



**TC01506**

**Appeal number: TC/2010/01379**

*Income Tax – whether legal costs incurred by Appellant in defending criminal charges and preserving trade interests were incurred wholly and exclusively for the purposes of his trade – ‘purpose’ and ‘effect’ of incurring expenditure distinguished - s 74 ICTA 1988 and s 34 ITTOIA 2005 - appeal not allowed*

**FIRST-TIER TRIBUNAL**

**TAX**

**MR PAUL DUCKMANTON**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)  
MR R BARRACLOUGH (MEMBER)**

**Sitting in public at Leeds on 19 May 2011**

**Mr J Barnet of Counsel for the Appellant**

**Mr A Hall, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

1. This is an appeal by Mr Paul Duckmanton against amendments to his self-assessment tax returns for the years 2003-04 to 2005-06 inclusive following a decision by HMRC to disallow expenses claimed by Mr Duckmanton and closure notices under s 28A TMA 1970.

2. The amounts in dispute are as follows –

Tax year	Accounts y.e.	Expenses in dispute
2003-04	31. 8.03	£48,752
10 2004-05	31. 8.04	£55,929
2005-06	31. 8.05	£163,991

3. The expenses claimed by Mr Duckmanton relate to legal and professional fees incurred by him in defending a charge of Gross Negligence Manslaughter, in respect of a fatality arising out of a road traffic accident in 2002 involving one of his goods vehicles. Mr Duckmanton was also charged with two counts of attempting to Pervert the Course of Justice, in respect of which he pleaded guilty. He was eventually acquitted of the Gross Negligence Manslaughter charge.

4. The agreed bundle of documents included (inter-alia) –

- (i) relevant legislation S74 ICTA 1988 (as amended), S34 ITTOIA 2005 and the Goods Vehicles (Licencing of Operators) Act 1995 and associated regulations
- (ii) case law authorities
- (iii) documentation relating to Mr Duckmanton’s appeal to the Court of the Transport Tribunal regarding revocation of his operators licence
- (iv) copy exchange of correspondence between the parties
- 25 (v) the assessments and closure notices

5. Mr Duckmanton’s case is that the legal and professional fees were incurred for the purposes of his trade, because if he had been convicted of Gross Negligence Manslaughter, his transport business operator’s licence would have been revoked indefinitely without prospect of renewal and his business would have had to cease.

30 6. HMRC say that the legal and professional fees were not wholly and exclusively expended for the purposes of the trade and should therefore be disallowed.

### The background facts

7. Mr Duckmanton is the owner of a business known as “Car Trans”. His self-assessment tax returns describe the business as being “car transporter, maintenance and haulage” or “car transportation”. Mr Duckmanton held a standard international operators licence and one aspect of the business was transporting vehicles from Solihull to the docks at Southampton. For regulatory purposes Mr Duckmanton was

the nominated transport manager as well as being a mechanic in his own maintenance workshop along with the foreman Mr Gleadall.

5 8. On 17 September 2002 there was a minor accident in Southampton when a vehicle operated by Mr Duckmanton's driver, Mr Roberts, struck the back of a car at a traffic- light controlled pedestrian crossing, causing damage to the value of £1,000. Two days later on 19 September 2002 in exactly the same location the same driver, Mr Roberts, was involved in another accident, unfortunately this time causing the death of a pedestrian. Mr Roberts blamed the accident on the vehicle saying it had 'faulty brakes'. He said that his vehicle 'would not stop' and, in attempting to avoid a collision with vehicles, mounted the kerb, hitting the pedestrian. Mr Roberts subsequently retracted this statement and admitted to driver error. Subsequent brake tests for the Police accident report however showed that the vehicle's brakes were out of adjustment.

15 9. Mr Duckmanton and Mr Gleadall admitted that a number of vehicle maintenance records had been falsified to cover up the workshop's increasing difficulty in keeping up with the mandatory scheduled preventative maintenance programme for the business' vehicles. In particular, records relating to two inspections scheduled for August 2002 had been subsequently falsified to hide the fact that the accident vehicle had missed its scheduled mandatory inspection.

20 10. Following investigations Mr Roberts was charged with Manslaughter to which he pleaded guilty and was sentenced to 12 months' imprisonment. Mr Duckmanton and Mr Gleadall were charged with Gross Negligence Manslaughter and two counts of Attempting to Pervert the Course of Justice. They pleaded guilty to attempting to Pervert the Course of Justice, but not guilty to Gross Negligence Manslaughter on the grounds that the accident was primarily due to driver error.

