Neutral Citation: [2024] UKFTT 00457 (TC)

Case Number: TC09181

FIRST-TIER TRIBUNAL
TAX CHAMBER

On the papers following an application to strike-out

Appeal reference: TC/2018/06110

Discovery Assessments, whether discovery of loss of tax, whether assessments in time, Yes whether cash basis of accounting available, No whether reductions in expenses claims not substantiated by evidence reasonable – Yes, whether bad relief is available No.

Heard on: 25 April 2024
Judgment date: 23 May 2024

Before

TRIBUNAL JUDGE GETHING

Between

Patrick Rodney Boden and Carole Anne Boden

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellants: Mr Patrick Rodney Boden

For the Respondents: Mr Simon Bracegirdle, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. With the consent of the parties, following an application to strike out heard by me on 13 February 2024, I determine this case on the papers without a hearing.

2. The documents to which I am referred are:

(1) A main bundle of 1269 pages which I shall refer to as the Trial Bundle and a Supplementary Bundle of 116 pages.

(2) In response to directions made by the Tribunal on 21 February 2024 as amended on 11 March 2024 following representations made by HMRC:

(a) Submissions from HMRC on the availability of bad debt relief of 12 pages,

(b) Evidence and correspondence produced by Mr Boden of 22 pages, and

(c) Further Submissions made by HMRC in response to the evidence produced by Mr Boden of 6 pages.

3. The appellants appealed against discovery assessments made by HMRC in respect of the years 2011-12 to 2014-15. The issues in the appeal are whether:

(1) HMRC had discovered a loss of tax arising from Mr and Mrs Boden's failure to notify liability.

(2) Whether HMRC were entitled to issue assessments under section 29 and 36 Taxes Management Act 1970 ("***TMA***").

(3) Whether the profits of the partnership carried on by Mr and Mrs Boden should include amounts in respect of "*proforma*" invoices referred to in the partnership accounts.

(4) Whether the profits of the business were understated because of excessive claims for travel, subsistence, motor and out of pocket expenses.

(5) Whether bad debt relief is available in respect of any of the sums referred to in the partnership accounts as pro forma invoices.

FACTS

I find the following facts:

4. In the years 2011-12, 2012-13, 2013-14 and 2014-15 the appellants carried on business as sales agents together in partnership under the name Point Four. The partnership sold, as agent:

(1) software owned by third parties which enabled customers to advertise their business on screens, and

(2) EPOS technologies being developed by the following entities: Instore Location LLP, InStore Local Ltd, DecisionVision (NAS) Ltd and DecisionVision Scotland Ltd. These entities were owned wholly or partly by Mr Boden and Mrs Boden. I refer to these entities as the "***family companies***".

5. The profits of the partnership were shared between Mr and Mrs Boden 70:30. The accounts of the partnership were made up to 30 April each year.

6. The customers of the business were small independent shops and petrol stations that carried business over the country.

7. The partnership received commission on sales from third party customers.

8. The partnership also provided consultancy services to the family companies and the charge for the services was £500 a day and expenses. As the businesses of the family companies were in development no payment was made for the services and expenses, but Mr and Mrs Boden expected to be paid once the family companies' businesses became successful.

9. The partnership received no payment from the family companies in the years in question for the services provided and expenses incurred.

10. The transactions with the family companies were referred to in the partnership accounts as proforma invoices.

11. It is not known precisely when the partnership accounts were actually prepared. None were submitted to HMRC in returns for the years 2011-12 to 2014-15. Copies were provided to HMRC in a letter written by Mr Boden and dated 8 January 2016.

12. The partnership accounts comprise schedules of revenue, overheads and proforma invoices. There is no balance sheet that shows the partnership debtors. The proforma invoices are shown as a total and broken down between the four family companies.

13. In his letter of 8 January 2016 to HMRC Mr Boden states that:

"*The anticipated profits ("the proforma invoices") are our fees and expenses invoiced to these companies and we expect to receive these when these companies grow and become profitable. As and when we receive these payments they will be included in our accounts. All these invoices are included in the companies' accounts and are filed with HMRC*."

14. Invoices were issued to the third-party customers for the products sold as agent by the partnership.

15. Mr and Mrs Boden considered they could make up the partnership accounts using the cash basis of accounting and not the accruals basis of accounting because the proforma invoices had not been paid and were not expected to be paid for some time. This is explained in a letter from Mr Boden to HMRC of 15 March 2016 where Mr Boden explains to HMRC that the proforma invoices to the family companies were expected to be paid when the companies become profitable, and they were to be reflected in the partnership accounts when paid as the partnership is "*cash accounting*".

16. The cash receipts of the partnership conducted by Mr and Mrs Boden (excluding the pro forma invoices) for each year were as follows:

30 April 2011 assessable in 2011-12	£81,727
30 April 2012 assessable in 2012-13	£97,283
30 April 2013 assessable in 2013-14	£96,609
30 April 2014 assessable in 2014-15	£96,607

17. For each year in question the partnership accounts showed profit separately from the value of pro forma invoices as shown in the table below. The aggregated amounts of profit and proforma invoices are referred to in the table below as "***Anticipated Profit***".

Period	Profit	Pro forma invoices	Anticipated Profit
18/2/2010 to 30/04/2011	7,740.20	189,487.40	197,227.60
1/5/2011 to 30/4/2012	7,330.55	216,953.25	224,283.80
1/5/2012 to 30/4/2013	9,824.53	207,448.27	217,272.80
1/5/2013 to 30/4/2014	14,721.68	152,558.65	167,280.33
1/5/2014 to 30/5/2015	16,009.65	158,015.55	174,025.20

18. HMRC inspected some of the records at the home of Mr and Mrs Boden. HMRC focussed on the accounting records for the period ended 30 April 2014. They uncovered schedules of expenses and the partnership rules for charging expenses, "***the partnership rules***". The rules were as follows:

Mileage	£0.45 per mile
Breakfast (only applies while travelling away)	£14.00
Lunch	£14.00
Dinner (only applies if working after 6.00pm)	£27.00
Hotel	£125.00
Out of pocket expenses (only applies when staying away in hotel)	£10.00

19. The schedules of expenses were not supported by receipts. The schedules of expenses indicate only round sum claims as they followed the partnership rules set out in the table above. The family companies had no copies of the receipts.

20. Neither Mr nor Mrs Boden had filed any return of their income for any of the years in question.

21. Much travel was involved in the conduct of the business and some overnight stays. The travel was undertaken by car.

22. There is a dispute as to whether Mr and Mrs Boden each owned a car. At the directions hearing in February 2024 Mr Boden claimed that Mrs Boden visited businesses local to their home in the Midlands whereas he undertook travel to London and Scotland. Mr Boden also claimed that on occasion on trips to Scotland he had claimed accommodation expenses for two rooms as he had been accompanied by his daughter on those trips.

