[2019] UKFTT 0743 (TC)

TC07501

Income tax – closure notice – professional fees and subscription not within requirements of s336 Income Tax (Earnings and Pensions) Act 2003 – self-employment expenses of £120,000 with income of £5,000 over 46 days not genuine – no expectation of profit – s66 Income Tax Act 2007 – closure notice confirmed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2017/07313

BETWEEN

ALISTAIR JORDAN **Appellant**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE ALASTAIR J RANKIN
MR JOHN WOODMAN

Sitting in public at Court 1, The Courthouse, Tynemouth Road, North Shields, NE30 1AG on 2 December 2019 at 10:00 AM

Mr Steven Hall of Hall Accountancy Ltd for the Appellant

Mrs Rosalind Oliver, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

Introduction

1. This is an appeal against a closure notice for the 2013/14 tax year made under s28A Taxes Management Act 1970 (TMA 1970). As a result of the closure notice HMRC were disallowing a professional fees and subscription claim of £19,128.00 and Value Adding Services self-employment expenses of £120,000.00.

Background

2. HMRC wrote to Mr Jordan on 17 November 2015 to advise him that they were checking his Self-Assessment tax return for the year ending 5 April 2014 and in particular were enquiring into his claim for losses arising from his self-employment trade. Attached to the letter were two Schedules which listed the documents or information which HMRC required as part of their enquiry.

3. Mr Jordan's accountant, Mr Steven Hall telephoned to HMRC on 26 November 2015 to inform HMRC that they seemed to think Mr Jordan was involved in an avoidance scheme which was incorrect and no promoter was involved. Mr Hall explained that Mr Jordan was an employee of the family company which had "dis-incorporated" and he had set up as a sole trader.

4. HMRC wrote to Mr Hall on 10 February 2016 stating:

> "I understand that, in the main, our initial request for documents and information was not relevant to your client's situation. We discussed the content of appropriate records to provide and that it may include invoices and contracts for services. It would also be helpful to receive a description of your client's stated trade. It is difficult for me to be prescriptive without knowing precisely what records are maintained or held or activity carried on."

5. Having received no response HMRC issued to Mr Jordan a Notice to provide information and produce documents on 20 April 2016 and sent a copy to Mr Hall. The notice stated that he must let HMRC have the information and documents by 26 May 2016 and warned that failure to do so he may have to pay a penalty of £300.00 without further warning.

6. Mr Hall replied by letter dated 20 May 2016 apologising for the delay. He explained that Mr Jordan had been employed by Rapid Platforms Ltd (RP Ltd) for many years which company was owned by his parents though he held a minority shareholding. Mr Jordan's parents had decided to sell the company and advised Mr Jordan to find alternative sources of income. Mr Hall further explained that Mr Jordan started self-employment while still employed with RP Ltd. When this self-employment work became significant he agreed to sign a new contract of employment with RP Ltd. Mr Jordan also realised that it would be beneficial to incorporate his business in a private limited company with the result that A & C Jordan Ltd (ACJ Ltd) was incorporated on 19 February 2014. Mr Jordan had extensive experience at a senior level in the provision of logistical services and equipment and had developed skills in property portfolio management.

7. Mr Hall continued by explaining that Mr Jordan had signed a contract of employment with RP Ltd for his director duties and a second contract for consulting services for which he received £5,000.00 in the year in question. As Mr Jordan had little in the way of provision for his retirement he sought the services of a professional to explain the options available to him. This advice cost him £25,000.00 and was reported in his employment expenses.

8. Lastly Mr Hall explained that Mr Jordan had incurred expenses from ACJ Ltd billed by an invoice dated 31 March 2014 as follows:

"Value adding activities related to Financial Management	£40,000.00
Value Adding Inbound Logistics	£20,000.00
Value adding activities related to Marketing and Sales	£20,000.00
Value adding activities relating to operational service delivery	£20,000.00
Value Adding After Sales Care	£20,000.00

The invoice indicated a total of 1,200 hours each charged at £100.00 making a total of £120,000.00. No VAT was charged.