30 11. The first trial took place in December 2003 and resulted in a successful submission of no case to answer on behalf of Mr Gleadall. The jury was discharged and a second trial took place in September/October 2004. Mr Duckmanton was acquitted of the charge of manslaughter but was convicted with Mr Gleadall on each count of attempting to pervert the course of justice. They were sentenced to eight months imprisonment on each count to run concurrently. Mr Duckmanton was legally aided in the second trial but was ordered to pay the costs of the first trial. Whilst he was in prison the business continued to operate with his son Nicholas Duckmanton as the nominated transport manager.

35 12. At the criminal trial Mr Duckmanton produced a detailed forensic analysis of the business' record keeping including service records and drivers' time manuals to show that, despite the falsification of the vehicle maintenance records in August 2002, there had previously been no widespread culture of falsification of records.

40 13. As there were criminal proceedings in place and at the request of Mr Duckmanton's solicitors, Ford & Warren, the Traffic Commissioner did not call Mr Duckmanton to a public inquiry until 3 November 2004. The inquiry was then

adjourned to 20 January 2005 to allow Mr Duckmanton to appear following his release from prison on licence.

14. At the hearing on 7 February 2005 the Traffic Commissioner for the North East Traffic Area revoked Mr Duckmanton's standard international operators licence, found he was no longer of good repute either as an operator or as a transport manager and disqualified him indefinitely under s 26-28 of the Goods Vehicles (Licensing of Operators) Act 1995. That decision was then appealed to the Court of the Transport Tribunal, but dismissed by written decision on 3 June 2005. Mr Duckmanton's disqualification came into effect on 15 July 2005. He subsequently reapplied for his operator's licence, which was renewed subject to strict conditions and undertakings.

15. Self-assessment tax returns were submitted on behalf of Mr Duckmanton for the year 2003-04 which included a claim for legal expenses incurred by him in defending the charge of Gross Negligence Manslaughter and pleading guilty to the two charges of Attempting to Pervert the Course of Justice. HMRC opened an aspect enquiry into the returns in particular for the purpose of examining the legal fees claimed which amounted to £74,919 (subsequently reduced by agreement to £48,752). HMRC then extended their enquiry to Mr Duckmanton's 2005 and 2006 returns, again with particular regard to legal fees claimed amounting respectively (again subsequently reduced by agreement) to £55,929 and £163,991. Following an extensive exchange of correspondence between HMRC and Mr Duckmanton's tax advisers, closure notices were issued on 20 August 2009 for each of the years 2003-04 to 2005-06 inclusive stating that the legal expenses claimed were not allowable. The closure notices were appealed on 31 October 2009.

16. Mr Duckmanton's contentions are that his sole purpose in defending the charge of Gross Negligence Manslaughter was to enable him to retain his "operators licence". Without this licence he says that he would have been unable to trade as a car transporter operator and would thus have had to cease trading. HMRC contend that the legal fees were incurred in defending criminal charges and that accordingly they cannot be said to have been incurred during the pursuit of a trade.

### 30 Legislation

17. The relevant law for the years in question is ICTA 1988 s74 for 2002-03 to 2004-05 and ITTOIA 2005 s34 for 2005-06

#### ICTA

'74 General rules as to deductions not allowable

35 [(1)]<sup>1</sup> Subject to the provisions of the Tax Acts, in computing the amount of the [profits]<sup>7</sup> to be charged under Case I or Case II of Schedule D, no sum shall be deducted in respect of –

40 (a) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation;

(b) any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of the trade, profession or vocation’;

5 Amendments –

<sup>1</sup> “(1)” inserted by virtue of FA 1994 s 144(2).

<sup>7</sup> Word substituted in sub-s(1) and (1)(m) by FA 1998 Sch 7 para 1 with effect from 31 July 1998.

#### ITTOIA

10 ‘34 Expenses not wholly and exclusively for trade and unconnected losses

(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, or

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

15 (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’.

#### Evidence

20 18. The parties agreed that there was no dispute as to the background facts. The issue before the Tribunal, was whether the expenses incurred by Mr Duckmanton had been incurred wholly and exclusively for the purposes of his trade and were therefore allowable for tax purposes.

