 09/10 tax return. On 2 November 2010, Clay & Associates sent Mr Grint the tax return they had prepared, a copy of the Schedule Accounts and other paperwork. Mr Grint's evidence was that he reviewed all the paperwork, including the Schedule Accounts, was happy all the papers were in order, and he signed the tax return. I accept this evidence as it was not challenged.

26. The appellant's tax return ('the Tax Return') for the year ended 5 April 2010 contained 2 self-employment pages, one covering the 12 months ending 31 July 2009, and one covering the next (approximately) 8 months to 5/4/2010. The self employment pages also included a page where information equivalent to that which would be contained in a balance sheet could be entered and the appellant's accountants did enter that information for both the 12 month and 8 month period. The information was, as I have said, taken from the Schedule Accounts.

27. The self employment pages of the Tax Return, including both the pages containing the profit and loss information, and the balance sheet information, were referred to collectively as the 'Return Accounts' and in so far as I refer to them individually I shall refer to the pages relating to the 12 months to 31 July 2009 as the '2009 Return Accounts' and the pages relating to the 8 months to 5 April 2010 as the '2010 Return Accounts'.

28. The Tax Return was submitted online to HMRC on the due date of 31 January 2011.

29. *The VAT Visit:* HMRC officers carried out a VAT control visit of the appellant at his accountant's office on 10 May 2011. From Mr Clay's undisputed evidence I find that the HMRC officer was shown files relating to the appellant's affairs and asked for, and received, copies of certain papers contained on those files, including the Long Accounts. In this way HMRC came to be in possession of a copy of the Long Accounts.

30. *The Enquiry:* HMRC opened an enquiry into the Tax Return on 12 January 2012. After correspondence over this, the appellant's accountants prepared two new accounts for the appellant, covering exactly the same period as Schedule Accounts and Return Accounts, but with the difference that they were prepared on the accruals basis (explained below at §95). The first, for the period to end 31 July 2009 I shall refer to as the 2009 New Accounts, and the second for the 8 month period to 5 April 2010 I shall refer to as the 2010 New Accounts, and I shall refer to them collectively simply as the New Accounts.

31. The appellant signed the New Accounts and they were submitted to HMRC on 21 June 2012.

32. The enquiry was completed and closure notices issued on 14 August 2014 and it is against HMRC's review decision of 24 October 2014 upholding the two closure notices that the appellant appealed and is the subject of this decision notice.

33. *The witness evidence about the Long Accounts:* From Mr Grint's evidence, I find that (a) the Long Accounts were used at the meeting on 18 October 2010 to discuss with him and his father his financial performance over the 20 month period to 5 April 2010 and (b) he knew that the Long Accounts would then be used as the basis for drawing up two accounts covering two shorter periods combined amounting to the 20 month period, as part of the process of changing his accounting period in his 09/10 tax return. He was unable to remember why he did not query why he was asked to sign the Long Accounts knowing accounts for different periods needed to be produced.

34. Mr Dan Clay's evidence was that he instructed someone in the accounts department of his firm to prepare accounts covering the 20 months period in order to discuss his financial performance with Mr Grint at the 18 October 2010 meeting. In the hearing, however, he said the Long Accounts were 'purely for internal purposes' and his firm had not intended them to stand as Mr Grint's accounts. However, it was pointed out to him that he asked Mr Grint to approve them, which he accepted that he had.

35. Mr Dan Clay also said he asked Mr Grint to sign the Long Accounts as he wanted a record on file that he had discussed and agreed with him Mr Grint's financial position over the 20 month period, which would form the basis of his tax return.

36. The evidence also shows that the draft tax return was prepared before the meeting on 18 October. So while the preparation of the Long Accounts did contribute to the preparation of the Schedule Accounts and Return Accounts, it was also clear that

drafts of the Schedule Account and/or Return Accounts could have been discussed at that meeting but were not.

5 37. There were no notes of the meeting so the only contemporaneous evidence was the appearance of the Long Accounts themselves. I find that they were in the formal format one would expect of ordinary trading accounts, with an accountant's report, profit and loss account, balance sheet and notes. They are referred to on their face as the unaudited accounts of Mr R Grint; moreover Mr Grint has signed them under a statement which included the words 'I approve the accounts...I acknowledge my responsibility for the accounts....'

10 38. The appellant pointed to Note 1.1 which stated that the financial information was compiled on an agreed accounting basis that met the requirements of the Taxes Act and would allow completion of the tax return. He suggested that this shows that the Long Accounts were prepared only for tax purposes. However, I find this note, under the main section heading of 'accounting policies' was an explanation of the  
15 accounting convention used to compile the accounts. It was not a statement of the *reason* the accounts were prepared: it was a statement of the *basis* on which they were prepared. This interpretation is further borne out by the rest of the notes in this section which were also statements of other accounting policies; for instance, note 1.2 was that the accounts were not intended to achieve full compliance with GAAP.

20 39. All in all, there was inconsistency in what Mr Clay said orally about the purpose of the Long Accounts, compared with his witness statement and the accounts themselves. I prefer to rely on the contemporaneous evidence which arises from the appearance of the Long Accounts and also the witness statements both of which are consistent with each other and state that the Long Accounts were used at the October  
25 meeting to discuss Mr Grint's financial results for the twenty month period. Therefore, I do not find reliable Mr Clay's statement that the Long Accounts were not intended to be Mr Grint's accounts.

### **The dispute over the accounts**

40. In summary, there were four sets of 'accounts' referred to in the hearing:

- 30 (a) The Long Accounts  
(b) The Schedule Accounts (comprising the 2009 Schedule Accounts and 2010 Schedule Accounts);  
(c) The Return Accounts (comprising the 2009 Return Accounts and 2010 Return Accounts);  
35 (d) The New Accounts (comprising the 2009 New Accounts and the 2010 New Accounts).

These names were used in the hearing but did not signify acceptance by both parties that the documents actually were accounts. That was a question left to the Tribunal to determine, other than in respect of the New Accounts which both parties agreed were  
40 accounts under either party's definition of accounts.

41. The appellant put his case on two alternate bases:

(1) Either or both the Schedule Accounts and Return Accounts were 'accounts' within the meaning of s 989 ITA (see §12) and the period of account for the 2010 Schedule Accounts and 2010 Return Accounts was 1 August 2009 to 5 April 2010, and that therefore the test in s 217(3) ITTOIA was satisfied as the period of account of 1/8/9 to 5/4/10 ended with the new accounting date of 5 April 2010 and was not longer than 18 months.

HMRC did not accept that either the Schedule Accounts or Return Accounts were accounts.

(2) It was agreed that the 2010 New Accounts were accounts within the meaning of s 989 ITA and they also had the period of account of 1 August 2009 to 5 April 2010 which was less than 18 months and so, said the appellant, the test in s 217 ITTOIA was satisfied by the New Accounts. The appellant's view was that there was no time limit and the 18 month test was satisfied even if the accounts were adopted after the change in accounting date was notified to HMRC (as the New Accounts were on the facts in this appeal).

While HMRC accepted the New Accounts were accounts, they did not accept they satisfied the 18 month test because the New Accounts did not exist at the time of the notification of the change in accounting date (31 January 2011). HMRC's view was that the New Accounts had to have been adopted as the appellant's accounts *no later* than when the appellant notified HMRC of the change in his accounting date.

**Issue 2: when did the 18 month test have to be satisfied?**

42. This was said by the parties to be a very short point, and unfortunately I had very few submissions on it and therefore most of the following discussion was unprompted by the parties. And what submissions I had were made at the end of each parties' submissions on issue 1, but as, if I resolved issue 2 in favour of the appellant, it would resolve the entire appeal, I choose to consider issue 2 first.

*Literal interpretation*

43. There is nothing I can see in the legislation which expressly imports any time limit into the 18 month test. I remind myself of the legislation:

**Conditions for basis period to end with new accounting date**

(1) The conditions in this section are met if –

(a) the person carrying on the trade gives appropriate notice of the change of accounting date to [HMRC] (see subsection (2)),

(b) the 18 month test is met (see subsection (3)), and

(c) either condition A or condition B is met (see subsections (4) to (6)).



Condition 217(1)(a) does have a timelimit. The notification to HMRC must be made no later than the due date of filing; this is subsection (2):

(2) Appropriate notice of the change of accounting date is given to [HMRC] if (and only if) the notice is given –

5 (a) in a return under the provisions of TMA 1970 that applies to the person carrying on a trade....and

(b) on or before the day on which the return is required to be made and delivered under that provision.

10 There is no express time limit for condition 217(1)(b) or (c). The appellant's view is that the absence of express time limit for the 18 month condition meant none was intended; HMRC considered it implied that the 18 month condition must be met no later than the date notification of it was given to HMRC.

15 44. The entire section is written in the present tense. Each side considered this a point in their favour. In favour of the appellant, s 217 does not refer to a change in accounting date having already taken place; but then again, in favour of HMRC, it does not refer to it taking place in the future either.

