



OUTER HOUSE, COURT OF SESSION

[2024] CSOH 1

P427/23

OPINION OF LORD ERICHT

In the petition

BUREAU WORKSPACE LIMITED

Petitioner

against

ADVOCATE GENERAL FOR THE COMMISSIONERS OF HMRC

Respondent

Petitioner: Simpson KC; Addleshaw Goddard
Respondent: Roxburgh; Office of the Advocate General

11 January 2024

Introduction

[1] Agents acting for a taxpayer sought to claim Research and Development Credit. Prior to the deadline for making the claim, they filed a return but did not file an accompanying corporation tax computation. The computation was not lodged until 20 days after the deadline. HMRC advised that it would not allow a late claim. The taxpayer brought judicial review proceedings seeking reduction of that refusal on two grounds. The first ground was that in refusing to process the claim because the claim was not accompanied by a corporation tax computation, HMRC had erred in law. The second ground was that, if there was no such error of law, the refusal was *Wednesbury* unreasonable.

The facts

[2] The Petitioner appointed Messrs Anderson Anderson Brown (the “Agents”) as its corporation tax advisors for the accounting period 1 January to 31 December 2020 (“AP20”). The Agents identified that the Petitioner was entitled to a Research and Development Expenditure Credit under section 1044 of the Corporation Tax Act 2009 (“RDEC”) in relation to AP20. The Agents then investigated the previous accounting period, AP19, and ascertained that the Petitioner was also entitled to an RDEC for AP19 in the amount of £349,346. As no claim for the RDEC for AP19 had been made in the Petitioner’s corporation tax return for AD19, the only means by which a claim for RDEC could be made was by amending that return (Finance Act 1988, schedule 18, para 83B). The deadline for such amendment was 31 December 2021.

[3] The Agents’ office was closing for the Christmas break on 23 December 2021. On that day the Agents filed online the return and corporation tax computation for AP20. At 18.32h that day they tried to file online the amended return and computation for AP19 but this was not successful. Instead, at some point after 19.05h, Agents filed online the amended return for AP19 without the accompanying corporation tax computation, and did not submit the computation by email. The Agents’ office was closed from 23 December until 4 January 2022 for the Christmas and New Year period. The deadline for filing the claim elapsed within the time when the office was closed.

[4] On 4 January 2022, the Agents contacted the HMRC by telephone to ascertain whether the claim was being processed, and was advised that the claim was not yet being processed and would be processed by 23 February 2022.

[5] On 13 January 2022, HMRC wrote to the Petitioner in the following terms (emphasis added):

“Thank you for sending us your Research and Development (R&D) claim dated 31 December 2019 for the above company.

This is for the accounting period from 1 January 2019 to 31 December 2019.

We are unable to deal with your R&D claim. This is because it is an incorrect format and is incomplete. The format does not meet the conditions set out in Schedule 18 of the Finance Act 1998 (paragraph 15 (2) and (3)).

What you need to do now

We need more information from you so we can deal with your R&D claim.

When you send us your R&D claim, you must include:

- your Corporation Tax return completed correctly and in full for all the relevant boxes (including the signature declaration box)
- computations for the relevant accounting period
- accounts for the relevant accounting period
- attach CT600L (2021) version 3

These requirements have been in place since 1 April 2019.

However, since 6 April 2021 we have introduced the CT600L supplementary page for R&D claims. This provides an additional breakdown to an R&D claim.

.....

Please submit computations to support 2019 claim I have processed and refunded 2020 today

You must send us the required information in the correct format so that we can deal with the claim.

...

Information for future claims

When you send us a Corporation Tax return that includes a claim for R&D, we also need all the correct information to support the claim. The information and the return must be for the same year. You can use the online service to send us this information.

We cannot accept a Corporation Tax return form on its own.

Please note that an amended return with an R&D claim must be sent to us within the time limit. The time limit for this is set out in Schedule 18 of the Finance Act 1998 (paragraph 83E (2)).

A claim for R&D relief can be made up to 2 years after the end of the accounting period it relates to.

If your R&D claim is for a period of 12 months or more, you should submit a separate claim for each accounting period. You should do this using a Corporation Tax return.”

[6] On 19 January 2022, the Agents telephoned HMRC’s general corporation tax helpline, which was not able to state whether the claim would be validly made if the corporation tax return were re-submitted. On 20 January 2022, the Agents emailed HMRC as follows:

“Following the re-submission of the above-named company's computation with related R&D claim for the 31 December 2019 year end, we received a letter dated 13th January 2022 explaining that we needed to provide further information. We understand that the computation was missing from the amended submission, for completeness please see attached the following documents to support the R&D claim:

- Corporation Tax Return with CT600L
- Corporate Tax Computation
- Accounts for the period ending 31 December 2019
- R&D report

I should be grateful if you could please confirm receipt of the attached documents and for the 2019 claim to be updated.”