23. There is also a dispute as to the miles driven by Mr Boden. HMRC had used a tool provided by the Automobile Association ("***the AA Planner***") which assists in devising the best route from A to B, to ascertain the likely miles undertaken on a trip and added 25% to deal with variations. HMRC reduced downwards the claim for mileage accrodingly.

24. On 13 February 2024 at a hearing of an application to strike out made by HMRC and a request to transfer the case to the Crown Court made by Mr Boden, the case was not struck out nor transferred to the Crown Court, but Mr Boden was given a further opportunity to

provide evidence to support his claim for expenses in computing the partnership profits. Directions were issued on 21 February 2024 pursuant to which Mr Boden was required to produce:

> (1) bank statements showing amounts paid at petrol stations for fuel, at hotels for accommodation and at other establishments for meals,
>
> (2) vehicle registration documents which would prove that Mr and Mrs Boden each owned a car,
>
> (3) MOT certificates which would record the milage undertaken by each of Mr and Mrs Boden annually, and
>
> (4) As the Tribunal had a concern that some of the expenses and sums referred to in the pro forma invoices may no longer be recoverable and some may have been paid and included in the cash accounting for a later year under review, in consequence of which there may be double taxation unless an appropriate adjustment is made, the Tribunal gave Mr Boden the opportunity to provide evidence of any potential bad debt claim or double counting in the years in question.

25. No evidence has been provided by Mr or Mrs Boden of their ownership of any vehicle and no MOT certificates were provided for any year showing mileage undertaken in any of the years in question.

26. No bank statements were submitted by Mr and Mrs Boden but my attention has been drawn by HMRC to bank statements in the Trial Bundle and the Supplementary Bundle.

27. No evidence of bad debts or double counting was provided. Instead, Mr Boden provided:

> (1) two licences dated 2015 which set out the terms on which the partnership was conducting business with two of the family companies for a period after the years under consideration in this case,
>
> (2) letters to those companies asking for proof of bad debts in the relevant periods.
>
> The family companies have not responded to Mr Boden's letters. Mr Boden provided the Tribunal with a copy of a letter he had sent to HMRC asking HMRC to obtain the information he was seeking from the family companies. Mr and Mrs Boden claim they are no longer on speaking terms with their daughters who have hijacked the family companies. Mr Boden sought a further extension of time to obtain evidence of bad debts.

28. At the Hearing on 13 February 2024, HMRC had objected to the explanation Mr Boden gave as to why he had claimed a deduction for two hotel rooms (that he had been accompanied by his daughter) because this explanation was brand new and the investigation into the partnership returns had been going on for many years. Notwithstanding the objection Mr Boden produced no evidence of his daughter having accompanied him on trips to Scotland.

29. In response to the Directions issued on 21 February 2024, HMRC had asked for an amendment to the directions to allow HMRC to make submissions on the availability of bad debt relief and to respond to any new evidence provided by Mr and Mrs Boden. Permission was granted to HMRC.

30. Considering HMRC's submissions on the scope of bad debt relief which I accept (and will expand on below) I decline to give Mr and Mrs Boden further time to gather evidence of

bad debts. In accordance with the February 2024 Directions, I now make this decision on the papers before the Tribunal. I will deal with each of the issues as set out above.

31. Mr Boden explained at the directions hearing and set out in the statement of claim that he and Mrs Boden had been investigated by HMRC on two prior occasions. Their experiences were not positive. The first investigation resulted in a crown court prosecution of an officer and because of an uncompromising attitude Mr and Mrs boden were made bankrupt. Mr Boden explained the second investigation, which lasted 3 years 4 months, became acrimonious but at the end of it Mr and Mrs Boden say they received a clean bill of health and say they were told by an officer that their record keeping was good, and their expenses claims accorded with HMRC practice. Mr Boden claims to have been told by that officer that he should keep a record of the payments that were due for services rendered where payment was expected later and to refer to them as pro forma invoices and bring the sums into account on a cash basis when paid. HMRC were unable to obtain evidence of these prior investigations owing to the lapse of time.

32. Officer Adamson began an investigation into Mr and Mrs Boden's affairs in December 2015 under Code of Practice 9 for suspected fraud. Mr and Mrs Boden were cooperative in that they allowed access to HMRC to inspect the business records but the conversations, as can be seen from the correspondence, were rancorous. Mr Boden's correspondence and Grounds of Appeal include a large amount of detail of the first unfair investigation, the dishonest conduct of an officer involved and the second investigation which exonerated him, and because he considered he was following the advice of an officer involved in the second investigation he did not fully engage with Officer Adamson. It was clear from his evidence and submissions at the Directions hearing Mr Boden thought it was for HMRC to trawl his records to find the receipts to support his claims for relief rather than it being his obligation to provide the receipts to prove his claims were accurate. In fact, he had not kept any receipts as he believed he could adopt the policy of charging expenses set out in the partnership rules described above and they would be allowed.

33. I formed the impression at the hearing 0n 13 February 2024 that Mr Boden was not dishonest, but he was very easily distracted. I was not therefore surprised that he had not obtained any evidence of ownership of the cars owned by him and Mrs Boden and of the mileage undertaken and had not cross checked a sample of his bank statements and other records to show even for a limited period he had made journeys and had incurred expenses he and Mrs Boden claimed had been made.

34. Officer Adamson made the following adjustments to the claims for expenses which she considered reasonable:

> (1) She disallowed all claims for "*out of pocket expenses*" as there was no evidence any such expenditure had been incurred.
>
> (2) She allowed all the overheads as she considered overheads had to have been incurred.
>
> (3) She reduced the mileage claimed using the AA planner for each trip from Nottingham to the destination plus 25% for deviations in routes. She also reduced the 88 mile round trip claimed for journeys in and around Nottingham where Mr and Mrs Boden were based as she considered this to be excessive.
>
> (4) She reduced the 45p per mile claimed and allowed 45p for the first 10,000 miles and 25p per mile thereafter, to the adjusted mileage. This was confined to a single claim.

(5) She reduced the claims for hotel expenditure and used the HMRC allowances to staff for overnight stays to determine the allowance. She denied the claims for two hotel rooms for trips to London and Edinburgh as Mr and Mrs Boden would have used the same hotel room.

(6) She reduced the claims for breakfast lunch and dinner to £5, £5, and £10.00 respectively and denied the claim to the extent that a claim was for more than two people.

35. Officer Adamson's decision was subject to a review and the Reviewing Officer upheld Officer Adamson's adjustments to Mr and Mrs Boden's claims.