20 45. On the subject of tense, I note that, because accounts can only be drawn up after the end of the year to which they relate, when s 217(3)(a) refers to 'the tax year in which the change of accounting date occurs' this must include a state of affairs where a change of accounting date only occurs in the tax year because the taxpayer has made a decision to that effect *after* the end of the tax year (although not later than the filing of the tax return for that tax year because of s 217(2)). That means the present tense 'occurs' must in this context include a retrospective state of affairs.

25 46. So does that mean where s 217(1)(b) says 'the 18 month test *is met*', also using a present tense, that that use of the present tense also necessarily implies that a retrospective meeting of the condition is acceptable, such as where accounts with the changed accounting date are only adopted after notification to HMRC of the change of accounting date? I do not think so. While 'occurs' and 'is met' are both present tenses, they are different present tenses, the former implying a continuing state of affairs and the latter a one-off state of affairs. As the tenses are not the same, I do not think that read literally the use of 'is met' implies that it was envisaged that the 18 month test could be met at any point in time. So while this point does not count against the appellant, it does not count in favour of him either. It takes me no further.

35 47. So far as the rules of construction were concerned, the appellant suggested that HMRC's interpretation required me to read words into the section that were simply not there and that, of course, I cannot do (see for a recent reinstatement of this *Chilcott* [2011] STC 456 (CA) at [28]). However, I don't agree with the appellant that words would need to be read in if I adopted HMRC's interpretation: I think on a literal construction either party's interpretation is possible. A literal interpretation of  
40 the 'is' in 'is met' might mean 'is met' at the date the claim is made (in other words when the tax return is submitted) or it might mean 'is met' at some point in future when HMRC or the Tribunal have to determine the matter.

48. Having got nowhere with a literal interpretation, I consider a purposive interpretation.

*Purposive interpretation*

49. Looking at it purposively, I can see the following points:

5 50. The absence of express time limit: it seems reasonably clear that Parliament only  
required that the change of accounting date had to be decided on before the affected  
tax return was filed; this would give a taxpayer some 9 months after the end of the tax  
year to consider whether to change his accounting date during the tax year. This is  
because s 217(2)(b) expressly gives that time limit for notification to HMRC. It's  
10 therefore implicit that Parliament permitted changes in accounting date to be at least  
to some extent retrospective: they could be decided upon after the end of the new or  
old accounting period, and after the end of the tax year, as long as the decision was  
made no later than the due date for filing the tax return. Indeed, as I have already  
said, accounts can only be drawn up after the end of the accounting year, and where  
15 the new accounting date coincides with the end of the tax year, it is inevitable that the  
change in accounting date during the tax year can only take place after the end of the  
tax year.

51. Does it follow, therefore, that because there is an express time limit for condition  
217(1)(a) but not for conditions 217(1)(b) and (c) that I must presume that that was  
20 because Parliament did not intend those latter two conditions to have any time limit?

52. I do not think so. Notification (which is what the condition in s 217(1)(a)  
requires) is clearly something which is an action and therefore something to which a  
time limit can be applied: conditions 217(1)(b) and (c), however, do not require the  
taxpayer to take an action so much as requiring a certain state of affairs to exist. For  
25 instance, condition 217(1)(c), set out in subsections (4)-(6), requires one of two states  
of affairs to exist. Those states of affairs are either condition A, which is that the  
taxpayer has not changed his accounting period in the previous 5 years (s 217(4)-(5))  
or Condition B, which is that the change in accounting date is for commercial reasons  
and HMRC is told of those reasons in the notice of change given under s 217(1)(a).

30 53. Indeed, while this is going into the section in more detail that I was taken to in the  
hearing, it is clear that in so far as Condition B requires the taxpayer to take action,  
the action being to inform HMRC of its reasons, that must be done at the same time as  
the notification under s 217(2) and that is because it provides:

(6) Condition B is that –

35 (a) the change of accounting date is made for commercial reasons  
...and

(b) the notice under subsection (2) sets out the reasons for the change.

So late notification of reasons means that Condition B is not met.

54. Moreover, time limits do not appear necessary for the state of affairs required to exist by s 217(1)(c). Condition A, being historic, is a state of affairs that must either exist at the date of notification or, if not, could never exist. It could not retrospectively be brought into existence. Similarly the commercial reasons have to exist at the date  
5 of notification else they can't be notified.

55. So while it is clear that the decision to change accounting date, and, where required, the notification of the commercial reasons for it, must take place no later than the due date of filing of the affected tax return, that does not tell me whether the other conditions must be met on the same date: while on the one hand it is true there  
10 is no express limit, that may well be because Parliament saw the other conditions as being a state of affairs which must exist at the time and could not be brought into effect retrospectively.

56. The logic underlying the basis period rules: Section 7 ITTOIA provides that tax is charged on the full amount of the profit in the tax year, and the profits of a tax year  
15 are the profits in the basis period for the tax year. So to declare his tax liability in a tax return, therefore, the taxpayer must know the basis period for the tax year; and for HMRC to determine whether that tax return is correct, HMRC must know the basis period for the tax year. But the basis period can be changed by a change in accounting date. If the 18 month test only needed to be met at any point in the future,  
20 and had not actually been met at the filing date, yet the other conditions in s 217 were met when the tax return was filed, it could not be known at the point of filing what the basis period actually was for that tax return and tax liability could not be determined.

57. The logic of the appellant's position is that, having met condition A, and having notified HMRC in the tax return of the change in accounting date, he only had to meet  
25 the 18 month test at some time in the future. He says he met it over one year later when the New Accounts were submitted to HMRC (on 21 June 2012) but the logic of his case on this is that he could even have filed the New Accounts ten or twenty years later. In the meantime, that would leave his tax liability undetermined and undeterminable. While he might say that until the New Accounts were filed, HMRC  
30 ought to tax him as if there was no change in accounting date, he could, on his interpretation of the law, retrospectively change his tax liability at any point by filing the New Accounts. His interpretation would put his tax return into a kind of limbo unless and until the New Accounts were filed.

58. As a matter of purposive interpretation, I do not think that Parliament intended  
35 this uncertainty to exist. Where in s 217(1)(b) it says 'the 18 month test is met' I interpret that as meaning that the state of affairs described in s 217(3) comes into existence no later than the time the tax return is submitted. S 217 is a provision which determines the taxpayer's basis period and therefore 'is met' means is met at the time the basis period is determined.

40 59. I mention in passing the case of *Colley* [2005] STC (SCD) 633 which HMRC relied on to support their position here. In that case, a partnership transferred its business, including its goodwill, to a limited company. The company's accounts showed it had paid for goodwill of £250,000. The partners' personal tax returns did

not show the disposal of the goodwill. They sought later to amend the company's accounts to remove the acquisition of the goodwill. The Special Commissioner did not accept that the original accounts were erroneous and upheld the assessment on the partners for an undeclared capital gain. I find it very difficult to see the relevance of the case to the issue here but in any event it certainly does not suggest my view is wrong.

### *Conclusion*

60. In conclusion, I decide issue 2 in favour of HMRC. The New Accounts were accounts but they did not have the effect that the taxpayer met the 18 month test because they did not exist at the time his basis period was determined: they did not exist when his 09/10 return was filed on 31 January 2011.

61. That conclusion means that I must consider the first issue, which was whether either or both the 2010 Schedule Accounts or 2010 Return Accounts meant that the taxpayer met the 18 month test, as there is no dispute that these documents did exist at the date that the tax return was filed on 31 January 2011.

### **Issue 1: what are accounts?**

62. I have set out Issue 1 at §41 above. In summary, for the change in accounting date to be effective, the appellant had to show that his period of account to 5 April 2010 was not longer than 18 months, and to do that he had to show that that the period for which he drew up his accounts was not longer than 18 months.

63. This is because the 18 month test referred to the 18 months to the taxpayer's accounting date, and 'accounting date' was defined as the period of account to which accounts were drawn up. In other words, it was fundamental to the 18 month test that the taxpayer had accounts. A 'period of account' and an 'accounting date' could only exist if the taxpayer had accounts.

64. The appellant here had four contenders as accounts: I have already determined that the New Accounts, although accounts, were too late to qualify. The remaining three contenders were the Long Accounts, Schedule Accounts and Return Accounts. If either the 2010 Schedule Accounts or 2010 Return Accounts were accounts within the meaning of the legislation then the appellant would win the appeal as both were for a period of less than 18 months. The Long Accounts were for 20 months and failed the 18 month test, but their status as accounts or otherwise was largely irrelevant because unless the Schedule or Return Accounts were accounts within the meaning of the legislation, the appellant would have failed to change his accounting date for tax purposes in year 09/10.

65. The appellant considered that the Schedule Accounts and Return Accounts were accounts and that either or both the 2010 Schedule Accounts and 2010 Return Accounts meant that the appellant satisfied the 18 month test (as they were prepared for an 8 month period). The appellant did not consider that the Long Accounts were accounts.

66. HMRC's view was the reverse: they considered the Long Accounts, but not the Schedule or Return Accounts, to be accounts.

