Neutral Citation: [2022] UKFTT 288 (TC)

Case Number: TC08570

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2020/02081

INCOME TAX - discovery assessments - deliberate behaviour by agent - extended time limits - whether validly made – yes - amendments confirmed

Heard on: 29 June 2022
Judgment date: 17 August 2022

Before

TRIBUNAL JUDGE ANNE SCOTT
MEMBER HELEN MYERSCOOUGH

Between

THE MAGNET PARTNERSHIP

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Dr Robert Milton

For the Respondents: Simon Bracegirdle, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. "If something sounds too good to be true, it probably is" is a well-known idiom. The appellant's ("Magnet's") profits returned in the tax returns for the years 2004/05 to 2014/15 were precisely zero regardless of turnover.

2. This appeal relates to discovery amendments to Magnet's partnership tax returns for the tax years 2004/05 to 2014/15.

3. This appeal was originally conjoined with appeals for the Haritou Partnership ("Haritou") (TC/2020/02080) and the Alan Fada Partnership ("Fada") (TC/2020/02079) which were allowed of consent by the Tribunal's Direction dated 3 February 2022.

4. We set out the reasons for those February Directions at paragraphs 67-71 below.

5. We heard evidence from Officer Harrop from HMRC and from Mr Christos Haritou. We had a Hearing Bundle extending to 2547 pages and an Authorities Bundle extending to 297 pages. We had Skeleton Arguments from both parties.

6. We had issues in the sense that although HMRC had furnished the Bundles to Dr Milton, neither Mr Haritou nor Mr Fada had those Bundles. Mr Haritou only had copies of selected items. With the consent of all parties, when a document was referenced then it was read out. Mr Fada did not give evidence, although, unusually, there was a joint witness statement from both him and Mr Haritou which the latter had prepared with him.

The Dramatis Personae

7. Abfad Limited ("Abfad"), a UK registered company, was incorporated on 28 February 1996. Alan and Ian Fada are brothers and, with Christos Haritou, were the shareholders and directors. Ian Fada resigned on 19 June 2013 after a dispute. Its primary business is industrial rope access and specialist coating services, such as tank lining.

8. In 1999, the company changed accountants and tax advisers and employed Christopher Lunn & Co ("CLAC"). There was a meeting with Christopher Lunn and HMRC (then the Inland Revenue but hereinafter referred to throughout as HMRC) on 26 August 2004 at which all of the directors were also present. Christopher Lunn is recorded as stating that he personally took the decision to create Magnet and what are described as the family partnerships.

9. The current partners in Magnet, which commenced trading on 1 April 1999, are Christos Haritou and Alan Fada. The representative partner is Mr Haritou. The partners own the intellectual property rights in patents and licensed Abfad to sell the developed products. All of Magnet's income is derived from Abfad.

10. The accounts for the year ended 31 March 2004 show that the partners were Alan and Ian Fada and Christos Haritou. John Rhodes became a partner on 1 April 2005 and continued until his death on 31 August 2008.

11. Magnet's partnership tax returns for all of the years under appeal describe the trade as Rope Access designers or Magnet & Rope Access Designers.

12. The family partnerships were the Ian Fada Partnership ("IFP"), the Haritou Partnership ("Haritou"), the Fada Partnership ("Fada") and the Rhodes Partnership ("Rhodes"); collectively the "Family Partnerships". All commenced on 1 April 1999. None of those partnerships had a bank account. All income in each partnership was derived from Magnet. The partners in Magnet had an annual meeting and decided how much each Family Partnership should receive for what was described as consultancy and design work.

13. Haritou ceased to exist on 31 March 2015. Mr Haritou and his wife Caroline Haritou (also known as Carrie) were partners throughout. Luke Tait, Mr Haritou's stepson who had been a performing arts student in Leeds until 2003, ceased to be a partner on 31 March 2006. It is not known what he did between 2003 and 2006. It is asserted that he provided computer services; there is no evidence.

14. Kathryn Robertson (nee Haritou), known as Katy, ceased to be a partner on 31 March 2005. Jason Haritou ceased to be a partner on 31 March 2004. In August 2004, Katy was 19 and Jason was a 21 year old full time student.