36. Mr and Mrs Boden appeal against those assessments.

37. In 2021 Mr Boden prepared modified accounts for the partnerships on the basis that there was foreign income which required different treatment. He also altered the period for which the accounts were made to coincide with the income tax year. Those accounts are not relevant to this decision. The issues in the case pertain to the documents filed by Mr Boden on behalf of himself and Mrs Boden in 2016.

38. I will deal with each of the five issues referred to at [2] above.

Issue 1: Have HMRC discovered a loss of tax arising from Mr and Mrs Boden's failure to notify liability so as to enable a discovery assessment to be issued under section 29(1) Taxes Management Act 1970 (TMA) – the law.

39. Section 29(1) Taxes Management Act 1970 provides:

"*If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a year of assessment-*

> *(a) That any income which ought to have been assessed to income tax or chargeable gains which ought to have been assessed to capital gains tax, have not been assessed,*
>
> *(b)*
>
> *(c)*

the officer or, as the case may be, the Board may, subject to subsections (2) and (3) below, make an assessment in the amount, or further amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax."

40. Sections 29(2) and (3) contain exceptions to the rule in section 29(1) that apply only where the taxpayers have filed self-assessment returns which is not the case here.

41. The burden of proof to show that an Officer has discovered that income had not been returned and a loss of tax would ensue, rests with HMRC and the standard of proof is on the balance of probabilities.

42. As to whether income has not been returned thus depends on whether it was permissible for the partnership accounts to be prepared using the cash basis of accounting or whether the accruals basis of accounting was required to be used.

43. Section 25(1) of Income Tax (Trading and Other Income) Act 2005 ("***ITTOIA***") provided at the relevant time that:

"*The profits of a trade must be calculated in accordance with generally accepted accounting practice, subject to any adjustment required or authorised by law."*

44. The relevant accounting standard for each of the years in question was the Financial Reporting Standard for Smaller Entities ("FRSSE"), effective from April 2008. Para 2.41 states:

"*The financial statements … shall be prepared on the accruals basis of accounting. Hence all income and charges relating to the financial year to which the accounts relate must be taken into account, without regard to the date of receipt.*"

Section 25(3) provides that the general rule in section 25(1) is subject to section 25A (cash basis for small businesses).

45. Section 25A(1) ITTOIA permitted anyone who had been carrying on a trade to make an election for the profits to be calculated on a cash basis instead of in accordance with generally accepted accounting practice provided a number of conditions are satisfied. Section 25A was introduced by Finance Act 2013 and applies to the tax year 2013-14 and subsequent years. It does not apply to 2011-12 and 2012-13. The conditions that must apply to enable a person to make an election under section 25A are set out in Chapter 3A of ITTOIA including section 31A.

46. Section 31A imposes three conditions. Condition A is that the aggregate value of the cash basis receipts of each trade carried on by the individual in person may not exceed the relevant maximum applicable to that tax year. Condition B applies where an individual controls a firm: the aggregate of the of the cash basis receipts of each trade carried on by the individual or firm during a tax year must not exceed the relevant maximum for that year. The partnership must also make an election.

47. The relevant maximum for the years 2013-14 and 2014-15 is defined as the VAT threshold amount or those years which was £79,000 for 2013-14 and £81,000 for 2014-15.

Issue 1: HMRC's case.

48. In relation to 2011-12 and 2012-13 HMRC state that Sections 25 and 25A ITTOIA do not permit the cash basis of accounting to be used as the provisions do not have retrospective effect.

49. In relation to 2013-14 and 2014-15 HMRC state that the actual cash receipts of the partnership trade shown in the accounts prepared by Mr and Mrs Boden as set out at [16] above (disregarding the value of the pro forma invoices referred to in the accounts) exceeded the relevant maximum set out in Sections 25A and 31A ITTOIA for each of those years.

50. HMRC note that for the cash basis to be claimed for the years 2013-14 and 2014-15 an election must also have been made by the partnership. No such election had been made.

51. HMRC say that the cash basis of accounting was not available to the partnership for any of the years in question. In consequence, the value of the proforma invoices set out in the table at [17] above which reflects the values of the services and expenses rendered to the family companies ought to have been included in the partnership accounts and the appropriate proportion of the income of the partnership ought to have been disclosed in the tax returns of Mr and Mrs Boden for the years in question. Officer Adamson had therefore discovered that an amount of income had not been returned and that a loss of tax had arisen from Mr and Mrs Boden's failure to notify liability by filing a self-assessment return.

Issue 1- Mr & Mrs Boden's position

52. Mr and Mrs Boden claim they had conducted the business and prepared accounts on the basis they had done:

(1) excluding from the profit computation the value of charges for services rendered for which payment was not expected for some time, and

(2) claiming round sums for milage, hotel accommodation and subsistence,

following advice Mr Boden said they received from an Officer of HMRC during the second enquiry into his and Mrs Boden's affairs.

53. Mr Boden considered that the cash basis of accounting should be available irrespective of the large number of years between the date he believes he received that advice and the preparation of the accounts in 2011-12 onwards. Mr Boden did not take advice and considered the expenses claims accorded with HMRC practice and policy.

Issue 1- Discussion

54. It is not disputed that neither Mr nor Mrs Boden had filed a tax return for any of the years under consideration.

55. If the accruals basis of accounting was required to be used for each of the years, the sums referred to in the proforma invoices for each year ought to have been accounted for as accrued income in each of the years in question.

56. I consider that the cash basis of accounting was not permitted by Sections 25 and 25A ITTOIA for the years 2011-12 and 2012-13. Neither section 25 nor section 25A has retrospective effect.

57. For the years 2013-14 and 2014-15, the receipts of the partnership from third party customers exceeded the relevant maximum for each of those years as set out in Conditions A and B of Section 31A ITTOIA so that the cash basis of accounting was not available for those years.

58. The accruals basis of accounting ought to have been adopted for each of the years 2011-12 to 2014-15. The value of services provided, and expenses incurred, by the partnership in the provision of services to the family companies for which payment was expected (referred to as the value proforma invoices in the partnership accounts) ought to have been included in the profit computation in the accounts of the partnership for the year to which they relate. Mr and Mrs Boden ought to have reported their respective partnership share of that profit in their self-assessment return for the year. Failure to do so resulted in a loss of tax caused by failure to notify their liability by filing a return.

59. I conclude therefore that Officer Adamson had made a discovery of a loss of tax for the purposes of section 29(1) TMA. I note those sums are referred to in the partnership accounts as pro forma invoices.

Issue 2- Whether a discovery assessment may be made- section 34 TMA – the law

60. Section 34 of the TMA sets out the general rule as to the time limit within which an officer of HMRC may issue an assessment of tax. Section 34 provides as follows:

"*(1) Subject to the following provisions of this Act, and to any other provisions of the Taxes Acts allowing a longer period in any particular class of case, an assessment to income tax or capital gains tax may be made at any time not more than 4 years after the end of the year of assessment to which it relates.*

(1A) ...