67. While 'period of account' and 'accounting date' were defined in the legislation, their definitions depended on the term 'accounts', and the term 'accounts' was not defined. Both parties largely proceeded on the assumption that 'accounts' in the legislation necessarily had the same meaning as the accountancy profession would ascribe to 'accounts'. I return to this point below but firstly deal with the parties' evidence and submissions on the meaning of 'accounts' to the accountancy profession.

### 10 **The expert evidence**

68. Each party called a qualified professional accountant as an expert witness. Neither expert's expertise nor independence was challenged. Certainly I saw no reason why I would call in question either of their expertise. So far as independence was concerned, the appellant's expert, Mr Nagla appeared entirely independent of the appellant and HMRC. Mr Bach, on the other hand, was an HMRC employee. However, not only was his independence not challenged, I noted at the outset of his evidence he volunteered a change of opinion that did not favour HMRC because, having listened to the factual evidence, he found the case as presented to him was inconsistent with it. I revert to this at §§144-146. I was satisfied of both experts' independence.

#### *The questions*

69. Both experts were agreed on what is obvious even to a non-expert such as myself: accounts must cover a period: the start of the period will be immediately after the end of the previous accounting period and the end will be on the accounting date.

70. Both experts were asked to opine upon:

- (1) Whether the 2010 Schedule Accounts were accounts as is generally understood in the accountancy profession;
- (2) Whether the 2010 Return Accounts were accounts as is generally understood in the accountancy profession;
- (3) Whether, if a taxpayer had more than one set of accounts covering the same period, how the accountancy profession would determine which were the most relevant or important for tax purposes?

71. The answers given were as follows:

- (1) Mr Nagla's view was that the 2010 (and 2009) Schedule accounts were accounts as generally understood in the accountancy profession. Mr Bach did not agree.
- (2) Mr Nagla's view was that the 2010 (and 2009) Return accounts were accounts as is generally understood in the accountancy profession, in

substance if not in presentation. Mr Bach did not agree that they were accounts.

5 (3) Mr Nagla considered that the most important accounts for tax purposes were those prepared in order to complete the tax return and those were the Schedule Accounts. Mr Bach considered that this question was one of tax law and beyond his expertise as an accountant.

*Agreement between the experts*

10 72. The experts were agreed that ‘accounts’ lacked an accepted definition and there was considerable subjectivity in the accountancy profession as to what would amount to accounts, thus hindering their ability to agree on the matter. They did agree that accounts must relate to an entity, and should summarise the entity’s past transactions during a specified period of time. They agreed accounts would generally include a profit and loss account and balance sheet.

15 73. I note that the dictionary and similar definitions to which I was referred were to much the same effect. Mr Nagla, for instance cited Google’s definition:

A record or statement of financial expenditure and receipts relating to a particular period or purpose

74. The Shorter Oxford Dictionary definition was:

20 A statement of money or goods or services received and expended, or other receipts and outgoings, with calculation of the balance.

25 75. In summary, the various definitions cited to me defined accounts as a statement of profits and losses over a period of time. Definitions in the Companies Act also required accounts to comprise a balance sheet as well as a profit and loss sheet. Whether accounts to be accounts must include a balance sheet is not something I need to decide because all the purported accounts in this appeal included a balance sheet. I note in passing that the experts appeared to be agreed that a profit and loss sheet was enough to constitute accounts (subject, in Mr Bach’s case, to whether the other criteria mentioned below were met): a balance sheet was not essential.

*Mr Nagla*

30 76. Mr Nagla’s evidence was short and it is easier to deal with first. His view was that there was no definition of accounts and the accountancy profession would consider a document that in whole or part met any of those definitions at §§73-75 would be seen as accounts.

35 77. He considered that both the 2010 Schedule Accounts and 2010 Return Accounts were both accounts as understood by the accountancy profession. His opinion was that Schedule Accounts would be considered by the accountancy profession as more relevant and important than the Long Accounts so far as tax was concerned as they were the ones from which the information in the tax return was more immediately derived.

*Mr Bach's view*

5 78. Mr Bach agreed that there is no definition of accounts and relied for his view on what accounts comprised on (a) the Statement of Principles for Financial Reporting issued by the Accounting Standards Board in December 1999 ('SOP') and (b) his experience.

10 79. He accepted that the SOP was issued to provide guidance on the preparation of accounts which were intended to show a true and fair view of the entity's financial position and that 'accounts' to be accounts did not necessarily have to be intended to show a true and fair view. For this reason he said he stepped back from the SOP and only used its guidance in formulating headline characteristics of accounts.

80. From the SOP and his expertise he formulated five characteristics which in his view a document had to possess in order to be 'accounts' and they were:

- (1) Accounts should relate to an entity
- (2) Accounts should be adopted by the entity
- 15 (3) Accounts should summarise past transactions/events in a fixed period of time
- (4) Accounts should have relevant and reliable content
- (5) Accounts should be in a recognisable form

20 81. He also noted that financial information could take a number of forms and these were categorised in the SOP as:

- (a) Special purpose financial reports (consisting of financial information prepared by the entity in order to satisfy the requirements of other entities, such as HMRC, with the power to require production of financial information, and an example of a SPFR would be a tax return);
- 25 (b) General purpose financial reports, consisting of two categories, both prepared by the entity:
  - (i) general purpose financial statements;
  - (ii) general purpose financial reports
- 30 (c) Other financial information – being financial information not prepared by the entity.

82. He considered that 'accounts' would be understood by the accountancy profession as referring to general purpose financial statements and not, in particular, special purpose financial reports.

35 83. It was also his opinion that a document could only be in one or other of these categories; Mr Nagla, on the other hand, thought a single set of accounts could be produced for general purposes and used for a specific purpose. Mr Bach's reply to that was that such accounts were general purpose accounts.

84. It was also Mr Bach's view that an entity could only have one set of general purpose financial statements, in other words, accounts, for any period of time: while it could replace one set of accounts with another, it could at any point in time never have two valid sets of accounts for the same time period.

5 85. It was Mr Bach's views, as set out above, which led to the difference of opinion between him and Mr Nagla on whether the Return and Schedule Accounts were accounts as understood by the accountancy profession. I therefore have to consider whether Mr Bach was right to consider that accounts have to have these five characteristics and whether he was also right to say 'accounts' means general purpose  
10 financial statements and that only one set of accounts could exist at a time.

86. Accounts should relate to an entity: both experts agreed on this requirement and it seems obviously right to me. It is irrelevant to the question at issue in this hearing as everyone was agreed, and I find, that all the four contenders to be 'accounts' in this appeal did relate to Mr Grint.

15 87. Accounts should be adopted by the entity: both experts appeared agreed that there must be some kind of ownership by the entity to which they relate of the purported accounts in order for them to that entity's accounts. They were agreed, where the entity was an individual, that the adoption could be informal, such as the decision to use the accounts as the basis for completing a tax return.

20 88. Mr Bach's opinion based on the evidence he heard was that Mr Grint had not adopted the Schedule or Return accounts 'as accounts' but had merely adopted the Schedule Accounts as working papers and the Return Accounts as his tax return. He said it was possible, having heard Mr Grint's and Mr Clay's evidence, that the Long Accounts had also only be adopted by Mr Grint as working papers rather than as his  
25 accounts and I deal with this below at §§144-146.

89. Accounts should summarise past transactions in a fixed period of time: both experts considered themselves agreed on this, and agreed that the Return and Schedule accounts met the requirement, but it is worth considering in some detail as it seems to me to be fundamental to the disagreement between the experts.

30 90. Firstly, accounts are no more than summaries and summaries by their nature are imperfect. So how imperfect as summaries of past transactions do they have to be before they cease to be accounts at all? This question overlaps with Mr Bach's 'relevant and reliable criteria' discussed below and I deal with it there.

35 91. Secondly, but related, is the question do accounts have to summarise past transactions in a fixed period of time or is it enough that they are intended to do so? Mr Bach's view was that the Schedule and Return Accounts met his criterion here because they claimed to summarise past transactions in a fixed period of time, even though it was his opinion that they were unreliable because they did not summarise past transactions in a fixed period of time (as discussed below). And while Mr Nagla  
40 did not use intent as an express criterion in his report, he referred to intent as significant in determining whether a document was accounts in his oral evidence in a



number of places. He suggested, for instance, that the Long Accounts were not accounts if they were only intended to be for discussion.

5 92. So must accounts actually summarise past transactions in a fixed period of time or is it enough that they are intended to do so and/or claim to do so? So this is all really part of the same question and that is whether Mr Bach is right to say that accounts must be reliable. I deal with this below.

93. I move on to consider the two criteria in dispute.

10 94. Accounts should be relevant and reliable? there was little dispute over ‘relevant’ as Mr Bach did not suggest that the Schedule and Return Accounts were not relevant. The dispute was over whether accounts to be accounts were required to be reliable as HMRC’s position was that the Schedule and Return Accounts, taken individually, were not reliable. They were not reliable, in HMRC’s view, because of the method by which they had been drawn up, as described at §23.