15. Carrie was also employed by Abfad; for example her P60 for the year to 5 April 2009 shows that she earned £14,670. She was also employed elsewhere. A document seized from CLAC, which on the balance of probability, and by his admission when read to him, was written by Mr Haritou or on his behalf, stated that for 2004/05 Caroline was "working full time in social services and adult education". Interestingly in the financial assessment form for higher education support for her son Luke dated 7 March 2003 she said that she was a family resource worker earning £6,005 and she had a self-employed income of £1,393.

16. The equivalent form signed by Mr Haritou for Jason on the same day said that Jason did not live at home and that Mr Haritou had an income of £5,700 from Abfad and £7,043 from self-employment. The latter figure is the same as his drawings from Magnet in the previous year.

17. CLAC had annotated the seized document, to which we refer above, and that suggests that they treated the rent and utilities paid by Jason and his girlfriend as deductible in the accounts.

18. Haritou's partnership tax returns for all of the years under appeal describe the trade as rope access designers.

19. Although HMRC's Statement of Case states that Fada ceased on 31 March 2016, it is obvious from the accounts, and fits with other evidence that it ceased to exist as at 31 March 2015. Mr A Fada and his common law wife Yvonne Bell were partners throughout. His son Ben Fada ceased to be a partner on 31 March 2006. Yvonne and Ben were also employees of Abfad. Fada's partnership returns for all of the years under appeal describe the trade as rope access designers.

20. IFP ceased to exist as at 31 March 2009. Mr Ian Fada and his wife Jacqueline were partners throughout. Their son Ian was 19 in 2004 and left IFP in 2004. Their daughter Gemma was 26 in 2004 and it is not known when she left IFP. Ian Fada was a sole trader receiving income from Magnet in both 2009/10 and 2010/11.

21. Rhodes commenced on 1 April 2000 but is only relevant for these purposes when John Rhodes became a partner in Magnet on 1 April 2005. The partners initially were John Rhodes, his wife and their two daughters. Amy left as at 31 March 2006, we know nothing about the other daughter and the partnership was dissolved on his death on 1 September 2008. His wife Julie received income from Magnet as a sole trader for the balance of 2008/09.

22. No appealable decisions have been issued in respect of IFP, Ian Fada as a sole trader or Rhodes.

23. Abfad Limited, Magnet, the Family Partnerships and the partners were represented by CLAC for all of the years until 2013/14 and for 2014/15 by the successor organisation to CLAC, The FTR Accountants Company Limited ("FTR"). They were briefly represented by another firm thereafter and in or about March 2018 Tait Walker were appointed. In or about November 2019, Dr Milton was appointed.

24. On 22 June 2010, as part of an ongoing criminal investigation into CLAC, officers of HMRC carried out a search of the business premises of CLAC and seized various records and documents under the terms of a search warrant. Those included the files and papers pertaining to Magnet and the Family Partnerships.

25. HMRC therefore only have CLAC records up until 2008/09.

26. In December 2015, Christopher Lunn was found guilty on four counts of Cheating the Public Revenue. One of the counts related to him inflating or causing to be inflated accountancy fees and clients' accounts.

The Revenue enquiries and HMRC's interaction

27. Abfad was subject to HMRC Corporation Tax enquiries for the Accounting Periods ending 31 March 2002, 2003, 2004 and 2013, and an employment status enquiry for the period 12 October 2004 to 18 September 2009. The Family Partnerships were not in any way involved in the latter and only peripherally in the former. The 2013 enquiry did not involve the partnerships but rather a tax avoidance scheme with which Abfad had not been involved. It too had nothing to do with Magnet or the Family Partnerships.

28. We understand that enquiries were opened into the Family Partnerships but do not have the details. What we do have are records from the Abfad enquiries from which we note that:

(a) The notes of a meeting with HMRC on 26 August 2004 disclose that Mr Lunn said that the Family Partnerships would be dissolved.

(b) On 27 September 2006, Officer Wright had written to Mr Haritou stating that she had been unable to obtain satisfactory replies from Mr Lunn and wished to move matters ahead. Under the heading "Magnet Partnership" she stated:

> "It appears that the amounts payable to Magnet Partnership have been split between the family partnerships in the years…without any documentation to justify doing so. The amounts should have been returned by the Magnet Partnership. However, in the light of the fact that the income has been returned by the family partnerships and with a view to moving forward I will accept the income as returned and close the all (sic) partnership enquiries."