9. The director's contract of employment between RP Ltd and Mr Jordan states that his normal working hours are variable but as a Director he agrees "to be contactable from 8.30 am to 5.30".

10. After sending an acknowledgment dated 5 July 2016, HMRC wrote to Mr Hall on 2 August 2016 explaining under the heading of "Professional Fees and Subscriptions £25,000" that the general rule for employee's expenses is set out in s336 Income Tax (Earnings and Pensions) Act 2003 (ITEPA2003) and as a result HMRC had a number of concerns. First a deductible expense must also be one that is necessarily imposed on the holder of the employment by the duties of the employment. Secondly the expense must be incurred in actually carrying out the duties of the job. Thirdly an expense must be incurred wholly and exclusively in the performance of the duties of employment. HMRC was of the view that seeking advice regarding retirement provisions did not meet the conditions set out in s336 and should therefore be disallowed in full. Under the heading "Self-Employment Expenses £120,000" HMRC asked for nine further pieces of additional information.

11. Mr Hall replied by letter dated 1 September 2016 saying that referring to "personal retirement planning" was misinterpreting the information already supplied: the advice given to Mr Jordan was appropriate to him as a director of RP Ltd and the expected changes in relation to his employer. Mr Hall then responded to the nine points concerning self-employment expenses saying that "Value adding activities" can be defined by such experts as Michael Porter and the service agreement between Mr Jordan and RP Ltd detailed the services provided by Mr Jordan. Mr Hall, while supplying a copy of the consultancy agreement between ACJ Ltd and RP Ltd and answering some of HMRC's questions raised several questions himself as to what exactly HMRC was seeking and why. Mr Hall also stated that HMRC's letter had imposed an administrative burden that was extremely difficult to achieve and requested HMRC to make suitable allowances for delays in their postal system, timing throughout the year observing traditional holiday periods and peak business times when requesting dates for responses.

12. The service agreement between RP Ltd and ACJ Ltd commenced on 10 March 2014 and states at clause 3.1:

> "[ACJ Ltd] shall provide Services as specified below as Sales Director (the 'Services') to [RP Ltd].
>
> 1) Capital Sales to all new and existing customers
> 2) Generate additional training business for the company
> 3) Generate additional servicing business for the company
> 4) Advise on marketing for the company
> 5) Advise on delivery schedules.
> 6) Advise on financial investment and management.

Clause 9.1 states that RP Ltd shall pay ACJ Ltd at the rate of £450.00 per day while clause 9.4 requires ACJ Ltd to detail on invoices the fees due, the hourly rate, the services to which the fees relate including dates and mileage.

13. After sending an acknowledgment dated 13 September 2016 HMRC issued a further Notice to provide information and produce documents dated 4 October 2016. The schedule to the Notice was as follows:

> "1. In relation to the £25,000 costs incurred for Professional Fees & Subscriptions – Please forward the invoice, and any other documentation you may hold, showing how this expense was incurred and evidence of payment in order for me to consider this further.
>
> 2. Please confirm what you actually did for Rapid Platforms Ltd. Please also state the hours worked, rates paid and precise duties undertaken.
>
> 3. Please supply all bank and/or building society statements for the year ended 5 April 2014 for Alistair Jordan so that I can check the source of all monies received.
>
> Please detail the source of all deposits where it's not apparent from the statements.
>
> 4. Please also let me see a diary, calendar or other contemporary written evidence to show how much time was spent on consultancy work for A&C Jordan Ltd."

14. Mr Hall replied by letter dated 1 November 2016 enclosing copies of two invoices – one from Sympatico Corporate Strategies Ltd (Sympatico) dated 28 February 2014 for £19,128 and one from his own firm dated 31 March 2014 for £5,872.00. Both invoices were addressed to Mr Jordan. The Sympatico invoice was for "SSAS Pension Scheme needs analysis, solution, provision, solution implementation, intellectual property" while Mr Hall's invoice referred to eight different matters including "Preparation of Self Assessment Tax Return", "Obtain and process required employment documentation (P60, P11D, Dividend Income Statement, references) (Director)", "Self Assessment Tax Return Submission", "Liaison with previous accountant, consultants and advisors on behalf of client (Director)" and "Preparation of Accounts and accompanying analysis".