(2) An objection to the making of any assessment on the ground that the time limit for making it has expired shall only be made on appeal against the assessment

(3) in this section assessment does not include a self assessment.".

50. The period during which an assessment may be made is extended under section 36 TMA Section 36(1) deals with cases where the loss of tax was brought about carelessly or deliberately and section 36(1A) deals with cases of failure to file a return.

Section 36(1) and (1A) relevantly provide:

"*(1) An assessment on a person in a case involving a loss of income tax or capital gains tax brought about carelessly by the person may be made at any time not more than 6 years after the end of the year of assessment to which it relates (subject to section (1A) and to any other provisions of the Taxes Acts allowing a longer period).*

(1A) An assessment on a person in a case involving a loss of income tax or capital gains tax-

(a) Brought about deliberately by a person,

(b) Attributable to a failure by the person to comply with an obligation under section 7,

(c) ....

(d) ....

may be made at any time not more than 20 years after the end of the year of assessment to which it relates (subject to any provision of the Taxes Acts allowing a longer period).

Section 7 TMA relevantly provides that-

(1) Every person who-

(a) is chargeable to income tax or capital gains tax for any year of assessment and

(b) falls within either Section (1A) or (1B)

shall subject to subsection (3) below, within the notification period, give notice to an officer of the Board that he is so chargeable.

(1A) A person falls within this subsection if the person has not received a notice under section 8 requiring a return for the year of assessment of the person's total income and chargeable gains. "

Issue 2 – HMRC's case

61. HMRC note that neither Mr nor Mrs Boden filed a return under section 7 TMA for any of the years 2011-12 to 2014-15.

62. HMRC also note that neither Mr nor Mrs Boden nor the partnership had been given notice to file a return under section 8 TMA for any of the years 2011-12 to 2014-15.

63. HMRC issued assessments for each of the years 2011-12 to 2014-15 to Mr and Mrs Boden on the 1 December 2017.

64. The assessments for the years 2013-14 and 2014-15 were made within the four-year period after the end of each of the years of assessment as provided by section 34(1) TMA.

65. The four-year period for the years 2011-12 and 2012-13 expired on 5 April 2016 and 5 April 2017 respectively, i.e. before 1 December 2017 when the assessments were issued by Officer Adamson so that section 34 is inapplicable. The assessments issued by Officer Adamson were however issued within the extended period of 20 years permitted by Section 36(1A)(b) TMA because neither Mr nor Mrs Boden nor the partnership had filed a return for the years in question under section 7 TMA and nor had they received a notice requiring them to file a return under section 8.

66. All the assessments issued on 1 December 2017 were validly made.

Issue 2- Mr & Mrs Boden's case

67. Mr and Mrs Boden acknowledge that they had not filed a return for any of the years 2011-12 to 2014-15 because they believed that the cash basis of accounting was permitted and that they were entitled to claim expenses on the basis they did following the advice of an officer of HMRC during the second enquiry into their affairs.

68. Neither Mr nor Mrs Boden had been asked to file a return under section 8 for each of the years 2011-12 to 2014-15.

Issue 2 – Discussion

69. It is not disputed that the assessments made by Officer Adamson were made on 1 December 2017.

70. Nor is it disputed that neither Mr Boden nor Mrs Boden:

(1) Had filed a return under section 7 TMA, or

(2) Had been required to file a return under section 8 TMA.

71. The assessments for the years 2013-14 and 2014-15 were made within the usual four-year period permitted by section 34 TMA.

72. The assessments for the years 2011-12 and 2012-2013 were made more than four years after the end of those periods so that section 34 TMA is inapplicable. As neither Mr and Mrs Boden nor the partnership had filed a return under section 7 TMA and neither had they been required to file a return under section 8 TMA, the conditions of section 36(1A)(b) are satisfied and the period in which an assessment must be made is extended to 20 years from the end of the year of assessment. As the assessments for 2011-12 and 2012-13 were made on 1 December 2017 they were made in time.

73. I conclude that the discovery assessments made on 1 December 2017 were validly made.

Issue 3 -Whether the profits of the partnership carried on by Mr and Mrs Boden should include amounts in respect of "proforma invoices" referred to in the partnership accounts – the law.

74. As set out above at [43],[44], [45] and [46] above, section 25 ITTOIA requires that the profits of a partnership should be computed on the accruals basis of accounting save where permitted by section 25A.

75. Section 25A permits accounts for periods beginning on or after 6 April 2013 to be prepared on a cash basis where certain conditions are satisfied including that the income for the period should not exceed a relevant maximum. The relevant maxima, per section 31A were equal to the VAT thresholds for the years:

2013-14 - £79,000

2014-15 - £81,000.

Issue 3- HMRC's case

76. HMRC considered curious Mr Boden's denial, that any invoices were issued, given that there is a reference to proforma invoices in each of the sets of partnerships accounts for the years in question. However, HMRC consider that Mr Boden's explanation that services were rendered, and expenses were incurred to provide services to various family companies for which payment is expected, means that the proforma invoice amounts should be accrued as

income in the accounts of the partnership for each of the years 2011-12 to 2014-15 in accordance with sections 25 and 25A ITTOIA.

77. The cash basis of accounting is not available to the partnership for any of the years 2011-12 to 2014-15 because:

(1) In relation to the years 2011-12 and 2012-13, the cash basis of accounting was not available prior to 6 April 2013.

(2) The income of the partnership for each of the years 2013-14 and 2014-15 (disregarding the pro forma invoices) of £96,609 and £96,607 exceeded the relevant maximum for each of those years of £79,000 and £81,000 respectively.

Issue 3- Mr & Mrs Boden's Case

78. Mr Boden's position is as follows:

(1) "*There are no proforma invoices*", see Mr Boden's witness statement of 31 July 2019 which comprises outline summaries of the correspondence and meetings with HMRC at page 16 of the Trial Bundle.

(2) The pro forma invoices referred to in the partnership accounts were not actually invoices.

(3) Mr Boden accepts that the partnership had provided services to the family companies and incurred expenses in doing so for which the partnership would be paid if, and when, the family companies become profitable. He expected that the companies would become profitable. Mr Boden believed that the cash basis of profit computation was available to the partnership, and he included in the accounts a reference to the "proforma" invoices to keep a track of the value of services and expenses the partnership had provided on the advice of an officer of HMRC during the second investigation by HMRC into his affairs.

Issue 3- discussion

79. The partnership was required to prepare accounts on the accruals basis for each of the years 2011-12 to 2014-15 because:

(1) the cash basis of accounting was not permitted by statute for the periods 2011-12 and 2012-13, and

(2) the cash basis was not available for the years 2013-14 and 2014-15 because the income of the partnership for each of those years (disregarding the "pro forma invoices" exceeded the permitted maximum.