She asked for a meeting.

(c) At the meeting with Mr Haritou on 23 November 2006 she recorded under the heading "Magnet Partnership & Other Family Partnerships":-

> "DW said that she is not happy with the partnership set up. She said that she felt that income that should have been returned by the directors was being returned by the family members. She said that she is prepared to accept the partnership returns as a gesture of goodwill with a view to getting the enquiries settled."

29. The earlier enquiries were finalised with Closure Notices dated 24 and 25 May 2007.

30. Since July 2010, HMRC had been writing periodically to the partners of Magnet requesting a disclosure of any irregularities in their returns during their period of representation by CLAC and to update them on the criminal proceedings. Most of those letters were generic.

31. Although Mr Haritou responded to some of those letters it was always in the same vein to the effect that the earlier enquiries had disclosed everything and that HMRC were harassing former CLAC clients.

32. However, on 26 June 2013, HMRC wrote to Mr Haritou stating that they had identified potential irregularities and asked for a disclosure.

33. On 11 July 2013, HMRC wrote to him again in more detail stating that they had identified possible irregularities in regard to expenditure claimed by the Family Partnerships and Abfad. It made it clear that the earlier enquiries had no connection with the seized documents.

34. He did respond but, whilst stating that he would co-operate with HMRC, he alleged harassment by HMRC and said that he would respond but only after the conclusion of the trial.

35. After the conviction of Mr Lunn in January 2016, Officer Ellsbury engaged with the interim representative, who appeared to accept that a disclosure should be made. Nothing was forthcoming.

36. On 11 January 2019, Officer Ellsbury wrote to the Family Partnerships' new representative Tait Walker advising that in the absence of any disclosure, he had reviewed the returns and identified irregularities. He set out in detail what he considered to be the discovery of a loss of tax.

37. Correspondence ensued and there was a meeting with HMRC on 3 September 2019 (the notes are wrongly dated 2018) which both Mr Haritou and Mr Fada also attended where a possible settlement was discussed. On 4 September 2019, Tait Walker emailed HMRC referencing the meeting and said that Mr Haritou had emailed them stating:

> "…each year we provided Christoper Lunn with a full package of receipts for what was spent within that financial year and I believe I have these files in my loft and we do have them for the Haritou Partnership.
>
> Would you please contact Harry [HMRC] and inform him that receipts for the partnerships were provided for all accounting periods to Christopher Lunn office.
>
> I have confirmed with Carrie we do have all these files for all the years….
>
> I appreciate that Christopher Lunn probably had loads of cases where family members did absolutely nothing for the business. However in our case all the family members contributed in their own way….I appreciate that Lunn didn't account for this correctly as discussed but on reflection I didn't really talk about how the family members helped the business to survive over those years."

38. On 27 September 2019, Officer Harrop sent Tait Walker copies of a number of the seized documents stating that those would give an insight into how CLAC had manipulated accounts figures. He pointed out that no records of expenditure were requested by CLAC, they merely telephoned for details of household and private expenditure to set against income.

39. On 14 November 2019, Milton & Co wrote to HMRC in reply to that letter. Dr Milton covered many of the arguments previously advanced by Mr Haritou such as that the earlier enquiries had established that everything was in order, allegations that HMRC were harassing Magnet, that their actions were malicious in regard to CLAC's former clients but pertinently stating that:-

> "We are able (with invoices etc) to show that the inter entity payments were made for legitimate commercial concerns and that thus the entities were properly trading."

However they said that in view of HMRC's attitude they would not "trouble" themselves to produce anything. Nothing has been provided. They said that they would not consider a contractual settlement.

40. On 22 January 2020, HMRC issued amendments to the partnership returns of each partnership under Section 30B Taxes Management Act 1970 ("TMA"). Those were the discovery amendments. The amendments were appealed on 1 February 2020 and a statutory review requested.

41. HMRC provided their view of the matter on 14 February 2020 and issued the review conclusions on 13 May 2020. The appeal to the Tribunal was made on 1 June 2020.

