



TC01775

Appeal number TC/2009/13975

INCOME TAX – SELF-EMPLOYMENT INCOME – EXPENSES – journalist and author writing a book about life on a boat in France – expenses for (1) transport of boat from the UK to France, (2) repairs and improvements to the boat in preparation for the voyage in France, (3) cost of mooring the boat in France, (4) insurance of the boat while in France – whether deductible as “wholly and exclusively laid out or expended for the purposes of the trade” (ITTOIA s.34) – yes in the particular circumstances of the case as to (1) – no in the particular circumstances of the case as to (2), (3) and (4) – Appeal allowed in part

FIRST-TIER TRIBUNAL

TAX

MR CHRISTOPHER HUHTALA

Appellant

- and -

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

Respondents

**TRIBUNAL: DR CHRISTOPHER STAKER (Tribunal Judge)
MR DAVID E WILLIAMS (CTA (Fellow))
(Tribunal Member)**

Sitting in public in London on 7 December 2011

Mr D Hamilton, accountant, for the Appellant

Mr D Edwards, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs for the Respondents

DECISION

Introduction

- 5 1. This is an appeal against a closure notice dated 3 October 2008 in relation to the Appellant's tax return for the year ended 5 April 2007. The appeal relates to one aspect of the closure notice, namely the decision of HMRC to disallow a deduction of £10,000 described as "premises costs", which the Appellant claimed under s.34 of the Income Tax (Trading and Other Income) Act 2005 ("ITTOIA"). This decision was upheld in an HMRC review decision dated 28 July 2009.
- 10 2. The Appellant appealed against the closure notice to this Tribunal. The Tribunal dismissed the appeal in a determination dated 13 September 2010: *Huhtala v Revenue & Customs* [2010] UKFTT 429 (TC). On appeal against that determination, the Upper Tribunal remitted the case to the First-tier Tribunal for rehearing before a differently constituted tribunal: *Huhtala v HMRC* [2011] UKUT 419 (TCC). At the
15 hearing before this Tribunal on 8 December 2011, it was common ground that we should rehear this appeal afresh, as if the earlier determination of the First-tier Tribunal had not been given. The Tribunal has therefore not considered that earlier determination.
- 20 3. The Appellant claims as follows. He is a self-employed journalist. In fact, his self-employment activities are broader than the term "journalist" conveys, and he is also a writer. In 2006, he commenced work on a project to write a book about life on a boat moored on a pontoon in southern France. For this purpose, he had a live-aboard motor cruiser called the "Caratania", of which he was part owner, transported from the United Kingdom to France. The boat remained moored at a pontoon in Port
25 Grimaud in France continuously for several years. The Appellant lived on the boat for most of the summer of 2006 as well as most of the summer of 2008, 2009 and 2010. He also spent short periods on the boat in France at other times of the year. While on the boat, he undertook research for his book about life on the boat. The book has still not been completed, but is at an advanced stage of work.
- 30 4. In his tax return for 2006/07, the Appellant claims deductions of expenses relating to (1) certain work undertaken to the boat in preparation for its voyage to France, (2) the transport of the boat from the United Kingdom to France, and (3) the cost of mooring the boat at Port Grimaud.
- 35 5. This appeal is concerned only with expenses claimed in 2006/07, although the Tribunal is informed that similar expenses have been claimed by the Appellant in his tax returns for subsequent years, and that the Tribunal's determination may therefore have implications for the Appellant's subsequent tax returns.
6. The relevant expenses claimed by the Appellant for 2006/07 are set out in a table at page 9 of the Appellant's hearing bundle as follows:

		£	£
	<u>Rent</u>		
	Port Grimaud		
	01.06.06	1594.83	
5	17.10.06	1076.51	
	19.12.06	1092.30	
	07.02.06	1411.58	
			5175.22
	<u>Insurance</u>		
10	18.12.06 Admiral Ins		317.10
	<u>Boat delivery</u>		
	19.05.06 Bray Marine	3317.28	
	27.05.06 Kevin Henderson	6317.57	
15			9634.85
	<u>Boat maintenance</u>		
	11.04.06 Stamfords charts	54.83	
	11.05.06 Sdy	1823.32	
	31.05.06 Marinapower	175.78	
20	11.06.06 Sdy	181.94	
	11.06.06 Wireless	114.24	
	16.06.06 Thames Marine	606.77	
	16.07.06	2376.36	
			<u>5333.24</u>
25			20460.41

7. The Appellant thus claims expenses totalling £20,460.41. Originally he claimed only £10,000 of these costs as a deduction. However, at the hearing on 8 December 2011, it was common ground that it is now for the Tribunal to determine whether the whole or any part of the above claimed £20,460.41 is an allowable deduction.

The relevant legislation

8. Section 34 ITTOIA (which has been repealed but the provisions of which remain applicable to the year in question) provided that:

- (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.
- (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.

The hearing, evidence and submissions of the parties

9. At the hearing, the Appellant was represented by his accountant, Mr Hamilton. HMRC was represented by Mr Edwards of counsel. The Tribunal had before it an Appellant's bundle (which included a skeleton argument) and an HMRC bundle and skeleton argument. The Appellant gave evidence and was cross-examined, and was asked questions by the Tribunal. The Appellant also produced a number of additional documents at the hearing (including examples of his previous publications) to which no objection was taken by HMRC.

10. The Appellant referred to examples of his published works which were in evidence. These included a book called *The Business of Digital Television* (2000) and *High Above: The Untold Story of Astra* (2010). He said that he was writing a follow-up book to the latter called *Even Higher*, due to be published in Spring 2012, for which he received a payment of £6,000 in November 2011 and was due to receive a second payment of the same amount in December 2012. Additionally, he said that on a daily basis he writes 3 to 10 broadcasting related articles for publication on an internet site, for which he is paid by the internet site. In evidence was a screen shot from his computer showing dates and titles of articles he had written for this website. He also said that he had in 2003/04 worked on a large-format book to be called *London From Its River*, which would contain high quality photographs taken from his boat of historical sites along the length of the River Thames, accompanied by text giving details of the sites. He showed photographs that had been taken for this project. He said that the book had ultimately not been published, because each of the interested publishers had wanted a sponsor to underwrite its costs, and a sponsor had not been found.

11. The Appellant's further evidence was as follows.

12. In approximately 2003 he spent a holiday in France on canals in his former boat. While on holiday he sent a daily log to friends and family, which was well received, and which prompted the idea of writing a book about life on a boat in France. He subsequently bought (jointly with his wife) his present boat, the "Caratania", which is slightly larger, and has a lounge which provides a good environment for him to work in. He decided to spend the Summer months on this boat in France researching a book about life on a pontoon in France. The success of other books about life in France (such as *A Year in Provence* by Peter Mayle) or about life on a boat (such as *Boogie up the River* by Mark Wallington) showed that such a book could be successful.

13. The Appellant has not claimed as a tax deduction any day to day living costs for periods spent on the boat, such as food, water, electricity, petrol and routine repairs. The boat was transported by truck from Southampton to Port Napoléon, at the mouth of the River Rhone in France. The cost of this was the figure of £6,317 under the heading "boat delivery" in paragraph 6 above. The Appellant himself flew from the United Kingdom to Toulouse, and collected the boat at Port Napoléon. It was necessary to sail the boat from Port Napoléon to Port Grimaud, as it was not possible to take it by truck all the way to Port Grimaud.

14. The other figure of £3,317.28 under the heading of “boat delivery” included the following items: (1) the addition of 250 kilograms of lead shot to correct a list; (2) repair to a porthole which was letting in water, (3) the addition of brackets for a life raft and life vests and for an outboard motor (but not the life raft or life vests or
5 outboard motor themselves which the Appellant already owned), (4) the strengthening of davits to take the weight of a dinghy, (5) the cost of checking a vibration in the propeller shaft (which involved lifting the boat out of the water), (6) the fitting of an electrical connector for Continental shore power, (7) the purchase of a hand-held VHF radio as a backup radio, and (8) the purchase of navigation charts for the French
10 Mediterranean coast.