80. I conclude that the accruals basis of accounting was required to be used. Irrespective of whether invoices were actually issued the value of proposed charges (including charges for expenses incurred) for the services rendered to the family companies (referred to as proforma invoices in the accounts) for each of the years should have been accrued in the accounts for each of the 2011-12, 2012-13, 2013-14 and 2014-15.

Issue 4 - Whether the profits of the business were understated because of excessive claims for travel, subsistence, motor and out of pocket expenses- the law

81. Section 34 ITTOIA provides:

"*(1) In calculating the profits of a trade, no deduction is allowed for-*

(a) Expenses not incurred wholly and exclusively for the purposes of the trade,

(b) Losses not connected with or arising out of the trade.

(2) If an expense is incurred for more than one purpose, this section does not prohibit a deduction for any identifiable part or identifiable proportion of the expense which is incurred wholly and exclusively for the purposes of the trade."

82. Section 35 ITTOIA provides:

"(1) In calculating the profits of a trade, no deduction is allowed for a debt owed to the person carrying on the trade, except so far as-

(a) The debt is bad,

(b) The debt is estimated to be bad, or

(c) The debt is released wholly and exclusively for the purposes of the trade as part of a statutory insolvency arrangement.

(2) If the debtor is bankrupt or insolvent, the whole of the debt is estimated to be bad for the purposes of subsection(1)(b), except so far as any amount may reasonably be expected to be received on the debt."

Prior to 2013-14 HMRC operated a non-statutory mileage rate that could be claimed by businesses under the VAT threshold instead of claiming actual motoring costs incurred. The allowance was 45p per mile for the first 10,000 miles and 25p per mile thereafter. Only one claim was allowed on this basis per business.

83. For 2013-14 the non-statutory scheme was replaced by section 94D, 95E and 95F ITTOIA. The 45p per mile for the first 10,000 miles and 25p thereafter for cars and vans was enacted and was dependent on the taxpayer not claiming any deduction for the cost of buying renting or leasing the car or van and not claiming capital allowances in respect of the cost of the vehicle.

84. Officer Adamson considered it reasonable to allow the non statutory scheme to apply in this case.

Issue 4- HMRC's Case

85. Deductions are only permitted for expenditure that is incurred wholly and exclusively for the purposes of the trade. Deductions are not allowed for dual purpose expenditure but deductions are permitted for an identifiable proportion of such expenditure which is incurred wholly and exclusively for the purpose of the trade.

86. After HMRC issued its statement of case in the Appeal, Officer Adamson received expense sheets provided by Mr Boden for each of the periods in question. The expense sheets show the date, the client name, the reason for the expense, the location, the mileage travelled and, the amount of the expense. No receipts or invoices were provided to support the expense sheets.

87. No receipts or invoices were retained to support the expenses claimed instead, a flat rate was claimed in accordance with the partnership expense rules referred to at [18] above.

88. All of the clients were the family companies. No records were retained of the nature of the work undertaken. There were no records to show the instructions received from the client companies. No records were available to show which clients Mr and Mrs Boden had visited on behalf of the family companies. No records of any sales were recorded.

89. The total expenses for the year ended 30 April 2014 shown in the sheets was £51,080.79. But the expenses shown in the accounts including overheads was £81,885.32. £30,804.53 was unaccounted for but Officer Adamson took a pragmatic view and accepted

that on a balance of probabilities the sum of £30,804.53 related to rents, utilities etc and accepted that these sums were wholly and exclusively expended for the purposes of the trade.

90. Officer Adamson was not satisfied that all the £51,080.79 shown in the expense sheets had actually been incurred on expenses for the purposes of the trade as there was no evidence to support them and as they seemed excessive. Officer Adamson looked at the following categories of expenditure: Motor Expenses, Meals and Hotels and Out of Pocket Miscellaneous Expenses for the accounting period ended 30 April 2014.

91. **Motor Expenses.** The business records showed that actual expenses were not being claimed. Instead, a fixed rate of 45p per mile was claimed. For the period ended 30 April 2014 the sheets showed that 38,035 miles were travelled. In his letter of 8 June 2018 Mr Boden claimed that He and Mrs Boden used two cars for the business. Mr Boden never produced any evidence of Mr and Mrs Boden having owned two cars or being licenced to drive. HMRC had not received any evidence that Mrs Boden drove to different places from Mr Boden.

92. Officer Adamson considered the claim for motor expenses was excessive. The non statutory scheme was not available for 2011-12 and 2012-13 as it applied only to businesses where the turnover was below the VAT threshold. But also, the rates claimed by the partnership exceeded the non-statutory scheme rates and in HMRC's view exceeded a reasonable approximation of the actual costs incurred.

93. For 2013-2014 and 2014-15, the 45p per mile claimed by Mr Boden exceeded the statutory scheme which offers 45p per mile for the first 10,000 miles and 25p per mile thereafter.

94. Officer Adamson also considered the number of miles claimed was excessive. She had identified the places visited and used a tool provided by the Automobile Association to ascertain a direct route from A to B (an "***AA planner***") to identify the likely route taken and the likely number of miles travelled and added 25% to cover variations on the route. She also concluded that only one car would be used for a single journey. This was a reasonable approach. In consequence for the period ended 30 April 2014 she reduced the 38,035 miles to 30,542. 10,000 miles at 45p and 20,542 miles at 10p per mile gives an allowable claim of £9,635.50.

95. **Meals and Hotels**. Flat rate claims as shown in the table at [18] above had been made for hotels and meals. HMRC state that there is no flat rate scheme for this category of expense. Officer Adamson considered the claims were excessive and claims for meals had been made irrespective of whether expenses had actually been incurred. She adopted a pragmatic approach as some expenditure would have been incurred by the partners carrying on the business. For hotels she used the rates HMRC employees are allowed to claim for accommodation of £80 per night outside of London and £120 per night in London.

96. HMRC considered that two rooms would not have been used when the partners stayed overnight so reduced the claims to one room per trip.

97. HMRC consider that rates for breakfast, lunch and dinner should be reduced to £5 per person for breakfast and lunch and £10 per person for dinner and claims should be limited to meals for two people.

98. Applying these rates the claim would be reduced from £27,369 to £9,890 which HMRC considered to be a reasonable conclusion.

99. **Out of pocket and miscellaneous expenses.** The records showed six claims for a total of £4,800. There were no invoices to support the claims and no indication of the purpose of

the expenditure. Officer Adamson disallowed all these claims which she considered reasonable based on the evidence provided.

HMRC's Conclusions for 2014-15.