CLAC and Mr Lunn's witness statement

42. The bundle included 194 pages of documents seized in 2010. We do not propose to detail all of our findings but rather highlight a few. A similar pattern can be noted in each of the years covered by the documents.

43. In the tax year 2006/07 the Magnet accounts showed "Direct costs" of £74,305 and there are notes on an email dated 24 September 2007 stating:-

"D/C Haritou	13230
A Fada	25125
Rhodes	18847
I Fada	17103
	74305

The draft accounts have the same notes.

44. We can see from a number of the documents that CLAC wrote against figures for expenses the word "say". It was clearly an arbitrary estimate since we could discern no tangible connection with anything else in the papers. Examples include the annotations to the draft accounts for Haritou in 2005/06 and annotations for Rhodes for 2007/08.

45. In March 2006, CLAC wrote to Mr Haritou about confirmation that he had sought about his earnings for a mortgage application. He had challenged the figure they had given of £5,173 for 2004/05 as being too low. The reply from CLAC read:-

> "Your Returns on their own will not show all of the profits as we have used Luke, Jason and Katie in the past".

Mr Haritou's tax return for 2004/05 disclosed £1,148 of profits and Katy had declared profits of £4,025. The total is £5,173.

46. In a number of documents under the heading "Magnet Partnership" there were schedules for "wages" and "expenses" for both Mr Haritou and Mr Fada. As an example, for 2004/05 Mr Haritou received 15 payments totalling £27,500 described as wages and 11 payments described as expenses totalling £2,750.12. That document is extensively annotated with notes about the Haritou children, rent at Leeds University, mortgage interest, insurance and other expenditure.

47. On the draft accounts for Magnet for 2007/08 there is typed next to the figure of £227,317 for "Direct costs" the words "do we need to alter this to profits that you want to give to each of the partners? e.g. £21,335 to Rhodes P'ship e.g. £20,108 to A Fada P'ship e.g. £21,184 to I Fada P'ship e.g. £10,543 to Haritou P'ship". The total is £73,170.

48. There is then, in a different document, a handwritten note suggesting different figures for each of the Family Partnerships totalling £143,105 and the returns for all but Fada showed those larger figures. Fada received marginally less than was suggested so the total was £142,335 which was the "Direct costs" in Magnet's accounts. The trial balance for those accounts, as was the case in every other year did not include any direct costs. In this year there is a handwritten note showing that CLAC manipulated amounts received by Magnet between sales and dividends received by the directors of Abfad.

49. There are numerous other examples and we comment further on seized documents under the heading Discussion.

50. Mr Lunn had furnished a witness statement and, of course, its evidential value is limited since he did not attend to speak to it. What is of note are:

(a) It was his practice, where "practical" to visit client's premises to review receipts, invoices and other records; those were never reviewed in CLAC's offices. He stated that "…all documentation remained at all times in the possession of the company and its directors and employees".

(b) He states that "The relevant family members, all over 18 at the time in question and not working elsewhere were ideal for this work [research]".

(c) He describes the "various partnership figures" as being drawings and the expenses as being "put together" at a meeting between client and accountant.

(d) He states that: "The amounts drawn or voted to each partnership would be shown as income in the family and outgoings in the Magnet Partnerships".

Summary of the appellant's arguments

51. HMRC had thoroughly investigated not only Abfad but also the Family Partnerships in a lengthy investigation in 2004. They had had all of the information since 2004.

52. HMRC were therefore fully aware of the Family Partnerships, had made no adjustments and had thus found that there was no loss of tax. The documents seized from CLAC changed nothing.

53. HMRC were biased and were conducting a campaign against former clients of CLAC and had not approached the appellant with an open mind. The Family Partnerships had traded lawfully and all payments to them were for legitimate business purposes. That had been established in the enquiry. All that had changed was Mr Lunn's conviction and he had not been convicted of anything that was applicable to the appellant. It was argued by Dr Milton that two juries had found that inter-company payments were legitimate.

54. HMRC have conceded the appeals by Haritou and Fada so therefore they were trading legitimately. The different Family Partnerships received differing sums because of the differing services provided.