15. Having acknowledged receipt by letter dated 25 November 2016 HMRC wrote to Mr Hall on 4 January 2017 requesting sight of evidence of payment of the £25,000 and sight of all Bank and/or Building Society Statements. These had been requested in the Notice dated 4 October 2016. In the absence of a response HMRC issued a further Notice to provide information and produce documents dated 28 February 2017 with a deadline of 10 April 2017.

16. Mr Hall replied by letter dated 6 April 2017 advising HMRC that Mr Jordan's correct address was not being used and enclosing a copy of ACJ Ltd's bank account for the period 28 April 2014 to 30 April 2014 which showed a payment of £19,128.00 to "Pension Consultanc BBP" . Mr Hall explained that his own fee had been paid by payments on account and finished his letter by saying that if the enquiry was not closed he would be obliged to request an independent tribunal to bring the matter to a conclusion.

17. HMRC wrote to Mr Hall on 28 April 2018 saying that to avoid a £300 penalty they must have the documents by 30 May. However on 1 June 2017 HMRC wrote again to Mr Hall stating that they had received his letter dated 6 April 2017 on 27 April 2017 but they still required the original bank statements for the period 6 April 2013 to 5 April 2014. HMRC also suggested Alternative Dispute Resolution.

18. Mr Hall responded by letter dated 22 June 2017 stating that it was simply not acceptable for HMRC to delay their reply for two months without any explanation. Mr Hall rejected the

apology and raised a formal complaint. Mr Hall claimed he had previously explained everything and believed the requests for information were excessive and beyond that which are considered reasonable. Mr Hall stated he would not be supplying any further information, rejected the proposal to utilize ADR and requested a reference to this Tribunal.

19. HMRC wrote to Mr Hall on 5 July 2017 stating that they were not satisfied with the evidence supplied in support of the claims for Professional Fees & Subscriptions (£25,000) and Self-Employment Expenses (£120,000) and would shortly be issuing a Closure Notice disallowing these items and seeking the lost revenue, interest & penalties.

20. By letter dated 11 July 2017 HMRC rejected Mr Hall's complaint and at the same time advised him that he may request a review of the decision to disallow the two claims following which HMRC issued their decision on 27 July 2017 by way of a closure notice disallowing the Sympatico invoice for £19,128.00 and the ACJ Ltd invoice for £120,000.00. The letter also indicated that HMRC was going to issue a penalty notice for inaccuracies and amended Mr Jordan's tax return from a repayment of tax of £3,279.00 to a liability to tax of £22,860.55. Finally the letter advised Mr Jordan that he could appeal the decision by writing to HMRC within 30 days telling them why the decision was wrong. HMRC would then contact Mr Jordan to try to settle the matter. If they could not come to an agreement HMRC would write to him to tell him why and offering a review by an HMRC officer who was not involved in his case. HMRC would also tell Mr Jordan about his right to go to an independent tribunal.

21. By email dated 20 September 2017 Mr Hall submitted an Application to Close Enquiry to this Tribunal for the "Years or accounts of Returns under enquiry 6/4/11 -5/4/12". By Application Notice dated 15 November 2017 HMRC sought to have the application for closure of enquiries struck out as no enquiry had been open for the year ending 5 April 2012.

22. By email dated 30 January 2018 to this Tribunal Mr Hall formally appealed the closure as he did not fully understand why HMRC "made the instruction to close the case and welcome an explanation as to why Mr Jordan was denied his right of appeal". HMRC replied to Mr Hall by letter dated 6 February 2018 requesting answers to three matters – why no appeal was made within 30 days of 27 July 2017, what Mr Hall thought were the correct figures and requesting detailed documentary evidence that the costs incurred had been settled in full.