100. Officer Adamson took the accounts to 30 April 2014 to be the starting point for the calculation of the taxable profit.

101. Officer Adamson concluded that:

(1) the allowable deductions for milage and subsistence were £ 9,635.50 and £9,890 respectively (£19,525.50) which was 23.85% of the amounts claimed which she rounded up to 25%.

(2) the allowable deduction for overheads was reasonable at £30,804.

(3) The aggregate amount allowed was £51,275 or 63% of the total amount of unevidenced expense claims.

Officer Adamson considered that this was a reasonable approach.

102. Officer Adamson considered that this should be applied to the other years. There was no evidence that a different approach had been adopted by the partners. HMRC rely on the decision in *Jonas v Bamford* (1973) 51 TC 1 where Walton J said it was reasonable to apply the principle of continuity. The situation will be presumed to go on until there is some change in the situation and the onus of proof is on the taxpayer to show there was a change.

103. HMRC consider that as the business records for 2011-12 and 2012-13 and 2013-14 are in the same format as 2014-15 it is more than reasonable to assume that the same behaviour will have been repeated by Mr and Mrs Boden. In consequence the allowable expenditure should be as follows for each of the other years:

Accounts to	Tax Year	Claimed	63% Allowable
30 April 2011	2011-12	£73,988	£46,613
30 April 2012	2012-13	£89,953	£56,671
30 April 2013	2013-14	£86,865	£54,725

104. The assessable profit is therefore:

Tax Year	Income (revenue shown in the accounts plus pro forma Invoices)	Less Allowable expenses	Assessable Profit	70% to Mr Boden	30% to Mrs Boden
2011-12	£265,988	£46,613	£219,375	£153,562	£65,812
2012-13	£308,453	£56,671	£251,782	£176,247	£75,534
2013-14	£297,447	£54,725	£242,722	£169,905	£72,816
2014-15	£244,557	£51,275	£193,282	£135,297	£57,984

105. HMRC wish the Tribunal to determine that the tax payable on the taxable income of Mr and Mrs Boden (which includes her pension of £548 per year) is as follows:

Tax year	Tax Payable by Mr Boden	Tax payable by Mrs Boden
2011-12	£60,175.24	£20,193.24
2012-13	£72,063.24	£24,116.28
2013-14	£68,156.90	£22,827.47
2014-15	£52,666.25	£16,413.99

Issue 4- Mr & Mrs Boden's Case

106. Mr and Mrs Boden consider they were entitled to rely on the advice of an HMRC officer during the second enquiry and claim flat rate expenses. Mr Boden claims his wife drove locally and he undertook longer journeys to London and Scotland.He said at the Directions hearing two rooms were required on occasion when his daughter accompanied him on trips to Scotland.

Issue 4- Discussion

107. The rule in section 34 ITTOIA requires that a deduction may only be claimed if the expenditure is incurred wholly and exclusively for the purposes of the trade. The burden of proving that the expense has been incurred rests on the taxpayer.

108. Without evidence there is no entitlement to a deduction.

109. Mr and Mrs Boden's adoption of a flat rate scheme following the advice they say they were given by an officer during the second investigation into their affairs is unfortunate. This Tribunal has no jurisdiction to require that HMRC give relief to accord with the advice Mr and Mrs Boden think they received.

110. The Tribunal concludes that the approach that Officer Adamson adopted of assessing 2014-15 and applying the results to the other years is reasonable.

111. Officer Adamson's decision to allow the entire claim in respect of overhead expenses was also reasonable.

112. The methodology adopted to assess milage undertaken was reasonable and giving relief for mileage that is only available to small businesses with turnover below the VAT threshold was reasonable.

113. Permitting relief for one hotel room only per trip was reasonable in the absence of any proof that Mr Boden was accompanied by his daughter. Restricting the claim to the value of expenses permitted to HMRC employees in the absence of a statutory scheme and in the absence of evidence was reasonable.

114. Officer Adamson's decision to restrict the claims for subsistence to £5, £5 and £10 for breakfast, lunch and dinner, in the absence of any receipts was again reasonable.

115. Officer Adamson's decision to disallow entirely the claim for out-of-pocket expenses was entirely reasonable without any proof of what had been paid and for what.

In consequence of these adjustments, the assessable profit of the partnership and the amount of those profits allocated to Mr and Mrs Boden in each of the years are as shown in the table

at [104] above and the tax assessed on Mr and Mrs Boden for each of the years under consideration is as shown in the table at [105] above.

Issue 5 -Whether bad debt relief is available in respect of any of the sums referred to in the partnership accounts as proforma invoices- the law

The statute which permited deductions for bad debts during the relevant years is Section 35 ITTOIA:-

"*(1) In calculating the profits of a trade, no deduction is allowed for a debt owed to the person*

carrying on the trade, except so far as -

(a) the debt is bad,

(b) the debt is estimated to be bad, or

(c) the debt is released wholly and exclusively for the purposes of the trade as part of a

statutory insolvency arrangement.

(2) If the debtor is bankrupt or insolvent, the whole of the debt is estimated to be bad for the

purposes of subsection (1)(b), except so far as any amount may reasonably be expected to

be received on the debt."

116. The time at which the assessment must be made as to whether a debt is a bad or doubtful debt is the last day of the basis period for which the accounts are prepared, i.e. 30 April each year. Hindsight is not permitted see *Jamie White* v *HMRC* [2016] UKFTT 791 (TC), affirmed by the Upper Tribunal at [2018] UKUT 257 (TCC) at [25]:

"*It is a long-standing principle that hindsight cannot be used to estimate bad and doubtful debts, either by a taxpayer seeking to obtain relief in an earlier period or by HMRC seeking to claw back relief given in an earlier period (see for example Anderton and Halstead Ltd v Birrell [1932] 1 KB 271).*"

Issue 5 – HMRC's case

117. HMRC refer to 35 ITTOIA and state that a deduction for a bad debt may be claimed when calculating the profits of the trade for the period in which the debt is found to be, or is estimated to be, bad. To obtain a deduction for a debt which is, or is estimated to be, bad in 2011-12, 2012-13, 2013-14 or 2014-15 that debt must have been considered a bad debt either within those periods or when the accounts for those periods were drawn up.

118. HMRC make the following observations as to the evidence before the Tribunal.

(1) Mr and Mrs Boden are partners in the partnership which trades as Point Four. Point Four did not submit partnership returns for any of the years 2011-12 to 2014-15.

(2) The accounts of the partnership were drawn up to 30 April each year.

(3) HMRC do not know when each of the accounts for the periods ending 30 April 2011, 30 April 2012, 30 April 2013, and 30 April 2014 were drawn up, but copies of all were provided to HMRC with Mr Boden's letter of 8 January 2016.