15 95. *The basis on which accounts are drawn up:* There may be a number of different ways in which accounts could be drawn up but the main ones discussed were the cash basis and accruals basis. Accounts on a cash basis show actual receipts of income and actual payments of liabilities during the period of account: accounts on an accruals basis show entitlement to income and liability to expenses incurred (but not necessarily realised) in a period. An assumption underlying what the experts said was  
20 that accounts properly drawn up on an accruals basis would be a reliable representation of past transactions over a period of time.

25 96. It was put to Mr Bach that accounts prepared on the cash basis were not reliable. He did not accept this. He considered that they were reliable as a record of cash receipts and expenditure in a period. They could, in any event, be adjusted for accruals by reference to some of the underlying data. Mr Nagla, of course, did not consider that accounts to be accounts had to be reliable. In other words, both experts considered that accounts drawn up on the cash basis, as well as on accruals basis, could properly be described as accounts.

30 97. Mr Bach’s view was that accounts drawn up on a time apportionment basis would not be reliable other than where the entity had completely regular income and expenses over the longer period of time from which the income and expenses were time apportioned. An application of logic is that Mr Bach must be right on this. Moreover, unlike cash accounts, time apportionment accounts could not be adjusted to an accruals basis by reference to some limited amount of raw data. Time  
35 apportionment accounts could not be adjusted to an accruals basis other than by basically ditching the time apportionment accounts and starting from scratch with the entirety of the entity’s raw financial data. (And this is what the appellant’s accountants did when they draw up the New Accounts).

40 98. Mr Nagla did not suggest that time apportionment accounts were reliable: it was simply his view that to be accounts a document was not required to be reliable. So far as accounts drawn up on a time apportionment basis were concerned, both experts

considered that in rare circumstances this might be appropriate. Mr Bach suggested it might only be appropriate when income and expenditure comprised fixed amounts at regular intervals. Mr Nagla suggested that it might be done as a matter of convenience, the reason for which it was presumably done in this case.

5 99. *Were the Schedule and Return Accounts Reliable?* I agree with Mr Bach that the  
Schedule and Return Accounts could not be described as reliable because they were  
drawn up on a time apportionment basis for an 'entity' (Mr Grint) whose income was  
irregular in timing and amounts. The unreliability of the Schedule and Return  
Accounts was readily proved by a comparison of them with the New Accounts. The  
10 New Accounts (both 2009 and 2010) were drawn up on an accruals basis and their  
accuracy was not challenged by HMRC: but the individual figures in them were very  
different to those in the Schedule and Return Accounts covering exactly the same two  
periods. This was inevitable: the Schedule and Return accounts took Mr Grint's  
income for the entire 20 months and apportioned it into the two periods without any  
15 reference to when the income and expenses were actually received and paid.

100. The appellant pointed out that the balance sheet for both the 2010 Schedule  
Accounts and 2010 Return Accounts was reliable: they duplicated the balance sheet  
in the Long Accounts (prepared as at the same day) and (ignoring a few minor  
adjustments with which no one took issue) in the 2010 New Accounts (also prepared  
20 as at the same day).

101. HMRC pointed out that the balance sheets (which shows assets/liabilities at the  
accounting date) for both the 2009 Schedule Accounts and Return Accounts,  
however, were a nonsense. They had been prepared by taking 12/20ths of the figure  
in the balance sheet in the Long Accounts. Any resemblance they had to the actual  
25 assets and liabilities as at the accounting date of 31 July 2009 would be pure chance  
and indeed they did not resemble the balance sheet in the 2009 New Accounts  
(prepared as at the same date).

102. It was Mr Bach's view that that meant that the balance sheets in the 2010  
Schedule and Return accounts were less than useful because the main use of a balance  
sheet was to look at the change in assets and liabilities since the previous accounting  
30 date; and as the balance sheets in the 2009 Schedule and Return accounts were  
nonsense, it meant that the 2010 balance sheets were less than useful.

103. Mr Bach was, of course, right on this if the two sets of Schedule and/or Return  
accounts were looked at in isolation. But the balance sheet in either the 2010  
35 Schedule or Return Accounts was useful, and as useful as that in Long Accounts, to  
which they were identical, if compared to the balance sheet in the accounts for the  
year prior to the 20 month period of the Long Accounts, or if compared to the balance  
sheet of the next accounting period.

104. Nevertheless, this discussion over the balance sheets is really quibbling: in  
40 isolation none of the 2009 nor 2010 Schedule nor 2009 nor 2010 Return Accounts  
individually were reliable: they did not accurately report Mr Grint's past transactions  
in the period to which related, and indeed were drawn up on a basis that meant it was

impossible for them to accurately report Mr Grint's past transactions in the set period of time to which they related. But to be accounts did they need to contain reliable information?

5 105. *Must accounts be reliable?* Mr Nagla's point was that accounts drawn up on a fundamentally flawed basis (as it seems to me the Schedule and Return Accounts were if the object was to give a reliable picture of transactions in the period covered by the individual accounts) were nevertheless accounts. Accounts which did not show a true and fair view were nevertheless accounts.

10 106. Again, in Mr Nagla's view, it seemed to come down to intent: he thought if the entity believed its accounts to be correct when prepared they were accounts even if they actually contained fundamental flaws.

15 107. Mr Bach considered accounts with fundamental flaws, whether or not known to the entity, were not accounts at all. However, this was difficult to reconcile with his view, reported above at §§89-92, that the Schedule and Return Accounts fulfilled the second criterion (summarising past transactions over a period of time) on the basis that they purported to do so, although, as he correctly pointed out, they did not do so because of the unreliable basis (time apportionment) on which they were prepared.

20 108. I also have real concerns with the proposition that accounts (which by their nature cannot be 100% accurate) are not accounts if they are later discovered to contain a fundamental flaw. Bearing in mind that accounting standards are constantly revised with a view to forcing entities to prepare accounts on an ever more reliable basis, this would seem to suggest that documents produced as accounts could retrospectively cease to be accounts when accounting standards are yet again revised. Even putting that aside, it seems to me that accounts which contain fundamental errors are still  
25 accounts, just flawed accounts.

109. I think Mr Nagla is closer to the truth of what the accountancy profession would regard as accounts when he said it would be a document intended to represent a reliable picture of past transactions over a set period of time, whether or not it actually did so.

30 110. The Schedule and Return Accounts were prepared on a basis which those preparing them on behalf of Mr Grint must have known did not accurately represent Mr Grint's transactions in the accounting periods: they knew the accounts were prepared on a time apportionment basis when Mr Grint's income was irregular. I do not see that this means that they are not accounts. As Mr Nagla said, the choice of  
35 basis of preparation could be convenience and that does not mean that they are not accounts, even if not reliable. They purported to be accounts, in the sense they purported to represent Mr Grint's transactions over a set period of time, and therefore they were accounts. Their unreliability does not mean they were not accounts as understood by the accountancy profession.

40 111. In conclusion I do not consider that the accountancy profession would disqualify as a set of accounts a flawed set of accounts – they would just chose not to rely on

accounts which they knew to be flawed. I reject the ‘relevant and reliable’ criterion as a necessary element for a document to comprise accounts. A document put forward as representing an entity’s transactions in a set period of time is a set of accounts even if fundamentally flawed, for whatever reason, and whether or not its flaws are known.

5 112. Therefore, I have concluded that that the appellant is right that accounts do not have to be reliable to be accounts as understood by the accountancy profession. This conclusion was urged on me for other reasons as well as those considered above and I mention them in passing as I heard argument on them although I did not find any of them persuasive one way or the other:

10 113.(1) *GAAP compliant accounts?* HMRC did not advance the case that accounts to be accounts had to be GAAP compliant. While it is the case that s 25 ITTOIA requires profits of a trade to be calculated in accordance with GAAP for tax purposes, there is nothing in the tax legislation which requires accounts to be drawn up in accordance with GAAP. Accounts which are not drawn up in compliance with GAAP  
15 would have to be adjusted to GAAP-compliant figures before those figures could be entered on a tax return.

114. There was general agreement that the Return and Schedule Accounts, taken individually, were not GAAP compliant because of the basis on which they were drawn up but that the Long Accounts and New Accounts, both drawn up on an  
20 accruals basis, were much closer to being GAAP compliant, although neither claimed actually to be GAAP compliant. Nothing turned on this.

115. The appellant’s point is that GAAP required accounts to be drawn up on a ‘true and fair view’ which meant (amongst other things) that they had to be drawn up on an accruals basis, reflecting income earned and expenses incurred in the period, albeit  
25 not yet received or paid. As ‘accounts’ do not have to comply with GAAP, it follows that ‘accounts’ did not have to show a true and fair view and did not have to be reliable.

116. This does not necessarily follow: ‘true and fair view’ has a very precise meaning in accountancy and the SOP covers many pages setting this out; ‘reliable’ has a more  
30 general meaning. I reject the appellant’s case on this: the fact accounts do not have to be GAAP compliant does not answer the question whether they must be reliable. However, I have for other reasons as set out above concluded that to be accounts as understood by the accountancy profession they do not necessarily have to be reliable.

