



TC03186

Appeal number: TC/2013/00737

*INCOME TAX- relief for bad debts under Schedule 1A Finance Act 2009
– debts not incurred wholly and exclusively for the trade of appellant – debts
not established as either incurred or bad – appeal dismissed.*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JAMIE WHITE

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

**TRIBUNAL: JUDGE DAVID S PORTER
ANN CHRISTIAN**

Sitting in public at Alexandra House, Manchester on 18 November 2013

The Appellant in person

**Mr Alan Hall, an Inspector of Taxes, instructed by the General Counsel and Solicitor to
HM Revenue and Customs, for the Respondents.**

DECISION

1. Mr Jamie White (Mr White) appeals against the Respondents' (HMRC) refusal to give relief for bad debts of £45,950 for the year to April 2009, £50,050 for the year to
5 April 2010 and £51,350 for the year to April 2011 totalling £147,350 owed by his father's company, M White Limited, to Mr White and his skip businesses. He says that approximately £320,000 has been lent to M White Limited and he wishes to set off £147,350 of that amount against the tax liabilities for his businesses for the years in question under Schedule 1A of the Finance Act 2009. Mr White says that the loans
10 to M White Limited were essential to maintain M White Limited so that it could continue to supply his skip businesses with drivers, skips and administration. HMRC says that the money lent by Mr White to M White Limited is to be treated as capital as Mr White is not carrying on the business of a moneylender or a bank. Such loans were not used wholly and exclusively for the purposes of Mr White's skip businesses. The relief is not therefore available.
15

2. Mr Alan Hall (Mr Hall), an Inspector of Taxes, appeared for HMRC and produced a bundle of evidence and authorities. Mr White was unrepresented.

3. We were referred to the following cases:

- *Reids Brewery Co Ltd v Male (HMRC) 3 TC 279 [1891] QB 1*
- 20 • *Bury & Walkers v Phillips (HMRC) 32 TC 198*
- *English Crown Spelter Co v Baker (HMRC) 5 TC 327*

The Law.

4. Sections 33-35 of Income tax (Trading and Other Income) Act 2008 deal with capital expenditure.

25 33. In calculating the profits of a trade, no deduction is allowed for items of a capital nature.

34. Expenses not wholly and exclusively for trade and unconnected losses

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

30 (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 proportion of the expense which is incurred wholly and exclusively for the purposes of the trade.

35 35. Bad and doubtful debts

(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

5 (c) the debt is released wholly or exclusively for the purpose 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.

10 5. Taxes Management Act 1970 (TMA) Schedule 1A (Claim for relief for overpaid tax etc)

1

(1) This paragraph applies where-

15 (a) a person has paid an amount by way of income tax or capital gains tax but the person believes the tax is not due, or

(b)

(2) The person may make a claim to the Commissioners for repayment or discharge of the amount.

(3) to (7).....

20 **2**

(1) The Commissioners are not liable to give effect to a claim under this schedule if or to the extent that the claim falls within a case described in this paragraph...

(2) ...

25 (3) Case B where the claimant is or will be able to seek relief by taking other steps under the Income Tax Acts or an enactment relating to the taxation of capital gains.....

Making a claim

3

30 (1) A claim under this Schedule may not be made more than 4 years after the end of the relevant tax year.

(2) In relation to a claim made in reliance on paragraph 1 (1) (a), the relevant tax year is –

35 a. Where the amount paid, or liable to be paid, is excessive by reason of a mistake in a return or returns under sections 8,8A Or 12AA of this

Act, the year to which the return (or, if more than one, the first return) relates, and

b. Otherwise, the tax year in respect of which the payment was made.

(3) In relation to a claim made in reliance on paragraph 1 (1) (b), the relevant tax year is the tax year to which the assessment, determination or direction relates.

(4) A claim under this Schedule may not be made by being included in a return under section 8, 8A or 12AA of this Act.

The Facts

6. Mr White told us that he is involved in running three businesses. M White Limited is owned by his father and his sister, but it was clear that his father, who was a driver, was not in a position to run the company and that Mr White effectively managed the Company on a day to day basis. Mr White is also the sole proprietor of LJ Skips and BP Skips. His businesses hired out skips to third parties. He told us that the skips, lorries, yard, insurances, licences etc were provided by M White Limited. He was charged for their use by M White Limited and he charged his customers for the hire of the skips, which enabled him to pay M White Limited.

7. The accounts for M White Limited dated 31 January 2009 were produced to the Tribunal. The accounts were prepared by Hart Shaw LLP accountants of Sheffield. The accounts revealed a loss of £49,113 for the year to 2009, as against a profit of £52,694 for 2008. The turnover for 2009 was £412,056. Creditors were £492,647 of which other creditors amounted to £282,368 and were payable within one year. The balance of the other creditors, falling due more than one year after the year end, amounted to £200,000. Note 11 to the accounts states:

11. Related party transactions

Included within creditors are £280,308 (2008:£31,677) owed within one year and £200,000 (2008: £200,000) owed after more than one year to M White a director, interest is not paid on this amount and there are no agreed terms of repayment....