15. These items of work had to be undertaken for the journey to be safe. Previously, the boat had been used in the Thames and the Solent, and not taken more than about 5 miles from land. The journey from Port Napoléon to Port Grimaud was 150 to 200 miles, and bad weather was anticipated.

15 16. In order to write the book, the Appellant needed a safe mooring somewhere with a long season of visitors, with a variety of fellow residents and good surrounding countryside. It was intended that each chapter of the book would conclude with an explanation of local beauty spots and curiosities. It was not easy to get a mooring in Port Grimaud, where there is a waiting list of tens of thousands of boats, but a place
20 was found through contacts. The pontoon there had a never ending changing list of occupants, from members of a Scandinavian royal family, to a much more ordinary family consisting of a mother, father and 8 children who lived on a boat.

17. On a typical day on the boat, the Appellant would get up at dawn, write his articles for publication on the website for a couple of hours, and then begin work on
25 the book by observing arrivals and departures and getting to know other residents if they stayed for a period, since other residents and their maritime stories form the greater part of the book.

18. Although the Appellant’s tax returns have always given his profession as “journalist”, in fact his self-employed activities have included that of marketing
30 manager, publisher, journalist, industry analyst, consultant to the pay TV industry, expert witness in commercial arbitrations, researcher, conference organiser, conference moderator, and other activities. Since 1998 he has been a writer/author. As a self-employed person, he takes whatever work comes along.

19. Writing a book takes time. Despite the workload of his other work while on the
35 boat in France (writing his regular articles for the website), the Appellant wrote more than 12,000 words for the book he was working on. He spent about two thirds of his time on the boat working on the book, and about one third on his other work. It proved not to be possible to complete the work on the book in the first Summer. The boat therefore remained moored in Port Grimaud, and he returned again for the
40 Summers in the subsequent two tax years, 2008/09, and 2009/10. He has claimed similar but lower deductions for the subsequent years also. About a year ago, the boat was taken out of the water for the winter, and was moved to Greece earlier this year. He proposes to write a similar book about life on a boat in Greece.

20. During the time that the boat was in Port Grimaud, the Appellant came and went. Some years he flitted back and forward throughout the Summer. The idea was to spend as much of the Summer as possible on the boat in France (the 3 month period from June-August).

5 21. The other claimed deductions set out in paragraph 6 above were explained as follows. The figure of £5,175.22 for “rent” is the mooring charge for mooring the boat at the pontoon in Port Grimaud. The figure of £317.10 is the cost of insurance of the boat during the process of transporting it from the UK to France.

10 22. The Appellant then expressed some uncertainty about the other amounts listed under the heading “boat maintenance”. Three amounts are said to be for “Sdy”, which he said meant “sundries”. He said that the figure of £1,823.32 included the cost of the insurance for the transport of the boat from the UK to France (£219.22), the cost of insurance while the boat was moored in France (£922.07), the cost of a new compass (£186.28), that the cost of fitting a shore power connector and fuse box
15 (£406.90), and an amount of £88.85 for a purpose he could not remember. He then said that the figure of £317.10 for insurance might in fact have been for part of the year that the boat was in the UK. He said that the “Sdy” amount of £181.94 was the cost of a crane in France to take the boat off the truck and put it in the water. The amount of £54.83 was for maritime charts of the area of the Mediterranean around the
20 coast of southern France, which were necessary for the voyage from Port Napoléon to Port Grimaud. The amounts for “Marinapower” and “Wireless” it seems may have been for items (6) and (7) referred to in paragraph 14 above. The Appellant said that he was not now able to explain the figures of £606.77 and £2,376.36.