23. Mr Hall replied to HMRC on 1 March 2018 complaining that Mr Jordan's case had not been independently reviewed and that neither he nor Mr Jordan had agreed to HMRC's deadline to reply in writing by 30 August 2017. This deadline was indicative of HMRC's consistent behaviour that had failed to allow adequate provision for weaknesses in the postal system at HMRC leading to weeks of delay in communications being received. Mr Hall also complained that HMRC had repeatedly addressed correspondence to Mr Jordan using the incorrect address despite being notified formally and Mr Jordan notifying HMRC of his correct details on multiple occasions. As a result Mr Jordan had not been provided with adequate opportunity to contact Mr Hall's firm when correspondence had been sent to check if the correct copies had been received. Mr Hall claimed that the response received by HMRC was not late – correspondence was sent to HMRC at the earliest opportunity and Mr Jordan had made repeated requests for HMRC's decisions to be reviewed by an independent tribunal.

24. Mr Hall claimed that he had not seen HMRC's closure notice dated 27 July 2017 until September 2017 as his offices are closed every year in August, December and January due to a combination of factors. In addition to the office closure Mr Hall left the UK on 27 July 2017 and returned on 28 August 2017 but did not return to his office until 4 September 2017. Mr Hall maintained that the claims for £25,000.00 and £120,000.00 were correct but did provide some further copy bank statements.

25. HMRC replied by letter dated 21 March 2018 stating that the 30 day period for a response was not an arbitrary period but was set by s31A(1) TMA 1970. HMRC maintained that the first time they were notified of Mr Jordan's change of address was in Mr Hall's letter dated 6 April 2017 referred to at paragraph 16 above and that no correspondence issued to Mr Jordan had been returned undeliverable. HMRC also maintained that the first request for a closure notice was in the letter dated 6 April 2017 but it was HMRC's usual practice to offer Alternative Dispute Resolution which offer was contained in their letter dated 1 June 2017 which offer was refused by Mr Hall in his letter dated 22 June 2017. HMRC pointed out to Mr Hall that while Mr Jordan had appointed him as his agent, Mr Jordan remained responsible for his returns, calculations and payments.

26. HMRC continued by referring to the additional bank statements which showed that the invoice from ACJ Ltd had been paid by three instalments between 6 October 2017 and 12 January 2018 and noted that Mr Jordan began his business described as "Value Adding Services" on 19 February 2014 and the income reported for the year ending 5 April 2014 was £5,000.00 while the costs incurred amounted to £120,000.00. HMRC stood by the original decision in the closure notice dated 27 July 2017 and advised Mr Hall that they were referring his appeal to HMRC's Solicitor's Office with a view to asking this Tribunal to determine the appeal by considering the factual evidence of both sides.

27. By an Application dated 29 March 2018 HMRC confirmed that they were treating the Notice of Appeal as a late appeal against the 2014 closure notice. No issue was taken by HMRC that the appeal was late.

Written submissions by Mr Jordan

28. Although the original appeal was an application for a closure notice this was subsequently changed to an appeal against the closure notice dated 27 July 2017. The Notice of Appeal did not include any grounds but HMRC in their Statement of Case summarised the matters under appeal as the costs incurred in self-employment of £120,000.00 which had been paid in full and should be an allowable deduction and the professional fees incurred of £25,000.00 which should be allowed as a claim against income.

Statement of Case by HMRC

29. HMRC claim that the professional fees of £25,000.00 should be substantially reduced. The fees of £19,128.00 submitted by claimed on the 2013/14 tax return were not paid until 30 April 2015 from the account of ACJ Ltd. The Sympatico fee failed the tests imposed by s336 ITEPA 2003 as the advice was personal to Mr Jordan and was not incurred in the performance of his duties.