(4) The accounts each comprise schedules of revenue, overheads and proforma invoices. There is no balance sheet which records the partnership's debtors. The proforma invoices are shown as a total broken down between four related entities:

(a) Instore Location LLP

(b) InStore Local Ltd

(c) DecisionVision (NAS) Ltd

(d) DecisionVision Scotland Ltd

(5) In his 8 January 2016 letter Mr Boden explained that the pro forma invoices were,

"*The anticipated profits (proforma invoices) are our fees and expenses invoiced to these companies and we expect to receive these as the companies grow and become profitable. As and when we receive these payments they will be included in our accounts. All these invoices are included in the companies' accounts and are filed with HMRC."*

(6) In a letter dated 15 March 2016 Mr Boden provided the following explanation in respect of the pro forma invoices,

> "*With regards to the proforma invoices this may be the wrong etymology, but we were advised by HMRC to raise invoices for the work we have done and the expenses agreed, as we are cash accounting we put proforma invoice but it is the same as an invoice which we raised for work and expenses we know that we would not get paid until the companies made profits which you will see this on your visit.*"

(7) A meeting between HMRC and Mr Boden took place on 21 December 2016. Paragraph 10 of the HMRC notes recorded that Mr Boden had confirmed that he had carried out the work on the proforma invoices and that these invoices related to amounts charged but not yet paid by the customer. Mr Boden did not agree with the HMRC notes of meeting.

(8) A meeting between HMRC and Mr Boden took place on 6 March 2018. The HMRC notes record that Mr Boden confirmed that the proforma invoices were issued for work done but where payment had not yet been received and that they were shown as a debt in the relevant company's accounts.

(9) In his letter to the Tribunal dated 25 November 2021 Mr Boden advised,

> "*Our company has been Hijacked by our two daughters who are trying to take it over and as one of them, as financial Director refuses to release any money we are not in a position to do anything Carole and I own 50% of the company. We are trying to get legal aid to get our money out of the company…*

(10) In his letter to the Tribunal dated 25 January 2022 Mr Boden advised,

> "*We set out our position in our letter dated 25th November 2021. We are still receiving no income from the company and although it is showing profits our daughters are refusing to release any of the profits to the shareholders or have any shareholders meetings.*"

Invoices issued

(11) The business records held for the periods 30 April 2011 to 30 April 2015 demonstrate that the amounts shown in the accounts are underpinned by invoices issued to each entity. These documents (the "pro forma invoices") correctly compute the amount of income owed to the partnership.

(12) This is relevant to consideration of whether the business had any bad debts, because before it can be determined whether any debt had become bad, it must first be

demonstrated that a debt exists. For the period ending 30 April 2012 the invoiced amounts were:

(a) Instore Location LLP £70,155.60

(b) InStore Local Ltd £62,099.45

(c) DecisionVision (NAS) Ltd £42,002.55

(d) DecisionVision Scotland Ltd £42,965.659

(13) An invoice to InStore Local Ltd shows monthly amounts invoiced with a total charge of £62,099.45.10

(14) An invoice to InStore Location LLP shows monthly amounts with a total charge of £70,155.60.11

(15) An invoice to DecisionVision (NAS) Ltd shows monthly amounts with a total charge of £42,002.55

(16) An invoice to DecisionVision Scotland Ltd shows monthly amounts with a total charge of £42,695.65.13

(17) For the period ending 30 April 2013 the invoiced amounts were:

Instore Location LLP £70,827.80

InStore Local Ltd £58,087.50

DecisionVision (NAS) Ltd £38,569.05

DecisionVision Scotland Ltd £39,963.9214

(18) An invoice to InStore Location LLP shows monthly amounts invoiced with a total charge of £70,827.80.

(19) An invoice to InStore Local Ltd shows monthly amounts with a total charge of £58,087.50.

(20) An invoice to DecisionVision (NAS) shows monthly amounts with a total charge of £38,569.05.

(21) An invoice to DecisionVision Scotland Ltd shows monthly amounts with a total charge of £39,963.92.

(22) For the period ending 30 April 2014 the total amounts were

Instore Location LLP £51,131.10

InStore Local Ltd £26,605.10

DecisionVision (NAS) Ltd £53,006.95

DecisionVision Scotland Ltd £21,815.5019

(23) An invoice to InStore Location LLP shows monthly amounts invoiced with a total charge of £51,131.10.

(24) An invoice to InStore Local Ltd shows monthly amounts with a total charge of £26,605.10.

(25) An invoice to DecisionVision (NAS) shows monthly amounts with a total charge of £53,006.95.

(26) An invoice to DecisionVision Scotland Ltd shows monthly amounts with a total charge of £21,815.50.

(27) For the period ending 30 April 2015 the totals are:

Instore Location LLP	£44,306.10
InStore Local Ltd	£28,847.70
DecisionVision (NAS) Ltd	£53,430.95
DecisionVision Scotland Ltd	£31,430.8024

(28) An invoice to InStore Location LLP shows monthly amounts invoiced with a total charge of £44,306.10.

(29) An invoice to InStore Local Ltd shows monthly amounts with a total charge of £28,847.70.

(30) An invoice to DecisionVision (NAS) shows monthly amounts with a total charge of £53,430.95.

(31) An invoice to DecisionVision Scotland Ltd shows monthly amounts with a total charge of £31,430.80.

Information contained in the accounts of the entities to whom the invoices were issued

(32) Instore Location LLP

(a) The accounts to 30 November 2012 do not include any profit and loss information and include a balance sheet with zero assets and liabilities. The members are Mr and Mrs Boden.

(b) The accounts to 30 November 2013 do not include any profit and loss information. The balance sheet shows £459,640 creditors under current liabilities. The members are Mrs Boden and Miss Rachel Boden.

(c) The accounts to 30 November 2014 do not include any profit and loss information. The balance sheet shows £563,066 creditors under current liabilities, an increase of £103,426. The members are Mrs Boden and Miss Rachel Boden.

(d) The accounts to 30 November 2015 do not include any profit and loss information. The balance sheet shows £611,026 creditors under current liabilities, an increase of £47,960. The members are Mr and Mrs Boden.

(e) The accounts to 31 March 2014 include the following:

Turnover £0

Other charges £342,683

Trading losses £342,683

Creditors £342,683

The expenditure of £342,683 is broken down into consultancy £305,243, light heat and power £8,640 and rent & rates £28,800.34.

The principal activity was local advertising and media sales.

Bridget Faulder was the sole director and the board approved the accounts on 22 December 2014.

(f) The accounts to 31 March 2015 include the following:

Turnover £0

Trading loss £34,479

Creditors £342,683

Accruals and deferred income £34,479

The accruals and deferred income are itemised as administration and office expenses £34,479.