23. The Appellant concluded his evidence in chief by stating the following. All data
25 for the book has now been collected. A first draft has been compiled. He is now working on the fourth draft of the book which is about one third completed. About 18,000 words have been completed. No publisher is in view yet, but some have expressed interest. He considers that work on the book is running behind schedule.

24. In cross-examination, the Appellant stated amongst other matters as follows. In
30 answer to the question why he sold his former boat and bought the “Caratania” once he had the idea of writing a book in France, the Appellant said that the former boat would not have been suitable for the journey from Port Napoléon to Port Grimaud across the Gulf of Lyon, particularly because its engine was too small. He said that he knew when he had the idea of writing the book that he would need a new boat. It
35 would have been impossibly expensive to rent a boat in France. It was put to the Appellant that he desired to be in France in any event: that he had previously been on holiday in France on a boat in 2003, and his accountant had stated in a letter to HMRC dated 16 May 2008 that during the 2007/08 tax year “a number of dreams and plans had come together culminating in my client moving his boat to Port Grimaud”.
40 The Appellant said that he had the idea of writing the book, that he followed through on the idea, and that the boat had been moved away from France once his work on the book had been completed. He said that his wife had spent much of the Summers with him on the boat in France. His wife worked for the company that ran the website that

published his articles. She was a conference manager and could work from home, meaning she could also work from the boat in France.

5 25. The Appellant was then cross-examined at some length about his travel schedule during the 2007/08 tax year. He said that he did not claim a deduction for his travel from the United Kingdom to France when he collected the boat from Port Napoléon. He said that on reflection he may have travelled by car. He said that all claimed travel was for work for which he was paid. For instance, in June 2007 he flew from Nice to London for a conference. He did not agree that this suggested that he had moved his home to France.

10 26. The Appellant was questioned about the letter from his accountants to HMRC dated 16 May 2008, which stated that the Appellant's expenses were in excess of £20,000, but that he was claiming only £10,000 on the basis that this was commensurate with the cost of renting a flat in Port Grimaud. The Appellant said that it was now apparent that he should have claimed the whole amount.

15 27. The Appellant said that while the boat was in France, he had given up its previous mooring in Southampton. He said that it would have been difficult to get another mooring in Port Grimaud if he had given it up, which is why he kept the boat moored there continuously even though he was not on the boat throughout the entire year. He said that he was occasionally on the boat at times of the year other than Summer. He
20 said that it was cheaper to moor the boat at Port Grimaud than many other places on the south coast of France, such as St Tropez, Antibes or Monte Carlo, and that it would have been too expensive to transport the boat between the United Kingdom and France every year.

25 28. The Appellant acknowledged that the items referred to in paragraph 14 above might be items that a prudent boat owner would want to undertake in any event, but said that these items were undertaken only because they were necessary to make the boat seaworthy for the trip from Port Napoléon to Port Grimaud. He would not have undertaken them if the boat was only used as it previously had been in the United Kingdom. There were many other repairs and routine maintenance that he had not
30 claimed. The Mediterranean is much rougher than the Solent. In any event, he would not go out on a rough day on the Solent. He confirmed that the boat had not been back in the United Kingdom since it was moved to France in 2007.

35 29. The Appellant mentioned on more than one occasion during his evidence that while he could not explain now what some of the claimed expenses were for, details had been provided of these previously to HMRC. The Tribunal explored with the parties whether there were any further documents relevant to the appeal that were not presently before the Tribunal. Both parties confirmed that there were no further documents that they wished to place before the Tribunal, and that the Tribunal should determine the appeal on the basis of the evidence that it presently had.

40 30. The submissions of the Appellant included the following. Where a war correspondent is commissioned to go to a war zone, the cost of his accommodation or living expenses are met by the organisation that sent him there, sometimes for months

at a time, and this is part of the cost of doing the job. It would be difficult to write a book about climbing Mount Everest without actually doing it. During the tax year, the Appellant maintained his flat in London, and never claimed any expenses for local travel, food or electricity. All of the expenses claimed were “wholly and exclusively for the purposes of the trade” as it would not be possible to write a book about living on a pontoon without a boat to do it in. It was a mistake to describe the Appellant’s occupation in his tax return as “journalist”, and “writer” would have been a better description. The Appellant should also have claimed the full amount of the expenses. These mistakes should not be fatal to his claim.