55. There has been neither a loss of tax nor any discovery.

Summary of HMRC's arguments

56. The expenses claimed by Magnet were not incurred.

57. Alternatively if they were incurred they were not incurred wholly and exclusively for the purposes of their trade.

58. The "Direct costs" paid to the Family Partnerships were in reality drawings by the partners.

59. The loss of tax was brought about by CLAC and subsequently FTR who acted on behalf of Magnet and prepared their accounts and tax returns. It was a deliberate decision to:-

(a) allocate income and expenses to Magnet which resulted in a nil profit every year, and

(b) produce accounts for the Family Partnerships including the turnover from Magnet and expenses that were not only estimated but also included substantial private domestic expenditure.

The issues

60. HMRC state that the issues are:-

> (1) Whether HMRC have discovered that profits on partnership statements were insufficient.
>
> (2) Whether HMRC were permitted to make good the insufficiencies discovered and, in particular, whether they were prevented from taking action by subsections (3) and (4) of Section 30B Taxes Management Act 1970 ("TMA").
>
> (3) Whether the conditions applied to enable HMRC to use the extended time limits to amend the Family Partnership statements.
>
> (4) Whether the expenses claimed by Magnet were incurred at all, and if so, whether they were incurred wholly and exclusively for the purposes of its trade.

We agree.

61. There is no dispute that the burden of proof lies with HMRC to show that they have made a discovery and that any loss of tax arose from the deliberate behaviour of Magnet or a person acting on their behalf.

62. The burden of proof is on the Partnership to show that the insufficiencies identified were attributable to an error or mistake made in accordance with practice generally prevailing at the time when it was made and that the amendments made to the Family Partnership statements are excessive.

The Law

63. The key provision in relation to the discovery assessments is Section 30B TMA which reads:-

30B Amendment of partnership statement where loss of tax discovered

> (1)Where an officer of the Board or the Board discover, as regards a partnership statement made by any person (the representative partner) in respect of any period-
>
> > (a) that any profits which ought to have been included in the statement have not been so included, or
> >
> > (b) that an amount of profits so included is or has become insufficient, or
> >
> > (c) that any relief [or allowance] claimed by the representative partner is or has become excessive,
>
> the officer or, as the case may be, the Board may, subject to subsections (3) and (4) below, by notice to that partner so [amend the partnership return] [(including anything included in the return by virtue of section 12ABZB(7)(b) (amendment of partnership return following reference to tribunal))] as to make good the omission or deficiency or eliminate the excess.
>
> [(2) Where a partnership return is amended under subsection (1) above, the officer shall by notice to each of the relevant partners amend-
>
> > (a) the partner's return under section 8 or 8A of this Act, or
> >
> > (b) the partner's company tax return,
>
> so as to give effect to the amendments of the partnership return.]
>
> (3)Where the situation mentioned in subsection (1) above is attributable to an error or mistake as to the basis on which the partnership statement ought to have been made, no

amendment shall be made under that subsection if that statement was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made.

(4)No amendment shall be made under subsection (1) above unless one of the two conditions mentioned below is fulfilled.

(5)The first condition is that the situation mentioned in subsection (1) above [was brought about carelessly or deliberately by]-

(a) the representative partner or a person acting on his behalf, or

(b) a relevant partner or a person acting on behalf of such a partner.

(6)The second condition is that at the time when an officer of the Board-

(a) issued ceased to be entitled to give notice of his intention to enquire into the representative partner's [partnership return]; or

[(b) in a case where a notice of enquiry into that return was given-

(i) a partial closure notice as regards a matter to which the situation mentioned in subsection (1) above relates, or

(ii) if no such partial closure notice was issued, issued a final closure notice.]

the officer could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the situation mentioned in subsection (1) above.

(7)Subsections (6) and (7) of section 29 of this Act apply for the purposes of subsection (6) above as they apply for the purposes of subsection (5) of that section; and those subsections as so applied shall have effect as if-

(a) any reference to the taxpayer were a reference to the representative partner;

(b) any reference to the taxpayer's return under [section 8 or 8A] were a reference to the representative partner's [partnership return]; and

(c) sub-paragraph (ii) of paragraph (a) of subsection (7) were omitted.

(8) An objection to the making of an amendment under subsection (1) above on the ground that neither of the two conditions mentioned above is fulfilled shall not be made otherwise than on an appeal against the amendment.

