



TC06293

Appeal number: TC/2016/04356

Income tax - appeal against closure notice - whether payments to son as wages whilst at university were deductible as an expense wholly and exclusively incurred for the purposes of trade - on the facts no - whether HMRC amendments correct - yes - appeal dismissed - amendments confirmed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ALAN NICHOLSON

Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL CONNELL
 MEMBER SHAMEEN AKHTAR**

**Sitting in public at Alexandra House, The Parsonage, Manchester on 3 October
2017**

The Appellant in person

Mr Aidan Boal, Officer of HMRC, for the Respondents

DECISION

The Appeal

1. This is an appeal by Alan Nicholson (“the Appellant”) against the decision of the Respondents (“HMRC”) dated 26 February 2016, as amended on 25 May 2016 to disallow, under s 9A of the Taxes Management Act 2007 (“TMA 1970”), wages paid to his son as expenses claimed on his self-assessment tax returns against his self-employment income in respect of the year ending 5 April 2014.

2. The point at issue is whether an amount of £7,400, claimed to be wages paid to Mark Nicholson, was incurred wholly and exclusively for the purpose of the Appellant’s trade and deductible against his self-employment income.

Background

3. The Appellant submitted his 2013-14 SA Return on 13 June 2014. The return included a claim for expenses of £23,511.

4. On 19 May 2015 HMRC opened a s 9A enquiry into the return. The purpose of the s 9A Enquiry was to verify the validity and accuracy of the expenses of £23,511 being claimed against business income.

The expenses breakdown was stated as follows:

As per receipts -	9,511.00
Wages to J. Nicholson -	4,650.00
Wages to Mark Nicholson -	7,400.00
Accounts -	150.00
Use of home -	1,800.00
TOTAL--	<u>23,511.00</u>

5. The information and evidence provided by the Appellant was sufficient for HMRC to initially accept allowable expenses to the extent of £9,036.77. The remaining expenditure was disallowed.

6. On 26 February 2016, HMRC issued a Closure Notice under s 28A TMA 1970, and amended the 2013-14 tax calculations to reflect reduced expenses.

7. On 4 April 2016 the Appellant appealed against the 2013-14 Closure Notice and Amendment, and provided further information and evidence regarding the disallowed expenses. The further information and evidence allowed HMRC to accept as allowable further expenses of £4,690. The allowance of further expenses reduced the additional tax from £4,197.76 to £2,837.00.

8. Of the remaining disallowed expenditure amounting to £9,785, only £7,400 is now in dispute. This sum relates to wages alleged to have been paid to Mark Nicholson, the son of the Appellant.

9. The Appellant had claimed for wages to Mark Nicholson of £7,400 based on 15 hours per week at £10.00 per hour for the “promotion of the business through internet and leaflet distribution and computer work”. The Appellant advised that this was paid through the “provision of goods” and also cash totalling £1,850.

5 10. Without any contemporaneous records to support what had been paid as wages, HMRC were unable to apportion and reconcile any entries in the Appellant’s bank statements which could be directly evidenced as payment for services to the Appellant’s business and therefore were unable to accept that the ‘wages’ were incurred as a business expense.

10 Evidence

11. The documentary evidence consisted of a bundle prepared by HMRC, containing the Appellant’s self-assessment returns and tax calculations in respect of the years under appeal, copy correspondence between the Appellant’s agents and HMRC, relevant legislation and case law. The Appellant provided a witness statement and
15 also gave oral evidence to the Tribunal.

Relevant Legislation

12. The legislation relevant to this appeal is:

Section 34(1) TMA 1970 which states that;

“In calculating the profits of a trade, no deduction is allowed for -
20 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”

Appellant’s Contentions

13. In his Notice of Appeal to the Tribunal the Appellant states:

25 “I am appealing against the [disallowed] £7,400.00 wages I paid to my son Mark Nicholson. I believe that it is an unfair assessment for the following reasons:

My son’s bank statement showed a total of £1,850.00 payments from myself to my son. I would like to ask why this amount was not taken into consideration.

30 There was a further amount of £203.61 (I paid by direct debit monthly the sum of £18.51) for my son’s home insurance which was also not taken into consideration in spite of doing my best to supply HMRC with the receipt.

35 My son was working for me as a casual labourer and without his help I could not do my job as a central heating salesman and the Internet business I was trying to build. It is totally unfair that the wages I paid to my son by supplying him food and drink every week are rejected. After all, I cannot discriminate my son against paying him unlawfully because of the fact that he is my son. I had to consider his skills and qualifications (Equality Act 2010), it is his right to be paid what he deserved and rightly so as he could not live without the wages I paid to him whilst studying at a university.”