30. HMRC advised that the self-employment business of "Value Adding Services" commenced on 19 February 2014 and appeared to cease on 5 April 2014 as no further entries have been made in Mr Jordan's personal tax returns for any of the subsequent tax years. This business was carried out for 46 days during which Mr Jordan reported income of £5,000.00 and expenses of £120,000.00 resulting in a loss of £115,000.00.

31. The Value Adding Services income of £5,000.00 was paid by RP Ltd, a company owned by Mr Jordan's parents and by whom he was employed. The expenses of £120,000.00 related to the invoice dated 31 March 2014 from ACJ Ltd detailed at paragraph 8 above. This invoice requested payment by 31 March 2017. HMRC believe that Mr Jordan had artificially created a loss of £115,000.00 to enable him to make a repayment claim. HMRC is not satisfied that the self-employment was genuine and that the expenditure was genuinely incurred. In the alternative, if the self- employment was genuine and the expenses incurred the trade was not commercial and there was never an expectation of any profit thus engaging s66 ITA 2007.

Evidence at the hearing

32. At the hearing Mr Hall indicated that he would like Mrs Oliver to present HMRC's case first. Mrs Oliver referred the Tribunal to HMRC's statement of case dated 22 May 2018 and to the three invoices the subject of the claim for losses. Mrs Oliver advised the Tribunal that pension planning was a private matter and as such the invoices from Hall Accountancy Ltd for £5,872.00 and from Sympatico for £19,128.00 did not meet the requirements of s336 ITEPA 2003. She also maintained that the trading loss of £120,000.00 did not represent a commercial business and as such fell outside the requirements of s66 Income Tax Act 2007. She referred the Tribunal to the Scottish Court od Session decision in *British Legion, Peterhead Branch, Remembrance and Welcome Home Fund v Commissioners of Inland Revenue* [35 TC 508] where the Lord President said on page 7:

> "In my view, a person cannot be said to be engaged in carrying on a trade or a concern in the nature of trade within the meaning of the Income Tax Acts unless, in a reasonable sense, he is conducting business on commercial principles."

33. Mr Hall opened his appeal on behalf of Mr Jordan by giving a lengthy history of the delays incurred by and the errors made by HMRC. Although the enquiry was launched by Notice dated 17 November 2015 Mr Hall maintained that HMRC admitted during his telephone conversation with him on 26 November 2015 that the Notice had been issued under the impression that Mr Jordan was involved in an avoidance scheme and as this was not the case the Notice had been issued in error. He maintained that his view was confirmed by the wording of HMRC's letter dated 10 February 2016 quoted in paragraph 4 above. As a result Mr Hall claimed that the enquiry did not officially commence until HMRC issued their Notice dated 20 April 2016 which was outside the statutory window of enquiry.

34. Mr Hall advised the Tribunal that on 8 December 2017 a person from HMRC called at Mr Jordan's premises seeking payment of the tax even though the matter was under appeal. Mr Hall maintained that Mr Jordan had always paid his taxes. He was very critical of HMRC's actions throughout the period of the enquiry and maintained that as a result of HMRC's delays and failures the appeal against the closure notice should be allowed and the original repayment position of Mr Jordan reinstated.

35. When Mr Jordan was in the witness box he confirmed to Mrs Oliver and this Tribunal that everything which Mr Hall had said was accurate and there was nothing with which he would disagree. He confirmed he had signed a service contract with ACJ Ltd but when asked why a copy was not in the papers he replied that HMRC had not asked for a copy. He maintained that he was entitled to claim for the advice which he had sought concerning his pension and future income once RP Ltd was sold.

The Legislation

36. Section 9A(1) TMA 1970 states that HMRC may enquire into a return under s8 or s8A TMA 1970 if HMRC gives notice of intention to do so to the taxpayer within the time allowed. Sub-section (2) states that the time allowed is up to the period of twelve months after the day on which the return was delivered if the return was delivered before the due date. Neither Mr Hall nor Mrs Oliver were able to confirm the date upon which Mr Jordan's self-assessment tax return for the year ending 5 April 2014 was filed but Mr Hall stated that he always filed returns just before the due date which in this instance would have been 31 January 2015. As Mr Hall has not taken issue with the date of the initial Notice of enquiry, 17 November 2015, the Tribunal must assume that the Notice was issued within the statutory 12 month period.