25 19. Mr Duckmanton gave evidence under oath. He provided some historical background relating to his business and explained his purposes in incurring the legal and other professional fees. Evidence was also given under oath on his behalf by Ms Christabel Louise Hallass, a solicitor who was employed by the regulatory transport department of Messrs Ford & Warren solicitors who represented Mr Duckmanton in the criminal proceedings and also provided preliminary advice in connection with  
30 public enquiry proceedings before the Traffic Commissioner. Ms Hallass now advises clients on the Goods Vehicles (Licensing of Operators) Act 1995, and in particular its provisions in relation to public inquiries before the Traffic Commissioner. Both Mr Duckmanton and Ms Hallass were cross-examined on their evidence.

35 20. Mr Duckmanton said that he started in the car transporter business in 1982. The business grew and at the time of the accident he had 18 trailers and 20 employees. He had been advised by his accountant to go ‘limited’ but did not wish to do that. He could not explain his reasoning save to say that he regarded his business as family-run and wished to keep it that way. The possible economic benefits of ‘going limited’ were not of particular importance to him.

21. Mr Duckmanton said that the legal costs he incurred in fighting the Gross Negligence Manslaughter charge were huge but that he was determined to fight them because he regarded the charge as fundamentally 'wrong' and also because it portrayed him as a reckless individual without any regard for safety standards. He said that he was never in any doubt that forensic evidence relating to his safety procedures would eventually vindicate his claim that there had been no widespread culture of falsification of records or other wanton disregard for safe working practices.

22. Mr Duckmanton said that, at considerable cost, he employed leading and junior counsel to conduct his defence. He said that prior to the hearing he had to make an application to the court for the purpose of setting up a test rig to conduct tests on the vehicle involved in the accident (which had been impounded) to prove the 'point of failure' of its brakes in order to establish that, whether or not the brakes were out of adjustment, the primary cause of the accident was driver error. He says the police resisted the application but eventually the tests were undertaken and the vehicle's brake efficiencies were found to be a 'pass'.

23. Mr Duckmanton said that at the time of the trial, irrespective of the eventual outcome, preserving his business reputation and status as a person of good repute, in his capacity as a transport manager, and thereby hopefully preserving his operator's licence, was of paramount importance. It was, he said, more important to him to establish that the accident had been caused by driver error and not because of a breach of safety standards, and thereby preserve his reputation, than it was to avoid the prospect of being sent to prison for a term of five years.

24. Mr Duckmanton conceded that there was a possibility of a civil action against him because of the fatality and that had he been found guilty on the Manslaughter charge a substantial damages action against him could have ruined his business. Again however, he said that this was of secondary importance to the preservation of his business reputation and transport manager's operator's licence which was his sole means of livelihood.

25. In her evidence Ms Hallas said that under the provision of paragraph 1(1) of schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995 in determining whether or not Mr Duckmanton was of good repute, the Traffic Commissioner would have had to have regard to any relevant convictions and any other information in his possession which appeared to him to relate to the individual's fitness to hold a licence. She confirmed that had Mr Duckmanton been found guilty of Gross Negligence Manslaughter then the Traffic Commissioner and the Court of the Transport Tribunal would have placed significant weight on his conviction, not only in determining whether or not Mr Duckmanton continued to be of good repute at the Public Enquiry, but also any future application for an operators licence. Ms Hallas said that had Mr Duckmanton not successfully defended the Gross Negligence Manslaughter proceedings and the allegation that there had been a widespread culture of falsification of maintenance records, he would not only have lost his operators licence but would have found it extremely difficult to regain his repute and with that an operators licence for any future business.

## Submissions

26. Both parties provided a statement of case and skeleton arguments.

27. The following case authorities were referred to in argument :

Spofforth and Prince v Golder [1945] 26 TC 310

5 Bowden v Russell & Russell [1965] 42 TC 301

Knight v Parry [1972] 48 TC 419

Vodafone Cellular Ltd & Others v Shaw [1995] 69 TC 376

McKnight v Sheppard [1999] 71 TC 419

10 28. The main substantive issues which arose in argument can be summarised as follows :-

(a) Was the expenditure incurred for the purposes of the trade?

15 29. Mr Hall argues that, although the wording is different in the provisions of s74 ICTA and s 34 ITTOIA, the effect is the same. A deduction is only allowed if an expense is incurred or expended wholly and exclusively for the purposes of the trade. If an expense is incurred or expended for more than one purpose no deduction is allowed for private purposes as distinct from the purposes of the trade, subject to a deduction being allowed where an identifiable portion can be shown to be incurred wholly and exclusively for the purposes of the trade. He contends that the legal fees incurred by Mr Duckmanton were not wholly and exclusively expended for the purposes of the trade and that it had not been shown that there were any identifiable portion of those fees which had been specifically incurred for the purposes of the business. He says that the true purpose of the expenditure on legal fees was for Mr Duckmanton to defend himself against criminal charges and therefore to preserve his liberty and personal reputation.