10 31. The submissions of HMRC included the following.

32. The claimed expenses were not incurred “wholly and exclusively for the purposes of the trade”. “Wholly” is a reference to the quantum of the money expended while “exclusively” concerns the motive or objective in the mind of the taxpayer, and the key question is whether the expenditure is “solely for the purposes of the business”: *Bentleys, Stoke and Lowless v Beeson* [1952] 2 All ER 82 (“**Bentleys**”), 84. If the object of the taxpayer was not only to serve the purposes of the profession but also to serve private purposes, the test is not satisfied: *Mallalieu v Drummond* [1983] 2 AC 861 (“**Mallalieu**”). The object that the expenditure was intended to achieve cannot be answered simply by evidence of what the taxpayer says he intended to achieve, and some results are so inevitably and inextricably involved in particular activities that they cannot but be said to be a purpose of the activity: *MacKinlay v Arthur Young McClelland Moores & Co* [1990] 2 AC 239 (“**MacKinlay**”), 255. All of the identified expenses have to be claimed as a deduction since if only part are claimed, this leads to the inevitable conclusion that they were not “wholly” incurred for the purposes of the trade: *Lucas v Cattell* (1972) 48 TC 353.

33. The claimed expenses are properly to be characterised as “premises costs”, incurred not only for the purposes of researching a book, but also to provide somewhere for the Appellant and his wife to live. While working on the boat in France, the Appellant was not merely writing a book about life on a boat in France, but on his own evidence was spending a third of his time doing other work from home, effectively in the same way as if he was in his home in London. The yacht became their living quarters. Expenses to enable them to live on the yacht were “living” costs, rather than wholly and exclusively for the purposes of the trade. The Appellant’s original claim for £10,000 was based on the hypothetical cost of renting a one bedroom flat in France, leaving no doubt as to the duality of purpose. He may also have had other reasons for wanting to spend time in France in any event, as suggested by the reference to a “number of dreams and plans” in the letter from his accountants to HMRC. Even if the Appellant needed to live in France in order to write a book about France, he still needed somewhere to live while he was there, so his costs of so doing are not wholly and exclusively for the purposes of the trade. The expenses were incurred largely to enable the Appellant to have somewhere to live in France.

34. The Appellant could not have claimed his accommodation expenses if he had written the book from his home in London. In effect, for a period over the Summer

he had moved his home to Port Grimaud and was working from home there. Furthermore, a substantial amount of the expenses claimed (and the most substantial part of the expenses claimed in future years) was the cost of mooring the boat. Yet the Appellant moored the boat Port Grimaud for the whole of the year even though he
5 was there for only a part of the year. HMRC acknowledges that it is possible to claim expenses in one tax year against profits made in future tax years, so that it is not material that the book did not make a profit in the tax year to which this appeal relates. However, the Appellant's trade is that of a journalist and not that of a writer. There is no evidence that he has made any money from this book, which would be
10 expected if his trade was that of a writer. HMRC accepts that the Appellant has previously had several books published but does not necessarily accept that these were commercial ventures.

35. This case is similar to *Mallalieu* and *MacKinlay*. The mooring costs of the boat served a dual purpose because the boat had to be moored somewhere in any event,
15 and the Appellant had to live somewhere in any event. The cost of moving the boat from the United Kingdom to France is similar to the relocation expenses considered in *MacKinlay*, which were held not to be allowable deductions.

36. Alternatively, some of the deductions claimed by the Appellant are capital and not revenue expenses, incurred as set-up costs in order to enable him to research a book
20 which has yet to be published. Whether a payment is a capital or revenue payment is a question of law: *Regent Oil Co Ltd v Strick* [1966] AC 295, 313. There is no single test to distinguish "capital" and "revenue" payments: *Van den Berghs Ltd v Clark* [1935] AC 431, 438. There are many different factors: *Vodafone Cellular Ltd v Shaw* [1997] STC 734, 739 ("*Vodafone*").