37. Section 28A TMA 1970 states that an enquiry is completed when HMRC inform the taxpayer by notice that they have completed their enquiries. The closure notice according to

sub-section (2) must state that either no amendment to the tax return is required or make the amendments of the return required to give effect to HMRC's conclusions. Sub-section (4) states that the taxpayer may apply to this Tribunal for a direction requiring HMRC to issue a closure notice within a specified period.

38. Section 31A TMA 1970 states that any appeal must be in writing within 30 days of the date on which the closure notice was issued and sub-section (5) states that the notice of appeal must specify the grounds of appeal.

39. Section 336 ITEPA 2003 is as follows:

(1) The general rule is that a deduction from earnings is allowed for an amount if –

(a) the employee is obliged to incur and pay it as holder of the employment, and

(b) the amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.

40. Section 64 ITA 2007 is as follows:

(1) A person may make a claim for trade loss relief against general income if the person -

(a) carries on a trade in a tax year, and

(b) makes a loss in the trade in the tax year ("the loss-making year").

41. Section 66 ITA 2007 restricts the relief unless the trade is commercial:

(1) Trade loss relief against general income for a loss made in a trade in a tax year is not available unless the trade is commercial.

(2) The trade is commercial if it is carried on throughout the basis period for the tax year –

(a) on a commercial basis, and

(b) with a view to the realisation of profits of the trade.

The Authorities

42. In *Jonas v Bamford (H M Inspector of Taxes* [1973] STC 519 Walton J confirmed that the onus lies upon the taxpayer of showing that HMRC's assessments are wrong. In *Norman v Golder (H M Inspector of Taxes)* (C.A.) 171 L.T. 369 Lord Greene MR rejected the suggestion that the onus of proving an assessment is incorrect and stated:

> "The very short answer to that lies in the language of the relevant Section, Section 137 Subsection 4, Income Tax Act 1918, which makes it clear, beyond any possibility of doubt, that the assessment stands, unless and until the taxpayer satisfies the Commissioners that it is wrong. If it were necessary to find authority for the point, it has in fact been so stated in terms in this Court by Lord Hanworth when Master of the Rolls in the case of T. Haythornthwaite and Sons, Ltd. v Kelly, 11 TC 657, at page 667, to which my brother Finlay calls my attention. The point really is not arguable."

43. Section 137 of the 1918 Act was the equivalent of s50(6) TMA 1970.

44. In *T Haythornthwaite and Sons, Ltd v Kelly (H M Inspector of Taxes)* Lord Hanworth MR said the following:

> "Hence it is quite plain that the Commissioners are to hold the assessment standing good unless the subject – the Appellant – establishes before the Commissioners, by evidence satisfactory to them, that the assessment ought to be reduced or set aside."

45. In *Hurley v Taylor (H M Inspector of Taxes)* [1998] STC 202 Park J stated:

> "Before the Commissioners the crucial statutory provision was TMA 1970, s 50(6):

> "If, on appeal, it appears the appellant is overcharged by any assessment, the assessment shall be reduced accordingly, but otherwise every such assessment shall stand good."
>
> It is well settled by authority that this places the onus of discharging the assessment on the taxpayer. If the Commissioners, having heard his case, are uncertain where the trust lies, they must dismiss the appeal and uphold the assessment."