25 30. Converseley Mr Barnett argues that the not guilty plea to the Gross Negligence Manslaughter charges was for the purpose of protecting Mr Duckmanton's operators licence. He says that the charges against Mr Duckmanton arose in the conduct of his business and not personal non-business conduct. The charge of Gross Negligence Manslaughter was a strict liability offence which turned on whether there had been 30 recklessness in failing to ensure a safe system of work and the technical issues which had to be addressed (including forensic reports and the setting up of a test rig to assess the effectiveness of the vehicle's brakes), accounted for a significant part of the costs of the criminal trial. He argues that this serves to emphasise the point that the costs primarily related to a matter arising during the course of Mr Duckmanton's business and specifically to safeguard his transport operators licence. That was achieved, albeit 35 on an interim basis, as the licensing authority postponed the public enquiry proceedings against Mr Duckmanton until the Manslaughter case had been determined. Mr Duckmanton's licence was eventually revoked but renewed upon re-

application some time later. There had therefore been a revocation of the operators licence for a minimum period. Mr Barnet contends that, although it was inevitable that Mr Duckmanton would lose his operators licence for a period, had he been found guilty of Manslaughter, it was improbable that he would have ever been able to reapply for a licence. He therefore argues that the costs incurred were “for the purposes of the trade” and therefore an allowable deduction under s 74(1)(a) of ICTA 1988 and s.34 ITTOIA.

(b) Was there duality of purpose?

31. Both parties agreed that a distinction had to be drawn between ‘purpose’ and ‘effect’. The expenses had to be incurred wholly and exclusively for the purposes of the trade. It was also agreed that there could be duality of purpose, but only one primary purpose, which, for the expenditure to be allowed, had to be incurred for the purposes of the trade. Mr Hall argues that even if one of Mr Duckmanton’s purposes in defending the Gross Negligence Manslaughter charge was to protect his business, there was nonetheless another distinct and primary purpose in that he wished to preserve his liberty and reputation as an individual and that accordingly the expenditure had not been wholly and exclusively incurred for the purpose of the business.

32. Mr Hall further contends that Mr Duckmanton has admitted that he was concerned about the threat of possible civil actions in damages against him that this represented a further purpose in defending the proceedings. Therefore his motivations did not simply relate to the preservation of his business.

33. Mr Barnet argues that there was no duality of ‘purpose’, only ‘effect’. He also argues that avoiding a prison sentence was not a primary purpose for Mr Duckmanton, but secondary to defending his professional status and reputation. He says that Mr Duckmanton’s acquittal on the Manslaughter charge was a consequence or effect of defending the charge; it was secondary and incidental to the main purpose of preserving his operator’s licence and livelihood.

34. He argues that the case of *McKnight v Sheppard* supports this contention. In that case substantial legal expenses were incurred by a stockbroker defending himself on a gross misconduct charge before his professional body. The House of Lords held that the expenses were deductible. It was found that the tax-payer Appellant’s main purpose was to preserve his business and the fact that he also preserved his personal reputation was of secondary effect. Mr Barnet submits that the proceedings in *McKnight* were quasi-criminal and therefore the facts were similar in nature to the presence case and sufficient precedent to allow the Tribunal to regard Mr Duckmanton’s expenditure as deductible.

35. Mr Hall disagrees with this view and argues that the *McKnight* case applies only to civil cases and cannot apply to defending a criminal charge. He does not accept in any event that the proceedings in *McKnight* were quasi-criminal and refers to the case of *Spofforth and Prince v Golder*. In that case a firm of two chartered accountants claimed that in computing their profits for income tax purposes a deduction should be

5 allowed for legal costs which they had paid in connection with the defence of a charge of conspiracy to defraud the Revenue in respect of one of the partners. The Appellants contended that the costs had been wholly and exclusively laid out for the purposes of their profession and accordingly were an allowable deduction against profits. The Court did not agree and held that legal costs incurred in criminal proceedings were not allowable as a deduction.

