



**TC04442**

**Appeal number: TC/2013/08115**

*INCOME TAX – closure notice –disputed expense claims for consultant work – charged from Appellant’s companies to Appellant – no evidence of services supplied – onus on taxpayer to demonstrate that expenses properly incurred for purposes of trade – case dismissed.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Mr Gerald Bianchi**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE Rachel Short  
                  Christopher Jenkins (Member)**

**Sitting in public at St Catherine’s House, 5 Notte Street, Plymouth on 18 May  
2015**

**Mr Fass, accountant of Lustigman and Co, Chartered Accountants and the  
Appellant in person**

**Mr Colin Brown, presenting officer for the Respondents**

## DECISION

1. This is an appeal against a closure notice served by HMRC on 8 July 2010 in respect of Mr Bianchi's personal tax return for the 2005 - 6 tax year. In that closure notice HMRC disallowed a number of expenses claimed as deductions by Mr Bianchi against the profits of his trade on the basis that Mr Bianchi had not provided any information to substantiate those claims.

2. The expenses in question were: £32,050 cost of sales and a further £7,096 of miscellaneous business expenses for travel, advertising and promotion and legal costs.

3. Mr Bianchi submitted his personal tax return for 2005-6 on 21 February 2008 and HMRC opened their enquiry into that return on 27 April 2009, making a request to see all books, record, documents and receipts used in the preparation of the tax return. A closure notice was issued on 8 July 2010. Mr Bianchi appealed to this Tribunal on 9 September 2013.

4. Mr Bianchi's appeal was made late on 21 December 2010 but HMRC confirmed that they had accepted the appeal should be treated as made in time.

### *Facts.*

5. Mr Bianchi was a quantity surveyor. He retired in March 2007 and spent the next two years travelling abroad, returning to the UK in the summer of 2009. During that time renovations were carried out at his residential UK property from which he had been carrying out his business.

6. Mr Bianchi was a sole trader and used the trading name "Abbeywood Kingstone and Co". For the latter part of his career he worked on a consultancy basis and provided some of his services through two UK companies; Palex Services Limited ("Palex") and Chalfont Consultancy Services Limited ("Chalfont"). Other surveyors also provided their services through these companies, but they were set up and run by Mr Bianchi, who was a director of both.

7. The cost of sales deduction of £32,050 claimed in Mr Bianchi's 2005-6 tax return related to payments by Mr Bianchi to those companies for services provided by them to him. The gross earnings declared in Mr Bianchi's tax return were £71,500.

8. HMRC made numerous requests for sight of documents relating to the expenses claimed in Mr Bianchi's 2005 - 6 tax return from April 2009 until February 2010 and eventually issued an information notice under Schedule 36 Finance Act 2008 on 9 February 2010. While some information was provided to HMRC relating to other aspects of Mr Bianchi's tax return, no information was provided about the expense deductions claimed other than eight handwritten invoices from Palex and Chalfont addressed to Abbeywood Kingstone and Co.

### *The law*

9. Expenses are deductible in calculating the profits of a trade only if, in accordance with s 34(1) Income Tax (Trading and Other Income) Act 2005 (“ITTOIA”) they are incurred “*wholly and exclusively for the purposes of the trade*”.

*Evidence*

5 10. We saw the correspondence between HMRC, the Appellant and his advisers from 12 February 2008 to 8 July 2013 and eight invoices made out by Chalfont and  
Palex to Abbeywood Kingstone and Co during 2005-6. Those were handwritten  
invoices which Mr Bianchi said had been completed by him. They referred to  
“surveying services” but gave no further details of the services provided or who had  
10 provided those services to Mr Bianchi through Chalfont or Palex. The total value of  
the invoices was £99,900 excluding VAT.

Mr Bianchi gave oral evidence to the Tribunal.

11. Mr Bianchi told us that he used Chalfont and Palex to provide an umbrella  
organisation under which a number of surveyors could provide their services and as a  
15 shelter from potential litigation against any of the individual surveyors. If a large  
property client was looking for surveying services they would approach an agency  
which provided surveying services who would in turn contact Chalfont or Palex. Mr  
Bianchi and his colleagues would then sometimes sub-contract their services to  
Chalfont and Palex to carry out the required surveying work.

20 12. Chalfont was set up in 2004 and Palex was set up in 2002. They were wound up  
in 2008 and 2009 respectively. Mr Bianchi provided his services to those companies  
but also received services from those companies; for example if he was asked to  
undertake a task for which he needed additional surveying services. He was not an  
employee of either of those companies.