Included in other creditors is an amount of £63,256 (2008: £10,657) owed to BP Skips Limited, this company being owned by the director's son.

It is not known whether the loan was made personally, or via an unincorporated business. We were told that the two other businesses were not limited companies, but operated by Mr White as a sole trader. Hart Shaw LLP completed the accounts for M White Limited. Mr White does not appear to have asked their advice with regard to preparing the accounts for his own businesses nor in relation to his claim for relief arising from the money he says he has lent M White Limited.

8. In Mr White's self-assessment returns, which he prepared himself, reveal the following profits:

Year	Profit	Tax paid	Net available
• 2008/9	£51,983	£11,419.20	£40,563.80

- 2009/10 £55,602 £12,170.80 £43,431.20
- 2010/11 £57,801 £13,050.40 £44,750.60

The returns make no reference to any substantial irrecoverable debts written off.

9. In a letter dated 30 October 2012 Mr White wrote to HMRC indicating that he
5 wished to change his tax returns as follows:-

YE April 09 Write down a loan made to M White Ltd by value of £49,950

YE April 2010 Write down a loan made to M White Ltd by value of £50,050

YE April 2011 Write down a loan made to M White Ltd by value of £51,330

These changes reduced the tax liability for his businesses in the three years to nil.

10 He stated that the loans were all made out of turnover, and are irrecoverable debts
written off because they would not be recovered. He stated that M White Limited
narrowly avoided bankruptcy in 2011 and that it had accumulated £4000,000 of losses
and that the position shows no signs of improving.

15 10. It appears that Mr White lent money to M White Limited when it needed the
cash. He had, however, had to borrow money from M White Limited to pay his
personal tax liabilities. He said that he had set that repayment off against the debt
owed by M White Limited. Mr White produced no formal evidence as to the amounts
of the monies lent to M White Limited. He said that all the details were agreed
verbally.

20 11. Mr White produced a schedule to the Tribunal of all the invoices raised by M
White Limited against his two businesses for the periods April 2003 to April 2011.
The schedule showed the amounts paid in each year by B P Skips and LJ Skips to M
White Limited for both the hire of the machinery and drivers. The schedule then
provided for the invoices raised by M White Limited to be deducted from the total of
25 moneys paid by Mr White to M White Limited. Mr White suggested that the end total
must represent the money lent to M White limited. For example in the year to April
2009 the figures were:

Invoices M White Ltd	Transferred	from	businesses	Total transferred	Resultant debt
	BP Skips	LJ Skips	Mr White		
£37,571.51	£70,880	£7,790	£9,980	£88,650	£51,078
A	B +	C+	D =	E	E -A

The total debt revealed by the schedule was £322,266.13

30 12. These figures had been produced for the first time and they have not been
examined or checked for their accuracy. It appears that Mr White believed that the

totals of the end figures represented the amounts lent to M White Limited because they must represent the cash paid out by his businesses and himself after all the invoices due to M White Limited had been paid. Mr White did not produce any evidence as to what the payments were specifically for. It also appears that part of the
5 alleged cash payment came from him personally rather than from the businesses. It is clear from the figures, however, that M White Limited could not have known of the debt because the figures have been produced for the hearing. The schedule was designed to justify the total debt of £322,266.13. We note that the figure of £51,078.49 for the year to 2009 is not the same as the figure claimed of £49,950 in the
10 application for relief to HMRC. (See paragraph 9 above). Mr White indicated that he had set-off the amount of the overall debt sufficient to reduce his businesses tax liability to nil

Summing up

13. Mr Hall submitted that it was not known whether the loans were made
15 personally, or via the unincorporated business, as no detail has been provided that related to the dates of the loans their terms and the individual amounts. Mr White could not set off sufficient of the alleged outstanding loans against each year so that his tax liability would be reduced to nil in each year. If there was a debt to set off, the entirety of the debt would have to be accounted for.

20 14. Sections 33 and 34 treat the money loaned to Mr White's father as being capital in nature. Mr White accepts that he is neither a moneylender nor acting as a bank but is running a skip hire business. He has not shown that the money lent was an expense of his businesses, nor that there was any loss, nor that any loss occurred in the trade. It also appears that the claims have been made to reduce the tax liability of
25 Mr White's businesses to nil. Any write down must be based on the total annual loans and not the figures that suit the businesses' tax position. If a loan is irrecoverable, the write off should be 100% at the time it is irrecoverable. The amount deemed to be bad should be known at the time the accounts are drawn up. Mr White has not established that the debts were either bad or estimated to be bad.

30 15. The cases require that the loan must be wholly and exclusively for the purposes of the business. In *Reids* the court confirmed that loans made to the Brewer's customers to assist with the businesses did not amount to a capital loan and could be set off against Reids profits if the loans became bad debts. The brewery advanced monies to its customers to encourage the customers to continue to buy its
35 alcohol from the brewery and as such they could deduct any amounts that were eventually unpaid by the customer from the profits in the year in question. In *Bury & Walker* (a firm of solicitors) it was held that the solicitors could not write off any bad debts arising from loans that it had made to its builder clients because they were not advanced wholly and exclusively for the purposes of its solicitors business. There had
40 been no obligation for such builders to transact business with the solicitors. *English Crown* lent money to a company it had formed to supply its raw material. That company went into liquidation, but English Crown was not allowed to set off the resultant losses on the loans because the loans had been of a capital nature.