(9)In this section-

["profits"-

(a) in relation to income tax, means income,

(b) in relation to capital gains tax, means chargeable gains, and

(c) in relation to corporation tax, means profits as computed for the purposes of that tax;]

"relevant partner" means a person who was a partner at any time during the period in respect of which the partnership statement was made.

(10) Any reference in this section to the representative partner includes, unless the context otherwise requires, a reference to any successor of his.]

64. Section 36 TMA extends the time limits for raising an assessment to 20 years where a loss of tax has been brought about deliberately.

65. Section 34(1) Income Tax (Trading and Other Income) Act 2005 makes it explicit that there can be no deduction for expenses that are not wholly and exclusively incurred for the purposes of the trade.

66. It is trite law that profit allocations or drawings are not expenses so incurred.

Discussion

67. The first issue is the concession by HMRC that the Haritou and Fada appeals should be allowed and Dr Milton's argument that that established that they traded legitimately.

68. The discovery amendments issued to Haritou and Fada reduced the profit of those partnerships to nil for each year.

69. Section 30B TMA may only be used where an officer of HMRC discovers that profits have been omitted from a partnership statement, profits in a partnership statement were insufficient or, where any relief claimed by the partnership is excessive. Reducing partnership profit is not one of the conditions set out in section 30B. Therefore, HMRC accept that their amendments were invalid.

70. They are correct. Since HMRC were outside the enquiry window, they could only make amendments using the discovery provisions which necessarily are predicated on a loss of tax. Therefore they had no powers to open earlier years for those partnerships.

71. We do not accept Dr Milton's argument that in conceding the Haritou and Fada appeals HMRC were accepting that those partnerships traded legitimately. It is abundantly clear that HMRC's case is that they did not.

72. The amendments made are to disallow the payments made to the Family Partnerships as those payments were not made wholly and exclusively for the purposes of Magnet's trade.

73. As far as the evidence that we heard is concerned, we found Officer Harrop's evidence to be credible, measured and straightforward. We do not accept that he came to this case with a closed mind. He asked for evidence to vouch Magnet's assertions that work was performed by the Family Partnerships and, as can be seen, he received nothing. All that has been produced is two photographs of ring binders, one of which is labelled "Accounts 2005". In handwriting above that someone has written "Proof that receipts where (sic) reviewed prior to tax returns for family partnership". Neither Officer Ellsbury nor Officer Harrop have seen more than that and those photographs prove nothing.

74. Mr Haritou's evidence was vague and he frequently stated that he could not remember. Furthermore, there are significant inaccuracies and contradictions, prime amongst which is the statement in the joint witness statement that "Family members that assisted within the partnerships did not have other paid work during this period…". That is quite simply flatly contradicted by the evidence.

75. Before considering the amendments we must decide whether or not there was a loss of tax and a discovery by HMRC.

76. Dr Milton argues that if there was a discovery, which is denied, it was on the seizure in 2010 and in any event HMRC could have investigated during the 2013 enquiry or at any other time. HMRC say that it was Officer Ellsbury who made the discovery on 11 January 2019.

77. That at least is a simple issue. The Supreme Court in *HMRC* v *Tooth* [2021] UKSC 17 at paragraph 64 *et seq* made it explicit that collective Revenue knowledge is not the issue but rather whether an individual officer made a discovery. Not only are we bound by that but we agree.

78. The next issue is whether there was a subjective view by Officer Ellsbury that there was a loss of tax and it is very clear that that was the case. Was that objectively justifiable? Yes, it is.

79. Officer Ellsbury reviewed the evidence from the seizure, compared it with the returns and in our view, unsurprisingly, concluded that there was a loss of tax.

80. We are wholly unpersuaded by Dr Milton's argument that if Magnet had not paid the Family Partnerships, Magnet would have had to have paid third parties and probably at greater expense.

81. Firstly, there is no evidence at all, beyond Mr Haritou's evidence as to what the family did and that was wholly unsatisfactory.

82. Quite apart from our quotation from his witness statement at paragraph 74 above, in his witness statement, Mr Haritou had said:-

> "…none of the persons claiming allowances within the family partnership had any other income at the time the family partnerships were in operation."