25 37. The expenses in this case were one-off expenses and not recurring. They were paid for by lump sum payments and to some extent have improved the yacht. The Appellant's business has nothing to do with moving, leasing or maintaining yachts, and in the circumstances the expenses relating to moving and preparing the yacht fall
30 to be treated as capital expenditure. Even if treated as current expenses, they were not for the purpose of the trade but for the purpose of the boat. Any prudent boat owner would want the boat to be seaworthy, and the expenses were therefore for the purposes of the Appellant as boat owner.

The Tribunal's findings

35 38. On its consideration of the evidence, the Tribunal is satisfied of the following, on a balance of probabilities.

39. The Tribunal is satisfied that the Appellant is a self-employed writer, and that his self-employment activities include not only writing articles of a journalistic nature, but also writing books. He has had books published, and has received an advance
40 payment for another book that is due to be published in the near future. He has been working on a book about life on a pontoon in France. Although he has never previously written a book of this nature, his self-employment activities and writing activities have historically been broad. The Tribunal accepts that Appellant's purpose

of writing the book is to realise a profit from its publication. The Appellant accepts that he has not yet received any return on the book project, but the Tribunal is satisfied that it is still his intention to do so. HMRC acknowledge that it is possible to claim expenses in one tax year against profits made in future tax years. The Tribunal
5 therefore finds that the writing of this book about life on a boat on a pontoon in France falls within the scope of the Appellant's self-employment activities. The facts that the project is running behind schedule, and that a publisher has not yet been found, do not alter this.

40. The Tribunal is therefore satisfied that expenses incurred in 2006/07 "wholly and exclusively" for the purposes of researching, writing and publishing this book are allowable deductions. That being so, the central issue in this appeal is whether the
10 claimed expenses were "wholly and exclusively" for this purpose.

41. A central argument of HMRC is that during the period that the Appellant was living on the boat in France, he needed somewhere to live, so that the boat also served
15 a dual purpose of satisfying his personal need for accommodation.

42. HMRC rely on *Mallalieu*, in which it was held that a barrister could not claim expenses incurred in the replacement and cleaning of items of clothing which she wore in court, on the basis that these were ordinary articles of apparel which could be worn in everyday life. The court in that case considered that the object of incurring
20 such expenditure was both to serve the purposes of the barrister's profession and also to serve her personal purposes. HMRC also rely on *MacKinlay*, in which it was held that a firm of accountants with offices throughout the country could not claim a deduction for removal expenses that it reimbursed to partners or employees who were required to relocate to work in an office in a different part of the country. The House
25 of Lords held that whether the expenses could be said to be laid out exclusively for the purposes of the partnership business depended not merely on the subjective motive for moving house. It considered in that case that while the motive was to place the partner concerned in a better position to further the interests of the partnership, the expenditure also "necessarily and inherently intended to serve the
30 personal interests of the partner in establishing his private residence for himself and his family".

43. However, the Tribunal does not consider the analogy with *MacKinlay* to be necessarily apt, for the simple reason that the evidence in this case is that throughout
35 the period that the boat was in France, the Appellant still had his home in London, in which he was quite capable of living. Another analogy that might potentially be invoked would be that of a businessperson away from home for a period on a business trip, who stays at a hotel during the trip. Such hotel expenses would not be disallowed, by analogy with *Mallalieu*, merely because the hotel room also served the dual purpose of fulfilling the businessperson's personal need for somewhere to live
40 during the period of the trip. In this example, the businessperson has a home, and would be living in their home but for the fact that their work or trade requires them to be elsewhere for a period. The business or trade is the sole reason for incurring the hotel expenses.