117.(2) *The press release:* HMRC issued a press release (IR 29) on 29 March 1988.  
35 The appellant relies on this as showing HMRC recognise accounts don’t have to show true and fair view.

118. IR29 was a budget press release announcing the proposal to shift professionals on the cash basis to the accruals ‘true and fair view’ basis for the purposes of tax calculation. The press release made it clear that the affected professionals could still  
40 draw up their accounts on other bases (eg cash basis) but would have to adjust them to a true and fair view basis in order to complete their tax return.

119. The appellant considered this significant as it showed HMRC recognised that accounts can be drawn up on bases other than an accruals basis and still be accounts. Ms Choudhury's view is that this submission missed the point: HMRC did accept accounts could be drawn up on a basis other than accruals but maintained the submission in reliance on Mr Bach's expert opinion that accounts drawn up on any basis nevertheless had to be relevant and reliable to be accounts at all. She said 'reliable' did not necessarily mean the accounts were prepared on a true and fair view basis but did mean that they reflected past transactions in a period of time. She indicated it was an assumption underlying IR 29 that the accounts used would at least be reliable.

120. Accounts should be reliable; accounts used to complete a tax return should undoubtedly be reliable: but as I have said for the reasons given above at §§105-112 I don't consider that accounts as understood by the accountancy profession are not accounts simply because they are not reliable. I don't think the point on IR29 proves this either way.

121. (3) *Tax legislation recognises time apportionment*: The appellant pointed out that there are provisions in the Taxes Acts which require tax to be calculated on a time apportionment basis, such as s 203 ITTOIA. I accept that, but I do not think it either supports or negates the case on whether accounts to be accounts have to be reliable.

122. (4) *Jenkins*: I discuss this case in more detail below. An obiter comment by Atkin LJ was that accounts prepared on a time apportionment basis were not accounts within the meaning of the legislation in that case where the definition concerned was:

'the books of a trade or business [that] have been actually made up....'

123. The appellant's view was that this did not say that time apportionment accounts were not accounts, merely that accounts made up in that manner did not satisfy that particular legislation which required the accounts to be drawn up from raw data. I agree that there is nothing in this obiter comment that suggests time apportionment accounts are not accounts as understood by the accountancy profession.

124. As I have said, I do not accept as reflecting the view of the accountancy profession Mr Bach's opinion that accounts to be accounts must be reliable. A piece of paper which did not even purport to represent past transactions over a period of time would not be accounts: but I prefer Mr Nagla's opinion for the reasons already given that a document which purports or is intended to represent past transactions over a period of time is accounts even if it is inaccurate.

125. Accounts should be in a recognisable form: Mr Bach's fifth criterion for accounts was that they should be in recognisable form. From his report, Mr Bach's concern appeared to be that neither the Schedule Accounts nor Return Accounts were prepared as standalone documents. In cross examination, he explained what he meant was that they were not prepared as standalone accounts but as a part of a larger document (the tax return). In his view, accounts prepared as accounts were accounts even if part of a larger document (such as an annual report); but financial information not prepared as accounts would not be accounts even if they set out exactly the same information.

126.It seems to me that, although Mr Bach did not put it like this, he was saying accounts would only be accounts if intended as accounts.

127.Mr Nagla considered substance was what mattered: a document which did contain a profit and loss sheet and balance sheet did represent transactions over a set period of time and would be accounts even if prepared for a different purpose (such as part of a tax return). This was one of his reasons for considering Mr Bach wrong to say that the Schedule Accounts and Return Accounts could not be accounts.

128.The Joint report showed that the experts were agreed that accounts could be very simple documents, but Mr Bach considered that they needed to be in form which showed that they were intended as accounts, and not as, say, historical summaries or tax returns. In my mind, this seems consistent with what Mr Nagla said about accounts being accounts if they were intended to record past transactions over a set period of time. Where the form of the purported accounts indicates that they were not intended as records of past transactions in a set period of time, then I agree with Mr Bach that the document would not be accounts.

129.For this reason, I prefer Mr Bach's opinion as reflecting that of the accountancy profession that a tax return is not accounts even though it contains the same information as would be comprised in a set of accounts: this is because it is not intended as a record of past transactions in a set period of time but to return the author's tax liability. I note that even Mr Nagla said that accountants' first reaction to the question whether a tax return was accounts would be negative.

130.Accounts means general purpose financial statements: While not one of Mr Bach's five listed criteria for accounts, it was clear that there was a disagreement between the experts over whether 'accounts' was limited to general purpose financial statements or could include a profit and loss sheets drawn up for a specific purpose.

131.The experts were agreed that general purpose financial statements would not include a tax return or even a profit & loss sheet drawn up specifically to complete a tax return albeit not actually submitted with the tax return: at least not unless the entity actually intended those accounts to be its accounts for all purposes.

132.But that is not to say that the word 'accounts' necessarily means general purpose financial statements: it must depend on context. If 'accounts' is used in a loose or very general sense then I think most other accountants would consider that Mr Nagla is correct to say that a document which contains the information that would be present in a profit and loss sheets is 'accounts' if intended to record past transactions in a set period of time, even if drawn up for a single very specific purpose (such as to enable completion of a tax return or to support a loan application). But if the word 'accounts' is used in a context where it is clear that the meaning was limited to general purpose financial statements, then that would limit the meaning of 'accounts' in that context.

133.Nevertheless, unless there is something in the context which shows the meaning was intended to be limited to general purpose financial statements, I accept Mr Nagla's evidence that the word 'accounts' by itself could refer to any type of

accounts, whether general or special purpose financial statements. I prefer Mr Nagla's evidence on this as it is more consistent with common sense and with the definitions of accounts referred to in §§73-75, as they contain no limitation on the purpose for which the accounts were intended to be used.

5 134. So in my view it is right to refer to a profit and loss sheet and balance sheet for a set period as 'accounts' even if drawn up solely to support, say, a loan application.

135. However, what the word 'accounts' meant in the context of legislation at issue in this appeal is a legal issue and one that I address below after §158.

10 136. Only one set of accounts at any point in time: Mr Bach's view that 'accounts' referred to the general purpose financial statements flowed through to his view that only one such accounts for a set period could exist at a time, and therefore that an entity could only have one set of accounts for the same period at a time. While a set of general purpose financial statements might be replaced (eg if a flaw were found in the original set), the new set would replace the old.

15 137. Mr Nagla did not agree. He considered an entity could have a number of different accounts for the same period at the same time. The appellant suggested an entity might choose to draw up accounts on the cash basis and another set on an accruals basis: it did not prevent either being 'accounts.'

20 138. It follows from my finding, based on Mr Nagla's evidence, that there is nothing inherent in the word 'accounts' to limit them to general accounts, (unless that restriction is imposed by the context in which the word is used), that I see no reason why an entity can't have more than one set of accounts at a time covering the same period. It could, for instance, have general purpose financial statement prepared on the accruals basis and a special purpose financial statement prepared on the cash basis  
25 both covering exactly the same period: both would be understood by the accountancy profession to be accounts.

30 139. I am confident my conclusion is correct: I note that the law has recognised the possibility of an entity having more than one valid set of accounts covering the same time period. In the case *Jenkins*, already mentioned above and discussed in more detail below (§§169-176), the entity had six months' accounts and 12 months' accounts and there was no suggestion that either were invalid despite the fact that two six months' accounts covered the exact same period as the 12 months' accounts. So this suggests that fact that 2009 and 2010 Schedule Accounts combined covered the same period as the Long Accounts did not prevent any of them being accounts as  
35 understood by the accountancy profession.

*Conclusion on the expert evidence on the meaning of accounts*

140. My conclusion, taken in part from both expert's evidence, though more from Mr Nagla's than Mr Bach's, on the meaning of 'accounts' by accountants is that accounts:

(a) Must relate to an entity

(b) Must be considered by, and intended by, the entity to be its accounts, by some kind of informal approval or adoption or otherwise;

5 (c) Must represent (however accurately or otherwise) its past transactions over a set period of time.

141. And accounts could be accounts prepared for a specific or general purposes although the context in which the word is used might indicate a particular type of accounts, such as general all purpose accounts.

10 142. Were the Return Accounts accounts? For the reasons given above at §129, I agree with Mr Bach that those parts of the tax return which contained the information from the Schedule Accounts, which I have referred to in this decision as the Return  
15 Grint, there is no evidence to show the return was signed or adopted by him as accounts, rather than simply as his tax return.

20 143. Were the Schedule Accounts accounts? Using the definition at §140 above, the Schedule Accounts were accounts. They related to Mr Grint. Although drawn up for the specific purpose of enabling completion of the tax return, they were drawn up as accounts. The evidence is that Mr Grint considered them to be accounts relating to him (§25). While inaccurate and unreliable, they did purport to represent Mr Grint's past transactions in a set period of time.