14. At the hearing the Appellant expanded on his grounds of appeal. He said that his son was at Leeds University studying for a Sports Science degree and he happened to be working in Leeds. He would buy his son food/drinks whenever he visited him. His son had been used to helping him with computer work for many years and therefore
5 knew the nature of the business very well. If he had hired someone else he “would have paid that person an awful lot more”. As a father he had a vested interest in his son’s progress in life and wanted to make sure that he was giving him the best chance to succeed in his education. He asked him not to work for someone else so that it did not interfere with his studies. Paying his son by way of buying him his food on top of
10 the cash payments had left him with a lot of credit card debt. Also without the wages his son would not have been able to maintain his University studies.

15. The Appellant said that he suffers from IBS, high blood pressure and has a heart murmur. He is therefore not always able to work and he finds it difficult to maintain his income levels. Without his son’s help his own income would have been much
15 lower. He therefore argues that the payments he made to his son whether in cash or “in kind” were wholly and exclusively referable to his business and therefore allowable.

HMRC’s Contentions

16. The onus rests with the Appellant to prove that the claimed expenditure of £7,400,
20 paid to Mark Nicholson, was incurred wholly and exclusively for the purpose of the Appellant’s trade, that is, the sole purpose was a trade purpose.

17. For any expenditure to be allowed against business income, that expenditure must satisfy the conditions of legislation in s 34 TMA 1970.

18. Section 34(1) requires expenditure to be incurred “wholly and exclusively for the
25 purpose of the trade”. In effect the legislation disallows any expenditure which is not incurred wholly and exclusively for the purpose of the trade.

19. This means that the rule is only satisfied if the sole purpose for incurring the expense is for the purpose of the trade. If any non-trade purpose is identified then the expenditure is not allowable.

30 20. This remains the case even if there is more than one reason for making the expenditure. Such dual purpose expenditure, if not entirely for business purposes, will fail the legal conditions of s 34 TMA 1970.

21. The expenditure in dispute is an amount of £7,400, claimed to be wages paid to Mark Nicholson, son of the Appellant, whilst Mark was studying at University. The
35 Appellant says that the amount of £7,400 was based on work of 15 hours per week at £10 per hour. There is no evidence to support the wages were paid in this manner.

22. The Appellant has conceded that his son’s wages were “made up of cash and goods bought on credit cards. Generally by buying his supply of food weekly.” Other comments and explanations from the Appellant point to the payments being made to

subsidise Mark's University expenses to the extent that "without the wages he would not have been able to maintain University".

23. It is contended that the motive or purpose behind the payments to Mark were not exclusively for the benefit of the trade. It is apparent from the information and explanations available that private and personal motives played a major part in any decision to make payments in kind and cash to Mark.

24. In the Tax Case of *Dollar v Lyon (H M Inspector of Taxes)* 54 TC 459, the decision was based on the fact that where any element of payments was due to "natural parental love and affection" they were not deductible. The case involved payments by a farmer to his children for working on his farm. He had argued that the payments were wages and therefore deductible from his profits. The children were 14, 11, 9 and 7 and been brought up to help on the farm. They were paid £2 a week. The Commissioners found that the payments were in fact in the nature of pocket money. There was therefore dual purpose and the payments were not deductible.

25. Also in the Special Commissioners case of *Executive Network Consultants Ltd v O'Connor* 1985 Sp C 56 Mr Stephen Oliver QC comments that "we cannot displace from our minds that 'personal benefit' played a part in the decision to make the sponsorship payments". The case involved a claim for deduction of sponsorship payments to the wife of a majority shareholder in the Appellant company, which led to publicity for the company. The Special Commissioners found that there was a dual purpose in making the payments and disallowed the expenditure.

26. It is contended that the payments to Mark were dual purpose payments. They were for "natural parental love and affection" and/or 'personal benefit' purposes rather than solely a business purpose. As a dual purpose expense, the payments to Mark fail the legal conditions of s 34 TMA 1970.

27. HMRC contend that their decision to disallow expenses of £7,400 for the year 2013-14 claimed as 'wages' to Mark Nicholson is correct as such expenditure was not incurred wholly and exclusively for the purposes of the Appellant's trade.

Conclusion

28. We can understand why the Appellant feels that he should be able to pay his son 'wages' as he would have to have done if anyone else had been doing the same work for him. Had the Appellant paid his son on a more time recorded basis or had there been some form of methodology in calculating the amount payable and an accurate record maintained of the number of hours his son worked, then as with any family member on the pay roll of a business, it is unlikely that the expense would have not satisfied the provisions of s 34 TMA.

29. However as HMRC assert, the payments to Mark had a dual purpose. The provisions of s 34 TMA (1)(a) are quite clear. The payments were not incurred wholly and exclusively for the purposes of the Appellant's trade. They were not directly and solely referable to the carrying on by the Appellant of his trade. There was no direct relationship arithmetically or otherwise between the amount of work Mark did and the

payments he received, whether in cash or in kind. The Appellant was helping to support his son whilst at University.

5 30. The Tribunal confirms HMRC's Closure Notice Decision of 26 February 2016 as amended on 25 May 2016 to disallow total expenditure of £9,785 including the £4,700 in dispute.

31. The appeal is dismissed.

10 32. 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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**MICHAEL CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 9 January 2018

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