44. HMRC suggest that the Appellant may have had other reasons for wanting to spend time on a boat in France. HMRC refers to a statement in a letter from the Appellant's representatives that "a number of dreams and plans had come together culminating in my client moving his boat to Port Grimaud". HMRC suggest that the
5 Appellant wanted to spend time on a boat in France for personal reasons, and that the writing of a book about the experience was an incidental purpose. On the evidence, the Tribunal is satisfied on a balance of probabilities that the only reason why the Appellant took the boat to Port Grimaud was in order to write his book. But for this purpose, the Appellant would have remained living in his home in London, and the
10 boat would have remained moored where it previously had been in Southampton. If the Appellant undertook other work while on the boat in France, such as writing his regular articles for the internet site, he only did so because he was at the time on the boat in France for purposes of writing the book. But for this purpose, he would have undertaken his other work from his normal place of work in the United Kingdom.
15 The sole purpose of transporting the boat to France was for the purposes of the Appellant's self-employment activity, even if it might be said that the effect of so doing had the incidental effect of conferring some benefit on the Appellant (compare *Vodafone* at 742-743).

45. However, the Tribunal is not satisfied that the only reason why the Appellant
20 *owned* the boat was in order to write the book. The Appellant's evidence is that he previously owned a different boat. He says that he bought the larger "Caratania" as a result of the plan for this book, as a larger boat was needed for this purpose. However, the evidence suggests that even if the Appellant had not embarked on the project to write this book, he would nonetheless have owned a boat (be it his former
25 boat or his present boat). The evidence further indicates that the he previously used his former boat at least for personal purposes, as he spoke of his experience holidaying on the boat in France in about 2003 (see paragraph 12 above). The evidence indicates also that the "Caratania" has been used for non-business purposes. The Appellant said that it had previously been used on the Thames and the Solent, and
30 there is no suggestion that this usage was related to his book project, or any of the Appellant's other self-employment activities. Thus, while the taking of the boat to Port Grimaud was solely for the purposes of writing the book, the ownership of the boat itself served at least a dual purpose, one purpose of which was to benefit the Appellant (again, *Vodafone* at 742-743).

35 46. The Tribunal therefore considers that the expenses incurred solely and exclusively for the purpose of transporting the boat to Port Grimaud are allowable expenses, but that expenses relating to ownership of the boat more generally are not allowable.

47. The Tribunal finds that the claimed £6,317.57 for transport of the boat by truck from Southampton to Port Napoléon is thus an allowable expense. So is the claimed
40 expense of £181.94 for a crane in France to take the boat off the truck and put it in the water, and the claimed £54.83 for the maritime charts necessary to sail the boat from Port Napoléon to Port Grimaud. There was no clear documentary evidence of these expenses. However, the Appellant was sufficiently clear in his oral evidence, and the figures were not as such disputed by HMRC. In the circumstances, the Tribunal finds
45 these expenses to be established on a balance of probabilities.

48. The Tribunal finds that another allowable expense would have been the cost of insuring the boat while en route from the United Kingdom to France. However, there was again no clear documentary evidence of this cost, and the Tribunal is not satisfied that the Appellant was sufficiently clear in his oral evidence about it. Initially he said that the figure of £317.10 in paragraph 6 above was the cost of *en route* insurance. However, he later said that the cost of the *en route* insurance was £219.22, and that this was included on the figure of £1,823.32. The Tribunal finds that the burden is on the Appellant to establish that claimed expenses were incurred in the claimed amounts and for the claimed purposes. While the Appellant stated during his evidence that details of expenses had been provided previously to HMRC, both parties at the hearing agreed that the Tribunal should determine the appeal on the basis of the evidence that it presently had (paragraph 29 above). The Tribunal finds that it is unable on the evidence before it to conclude that a particular amount of expenditure was incurred for en route insurance.