10 36. Mr Hall raised the further point that the legal costs would have included dealing with the two charges of perverting the course of justice until Mr Duckmanton pleaded guilty to those charges at the start of the first trial. Mr Duckmanton had agreed in correspondence with HMRC that these costs relating were not an allowable deduction for tax purposes. In any event however Mr Duckmanton had not offered any apportionment as between those costs and those relating to the defence of the Manslaughter charge. The issue was not further argued on Mr Duckmanton's behalf.

(c) Legal fees arising after the criminal proceedings

15 37. Mr Barnet submits that any fees relating to proceedings before the Traffic Commissioner and the Court of the Transport Tribunal were not incurred until after the criminal proceedings had finished in October 2004 and in the interim period his business had continued under the management of his son Mr Nicholas Duckmanton. He therefore argues that those costs were properly incurred for the purposes of  
20 continuation of the business and could not have related to preserving the liberty of Mr Duckmanton. He accepts on behalf of Mr Duckmanton that the fees in this regard were small by comparison to the overall fees in connection with the criminal trial. Mr Duckmanton had not however proffered any apportionment for HMRC to consider and the issue was not argued in any detail.

25 Review of Case Law authorities

38. Mr Barnet and Mr Hall assisted the Tribunal with a review of the relevant case law authorities.

39. Mr Hall drew our attention to guidance on the "exclusively" test given by Millet L J in *Vodafone*:-

30 "The leading modern cases on the application of the "exclusively" test are *Mallalieu v Drummond* 57 TC 330; [1983] 2 AC 861 and *MacKinlay v Arthur Young McClelland Moores & Co.* 62 TC 704; [1990] 2 AC 239. From these cases the following propositions may be derived :

35 1. The words "for the purposes of the trade" mean "to serve the purposes of the trade". They do not mean "for the purposes of the taxpayer" but for "the purposes of the trade", which is a different concept. A fortiori they do not mean "for the benefit of the taxpayer".

2. To ascertain whether the payment was made for the purposes of the taxpayer's trade it is necessary to discover his object in making the payment. Save in obvious cases which speak for themselves, this involves an inquiry into the taxpayer's subjective intentions at the time of the payment.

40 3. The object of the taxpayer in making the payment must be distinguished from the effect of the payment. A payment may be made exclusively for the purposes of the trade even though it also

secured a private benefit. This will be the case if the securing of the private benefit was not the object of the payment but merely a consequential and incidental effect of the payment.

5 4. Although the taxpayer's subjective intentions are determinative, these are not limited to the conscious motives which were in his mind at the time of the payment. Some consequences are so inevitably and inextricably involved in the payment that unless merely incidental they must be taken to be a purpose for which the payment was made.

10 To these propositions I would add one more. The question does not involve an inquiry of the taxpayer whether he consciously intended to obtain a trade or personal advantage by the payment. The primary inquiry is to ascertain what was the particular object of the taxpayer in making the payment. Once that is ascertained, its characterisation as a trade or private purpose is in my opinion a matter for the Commissioners, not for the taxpayer. Thus in *Mallalieu v Drummond* the primary question was not whether Miss Mallalieu intended her expenditure on clothes to serve exclusively a professional purpose or partly a professional and partly a private purpose; but whether it was intended not only to enable her to comply with the requirements of the Bar Council when appearing as a barrister in Court but also to preserve warmth and decency.”

15 40. Adopting the principles set out above, Mr Hall contends that the expenditure was not *exclusively* incurred for the *purpose of the trade*. There was a personal, non-business element, in incurring the expenditure, as it was expended on legal fees in defending criminal charges. Mr Hall says that the major reason was to limit the potential for the imprisonment of Mr Duckmanton. It was not merely incidental to some business purpose.

41. Mr Hall also referred to the case of *Bowden v Russell & Russell*, where Pennycuik J observed :

25 “..it may often be difficult to determine whether the person incurring the expense has in mind two distinct purposes, or a single purpose which will or may produce some secondary consequence. But once it is found that the person has a distinct purpose other than that of enabling him to carry on and earn profits in his trade or profession s 137(a) prohibits deduction of the expense.”

30 42. Mr Hall therefore argues that the expenditure had a distinct purpose separate from the business, being the defence of Paul Duckmanton's liberty. He referred to *Knight v Parry*. In that case the Respondent tax-payer was employed as an assistant solicitor and had made an agreement with one of his principal's clients that upon leaving his principal's employment and setting up in practice on his own account the client would instruct him as his retained solicitor. That led to the principal alleging that the Respondent had solicited the client and had therefore been guilty of unprofessional conduct for which he reported him to the Law Society, with the request that he be struck off the rolls. A civil action was also brought against the Respondent by the principal. The Court awarded damages against the Respondent for breach of a duty of good faith. The point at issue was whether the Respondent's legal costs were an allowable deduction. It was contended in that case by the Appellant that :

40 “it was necessary to defend the proceedings in order to refute the allegations of professional misconduct which had been made” and “had professional misconduct been established he would inevitably have been struck off the rolls”

- and that therefore the legal costs were deductible.