25 13. Mr Bianchi retired in 2007 and spent the next two years travelling abroad with  
his wife while their house in the UK was being refurbished. All of his documents  
were put into storage and were not accessible by him or his accountant Mr Fass. That  
was why it had taken so long to give HMRC the evidence which they required.

30 14. When asked to explain what services had been provided by Chalfont and Palex  
to him Mr Bianchi gave rather confused answers, initially referring to work provided  
by him to those companies. He could not specify in any detail what work had been  
provided by Chalfont and Palex to him but said that this would have been done if he  
had been approached to undertake work which he could not do alone, when he would  
utilise the sub-contracted services of other surveyors through one of those companies.  
35 Initially both he and Mr Fass said that they did not have any further details of the  
services to which those invoices related.

15. During the course of the Tribunal hearing Mr Bianchi did say that he had further  
details of the work done for him by Chalfont and Palex in the form of a spreadsheet  
on his laptop, which he tried to extract during the Tribunal hearing. This information  
40 had not previously been seen by HMRC. It transpired that this information only  
provided dates and invoice amounts taken from Mr Bianchi’s own sales ledger rather

than any further information about the services provided by the companies to Mr Bianchi.

Mr Fass oral evidence.

16. Mr Fass told us that as Mr Bianchi's accountant he worked from information provided by Mr Bianchi, which he initially said included bank statements but later said amounted only to information provided by Mr Bianchi in the form of a spreadsheet and the company's VAT returns, to complete Mr Bianchi's accounts as a sole trader and his tax returns. Mr Fass said that he did not see the invoices provided to Mr Bianchi when he was completing Mr Bianchi's accounts and tax returns.

10 HMRC witness evidence

17. We also saw a written witness statement from Mr John Laity of HMRC who was Mr Bianchi's compliance officer. Mr Laity was not called to give oral evidence.

#### *Appellant's Argument*

18. The Appellant's argument was that the expenses were properly claimed as deductions in his 2005-6 tax return. There had been difficulties in providing the documents relating to those expenses to HMRC because of Mr Bianchi being abroad and the renovation work done at Mr Bianchi's property in the UK which meant that documents were not accessible. Documents had been provided in 2009 but HMRC were still refusing to accept the deductions claimed.

19. The Appellant also pointed out that the payments in question made to Chalfont and Palex had been declared and taxed in the hands of those entities and so should be deductible for the Appellant.

#### *HMRC's argument*

20. HMRC's argument was that the onus of proof was on Mr Bianchi to demonstrate that the expenses which he had claimed in his tax return were expenses wholly incurred for the purpose of his trade. The information provided by Mr Bianchi had not demonstrated that, or provided sufficient details of what the expenses actually related to at all. Mr Brown said that HMRC had not even been provided with evidence relating to the miscellaneous expenses claimed (£7,096), let alone for the larger sub-contractor payments (£32,050). HMRC pointed out to the Tribunal that the total of the invoices submitted by Mr Bianchi which he said related to 2005-6 exceeded Mr Bianchi's income for the year and were more than double the actual expenses claimed in his tax return.

#### *Decision*

35 Facts found:

21. The Tribunal found that HMRC had requested documents relating to the expense deductions claimed in Mr Bianchi's 2005-6 tax return on a number of

occasions but Mr Bianchi and his advisers had only provided the basic invoices which had been issued by Palex and Chalfont during 2005 and 2006.

22. HMRC's information requests had been made after Mr Bianchi had returned to the UK and Mr Bianchi had not explained why he had not been able to provide any other documents in support of his expense claims.

### **Conclusion**

23. In order to succeed in this appeal Mr Bianchi needs to demonstrate that the expenses which have been claimed can properly be treated as incurred wholly and exclusively for the purpose of his trade as a consultant quantity surveyor. On the basis of the evidence provided to the Tribunal and the evidence provided to HMRC during the rather lengthy process of resisting HMRC's closure notice, Mr Bianchi has failed to produce any evidence to substantiate the basis of these claims other than the generic invoices about which, when asked to do so by the Tribunal, he could provide no further details.

24. The fact that the disputed sub-contractor payments were taxed in the hands of the recipient companies, Palex and Chalfont is not relevant to the question of their deductibility by Mr Bianchi. Those entities are subject to corporation tax as separate taxable entities and there is no assumption in the UK tax code that there should be symmetry of tax treatment as between payer and recipient of payments such as these.

25. In these circumstances there is little doubt that the Appellant has failed to demonstrate for the purpose of s 34 ITTOIA that the expenses can be treated as deductible expenses incurred for the purposes of his trade and for that reason this appeal is dismissed

26. 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.

**RACHEL SHORT  
TRIBUNAL JUDGE**

**RELEASE DATE: 3 JUNE 2015**