



**TC02615**

**Appeal number: TC/2012/8146**

*CORPORATION TAX – adjustments to Appellant’s returns to take account of incorrect treatment of writing off of goodwill – whether such treatment discovered during investigation into Appellant’s tax affairs – yes – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PENNINE DRILLING & GROUTING SERVICES LTD      Appellant**

**- and -**

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

**TRIBUNAL: JUDGE DAVID DEMACK  
SUSAN STOTT FCA CTA**

**Sitting in public at Manchester on 15 March 2013**

**Mr Dermot Garvey for the Appellant**

**Mrs C Douglas of HM Revenue and Customs, for the Respondents**

## DECISION

1. This is an appeal by Pennine Drilling & Grouting Services Ltd (“Pennine”) against a decision on review by the Commissioners of 1 August 2012 which confirmed a decision of 23 May 2012 wherein, following an enquiry into Pennine’s return for the accounting period ended on 31 July 2010, they amended its returns for each of the accounting periods ended on 31 July 2008, 31 July 2009 and 31 July 2010. In the earliest of those years they did so by reducing its declared loss by £24,000 and, in the two later years, by increasing its profit by £24,000.

2. The amendments were made to take account of the fact that Pennine had claimed that it was entitled to tax relief on the purchase of the goodwill of a business for £240,000 from its director, which it had amortised over a period of ten years.

3. It was common ground that Pennine had incorrectly claimed the relief in question, so that the only question before us was whether the Commissioners had discovered the error, and were thus entitled to make the adjustments in question.

4. Before us Pennine was represented by Mr Dermot Garvey, the company secretary, and the Commissioners by Mrs C Douglas, one of their officers. Mrs Douglas presented us with two bundles of documents, the one containing the relevant documentation, including correspondence, and the other consisting of the legislation and authorities on which the Commissioners relied.

5. Pennine’s case can be stated very simply. It claimed that the Commissioners had been informed at the outset, i.e. in its accounts for the period ended on 31 July 2003, of the purchase of a business known as PDG Services from its director, Mr M Tomlinson, and that a note was included in its accounts for each subsequent year indicating that “Acquired goodwill is written off in equal annual instalments over its estimated useful economic life of 20 years”. Consequently, it claimed that the Commissioners had discovered nothing in their enquiry into the 2009/10 return.

6. The relevant part of the note relating to “Related Party Transactions” in the accounts to 31 July 2003 reads as follows: “On 31 January 2003 the company acquired the assets and trade of PDG Services, a business owned by Mr M A Tomlinson for a consideration of £240,000”. We observe that that note contains no mention of “Goodwill”, so that it is difficult to see how the Commissioners could have been expected to be aware that references to goodwill in subsequent years’ accounts related to the acquisition of PDG Services.

7. The Commissioners took the view that the explanations contained in the various notes to Pennine’s accounts were insufficient

8. Following the opening of the Commissioners’ enquiry on 17 January 2012, they raised a number of queries with Pennine, one of which was its treatment of goodwill. It replied on 15 February 2012 saying, “The goodwill was purchased from M Tomlinson on 31 January 2003. M Tomlinson is a shareholder in [Pennine]”.

9. Having been pointed to s.118 of Schedule 29 to the Finance Act 2002, Pennine agreed that the tax treatment adopted by its tax advisors had been incorrect. At that point the Commissioners accepted that error had been “a mistake”, and determined to take steps to correct the return for the enquiry period and raise discovery assessments for the three accounting periods ended in 2008, 2009 and 2010. They also invited Pennine to amend its return for the period to 31 July 2011.

10. The enquiry amendment, the discovery assessments and determinations having been processed on 1 May 2012, Pennine appealed on 17 May 2012 claiming that all relevant information had been disclosed to the Commissioners, and that for the accounts period ended 31 July 2011, the goodwill had been treated similarly to that in previous years. Pennine was offered a review of the Commissioners’ decisions.

11. In the letter offering the review, dated 23 May 2012, the Commissioners explained that, whilst the discovery legislation put restrictions on their right to raise assessments, that did not apply to the enquiry year, and said that the notice giving effect to the conclusion of their enquiry was raised under para 34 of Schedule 18 to the Finance Act 1998. The letter also dealt with the Commissioners’ discovery powers, explaining that they could not be used if information was included in the “relevant return”, which meant that it had to have been included in the accounts for each of the two preceding accounting periods (see s.118 Schedule 29 to the Finance Act 2002). Further, the letter set out the relevant notes in Pennine’s accounts post-2003, and continued, “I trust you can see that this is not a full disclosure enabling HMRC to see from the relevant returns and accompanying documents that they contained incorrect claims to goodwill amortisation. As you are aware I had to ask you for the information in my enquiry for the year ended 31 July 2010 before I could establish whether or not the claim was correct.”

12. Summarising the Commissioners’ position, Mrs Douglas submitted that, whilst the Commissioners accepted that the necessary information was provided in Pennine’s 2003 accounts, it was not shown in the accounts or documents for the accounting periods ended in in 2006,2007, 2008 or 2009, they were not precluded from making a discovery assessment. Nor, she maintained, were they prevented from amending a return to give effect to the conclusion of an enquiry.

13. For completeness, we should mention that Mrs Douglas contended that the Commissioners correctly notified Pennine that they were enquiring into its accounts for the period ended in 2010, and were empowered to give effect to the conclusions of the enquiry; they were not relying on the discovery powers in that year. Her contentions were not challenged by Mr Garvey, and we accept them as being correct.

14. Although Mrs Douglas made reference to a number of cases in her presentation to us, we find it necessary to refer to only one of them, that of *Langham v Veltema* [2004] STC 544 where at [33] Auld LJ said, “..., it is plain from the wording of the statutory test in s.29(3) [of the Taxes Management Act 1970] that it is concerned, not with what an Inspector could reasonably have been expected to do, but with what he could have been reasonably expected to be aware of. It speaks of an Inspector’s objective awareness, from the information made available to him by the taxpayer, of

5 “the situation” mentioned in s.29(1), namely an actual insufficiency in the assessment,  
not an objective awareness that he should do something to check whether there is such  
an insufficiency, as suggested by Park J. If he is uneasy about the sufficiency of the  
assessment, he can exercise his power of enquiry under s.9A and is given plenty of  
10 time in which to complete it before the discovery provisions of s.29 take effect”. And  
at [36] Auld LJ added, “It seems to me that the key to the [self-assessment] scheme is  
that the Inspector is to be shut out from making a discovery assessment under the  
section only when the taxpayer or his representatives, in making an honest and  
accurate return or in responding to a s.9A enquiry, have clearly alerted him to the  
15 insufficiency”.

15 15. In his submissions, Mr Garvey dealt with the whole of the case law produced by  
Mrs Douglas, emphasising the differences between the various cases and the present  
one, and effectively inviting us to distinguish them. For present purposes, we are  
content to do so. It was plain that Mr Garvey had prepared the case for Pennine with  
some care, and we should record our thanks to him for his work. However, at the end  
of the day his submissions simply amounted to a claim that Pennine had made full  
disclosure to the Commissioners, so that its appeal should be allowed.

20 16. We are quite satisfied that the contents of the various notes in Pennine’s  
accounts did not amount to disclosure sufficient to enable the Commissioners to be  
aware of its practice of dealing with goodwill in its accounts. It follows that we  
dismiss the appeal.

25 17. 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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**DAVID DEMACK  
TRIBUNAL JUDGE**

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**RELEASE DATE: 27 March 2013**