83. In oral evidence he said that he and his wife paid allowances to their children when they did work for Magnet. He had been asked in cross-examination in which years the family had performed work and replied "You are joking" and then declined to comment beyond stating that small allowances were paid. However, crucially, he expanded on that. He conceded that to the extent that anything was done by family members "most of the work was done before 2004 because that was when they were free to do it. By 2004 they had their own lives and had less time."

84. In order to ensure that there could be no doubt, we recapped his oral evidence to him and he agreed that it was accurate. That is consistent with other evidence.

85. Amongst the seized papers was a handwritten note from Mr Haritou date stamped as received by CLAC on 14 June 2005, recording the incomes of Caroline (£17,349), Jason (£8,886) and Luke (£9,858) in 2004/05 and the tax deducted. That was put to him and he then said that when he said that they had no income he had meant in earlier years.

86. There is other evidence amongst the seized papers which is inconsistent with the accounts and tax returns of Haritou. For example, we have recorded the details of the children's tenure in Haritou based on the returns and accounts. However, on 23 March 2005 Mr Haritou had written to CLAC stating that Luke had been working full time for the past year and should not be included in that partnership for that year, yet he was for both that year and the following year, albeit with no income. Mr Haritou had signed those partnership tax returns declaring that he was a partner.

87. In a similar vein, on 30 June 2004, Mr Haritou had written to CLAC, stating that Katy was not working and had claimed benefits so had said that she was not self-employed; she remained a partner until 31 March 2005 and had a profit share of £4,025 in that year. Again Mr Haritou signed the tax return.

88. When these issues were put to him Mr Haritou said that it was a long time ago, which it is, and he could not remember.

89. In summary, Magnet has at all times relied on the earlier HMRC investigations and we find that that is entirely unfounded. HMRC have extensive care and management powers. They decided, with clearly articulated reservations, not to pursue the Family Partnerships in 2007 because they wished to close the Abfad enquiry where they did recover tax. That is their right.

They made it clear that the Family Partnerships were not appropriate and also they had reason to believe that they would be dissolved.

90. The fact that tax returns were issued thereafter is irrelevant because that is simply an automated process.

91. Until the seized documents were scrutinised in detail by Officer Ellsbury, HMRC certainly did not know how the "Direct costs" in Magnet's accounts were arrived at. They did not know that the expenses in the Family Partnerships were estimated and largely based on non-deductible expenditure such as rent for accommodation whilst at University. They certainly did not know until this hearing that the alleged research etc had mainly been conducted prior to 2004. It is fair to say that they suspected that that was the case since in correspondence they had pointed out that an argument advanced by Magnet that the family had done research on magnets could not be accurate since the patent had been granted in 1998 before the Family Partnerships were even created.

92. We were not persuaded by Dr Milton's argument that partners in a partnership did not have to be active; that is a red herring. The Family Partnerships had to be trading. There is no evidence that they did. We had no witness evidence giving any detail as to what was done and no receipts. By contrast, we had Mr Haritou's concession that most of the work that had been done by family antedated the years with which we are concerned.

93. The evidence seized from CLAC is compelling and Mr Lunn's witness statement does not assist Magnet. At all times the sums paid to the Family Partnerships were drawings. Those could never be deductible. Drawings are never wholly and exclusively incurred for any taxpayer's trade.

94. For the avoidance of doubt although it was an issue in correspondence, the amendments do not include any element relating to inflation, or not, of accountancy fees.

95. Mr Lunn, by his own admission set up this structure in 1999. We pay no heed to his conviction. His witness statement is damning for Magnet. At all times this was a means of diverting profits in Magnet, in theory but not in practice as is evidenced by the mortgage information, to family members. There was a loss of tax. Officer Ellsbury discovered it and Officer Harrop made the amendments. Therefore there was a discovery that there was a loss of tax, HMRC acted both timeously and competently. Magnet have failed to establish that the expenses claimed were incurred at all. They certainly were not incurred wholly and exclusively for the purposes of Magnet's trade.

DECISION

96. The appeal is dismissed and the discovery amendments for all of the years in question are upheld.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

97. 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.

ANNE SCOTT
TRIBUNAL JUDGE

Release date: 17 AUGUST 2022