[7] By letter dated 10 February 2022, HMRC wrote to the Agents as follows:

“I write regarding your email dated 20 January 2022 concerning your client’s R&D claim for the period ended 31 December 2019.

The time limit for submitting a claim mirrors the time-limit for submitting a corporation tax return, i.e. a return/claim should be submitted within 12 months following the accounting period end and any amendment to that return should be submitted within 12 months following that date, i.e. for an account period ended

31 December 2019 a return should be submitted on or before 31 December 2020 and any amendment on or before 31 December 2021.

I must therefore advise you that this submission is 'out of time'. In *exceptional* circumstances submissions made out of time *may* be accepted but only where these circumstances fit the criteria as described in SP5/01. I would refer you to the attached copy and in particular paragraphs 9-13.

Please note that although SP5/01 does not expressly mention R&D claims, such claims are subject to the same time restraints.

At this stage, a decision has not yet been made about whether the claim can be accepted, or not. If you feel that the reasons for the late submission meet the requirements, please write to me at the address above by 11 April 2022 stating that the claim is being made under the provisions of SP5/01 and giving the reasons for the delay...."

[8] HMRC's statement of Practice 5 (2001) (SP5/01) was attached to that letter. SP5/01 sets out HMRC's approach to late claims as follows:

"The Commissioners for HMRC's approach to extending time limits for making claims

9. The time limits allowed for making claims to loss relief, capital allowances and group relief under CTSA and the further provisions described above should generally be adequate and the Commissioners for HMRC will not make routine use of their powers to accept claims made outside these limits. But the Commissioners for HMRC recognise that there may be exceptional reasons why a claim is not made within the time specified. Applications to allow further time in accordance with the powers referred to at paragraph 1 above will be considered with the assistance of the following criteria.

10. In general, the Commissioners for HMRC's approach will be to admit claims which could not have been made within the statutory time limits for reasons beyond the company's control. This would include, for example, cases where:

- at the date of the expiry of the time limit, the company or its agents were unaware of profits against which the company could claim relief
- the amount of a profit or loss depended on discussions with an Inspector which were not complete when the time limit expired, and the delay in agreeing figures is not substantially the fault of the company or its agents.

In such cases the Commissioners for HMRC's approach will be to admit late claims up to the amount of the profit or loss in question. Where the claim involves the

withdrawal of an existing claim and the making of a fresh claim, the Commissioners for HMRC's approach will be to admit these to the extent of the profit or loss in question. Claims which go beyond this and affect profits which were not in dispute at the time of expiry of the statutory time limits will not be within this approach.

Reasons beyond the company's control would also include a claim where all of the following 4 features were present:

- an officer of the company was ill or otherwise absent for a good reason
- the absence or illness arose at a critical time and prevented the making of a claim within the normal time limit
- there was good reason why the claim was not made before the time of the absence or illness
- there was no other person who could have made the claim on the company's behalf within the normal time limit.

11. The Commissioners for HMRC would not, however, regard the following as reasons beyond the company's control:

- oversight or negligence on the part of a claimant company or its agent
- failure, without good reason, to compute the necessary figure *the wish to avoid commitment pending clarification of the effects of making a claim
- illness or absence of an agent or adviser to the company

12. There may be cases falling outside the general approach outlined in paragraph 10 where it would nevertheless be unreasonable, given the overall circumstances of the case, for the Commissioners for HMRC to refuse a late claim. It is likely that such cases will involve a combination of factors, but the following criteria may be relevant:

- the reason why a claim is late - where the reason does not in itself warrant admission of the claim under the approach outlined above, it will still be taken into account by the Commissioners for HMRC in assessing the circumstances as a whole
- the extent to which it is late
- the consequences for the company if the claim is refused
- any particularly unusual features

For the purpose of this paragraph and those above, if the late claim forms part of a scheme or arrangement, the main purpose or one of the main purposes of which is the avoidance of tax (including the payment of tax), then that will be taken into account in the Commissioners for HMRC's approach."

[9] On 3 March (the "Request Letter"), the Agents requested HMRC to process the AP19 claim as follows:

"We are writing in response to your recent correspondence on our above client received on 10 February 2022. Our email dated 20 January was a response to your original correspondence on 13 January 2022, all attached for reference.

An amended Corporation Tax return (CT600 and CT600L) was submitted for the above named client for the accounting period 1 January 2019 to 31 December 2019 which included the R&D claim, this amended return was submitted to HMRC on 23 December 2021. Our normal procedure is to attach a copy of the computation with the claim however we were having an issue with our CT software at that time. We were keen to get the claim in so submitted the amended return and R&D report.

Following your original letter on 13 January 2022 in relation to our above named clients R&D claim for the accounting period 1 January 2019 to 31 December 2019, requesting for the computation required to support the R&D claim, we responded on 20 January 2022 with the requested computation via email, I have attached for reference. We were under the impression that when the additional information was provided to HMRC the amendment would be processed, there was no mention of a claim being out of time in your original letter of 13 January. It was not until we then received your letter on 10 February 2022 stating that the claim for R&D was outwith the time-limit for a claim.