46. In *Graeme Allan and The Commissioners for Her Majesty's Revenue & Customs* [2016] UKFTT 0504 Judge Heidi Poon said at paragraph 66:

> "No matter how much Mr Allan laboured under the notion that the burden did not lie upon him as the taxpayer, but on HMRC, this notion has no basis in law. As Walton J in *Johnson* puts it – "it is quite impossible to see how the Crown, in cases of this kind, could do anything else but attempt to draw inferences. *The true facts are known, presumably, if known at all, to one person only, the taxpayer himself."*

47. Finally, in *Customs and Excise Commissioners v Pegasus Birds Ltd* [2—4] STC 1509 Chadwick LJ said at paragraph 75:

> "For my part, I would accept that an assessment made on behalf of the Commissioners by an officer who had, consciously or unconsciously, 'closed his mind' to any material which did not fit the case, would not be an assessment of an amount due to best judgment. The exercise of judgment, based on the evaluation of material, requires that the task be approached with an open mind. That does not, of course, mean that the officer is required to accept all that the taxpayer tells him; or to accept that all of the material that the taxpayer produces is genuine….The officer is entitled to reject material on the basis that, on evaluation, he does not regard it as credible; but he must not reject material on the basis that, before evaluation, he has closed his mind to the possibility that it might be credible."

Discussion and Decision

48. HMRC opened their enquiry by letter dated 17 November 2015. This letter was issued within the statutory time limits set down by s 9A(2) TMA 1970. While some of the information requested by HMRC was not relevant the letter specifically states that the enquiry would cover the claim to relief for losses arising from the self-employment trade. HMRC's subsequent letter dated 10 February 2016 confirmed to Mr Hall that some of the information requested was not relevant but specifically suggests that appropriate records may include invoices and contracts for services.

49. Throughout the enquiry period HMRC had to request material. Neither Mr Jordan nor Mr Hall volunteered information to support Mr Jordan's repayment claim until a specific question was asked by HMRC. Mr Hall's explanation as to why the service contract between ACJ Ltd and Mr Jordan was not produced that it was never asked for does not stand up to scrutiny when HMRC's letter dated 10 February 2016 refers to contracts for services.

50. This Tribunal is satisfied that the enquiry was validly opened, carried out and concluded.

51. Turning to the invoice dated 28 February 2014 from Sympatico, it is understandable that HMRC initially thought it referred to pension planning as the invoice states the fee was for "SSAS Pension Scheme needs, analysis, solution provision, solution implementation, intellectual property". An examination of the report reveals that the advice was for the benefit of Mr Jordan after he was going to be made redundant following the sale of RP Ltd by his

parents. As a result this Tribunal finds that Mr Jordan was not obliged to incur and pay it as holder of the employment, nor was the amount incurred wholly, exclusively and necessarily in the performance of the duties of the employment as required by s336(1) ITEPA 2003 in order to be allowable.

52. Mr Jordan failed to adequately explain to this Tribunal what "Value Adding Services" actually was. He claimed that these Services commenced on 19 February 2014. ACJ Ltd invoiced him on 31 March 2014 for 1,200 hours of work (see details of invoice at paragraph 8 above). There are only 984 hours between 19 February and 31 March (41 days x 24 hours – 2014 was a leap year). The burden is on Mr Jordan to prove on the balance of probabilities that the work referred to in the ACJ Ltd invoice resulting in a fee of £120,000.00 could genuinely have been carried out. Mr Jordan has failed to convince this Tribunal that "Value Adding Services" were in fact carried out.

53. In the alternative, this Tribunal is satisfied that there was no commercial activity supporting the arrangement between Mr Jordan and ACJ Ltd. A net loss over the period 19 February 2014 to 5 April 2014 with no further income reported in subsequent does not amount to a commercial trade as required by s66 ITA 2007.

54. This Tribunal is surprised that HMRC has apparently allowed Mr Jordan to claim for Mr Hall's accountancy fees as it has always understood that such fees were not allowable for income tax purposes. However it does not propose to amend the closure notice.

55. The appeal is dismissed. HMRC indicated they were going to issue a penalty notice for inaccuracies of £11,201.66. However in error HMRC failed to raise a penalty assessment and accordingly no penalty is payable by Mr Jordan.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

56. 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.

ALASTAIR J RANKIN

TRIBUNAL JUDGE

RELEASE DATE: 09 DECEMBER 2019