25 144. Were the Long Accounts accounts? The appellant's case was that these were prepared solely as working papers to enable preparation of the Schedule Accounts and tax return. Even Mr Bach indicated that having heard the appellant's oral evidence, he was not certain whether they were accounts and considered they might just have been working papers.

30 145. Referring to this oral evidence by Mr Bach, the appellant submitted in closing that that Mr Bach retracted his opinion that the Long Accounts were accounts. That is not my understanding of his evidence. What he said was that he had been given to understand in his instructions that the appellant had voluntarily offered the Long Accounts to the HMRC visiting officer during the VAT visit (§29) but on hearing Mr Clay's evidence it appeared that the VAT officer had selected the Long Accounts from a file and that therefore he was not certain whether the Long Accounts might  
35 just have been working papers.

146. I find Mr Bach did not state that the Long Accounts were mere working papers: what he did was retract his statement that he definitely considered that they were accounts.

40 147. It is for me to decide whether or not the Long Accounts were accounts or working papers. I accept that the point about the VAT visit is significant in that, if Mr Clay had volunteered the Long Accounts to the VAT officer, it would be a very clear



indication that the appellant saw the Long Accounts as his general purpose financial statements and therefore as his accounts.

148.I accept that Mr Clay did not do this: the VAT officer herself selected them from the file and Mr Clay merely gave her copies of what she asked for. So nothing that happened at the VAT visit gives any support to HMRC's submission that the Long Accounts were accounts.

149.So far as Mr Bach's retraction of his opinion is concerned, I put little weight on it as it was on the spur of the moment having just heard what Mr Clay said about the VAT visit: it was not a considered view taking account of all the evidence, such as what was written in Mr Clay's witness statement. Indeed, later Mr Bach pointed out that he found it surprising Mr Clay had asked Mr Grint to sign the declaration in the Long Accounts (§37) if Mr Clay only intended the Long Accounts as working papers.

150.My view is that the appellant's submissions that the Long Accounts were mere working papers was not consistent with the evidence. If the Long Accounts were mere working papers with no purpose other than as a step in the production of the Schedule Accounts, then why:

- (a) Were they presented in a very formal format such as with heading of the unaudited accounts of Mr Grint (§37);
- (b) The appellant was asked to and did sign them with a formal declaration of them as his accounts (§37)

151.I have already dismissed as wrong the appellant's submission on note 1.1 to the accounts (see §38).

152.In closing, the appellant's submission seemed to include that the Long Accounts were merely for discussion, and were not actually accounts. But as I have said at §39, that is not my understanding of the evidence. They were the only set of accounts in existence before the submission of the appellant's tax return (and indeed for some time afterwards) which reliably recorded his financial performance for the period to which they related. Both Mr Grint and Mr Clay's witness statement records that they were used in the October 2010 meeting to report to Mr Grint his financial performance over the 20 month period. There was no suggestion that any other accounts were discussed with Mr Grint nor that Mr Clay reported to Mr Grint his financial performance for that period at any other meeting.

153.So I reject the submission that they were merely working papers. It is clear that the Long Accounts did not exist solely to enable preparation of the Schedule Accounts: they were the only accounts ever presented to, discussed with, and signed by the appellant as a record of his financial performance over the twenty months they covered. The Schedule Accounts and Return Accounts could not have been used for this purpose, nor were they used for this purpose, because they were time apportioned and did not accurately show the results for the period they covered. And while the New Accounts were signed by the appellant, I had no evidence that they were ever used to present to the appellant a picture of his financial performance over the 20

months and indeed it seems implicit in the evidence that they were prepared solely to put an end to the tax dispute and indeed were prepared long after the period to which they related. So the conclusion that the Long Accounts were intended as business accounts to report to the trader his financial position over the period they covered makes sense in that there were no other accounts available at that time which could have been used for that purpose.

154.I find the Long Accounts had dual purpose: they were used as ordinary business accounts in the sense that Mr Grint's accountants produced them to, and discussed them with, Mr Grint at the October meeting as the record of his financial performance over the period covered by them. In addition, they were used to prepare the Schedule Accounts from which the tax return was completed.

155.It seems to me that the Long Accounts were prepared not only as a step in the process of preparing the tax return, but because the accountants, doing the job they were appointed to do, wished to show to the appellant his financial results for the 20 month period. Therefore, the Long Accounts were not mere working papers or a mere step towards preparation of the tax return. They were in part brought into existence in order to show the appellant his financial results.

156.Moreover, if the Long Accounts are to be seen as working papers, all the criticisms of them as accounts occur in even greater force in respect of the Schedule Accounts. The Schedule Accounts:

- (a) were not formally formatted as accounts; rather they were described as 'Client Schedule to Tax Return' and had no notes on accounting policies;
- (b) were not signed;
- (c) were merely posted to the appellant with the tax return and were not discussed with him;
- (d) they were prepared and used for no purpose other than preparation of the tax return.

157.If the Long Accounts were working papers, then so were the Schedule Accounts. But my finding is that both were accounts as understood by the accountancy profession. Where does that take this appeal?

### **The law**

158. The question is the meaning to be given to the word 'accounts' in the legislation at issue in this appeal. The appellant, as I have said has to show (s 217 ITTOIA - at §§8-14 above) that his 'period of account' ending with the new 'accounting date' is not more than 18 months.

### *General definitions*

159.The meaning of accounting date was contained in s 197 ITTOIA as follows:

- (1) In this chapter ‘accounting date’, in relation to a tax year, means-
- (a) the date in the tax year to which accounts are drawn up, or
  - (b) if there are two or more such dates, the latest of them.

5 And the meaning of ‘period of account’ was contained in s 989 Income Tax Act 2007 (‘ITA’) as follows:

- (a) in relation to a person, means any period for which the person draws up accounts,
- (b) in relation to a trade, profession, vocation or other business, means any period for which the accounts of the business are drawn up....

10 160.The appellant’s position is that the word ‘accounts’ refers to accounts as understood by the accountancy profession and the accountancy profession would recognise the Schedule Accounts as accounts and that is enough for him to win the appeal because the 2010 Schedule Accounts meet the 18 month test. It does not matter that the appellant also had the Long Accounts which don’t meet the 18 months test.

15

161.My view is that statutory provisions should be interpreted in their context. The context of s 217 includes s 214-219. I set out some of those provisions here:

**214 When a change of accounting date occurs**

20 (1) If there is a change from one accounting date (‘the old accounting date’) to another accounting date (‘the new accounting date’), the change of accounting date occurs .....etc

**216 change of accounting date in later tax year**

(1) this section applies if –

- (a) a change of accounting date occurs in a tax year in which a person carries on a trade....etc

25

Moreover, in s 217 itself it refers to a change in accounting date for commercial reason:

- (6) condition B is that –
  - (a) a change of accounting date is made for commercial reasons.....

30 162.Moreover, s 989 ITA which contains the definition of ‘period of account’ when referring to a business refers to “the accounts of the business” which suggests the drafters considered a business would only have one set of accounts for any one period.

35 163.The impression I get is that the legislation was intended to refer to a change in the date to which the entity made up its accounts, in the sense of the accounts it relied on for its general commercial purposes. If the legislation could be interpreted as meaning that a change in accounting date of any type of accounts, it inevitably follows that an entity could keep one set of accounts for its general commercial purposes and another set for tax purposes, and that these two sets of accounts would

not need to have the same accounting date. This would be a short step to saying that a change in accounting date could be done artificially, by changing the date in the special purpose tax accounts, leaving the ordinary accounting date entirely unaffected. And that is the same as saying that the legislation would permit an entity to have a commercial accounting date and a (different) tax accounting date. But the fact that these detailed legislative provisions exist at all, rather than a short provision saying it's simply a matter of election for tax purposes, strongly indicate that the drafters did not envisage a change in accounting date being simply a matter of election for tax purposes, and having no impact on the accounts which the entity kept for its general commercial purposes.

164. The fact these detailed provisions exist suggest on the contrary that the drafters envisaged a real change in accounting date: in other words a change in the accounting date in the accounts kept by an entity for its general commercial purposes. And while the definitions of 'accounting date' and 'period of account' apply to other provisions of the Taxes Act, so far as I am aware it is the case that it is implicit in the use of these definitions in those other provisions that it is the trader's actual or real accounting date that is referred to and not one that only applies for tax purposes and no other.

165. So while I think Mr Nagla is right to say all financial statements showing profit and loss over a set period of time are accounts at least if intended as accounts, that does not mean that these provisions of ITTOIA are referring to any and every set of accounts prepared by an entity.

166. The effect of my interpretation is that the trader's actual accounts used for its general trading purposes must be identified and those are the ones which matter for s 217.

167. In any event, the appellant appeared to accept, based on the authority of *Jenkins*, that where a taxpayer had more than one valid set of accounts, the Tribunal would be forced to choose between the two and would do so on the basis of which were the 'more important' set of accounts.

168. So bearing in mind that I have found that both the Long Accounts and Schedule Accounts were accounts, I move on to decide which of these accounts were the ones which matter for the purposes of s 217.