Our amended return was made on 23 December 2021 and therefore within the time limit of 31 December 2021. We understood from the letter on 13 January 2022 that the computations were not attached to the amended submission and, from your letter on 13 January 2022, that we were to 'submit computations to support 2019 claim' which we understood would allow the R&D claim to be processed. Furthermore, as the 31 December 2019 return was an amended return, the computations had previously been submitted on original submission, excluding the R&D claim that was included on the amended Corporation Tax return with CT600L.

I would be grateful if you could please process the R&D claim for the 31 December 2019 period now that we have provided the computations to support the R&D claim made on 23 December 2021, as requested in your letter on 13 January 2022."

[10] The Agents sent a further letter to HMRC dated 8 July setting out their point of view and including the following:

"SUBMISSION ISSUES

.. there were technical issues with Alphatax and/or the HMRC portal when we initially tried to submit the amended 31st December 2019 Corporation Tax return with the inclusion of the computation.

We have attached the E filing report which shows the audit trail of the submission and documents attached on the filing request. This shows the "failed" submission which refers to the HMRC website that is no longer available. We understood on the 23rd December 2021 that this related to the computation being attached on the submission and HMRC would reject this submission because of the attached computation.

With HMRC, Alphatax and our offices being closed for most of the days over the Christmas period up to the 31st December 2021, we submitted the Corporation Tax return without the computation to ensure that the R&D claim was made prior to the 31st December 2021 deadline. This was successful on 23rd December 2021 as seen from the E filing report attached. Just to emphasise that the 31st December 2019 was an amended return and the computation had already been submitted, albeit without the R&D figures and other amendments made in the amended Corporation Tax return.

...

We replied to [HMRC's letter of 10 February] on 3rd March 2022, as attached, stating the Alphatax/HMRC technical issue and reference to the original 13th January 2022 letter, referring to the request for the computation to be provided in order to process the 2019 R&D claim.

CLIENT IMPACT

In addition to the submission issues, we would like to emphasise the reliance that [the Petitioner has] on the R&D repayments and claims.

The shareholders of [the Petitioner] had acquired the business from an insolvent group "Houseology Design Group Limited" who were in liquidation at the time. A significant investment was required into [the Petitioner] to turn the business around with the R&D claims being large factor in keeping [the Petitioner] trading.

Based on the evidence provided, we consider that all relevant information was provided in time when requested following the submission issues. We therefore consider that the 31st December 2019 claim should be processed and removed from the Out of Time/Late Claims."

[11] By letter dated 23 February 2023, (the "Decision Letter") HMRC advised the

Petitioner that HMRC would not use its powers under paragraph 83A (2) Schedule 18

FA 1998 to allow the late claim for the period ending 31 December 2019. The time limit for

R&D claims was at para 83E(1) Schedule 18FA 98. The only recourse where time limits had expired was para 83E(2) and the provisions of SP05/01. The letter summarised the relevant paragraphs SP05/01 and then continued:

“Application of SP 05/01

1. For the purposes of the Taxes Acts it is the responsibility of the Company to ensure that it makes its appropriate claims at the correct time and only exceptional cases for lateness can be admitted under SP 05/01.
2. It was always within the Company’s control to make the R&D claim and the Company has managed to fulfil its other statutory requirements at the correct time. In coming to my decision, I have considered that the statute on R&D claims is clear and that the legislation has been in place for many years. Furthermore, it has attracted wide publicity within many professional fields and within the accountancy profession.
3. The timeframe is given by Parliament, and it has proved long enough for other companies. HMRC has to exercise its administrative discretion in a fair and equitable way. Fair treatment must include dealing with all taxpayers equitably.

Paragraphs 9 to 11

Paragraphs 9 & 10 of SP5/01 explain that, while HMRC recognises there may be exceptional reasons why a claim is not made within the statutory time limit, it will not make routine use of its power to allow claims made outside the statutory time limits. In general, HMRC’s approach will be to admit claims which could not have been made within the time limits due to circumstances beyond the company’s control. Paragraph 11 of SP5/01 makes it clear that HMRC will not consider oversight or negligence on the part of the company of agent to be something beyond the company’s control.

You have suggested that the claim was not late. This is incorrect. The time limit for making the claim is the anniversary of the statutory filing date for the return in which the claim is made. In this case that was 31 December 2021. Any claim received after that date is late. The amendment made to the return on 23 December 2021 did not make a valid claim for relief, due to the absence of computations, and the claim received on 20 January 2022 was late.

Since 1 April 2019 there is a requirement that any claim for R&D relief, payable tax credit or RDEC made in an amendment to a return must be accompanied by completed CT600 and computations. This was notified to agents in Agent Update 70, published on 21 February 2019.