43. Goff J said however:

“.. it is equally clear that there was a second purpose, and that was the purpose of defending himself against the claim for damages.”

and accordingly that dual purpose barred the deduction for tax purposes.

5 44. In *Knight*, Goff J also quoted from *Spofforth*, where Wrottesley J made the following observations :

10 “The establishment of Mr Spofforth’s innocence, the saving of him from conviction and punishment, are matters which must have been the purpose of the expenditure, just as it would have been had the charge been one of fraud against Mr Spofforth in his personal capacity. No doubt Mr Spofforth was an important member of the firm, and his conviction, and still more his imprisonment, would have been a severe blow to it. That, however, is not the test. It is not every expenditure made by a firm which falls within the definition, however prudent it may be, even though it may tend to benefit the firm.”

15 45. Mr Barnet said that in *McKnight*, Lord Hoffman accepted that the purpose of the expenditure was allowable, and distinguished the purpose of the expenditure from the effect of the expenditure, saying :

20 “Once it is appreciated that, in a case like this, non-deductibility depends upon the nature of the expenditure and the specific policy of the rule under which it became payable, it can be seen that the relevant considerations may be quite different. This explains the divergent answers given by the Courts in the various cases...”

25 46. Mr Barnet argued that factually the case of *McKnight*, given the ‘quasi-criminal nature of the charges involved’, was much closer to the facts of the present appeal. He submits that the case is more recent, and also a House of Lords decision in which it was recognised and accepted that in certain circumstances the preservation of personal reputation can be regarded as secondary and incidental to the main purpose of safeguarding one’s means of livelihood.

### Conclusion

30 47. The question whether expenses were incurred wholly and exclusively for the purposes of a trade is a question of fact. Section 74 ICTA and 34 ITTOIA say in clear terms that the purpose must be the sole purpose. Case law authority shows that if the sole purpose of the taxpayer in incurring expenditure is business preservation, the expenditure should not be disallowed simply because the purpose of the expenditure necessarily involved some other result. If however, as in this case, legal fees are incurred with the object of firstly defending criminal charges, secondly preserving a business reputation and thirdly avoiding the possibility of a substantial damages claim, then the requirements of the legislation are clearly not satisfied.

40 48. Mr Duckmanton said in evidence that the real possibility of his losing his liberty was not a factor or primary factor in his decision to incur substantial legal expenses in defending the Gross Negligence Manslaughter charge. He said that the protection of his business and operators licence was his only real concern. The Tribunal do not accept this. Whilst we accept, and it is established from case law authority, (see

*Mallalieu v Drummond*) that not every benefit resulting from expenditure constitutes an inescapable object of that expenditure, it would defy common sense not to conclude that Mr Duckmanton's main purpose in incurring significant expenditure on legal and other professional fees was to defend the Manslaughter charge for the purpose of protecting his liberty and personal reputation. We do not accept that the sole or even a primary object of Mr Duckmanton in incurring that expenditure was to establish that the cause of the road traffic accident was driver error, or primarily driver error, and therefore retain the prospect of regaining his operators licence. We accept that had the jury not come to the conclusion that it did, Mr Duckmanton faced the possible destruction of his business. However, the result of the jury's findings is that Mr Duckmanton was acquitted of a serious criminal charge for which he could have been in prison for many years. Although Mr Duckmanton, in giving evidence, may now some nine years after the event honestly believe that he was indifferent to the prospect of imprisonment, we cannot accept that this was a secondary motivation when the expenditure was actually incurred at the time of the trial.

49. In our view the only reasonable conclusion we can come to on the facts is that the expenditure incurred by Mr Duckmanton, as detailed paragraph 2 of this decision, should be disallowed pursuant to the provisions of s 74 ICTA and s 34 ITTOIA as not having been incurred wholly and exclusively for the purposes of his trade.

50. For the above reasons the appeal is disallowed.

51. 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.

**Michael S Connell**

**TRIBUNAL JUDGE**  
**RELEASE DATE: 13 October 2011**