*Jenkins Productions Ltd* 29 TC 142 (1944)

169. I was referred to this case by the appellant as an authority which showed that (a) where a body has more than one set of accounts covering the same period, the ones which matter for tax purposes are the more final accounts and (b) as a matter of law accounts can be accounts even if prepared from other accounts and not by reference to the raw data.

170. In so far as the second point is concerned, I have already reached that conclusion for different reasons: see §§110-111 and §123 and I agree this case supports that conclusion.

5 171. But what about the first point? The provisions at issue in this old case were somewhat different to those at issue in this appeal. They required the court to identify the taxpayer's 'accounting period' where the definition was that it was the period covered by "the accounts of the trade". Is 'accounts' in ITTOIA used in the sense of 'accounts of the trade' or does it mean any set of accounts? I have concluded for reasons set out above at §§161-166 that 'accounts' in ITTOIA does have a meaning  
10 similar to 'accounts of the trade', which I take to mean something like general purpose financial statements, and in particular I consider 'accounts' does not refer to any and every set of accounts produced by a taxpayer. Therefore the *Jenkins* case is relevant to the extent it offers guidance on how such accounts should be identified.

15 172. The relevant facts were that the taxpayer had always had prepared audited accounts every 6 months which were relied on by the directors for the company's general commercial purposes; nevertheless it also had 12 months' accounts prepared (by simply combining the two audited accounts for that year) to present them to its annual general meeting of shareholders.

20 173. Which set of accounts were the accounts of the trade? The Court of Appeal said the 12 month accounts were the ones referred to by the legislation as they were 'the more important' of the two sets of accounts because (a) they were laid before the shareholders who could approve or disapprove of them and (b) because the company had a statutory obligation to submit accounts to shareholders. The Court had already noted that the six months accounts went no further than the directors.

25 174. The appellant says that this case indicates that where a taxpayer has more than one valid set of accounts covering the same period, the tribunal should look at the more important of the two. And, says the appellant, the more important accounts are those which were notified to HMRC in connection with the change of accounting date (the Schedule Accounts) or the tax return itself (the Return Accounts) but certainly not the  
30 Long Accounts.

35 175. I do not agree with that analysis. While it is difficult to make an analogy between a company, split as it is between those who own it (the shareholders) and those who run it (the directors), and a private person in business, such as the appellant in this case, the Court in *Jenkins* considered the more important accounts to be those presented to the owners of the company to show its financial results. The analogy, if any, is with the Long Accounts, as they were the only accounts which were (and which could have been) used to present to Mr Grint his financial results. These were the only set of accounts discussed with him by his accountants; they were the only set signed by him. Neither the Schedule nor Return Accounts were discussed with him  
40 by his accountants (although of course he did sign the tax return). Moreover, it makes sense that only the Long Accounts were discussed with him: they were the only accounts which actually reflected Mr Grint's financial performance over the period to which they related. The Schedule and Return Accounts were merely the Long

Accounts time apportioned over shorter periods and while it was no doubt convenient to have created them by this method, in the sense it was cheaper than going back to the raw data, they did not accurately record Mr Grint's financial performance over the period to which each set of accounts (the 2009 and 2010) related. The Schedule  
5 Accounts were used to complete the tax return, as they split the income and expenses incurred during the 20 months into the two sections (12 months and 8 months) needed to complete the tax return, but that limited purpose was the extent of their use: they were not used, and not suitable to be used, to show to Mr Grint his financial performance over the periods to which they related.

10 176.The facts in this case do not in that sense compare to the facts in *Jenkins*. In my view it is much clearer in this appeal which are the more important of the accounts. In *Jenkins*, both sets of accounts were accurate (because the two six months sets were combined to create the 12 months set, rather than what happened here, where one long period was time apportioned between two shorter periods). Both sets of accounts in  
15 *Jenkins* were used to show to the entity its financial performance over the period of time to which the accounts related. The decision therefore turned on the fact that the shorter sets were only used by the directors whereas the longer set were also used by the entity's owners. Here, on the contrary, only one set of accounts (the Long Accounts) were accurate and only that set of accounts was used to demonstrate to the  
20 entity (Mr Grint) his financial performance.

177.The appellant's reply to this is that the Schedule Accounts were the ones used to report the entity's financial performance to HMRC. In fact they were not, as they were not produced to HMRC. Only the tax return (aka the Return Accounts) was filed with HMRC. But putting that quibble aside, on the evidence I have only the  
25 Schedule Accounts contained the figures reported to HMRC in the tax return: does that make them the more important? Mr Nagla also expressed the view that 'accounts' in the tax legislation means the accounts which were used to prepare the tax return (§177(3)). In any event, that is a legal question on which Mr Nagla should not have been asked to express an opinion, and Mr Bach was correct to refuse to express an  
30 opinion on it. I do not rely on Mr Nagla's opinion but treat it as a submission made by the appellant's legal representative.

178.And considering the submissions on this, I do not agree with the appellant's view. It has the serious defect, already discussed at §§163-164, that, if correct, it would enable a taxpayer to keep one set of accounts for its general trading purposes with any  
35 accounting date it chose, plus another 'tax' set of accounts with a completely different accounting date thus allowing artificial changes of accounting date, which have no relevance to the accounts which the trader actually uses in his business, which is inconsistent with the intent of the legislation as already explained.

179.In any event, while the Schedule Accounts were used directly to prepare the tax return, the Schedule Accounts' own existence depended on the Long Accounts, as the  
40 Schedule Accounts (and tax return) were drawn from the information contained in the Long Accounts. So it seems to me that the Long Accounts were the 'more important' of the accounts even on Mr Nagla's view as they were (indirectly) used to prepare the

tax return *and* were the only set used to show to the appellant his financial performance over the period to which they related.

180. Moreover, if in fact the question is not ‘which is the more important set of accounts’ but rather, as I think it is, which set is ‘the’ accounts, or put another way, which set is the accounts used by the entity for general purposes as representing its past transactions in a set period of time, then the answer is still the Long Accounts and for the same reasons. In this appeal, the Long Accounts were used both to report to Mr Grint his financial performance over the 20 month period and to create the figures inputted into the tax return (albeit by way of a spreadsheet that was used to create the Schedule Accounts). As I have said, the Schedule Accounts were neither suitable to nor were in fact used to report his financial performance to Mr Grint.

181. Should I reconsider this conclusion because Mr Nagla’s opinion was that the Schedule Accounts were within the definition of General Purpose Financial Statements? Firstly, the experts were not agreed on this. And while the appellant submitted that Mr Bach changed his mind on this, I find that was taking what Mr Bach said out of context (the context being that if the contents of the Schedule Accounts alone was considered and the heading of ‘client schedule to tax return’ dropped then he might have considered them to be general purpose accounts). I have to say on this I prefer Mr Bach’ evidence: bearing in mind the Schedule Accounts were headed ‘Client Schedule to Tax Return’, they were clearly prepared for the purpose of submitting a tax return and indeed all the evidence suggests that that was the only reason they were prepared. There was no evidence at all that they were intended as or used as Mr Grint’s business accounts. While Mr Grint did see them, he never signed them, and he only saw them in the context of approving his tax return.

182. In conclusion, I consider that the Long Accounts were the accounts which matter for the purposes of s 217; I consider that they are the only accounts for that period which could be described as Mr Grint’s business accounts; and even if wrong on that, and both could properly be described as business accounts, then the Long Accounts were more important than the Schedule Accounts. This is because the Long Accounts, unlike the Schedule Accounts, were:

- (a) signed as such by Mr Grint;
- (b) intended to be and actually were a reasonably accurate record of Mr Grint’s financial performance over period to which they related;
- (c) contained a record of the accounting policies used in their preparation;
- (d) used by his accountants in discussion with Mr Grint to report to him his financial performance over the 20-month period;
- (e) used as step in process of preparing Mr Grint’s tax return.

183. None of the above can be said of the Schedule accounts except (e). The appellant submitted that only the Schedule Accounts were intended for external consumption,

but the evidence does not support the submission. There is no evidence that either the Long Accounts or Schedule Accounts were ever volunteered by the appellant or his accountants to anyone. Whilst the figures in the Schedule Accounts were used to complete the tax return, the Schedule Accounts were not sent to HMRC. If the appellant had wished to show his accounts to a third party, and I had no evidence that he had ever done so or ever wished to do so, I had no evidence which accounts he would have chosen. But it seems likely that he would have preferred the Long Accounts as not only were these signed, headed as accounts (rather than ‘client schedule to tax return’) and contained a record of the accounting policies on which they were prepared, they were the only reliable accounts he had of that period (until the New Accounts were produced well over a year later).