You appear to be under the misapprehension that, because computations had been delivered with the company's original return, the requirement had been met. This is incorrect.

First, the requirement is to provide the computation with the claim not at some point in the past.

Second, R&D relief is an additional deduction in calculating a company's trade profit chargeable to tax and making a claim reduces the company's profit or increases a loss. By definition, if the company intended to claim R&D relief in an amendment to the return, the original computations were incorrect. There would be little point in HMRC requiring computations if they did not reflect the claim.

You have pointed to HMRC's initial correspondence failing to point out that the claim was late. In fact, when HMRC wrote to the company on 13 January 2022 there was no late claim. The amendment received on 23 December 2021 did not make a claim. When you provided the correct documentation to make a claim on 20 January 2022 that claim was late.

You have claimed that you were unable to attach computations to the amendment for this period on 23 December 2021 due to issues with your software, Alphatax. However, you were able to deliver the same company's return for the following period with a computation on 23 December 2021. Without further explanation it is difficult to see how this occurred.

However, even if HMRC accepts that software issues prevented the delivery of computations, the fact remains that you failed to take any action to rectify the situation until contacted by HMRC.

It was the responsibility of the officers of the company and their advisers to be aware of the correct procedure for making a claim and to follow it. They failed to do so and, further, having failed to provide a computation took no action to rectify the situation until contacted by HMRC.

The claim was not delayed by any circumstances beyond the company's control. It is more likely that the cause was oversight or negligence on the part of the company or its authorised representatives in failing to take steps to deliver the computations before 31 December 2021 despite knowing that they had not been provided.

Paragraph 12

The public body must give attention to the particular circumstances taking account of all relevant considerations and not taking account of any irrelevant consideration in order to reach a rational and reasonable decision; that is a decision not so unreasonable that no reasonable person properly directing themselves could have taken it.

The reason the claim was late has been considered above.

In particular, Para 12 mentions 4 specific points to consider amongst other things, these being:

- The reason the claim is late.
- The degree of lateness.
- The consequences of refusal.
- Any unusual features.

The claim was twenty days late. While this may not be considered an excessive delay, you were fully aware that they had failed to provide computations and took no action until contacted by HMRC.

A review of the most recent financial statements provides no reason to believe that rejection of the claim will materially affect the long-term viability of the company.

There are no other unusual circumstances.

Nothing beyond the company's control prevented the claim being delivered with the time limits."

Statutory provisions

[12] Schedule 18 to the Finance Act 1998 includes the following paragraphs:

"15.—

- (1) A company may amend its company tax return by notice to an officer of Revenue and Customs.
- (2) The notice must be in such form as an officer of Revenue and Customs may require.
- (3) The notice must contain such information and be accompanied by such statements as the Inland Revenue may reasonably require.
- (4) Except as otherwise provided, an amendment may not be made more than twelve months after-
 - (a) the filing date, or
 - (b) in the case of a return for the wrong period, what would be the filing date if the period for which the return was made were an accounting period.

...

83B.— Claim to be included in company tax return

- (1) A claim [for RDECs] must be made by being included in the claimant company's company tax return for the accounting period for which the claim is made.
- (2) It may be included in the return originally made or by amendment.

83C. Content of claim

A claim [for RDECs] must specify the amount of the credit or relief claimed, which must be an amount quantified at the time the claim is made.

83D. Amendment or withdrawal of claim

A claim [for RDECs] may be amended or withdrawn by the claimant company only by amending its company tax return.

83E.

- (1) a claim [for RDECs] may be made....at any time up to the last day of the period of—
 - (a) two years beginning with the last day of the period of account....,
- (5) A claim [for RDECs] may be made, amended or withdrawn after the end of the period mentioned in sub-paragraph (1)... if an officer of Revenue and Customs allows it."

HMRC publications***HMRC Agent Update Issue 70***

[13] HMRC *Agent Update Issue 70* February-March 2019 (Update 70) states:

"Claims for Research and Development reliefs or Creatives Tax Reliefs which form a part of an amended return

From 1 April 2019 all claims for research and Development reliefswhich form a part of an amended return must include a completed CT600 and a Corporation Tax computation.

Those items can be included as enclosures to an email. Potential claims without both the completed CT600 and computations will be returned.

...

The changes do not affect amendments which are made electronically.

When the new rules commence details will be included in pages of the Corporate Intangibles Research and Development Manual ([CIRD81800](#) and [CIRD89705](#)) and in the [Company Taxation Manual](#) on GOV.UK.”

HMRC Corporate Intangibles Research and Development Manual CIRD81800

[14] HMRC manual CIRD81800 *Claims and Time Limits* states (emphasis added):

“R&D tax reliefs are not a mandatory adjustment to the profit of an accounting period. A claim must be made for the extra deduction.

...