16. Mr Hall submitted that as the loans had not been made in the course of trade as 'Skip Hire/Waste Management' the Tribunal should dismiss the appeal since the loan write-offs were not based upon evidence but on tax mitigation

17. Mr White submitted that his organisation could be compared to a group of companies. M White Limited had supplied all the necessary assets to allow Mr White to operate his two sole trader businesses and charged his business for the supplies. M White Limited had, however, made insufficient money to fund its trading activities and Mr White had had to lend it money from time to time to help its cash flow and to stop it going into liquidation.

18. He accepted that in the Reids' relief could not be given when the money was used to purchase Public Houses which it then leased to its customers as that was clearly a capital expenditure. The court held that the brewery could obtain relief in relation to the loans to customers when the loans amounted to bad debts. Those loans were designed to assist the customers in running their businesses. That was no different to his funding of M White Limited. If his businesses had not lent the money M White Limited would have gone out of business. The loans were wholly and exclusively for the benefit of his businesses as they could not have operated without M White Limited.

19. Mr White indicated that he did not charge interest on the loans as the loans were made to keep M White Limited in business. He had not raised the claim in his earlier accounts because he had not become aware of the relief until 2011. He completed his own returns and did not have any professional training. He was aware that the loans were getting out of hand, but HMRC were unwilling to be of assistance. The loans were made in the course of his businesses and from his evidence of the loans produced to the Tribunal the bad debt relief should be allowed.

The decision

20. We have considered the law, the cases and the evidence and we dismiss the appeal. Mr White considers that the funding that he has made available to his father's business should be allowed as a debt in his two businesses because he does not consider there is any prospect of M White Limited repaying him. There appears to be considerable confusion in Mr White's mind in relation to the running of the businesses. M White Limited is a limited company owned by his father and his sister. It is a separate legal entity to BP Skips and LJ Skips. Mr White runs all three businesses, but has not sought any professional advice as to the best way of managing them. He has produced a schedule to the Tribunal as to how he thinks the loans have been made up. The figures from the schedule for the year to April 2009 do not agree with the amount he wishes to claim. This is because he has merely set off sufficient of the apparent loan to reduce his businesses tax to nil. As indicated by Mr Hall, he would need to set of the entire loan arising in each year against the profits for the year in question.

21. We are not satisfied that there were personal loans and if there were such loans that they were either bad or estimated as bad. The evidence produced by Mr White is

no more than a mathematical calculation of how he believes the debts have arisen. There has been no evidence from M White Limited as to any agreement. We doubt that Mr White's father or sister have any idea of the moneys purportedly owed by their company, M White Limited, to Mr White. The account details of Mr White's
5 business reveal profits in the order of £43,000 for the three years (see paragraph 8 above). We assume that Mr White would need to have spent something on his living expenses. If those had been £20,000, a modest sum, he would have had approximately £23,000 available to lend M White Limited each year. A figure which, in most cases, is less than half the amounts he shows the businesses had lent from his schedule. If
10 the outstanding debt is of the order of £320,000 then he would have needed 14 years to fund it assuming he had achieved £43,000 profit in each year.

22. We do not accept that the money advanced to M White Limited was loans for Mr White's trading purposes nor do we accept, from the evidence, that the amounts that Mr White alleges are bad debts are such. M White Limited is a separate legal
15 entity to Mr White's sole trading businesses. Mr White has chosen to hire all the necessary assets to run his business from M White Limited. As a result, the payments to M White Limited were for those services and not loans at all. Given that Mr White appears to have paid £322,266.13 to M White Limited over the period, he could have used the same monies to buy or hire all the assets he needed to run his businesses
20 from elsewhere. Mr White could have continued to run his businesses without needing to support M White Limited. As a result the payment of the money to M White Limited did not amount to a loan at all but an overpayment for services rendered. The overpayment has not been recorded as a debt in Mr White's business accounts. No evidence has been given as to how the debts have been incurred; the
25 proposals as to their repayment; or of any interest that might have been charged.

23. Even if it is conceded that part of the payments might be money lent to M White Limited, it would have been money so lent to assist M White Limited's business. It is difficult to see how that could be other than a capital payment. Mr White was in the business of skip hire not moneylending or banking. The payment
30 made by Mr White was not the same as the payments made by the brewer's to its customers in the *Reids'* case. It was not necessary for the purposes of his skip businesses that payments should be made for M White Limited. We consider that Mr White has chosen to run the three businesses together because he believed that that would be the most efficient and effective way to manage them. We would suggest, as
35 Mr Hall has done, that he seeks professional accounting advice as it may well be that he can claim the expenditure against his profits, but not under Schedule I AB. We therefore dismiss the appeal.

24. 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
40 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.

**DAVID S PORTER
TRIBUNAL JUDGE**

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RELEASE DATE: 6 January 2014

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