184. I do not accept that the Return Accounts were accounts. But even if I am wrong on that, it would not alter my conclusion here. So far as Return Accounts were concerned, none of above can be said of them except (a) and (e) and although signed, the ‘Return Accounts’ was signed as a tax return and there was no evidence the tax return was signed as accounts. In any event, I am quite sure that the legislation when it referred to accounts did not refer to a tax return. It is true that the tax return was intended for external consumption in that it was filed with HMRC, it was not filed as accounts but as a tax return. Moreover, there is no evidence it was shown to anyone else, and indeed it is unlikely that a taxpayer who possessed a set of signed and reliable accounts, which were headed accounts, and which contained accounting policies, would instead produce as his accounts to a third party his tax return, particularly where the split of the figures between the two periods returned was unreliable (albeit the totals were reliable).

185. In my view, the *Jenkins* case supports the view I have reached that ‘accounts’ in s 217 refers to the general business accounts of the taxpayer and did not refer to accounts intended solely for use in preparing a tax return. It supports the view I have reached that the ‘accounts’ which matter for s 217 were the Long Accounts.

*Bass Holdings v Money* [1993] STC 300

186. I was also referred to another case as relevant to this issue. This *Bass Holdings* case concerned a company which did create a set of accounts purely for tax purposes. The facts were that the taxpayer company wished to gain a relief but was out of time to do so; so to fall within the statutory provisions it effectively created a 2 year set of accounts for that purpose and that purpose only. The definition in the relevant legislation of ‘period of account’ was more or less as in this appeal:

‘a period for which an account is made up in relation to the trade in question’.

The taxpayer lost its appeal on the basis that the period of account of the ‘tax’ accounts prepared for sole purpose of claiming the relief was not a period of account within the meaning of the law. The judge said:



“ ‘a period of account’ I take it to mean a period of account that will be disclosed in the company’s accounting records and not a period of account made specifically for stock relief purposes” (page 18)

187. This strongly suggests that the views I have already expressed that ‘accounts’  
5 refers to the general business accounts and not accounts drawn up specifically for tax purposes are right. I do take into account that in the next paragraph of the judgment, the judge said that ‘period of account’ meant ‘any period of account used by the company for [assessment to tax]’. However, this was in context where the company had both the ‘tax’ accounts drawn up for the sole purpose of gaining the tax relief and  
10 its general accounts used by the company for purposes such as its tax liability. So this comment was actually a reference to the general purpose accounts and not the ‘tax’ accounts and does not detract from the above citation on page 18.

188. In conclusion, this case is entirely consistent with the view that I have reached that ‘accounts’ in ITTOIA is a reference to the company’s general purpose trading  
15 accounts and does not refer to accounts drawn up solely for tax purposes.

*James Cycle 12 TC 98 (1919)*

189. HMRC referred me to this case as supporting their proposition that time apportioned accounts were not accounts. In that case the appellant produced quarterly  
20 accounts by taking its annual profits and time apportioning them over the four quarters. Tax had to be paid by reference to the company’s past accounting period save where accounts had been made up for another period for a different purpose from which profits could be readily ascertained. It was held the General Commissioners, upheld by the High Court and Court of Appeal, that the true profit could not be readily ascertained from the time apportioned accounts and so those special purpose  
25 accounts were rejected.

190. I do not consider this case does support HMRC’s position: the decision was not that the time apportioned accounts were not accounts but that they were not accurate, a conclusion I have come to independently in any event. And the case is of no  
30 relevance to the question of the meaning of ‘accounts’ in ITTOIA as the legislation at issue in this case (which concerned a tax during WWI) required the accounts to be ones from which profits could be readily ascertained, which is not a requirement in the legislation at issue in this appeal. I gained nothing useful from this case nor the similar case of *John Marston Ltd 12 TC 106 (1919)*.

**Conclusion**

35 *The New Accounts*

191. Both experts were agreed that the New Accounts were accounts as understood by the accountancy profession: I find that they met the legislative requirements of s 217  
save one and that is that they did not exist at the time the change in accounting date was notified. As I have said it is implicit in the legislation that it only permits  
40 notification of actual changes in accounting date and not prospective ones and as the change is effected by drawing up accounts to the new accounting date, there can have

been no change in accounting date when the accounts to the new accounting date had not yet been drawn up.

### *The Return Accounts*

192. It is something of a philosophical question whether a tax return amounts to a set of accounts so far as the accounting profession is concerned. Mr Bach said they did not; Mr Nagla agreed that most accountants' initial reactions would be that tax returns were not accounts but that on reflection they would accept that where they contained all the information that would be contained in accounts (profit and loss and balance sheets) then they were accounts. I think that Mr Bach's view and Mr Nagla's initial reaction is right: irrespective of whether they contain the same information as would be contained in accounts, tax returns are not intended to be a record of past transactions in a set period of time, instead they are intended to declare tax liability and provide HMRC with the information which HMRC demand a taxpayer provides. Intention, I think, matters. It is not just content.

193. However, this is all irrelevant because even if I am wrong, and the tax return (aka Return Accounts) would be seen as accounts by the accountancy profession, I find as a matter of law that they are not the accounts within the meaning of the legislation at issue in this case.

194. HMRC point out that s 8 TMA makes a distinction between 'accounts' and a tax return suggesting that they could not be one and the same thing. The appellant counters this by saying that that was true in the past when HMRC required less information on the tax return itself but expected taxpayers to file a copy of their accounts with the tax return: now HMRC expect all the information on the accounts to be recorded in the tax return and do not permit the filing of accounts with the tax return (at least if filed electronically).

195. I don't think that anything much can be made of this point either way: what seems critical to me is what I concluded at §§163-166: 'accounts' in s 217 refers to the ordinary or general accounts of the taxpayer and does not refer to accounts intended solely for use in preparing a tax return.

### *The Schedule Accounts*

196. I reject HMRC's case that the Schedule Accounts were not accounts as understood by the accountancy profession because of their unreliability. I found that the accountancy profession would not consider that accounts were not accounts because they were wrong. In this case, although the Schedule Accounts were not reliable because of the manner in which they were prepared, they were adequate for the purpose for which they were intended which was for completing a tax return covering the 20 month period (or at least they would have been adequate if the change in accounting date had been effective).

197. However, for the reasons explained at §§168-185, I consider that they are not the 'accounts' referred to in s 217. In conclusion, the appellant failed the s 217 test for a

change in accounting date because it could not show that its period of account ending with the new accounting date was not longer than 18 months, because the period of account referred to was the period of account used in accounts other than accounts drawn up solely for tax purposes, and its accounting date was the date to which it had accounts, other than accounts solely drawn up for tax purposes, drawn up.

### *The Long Accounts*

198.I have concluded that the Long Accounts were accounts and moreover that they were accounts within the meaning of s 989 ITA. However, this is largely irrelevant to the resolution of this appeal. The appellant fails the s 217 test because he did not have accounts with an accounting period of less than 18 months to the accounting date of 5 April 2010 at the time he notified the change in accounting date. He does not fail it because he does have accounts (the Long Accounts) with an accounting period of more than 18 months.

199.The relevance of the Long Accounts is that they existed: if they did not exist at all then perhaps a Tribunal perhaps might have been persuaded that the Schedule Accounts were Mr Grint's general purpose business accounts, because he had no other, and therefore that they were accounts which mattered for s 217; but that situation is impossible to imagine because the existence of the Schedule Accounts depended on the existence of the Long Accounts. If the Long Accounts had not been created, then perhaps the Schedule Accounts would have been like the New Accounts and drawn up from the raw data, and then perhaps they would have been the accounts used in the meeting with Mr Grint and the ones he was asked to sign. But this is fantasy. The Long Accounts did exist and they were the ones, if any, which were the accounts referred to by s 217. They were for a period of 20 months and so the test was failed.

200.The appeal is dismissed.

### **Dispute over technical point**

201.As I have said, it was no part of HMRC's case that the appellant was involved in tax avoidance; HMRC accepted that the appellant had the right to change his accounting date. The dispute was solely concerned whether he had done so within the meaning of the legislation.

202.An issue was made in the appeal over the unreliability of the Schedule and Return Accounts because they were drawn up on a time apportionment basis. While I accept that, and I do not think the appellant disputed this anyway, the Schedule and Return accounts were unreliable in the sense that they did not actually represent the appellant's past transactions in the period of time they covered individually, nothing turned on this other than whether it meant that they were not 'accounts'. While whether they were accounts was critical to the appeal on this technical point, it had no other significance.

203. In particular, the declared liability for 09/10 covered a 20 month period. As the totals of the 2009 added together with 2010 Schedule Accounts equalled the figures in both the Long Accounts (which they did of course as the Schedule Accounts were simply the Long Accounts divided over two periods) and the figures (with some minor discrepancies) in the New Accounts, the taxable income for that 20 month period was the same under either set of accounts. The same was true of the Return Accounts for the same reason.

204. Further, as the declared liability was for a period in excess of a year, the appellant was entitled to overlap relief. The amount of relief to which he was entitled was calculated by reference to the total figures for the 20 month period and was entirely unaffected by which set of accounts were used.

205. This appeal, as the appellant said, concerned a purely technical point. However, HMRC are entitled to take, as taxpayers are, technical points. And I found on this technical point, the appellant's appeal fails.

206. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**BARBARA MOSEDALE**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 3 AUGUST 2016**