Claims made in an amendment to a Corporation Tax Self Assessment (CTSA) Return

From 1 April 2019 all R&D claims which are made in an amendment to a return need to include a completed CT600 and a corporation tax computation.

Most amendments to a return are made through the Corporation Tax Online Service ... and already include a completed CT600 and a corporation tax computation. Those claims are not affected by this change. However, **where the corporation Tax Online Service is used to make an amendment to a return but a company does not include both a completed CT600 and a corporation tax computation no valid claim will have been made until both documents have been received. Any missing document can be included as an enclosure to an email.**

...

Late claims

Where there is a late claim it should be dealt with in accordance with the guidance at Statement of Practice SP05/01. While this does not specifically refer to R&D payable tax credits, the approach is a general one that HMRC adopt.

HMRC Corporate Intangibles Research and Development Manual CIRD89705

[15] CIRD 89705 *R&D Tax Reliefs: Overview* states (emphasis added):

“From 1 April 2019 all R&D claims which are made in an amendment to a return need to include a completed CT600 and a corporation tax computation.

Most amendments to a return are made through the Corporation Tax Online Service ... and already include a completed CT600 and a corporation tax computation. Those claims are not affected by this change. However, **where the corporation Tax Online Service is used to make an amendment to a return but a company does not include both a completed CT600 and a corporation tax computation no valid claim will have been made until both documents have been received. Any missing document can be included as an enclosure to an email.**"

HMRC Company Taxation Manual CTM93300

[16] *HMRC Company Taxation Manual CTM93300 CTSA: Amended Returns* states

(emphasis added):

"Under FA/SCH18/PARA15 a company can amend information originally entered in its return and make corresponding amendments to its SA...

...

Currently, HMRC does not propose to prescribe the form and content of an amended return, or to provide an official form for amended returns.

Instead, companies and their agents can amend company tax returns informally, in correspondence.

The only exception to this is if the amendment to the return involves Research and development reliefs.... Details about the form and content required for these reliefs are in the R&D Manual (CIRD81800)"

First Ground: Error in law

Submissions for the Petitioner

[17] Counsel for the Petitioner submitted that no requirement that the corporation tax computation be filed at the same time as the amended return had been imposed in terms of paragraph 15 of schedule 18 of the Finance Act 1998. HMRC manuals do not purport to be the means by which any officer imposes a requirement under para 15(2) of Schedule 18 to the Finance Act 1998. In any event, the manuals do not make clear that where an amendment is made by corporation tax return by electronic means the amendment must

include or be accompanied by a corporation tax computation. Agent Update 70 described itself as concerning changes that do not effect amendments which are made electronically.

[18] In refusing to process the claim on the ground that a corporation tax computation was not included with the amended corporation tax return, HMRC erred in law, because where an amended return is submitted electronically, neither HMRC nor any of its officers have required that a corporation tax computation must be included in or accompany it.

Submissions for HMRC

[19] Counsel for HMRC submitted that it was clear from the opening line of CIRD81800 that all RDTC claims that are made in an amendment to a return must include both the CD600 and a corporation tax computation. As a matter of plain language, that included all claims whether made on the online portal or not. The matter was put beyond doubt in the second section which stated that no valid claim would have to be made until both documents had been received.

Analysis and decision

[20] A claim for RDEC must be made by being included in the claimant company's tax return for the accounting period for which the claim is made, either in the original return or by amendment (para 83B of Schedule 18 to the Finance Act 1998). The deadline for submitting an amended claim is two years (para 83E). A company may amend its tax return by notice to HMRC in such form as an officer of HMRC may require, and must contain such information and be accompanied by such statements as HMRC may reasonably require (para 15)

[21] In this case, the deadline for the submission of an amended claim by the Petitioner was 31 December 2021. The Petitioner's position is that the submission of the amended return without a corporation tax computation on 23 December 2021 constituted a valid claim, and therefore the claim had been submitted before the deadline and should have been considered. HMRC's position is that the submission of the amended return without the corporation tax computation was not a valid claim, and therefore the claim had not been submitted before the deadline.

[22] This issue turns on whether there was a requirement on the taxpayer to include the computation with the amended return. There is no doubt that HMRC has the power to impose such a requirement: a notice amending a return must be in such form as an officer of HMRC may require and must contain such information and be accompanied by such statements as HMRC may reasonably require (para 15 (2) and (3), schedule 18, Finance Act 1998).

[23] In my opinion, there was such a requirement. There is no formal mechanism set out in the legislation with which HMRC must comply in order to impose requirements under para 15(2) or (3). HMRC has set out its requirements in the HMRC Manual CTM 93300 and CIR 81800 and 89705 and communicated its requirements to agents in Agent Update 70. Although HMRC Manuals contain guidance for HMRC staff, they are published and constitute a public record of the requirements which HMRC has imposed under para 15(2) and (3).

[24] CTM93300 makes it clear that although HMRC does not normally prescribe the form and content of an amended return, it does so if the amendment involves Research and Development.