The principal activity was local advertising and media sales. Bridget Faulder resigned on 31 October 2014. The accounts were approved by Mr Boden as director on 29 December 2015.

(33) Decision Vision (NAS) Ltd

(a) The accounts to 31 January 2016 include the following:

Turnover £0

Other charges £72,248

Creditors £497,776

The creditors increased by £72,248 during the period.

The expenditure of £72,248 is broken down into consultancy £60,248, light heat and power £4,200 and rent & rates £7,800.38.

The comparative figures for the period ending 31 January 2015 show other charges £425,528.

The principal activity was national media sales. The sole director was Mr Boden who approved the accounts on 28 September 2016.

(34) DecisionVision Scotland Ltd

(a) The accounts to 31 December 2014 include the following:

Turnover £0

Consultancy costs £203,386

Trading losses £203,386

Creditors £203,386

The principal activity was media sales. There were two directors Bridget Faulder and Rachel Boden. Rachel Boden approved the accounts on 2 March 2015.

(b) The accounts to 31 December 2015 include the following:

Turnover £0

Other charges £35,308

Trading loss £35,308

Creditors £238,694

The principal activity was media sales. There were three directors during the period, Mr Boden, Bridget Faulder and Rachel Boden. Mr Boden was

appointed on 2 January 2015. Rachel Boden and Bridget Faulder resigned on 2 January 2015. Mr Boden approved the accounts on 28 September 2016.

The expenditure of £35,308 is broken down into consultancy £23,308, light heat and power £4,200 and rent & rates £7,800.

Issue 5 - HMRC's conclusions on the availability of bad debt relief

119. The partnership income and expenditure schedules, prepared for the years ending 30 April 2011 to 30 April 2014, did not indicate that any of the debts owed by Instore Location LLP, InStore Local Ltd, DecisionVision (NAS) Ltd and DecisionVision Scotland Ltd were bad or estimated to be bad.

120. The business records of the partnership demonstrate that invoices were raised for services provided. This is consistent with the contentions made by Mr Boden throughout.

121. The corresponding accounts of Instore Location LLP, InStore Local Ltd, DecisionVision (NAS) Ltd and DecisionVision Scotland Ltd all show amounts owed to creditors. All four entities were trading with expenditure incurred and trading losses carried forward. None of the accounts show any write offs in respect of creditors.

122. In correspondence with HMRC during 2016 Mr and Mrs Boden did not consider any of the debts to be bad or estimated to be bad, on the contrary they indicated that they still expected the invoices to be paid.

123. In the meetings of December 2016 and March 2018 Mr Boden gave no indication that the debts owed by Instore Location LLP, InStore Local Ltd, DecisionVision (NAS) Ltd and DecisionVision Scotland Ltd were bad or estimated to be bad.

124. In correspondence to the Tribunal in November 2021 and January 2022 Mr Boden referred to ongoing efforts to recover monies owned from a profitable company in which he and Mrs Boden were shareholders. HMRC submit that it is reasonable to conclude that this unidentified company was either one of the debtors of the partnership or was an associated company within the supply chain, which had the capacity to release funds to service the debts to some extent.

125. The evidence shows that Mr Boden was either a director or partner in all four of the debtor entities by 2016. HMRC submit that Mr Boden was therefore in a position to know whether there was an expectation that the debts would be paid at that point. HMRC submit that in subsequent meetings and correspondence Mr Boden gave no suggestion that any of the debts were, or may be, bad and this demonstrates that in his view at that date they were not bad.

126. HMRC submit that the application hearing on 13 February 2024 was the first time that it has been suggested that the debts owed by Instore Location LLP, InStore Local Ltd, DecisionVision (NAS) Ltd and DecisionVision Scotland Ltd were bad or estimated to be bad.

127. HMRC submit that no evidence has been provided to demonstrate that the debts are bad or estimated to be bad.

128. HMRC submit that the reason no such evidence has been provided by the Appellants, and why the Appellants did not raise such arguments themselves, is because they considered that the payments would be made, and the debts were not therefore likely to be bad in any of the accounting periods under consideration. Indeed, Mr Boden's own letters prove that the amounts invoiced in the "pro forma invoices" had not – as a fact – been assessed by the Appellants to have become bad or estimated to be bad debts in any of the relevant periods.

129. HMRC submit that should the Appellants now contend that the debts are bad or estimated to be bad, then no relief should be available for bad debts in the years concerned.

Issue 5 -Discussion

130. Mr and Mrs Boden did not advance to the Tribunal any arguments about whether any sums payable to the partnership for services rendered to the family companies were bad or doubtful debts.

131. The issue of bad debt relief was raised by me at the application hearing on 13 February 2024. It was agreed that I should decide the case on the papers and as I would not have the benefit of asking questions during the hearing, and wanting to do justice to the parties, I was concerned that either:

(1) receivables in say 2011-12 referred to in a pro forma invoice, may have been paid in say 2013-14 and taxed on a cash basis in 2013-14 (double counting), or

(2) that any of the sums referred to in the proforma invoices may have become bad debts.

132. I did not have the benefit of any submissions on the issue of bad debt relief and the conditions that must be satisfied to make a valid claim for bad debt relief at the 13 February hearing.

133. I therefore:

(1) asked Mr Boden to provide evidence, if any, of such bad debts and any double counting, and

(2) gave HMRC permission to make submissions on the availability of bad debt relief and comment on any evidence Mr and Mrs Boden produced.

134. Mr and Mrs Boden did not produce any evidence that any sum included in any of the accounts filed in January 2016 were bad at the date to which the accounts were prepared or indeed when they were filed. Nor did they produce any evidence of double counting.

135. I am grateful to HMRC for their submissions on the law and the application of the law to the details of some of the accounts of the partnership and the family companies in some of the years concerned. I did not receive submissions on the proforma invoices for the accounting period of the partnership ended on 30 April 2011 which would be taxed in the year 2011-12 and received by the companies in the accounting periods ended in December 2011 etc but the rule of continuity should apply to enable me to assume the same is true for 2011-12 as it was for 2012-13, 13-14 and 14-15.

136. It is clear from the authorities that the date at which an assessment for bad debt relief must be made is the date to which the accounts are prepared. The benefit of hindsight is not permitted.

137. I accept HMRC's contention that Mr Boden's evidence was that the payments for services provided to the family companies would be paid when the companies' businesses were established. And there was no evidence that in 2016 when the accounts were filed with HMRC or at the dates to which the accounts were prepared any sum would not be paid in due course.

138. No claim for bad debt relief can therefore be made to reduce the profits of the partnership calculated on the accruals basis in any of the years 2011-12 to 2014-15.

DECISION

106. The appeals against assessments are dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

139. 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.

HEATHER GETHING
TRIBUNAL JUDGE

Release date:

23rd APRIL 2024