49. As to the £5,175.22 claimed for the cost of the mooring in Port Grimaud, the Tribunal notes the evidence that once the boat was taken to France, its previous mooring in Southampton was relinquished. The Tribunal has already found that the ownership of the boat as such served a dual purpose. The Tribunal finds that as owner of the boat (in fact, as half-owner according to details provided at page 7 of the Appellant's bundle), the Appellant was necessarily required to moor the boat somewhere. The cost of mooring the boat thus also served a purpose of fulfilling a requirement that was an inherent and integral aspect of ownership of the boat. As the ownership of the boat served a dual purpose, the cost of mooring it also served a dual purpose, on *Mallalieu* principles. It may be that the cost of mooring the boat was higher in Port Grimaud than in Southampton, where the boat would have remained moored but for the book project. Nevertheless, the mooring expenses still served in part another purpose, and were therefore not "wholly and exclusively" for the purposes of the Appellant's self-employment activities.

50. The same conclusion must be reached in respect of the cost of insuring the boat while it was in France. Whether the boat was moored in France or in the United Kingdom, it needed to be insured. Even if the cost of insurance was higher while the boat was in France, the expense was not "wholly and exclusively" for the purposes of the Appellant's self-employment activities.

51. The Appellant said that he was not now able to explain the figures of £606.77 and £2,376.36 in paragraph 6 above, and he mentioned an amount of £88.85 for a purpose he could not remember. The Tribunal cannot be satisfied that these expenses, whatever their purpose, were wholly or exclusively for the purposes of the Appellant's self-employment activities.

52. The Appellant also claimed figure of £3,317.28 under the heading of "boat delivery" for the following items referred to in paragraph 14 above. In fact, some of these expenses may be separate items under the heading "boat maintenance" (paragraph 22 above).

53. The Appellant said in evidence that these items of work had to be undertaken for the journey to be safe, and that he would not have undertaken them if it had not been intended to sail the boat from Port Napoléon to Port Grimaud.

5 54. The Appellant acknowledged that these items might be items that a prudent boat owner would want to undertake in any event, but said that these items were undertaken only because they were necessary to make the boat seaworthy for the trip from Port Napoléon to Port Grimaud. He said that he would not have undertaken them if the boat was only used as it previously had been in the United Kingdom. He said that the Mediterranean is much rougher than the Solent. In cross-examination, he clarified that there can be less bad days on the Mediterranean than on the Solent, but that he would not go out on a rough day on the Solent. The Tribunal, on its consideration of the evidence as a whole, considers that these items are, as the Appellant said, items that a prudent boat owner would want to undertake in any event. Most of them were general improvements to the boat. In addition to making the boat safe for the trip to France, they made the boat as a whole safer, and would also be of benefit to the Appellant when using the boat on the Solent. The Tribunal finds that these expenses served a dual purpose, and are therefore not eligible expenditure.

20 55. HMRC argues in the alternative that the claimed expenses were “capital” rather than “revenue” payments. As the Tribunal has found that only certain expenses were wholly and exclusively for the purpose of the trade, it is only necessary to consider whether these expenses were capital or revenue payments. The Tribunal accepts, as HMRC argued, that whether a payment is a capital or revenue payment is a question of law, and there is no single test to distinguish “capital” and “revenue” payments. However, HMRC does not advance particular reasons for regarding the expenses in this case as capital payments, other than to say that they were one-off expenses and not recurring, and that they were incurred to set up premises from which the book was written.

30 56. The Tribunal does not accept that costs relating to the moving of the boat to France were capital expenses. These expenses did not result in the Appellant acquiring or improving any asset. Although boat ultimately remained in France for some years, the evidence was that from the beginning, it was only intended that it would remain in France for as long as necessary for purposes of the book project. The boat was moved to France temporarily, not in order to make it more valuable as an asset, but simply because it was needed there for a limited period for purposes of the Appellant’s trade.

Conclusion

40 57. For the reasons above, the appeal is allowed in relation to the claimed expenses of £6,317.57 for transport of the boat from the United Kingdom to France, of £181.94 for a crane in France to put the boat in the water, and of £54.83 for maritime charts, but the appeal is otherwise dismissed.

58. 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.

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Christopher Staker

**TRIBUNAL JUDGE
RELEASE DATE: 24/01/2012**