[25] HMRC sets out in CIRD 81800 and 89705 its requirements for the form and content of a Research and Development claim which is made in an amended return. CIRD 81800 and 89705 make it very clear that HMRC requires such a claim to include a corporation tax computation. Both CIRD 81800 and 89705 contain the following wording:

“From 1 April 2019 all R&D claims which are made in an amendment to a return need to include a completed CT600 and a corporation tax computation. However, where the corporation Tax Online Service is used to make an amendment to a return but a company does not include both a completed CT600 and a corporation tax computation no valid claim will have been made until both documents have been received. Any missing document can be included as an enclosure to an email.

[26] This requirement was communicated to agents in HMRC Agent Update 70. The Update made clear that the requirements would be set out in detail in CIRD81800 and CIRD89705, and referred agents to these documents for the details. The Update states :

“From 1 April 2019 all claims for research and Development reliefs..... which form a part of an amended return must include a completed CT600 and a Corporation Tax computation.

Those items can be included as enclosures to an email. Potential claims without both the completed CT600 and computations will be returned.

The changes do not affect amendments which are made electronically.

When the new rules commence details will be included in pages of the Corporate Intangibles Research and Development Manual (CIRD81800 and CIRD89705) and in the Company Taxation Manual on GOV.UK.”

[27] The Petitioner founds its argument that the changes do not apply to electronic submissions on the sentence “The changes do not affect amendment which are made electronically”. However that sentence is a brief summary of the details set out in CIRD81800 and CIRD89705, to which agents are referred by Update 70. It is CIRD81800 and CIRD89705, and not the summary in Update 70, which set out the requirements under para 15(2) and (3) of Schedule 18. CIRD81800 and CIRD89705 state that electronic claims

which include a completed CT600 and a corporation tax computation are not affected by the change, but where a company does not include both a completed CT600 and a corporation tax computation no valid claim will have been made.

[28] In these circumstances I find that HMRC has imposed a requirement in terms of para 15(2) and (3) of Schedule 18 to the Finance Act 1998 that claims which are made in an amendment to a return need to include a corporation tax computation. It follows that HMRC made no error of law in rejecting the claim as being incomplete.

Ground 2: *Wednesbury* unreasonableness

Submissions for the Petitioner

[29] Counsel for the Petitioner submitted that HMRC's decision to refuse to process the claim was unreasonable. Schedule 18 Finance Act 1998 conferred a discretion on the HMRC (para 83E) to allow a claim to be made after the time limit. The circumstances were (a) the existence and the amount of the claim were notified within the time limit; (b) there was a genuine attempt to file the corporation tax computation; (c) the documents that were filed included all the information that would have enabled the HMRC to draw up the relevant corporation tax computation; (d) the reason no further steps were taken until after the time limit had expired was the intervening holiday period; (e) as soon as the holiday was over, the Petitioner's agents took proactive steps; (f) on receipt of the letter dated 13 January 2022, the Petitioner's agents took proactive steps to contact HMRC; (g) the missing corporation tax computation was filed only 20 days late, on 20 January 2022; (h) HMRC cannot reasonably have expected finality as at 20 January 2022; (i) the respondent would suffer no material prejudice if required to process the claim; (j) if the prayer of the petition is granted the respondents will be able to consider the claim in the normal way; (k) if the prayer is

refused the petitioner would lose entitlement to a relatively large amount of tax relief.

Weighed against this was little more than the fact that the corporation tax computation was not filed before the time limit expired.

[30] Counsel referred to *HMRC Petitioners* 2005 SLT 1061 and *Martland v HMRC* [2018] UKUT 178 (TCC).

Submissions for HMRC

[31] Under reference to *M v Scottish Minister* 2013 SLT 875 at [98] and *R v Minister of Defence ex p Smith* [1996] QB 517 at page 554, counsel for HMRC submitted that irrationality represented a substantial hurdle for the petitioner to overcome. A request under paragraph 83(2) involved the exercise of a statutory discretion on the part of the officer in question (*HMRC Ptrs* at paras [22]-[24]). The policy applied by HMRC in statement of practice SP5/01 was consistent with the case law. In reaching a decision contained in a letter of 23 February 2023, HMRC had applied the approach set out in that statement of practice. The decision came within the range of decisions open to a reasonable tax authority, on the basis of information which was put before it. Fresh evidence should only be considered in very limited circumstances *R v Secretary of State for the Environment ex p Powis* [1981] 1 WLR 584, *E v Secretary of State for the Home Department* 2004 QB 1044 at [66].

Analysis and decision

[32] As I have held in respect of the first ground that the claim was invalid at the deadline of 31 December 2021, I now turn to consider the refusal of HMRC to extend that deadline to 20 January 2022, when the missing computation was provided.

[33] HMRC has a statutory discretion under paragraph 83(A)(2) of Schedule 18 of the Finance Act 1998 to allow a claim which is submitted after the deadline. It has set out in SP05/01 how it will go about exercising its discretion.

[34] In this case, HMRC took account of SP05/01 and exercised its discretion against allowing the late claim. In my opinion in exercising that discretion HMRC came to a decision which was open to a reasonable tax authority on the basis of the information which was put before it.

[35] The exercise of such a discretion was considered in *HMRC Ptrs*. That case concerned a statutory discretion under section 49 of the Taxes Management Act 1970 to allow a late appeal against an assessment. Lord Drummond Young said:

“[22] Section 49 is a provision that is designed to permit appeals out of time. As such, it should in my opinion be viewed in the same context as other provisions designed to allow legal proceedings to be brought even though a time limit has expired. The central provision of such features is that they are exceptional in nature; the normal case is covered by the time limit, and particular reasons must be shown for disregarding that limit. The limit must be regarded as the judgement of the legislature as to the appropriate time within which proceedings must be brought in the normal case, and particular reasons must be shown if a claimant or appellant is to raise proceedings, or institute an appeal, beyond the period chosen by Parliament.

[23] Certain considerations are typically relevant to the question of whether proceedings should be allowed beyond a time limit. In relation to a late appeal of the sort contemplated by s 49, these include the following; it need hardly be added that the list is not intended to be comprehensive. First, is there a reasonable excuse for not observing the time limit, for example because the appellant was not aware and could not with reasonable diligence have become aware that there were grounds for an appeal? If the delay is in part caused by the actings of the Revenue, that could be a very significant factor in deciding that there is a reasonable excuse. Secondly, once the excuse has ceased to operate, for example because the appellant became aware of the possibility of an appeal, have matters proceeded with reasonable expedition? Thirdly, is there prejudice to one or other party if the appeal is allowed to proceed, or if it is refused? Fourthly, are there considerations affecting the public interest if the appeal is allowed to proceed, or if permission is refused? The public interest may give rise to a number of issues. One is the policy of finality in litigation and other legal proceedings; matters have to be brought to a conclusion within a reasonable time, without the possibility of being reopened.”

[36] The grounds on which the Petitioner requested HMRC to exercise its discretion and allow a late claim in this case were set out in the Request Letter, with further information being provided in the letter of 8 July. HMRC responded in the Decision Letter.

[37] In the Decision Letter HMRC noted that only exceptional cases for lateness can be admitted under SP 05/01, and that the timeframe had been given by Parliament. That is unimpeachable and accords with the *dicta* of Lord Drummond Young.

[38] The Decision Letter considers the circumstances and concludes that the claim was not delayed by any circumstances beyond the company's control and it was more likely that the cause was oversight or negligence on the part of the company or its authorised representatives in failing to take steps to deliver the computations before 31 December 2021 despite knowing that they had not been provided.

[39] In my opinion HMRC was entitled to come to that conclusion. The Agents were aware of the correct procedure and attempted to follow it: in the Request Letter they state that their normal procedure was to attach a copy of the computation. Agents attempted and succeeded in sending the computation for AP20. They attempted and failed in sending the computation for AP19. Having failed to send the computation on-line on 23 December, they did not attempt to send it on any subsequent day prior to the deadline of 31 December. Nor did they follow the alternative procedure (which was set out in Agent Update 70, CIRD81800 and CIRD 89705) of sending the computation by email.

[40] The Decision Letter also addresses and rejects the argument made by Agents in the Request Letter that the computations had previously been submitted. The Decision Letter concludes that the requirement to lodge computations with an amended return is not met by the computations having been delivered with the original return because firstly, the requirement was to provide the computations with the amended claim, and secondly that if

the company now intended to claim relief the original computations were incorrect. In my opinion HMRC were entitled to come to that conclusion for the reasons it gave. The reasons given are not unreasonable in the *Wednesbury* sense.

[41] In the petition the Petitioner elaborates on the argument made in the Request Letter that the computations had been previously submitted. It makes the further point that the documents that were filed included all the information that would have enabled the HMRC to draw up the computation. In my opinion that gets the Petitioner no further. Our tax system does not operate on the basis that a taxpayer provides some information to HMRC and HMRC then analyses whatever past and current financial information it has so that HMRC can work out whether the taxpayer has a claim. It operates on the basis that there is a statutory framework which sets out what a taxpayer must lodge in order to make a claim. If the taxpayer fails to lodge the information or computation required by statute, HMRC is under no obligation to try to work out for itself what that information is or to draw up the computation which the taxpayer has failed to provide. It follows that even if HMRC could itself have worked out the computation on the basis of the amended claim and the original computation, it was not obliged to do so and was entitled to exercise its discretion so as to disallow a late claim.

[42] The Decision Letter then goes on to address the Agents' claim that they were unable to attach computations due to issues with the Agents' software.

[43] In the Petition the Petitioner avers that it is believed that the failure of the submission that included the computation was due to a problem within the Respondents' systems. That is a material change of position by the Petitioner. In the Request Letter the Agents identify the problem as being with the Agents' system alone: the Request Letter states "we were having an issue with our CT software at that time" and makes no mention of any problems

with HMRC's systems. In the Letter of 8 July the Agents modified their position as to the problem being "with Alphatax [i.e. the Agent's system] and/or the HMRC Portal". In coming to its conclusion that the claim was not delayed by any circumstances beyond the company's control and it was more likely that the cause was oversight or negligence on the part of the company, the Decision Letter HMRC was entitled to proceed on the basis of the facts put before it by the Agent, rather than the different factual position now set out in the petition. The Decision Letter noted that it was difficult to see how if there were software issues Agents managed to deliver the computation for period AP20. It stated that even if HMRC accepted that software issues prevented the delivery of computations, the fact remained that Agents failed to take any action to rectify the situation. As Agents failed to rectify the situation by submitting the computation online or by email prior to 31 December, it was not *Wednesbury* unreasonable for the Decision Letter to conclude that the cause was oversight or negligence.

[44] The Decision Letter then stated that having failed to provide a computation Agents took no action to rectify the situation until contacted by HMRC. This is challenged by the Petitioner on the ground that the reason no further steps were taken until after the time limit had expired was the intervening holiday period, and as soon as the holiday was over Agents took proactive steps by contacting the helpline. That challenge to the way in which HMRC exercised its discretion fails on a number of counts. Firstly, the Agents took no action between 23 December, when they knew that the attempt to lodge the computation had failed, and the deadline of 31 December. They could have emailed the computation on 23 December itself, or between 23 December and the deadline if they continued to have a difficulty with submitting on-line: CIR81800 and CIR8 89705 explicitly state that:

“where the corporation tax online service is used to make an amendment to a return but a company does not include... a corporation tax computation....any missing document can be included as an enclosure to an email”.

Secondly, it is no excuse that the Agents' offices were closed for the holiday period from 23 December 2021 to 4 January 2022. Where deadlines occur during a holiday period agents should put in place arrangements to ensure that the deadlines are met, for example by successfully lodging claims well in advance of the holiday closure, or by continuing to work during the holiday period to meet the deadlines. The Agents did have such arrangements in place: employees were required to work during the December break should client deadlines require it. There was ample time between 23 and 31 December for Agents to make further attempts to lodge the claim and computation on line (as they had successfully done with the AP 20 claim) or to submit the computation by email. The telephone call by Agents to HMRC on 4 January 2022 was not an attempt to lodge the computation but merely a query about the timing of processing. It was not until after receipt of the HMRC letter of 13 January that the Agents submitted the missing computation.

[45] A further ground of challenge by the Petitioner is that the computation was filed only 20 days late. In accordance with para 12 of the SP05/01 the Decision Letter gives consideration to the degree of lateness. It concludes that while 20 days may not be considered an excessive delay, Agents were fully aware that they had failed to provide computations and took no action until contacted by HMRC. In my opinion, that conclusion falls within the range of reasonable conclusions which would be available to a decision maker. While another decision maker might have taken a different view in respect of the 20 day delay, it cannot be said that in exercising its discretion no reasonable decision maker would have come to the decision which HMRC did on the delay. HMRC came to a balanced decision on the question of delay. It recognised that the delay was a short one, but also took

into account the failure of the Agents to rectify the situation, of which they were fully aware, by providing the computation online or by email either before 31 December or thereafter, until HMRC raised it with them on 13 January.

[46] I do not accept the Petitioner's argument that HMRC could not reasonably have expected finality as at 20 January. Where there is a statutory deadline, both a taxpayer and HMRC are entitled to expect finality at the deadline. It then becomes a matter for the discretion of HMRC as to whether to extend the deadline, taking into account all relevant circumstances.

[47] The Petitioner also challenges the Decision Letter in respect of prejudice. In the letter of 8 July the Agents raised the issue of Client Impact, emphasising the reliance that the Petitioner has on R&D claims, with the R&D claims being a large factor in keeping the Petitioner trading. This was considered in the Decision Letter, and the conclusion reached was that a review of the most recent financial statements provided no reason to believe that rejection of the claim would materially affect the long-term viability of the company. That conclusion was not specifically challenged in this Petition, and in any event was a conclusion HMRC were entitled to reach. Instead the Petitioner advanced an argument that the Respondents would suffer no material prejudice if they were required to process the claim, whereas refusal to allow the late claim would prejudice the Petitioner as it would lose an entitlement to a relatively large amount of tax relief. In my opinion, that could be said of any situation in which a taxpayer missed a deadline, and, when all the circumstances are considered, does not make it unreasonable to refuse to extend the deadline in this case.

Order

[48] For these reasons the petition is refused. I reserve all questions of expenses in the meantime.