

# Reasonable repairs

## RICHARD GREEN-WILKINSON

looks at when repairs can be claimed against letting income.

It is not unusual for country houses to have a barn, stable, garaging etc., separated from the house but within the curtilage, and which are clearly part of the dwelling. These can, however, lead to some complications for tax purposes.

In the First-tier Tribunal case, *Christopher Wills* (TC479), the taxpayer had income from property lettings. In his 2005/06 tax return, he claimed £119,000 for repairs and renewals on The Old Rectory, which HMRC rejected. The facts were that a 200-year old outbuilding (pictured aside), which was connected to the house by a short wall, had fallen into disrepair and had become unsafe. Mr Wills needed to carry out substantial repair work and, at the same time, decided to undertake some improvements.

HMRC refused deduction of any of the repair costs on the basis that the work carried out and claimed as repairs was part of a wider capital scheme of work to convert a barn into separate living accommodation.

## Substantial repairs

The outbuilding, which is listed, had been used for storage, as a games room and generally as additional living space. Also, for a few years a car was sometimes garaged in the building. As the building was listed, Mr Wills had no option other than to undertake substantial repairs. In undertaking this work, it made sense to bring the interior up to date, for example installing heating, electric power points and a water supply. There were, however, no basins, toilets, kitchen or anything that would allow this space to be anything more than additional living space, ancillary to the main house. In fact, the plans drawn up at the time stated that 'no means of insulation has been included for in the above structure, as the building is designed for storage purposes only'.

The work included shoring up the structure, grouting, pointing, decorating, and replacing windows, doors and the roof. It had to be kept exactly to the previous external design (apart



from a change in the size of a door), and existing materials, roof tiles etc. had to be reused where possible.

ITTOIA 2005, s 34(2) provides that where expenses are incurred for more than one purpose, it is not prohibited to deduct any identifiable part or proportion of the expense which is incurred wholly and exclusively for the purposes of the trade.

## Claiming the repair elements

As the repair elements of the work on the outbuilding were wholly and exclusively for the purposes of the trade of letting, and could be identified as separate elements to the improvements made, Mr Wills claimed that the repair part of the expenditure should be deducted from the rental income.

The case of *Conn v Robins Bros* 43 TC 266 had striking similarities to the *Wills* case. The subject in *Conn* was whether or not major structural works to make safe a 400-year old building were repairs or improvements. Not only was the internal appearance of the building altered, but underfloor heating was put in and an additional lavatory was added. It was decided that the cost of the structural works were repairs and therefore deductible against rental income. The costs of underfloor heating and a new WC were not claimed by the taxpayers and were treated as capital improvements. In his judgment, Buckley J said:

'... no doubt in the course of carrying out these works, certain structural alterations were made, as one would expect with any extensive repair of a building over 400-years old, when repairs were being carried out at a time when building techniques have completely altered'.

In support of their argument disallowing Mr Wills' repairs, HMRC referred to *Lurcott v Wakely & Wheeler* [1911] 1 KB 905. This case involved replacing a wall which was in poor repair and consequently dangerous. The wall was replaced and it was decided that the cost was a repair. The decision in this case suggests that there is a test as to whether the work is a renewal or replacement of defective parts of the 'entirety', (which would be a repair), or alternatively a renewal or replacement of substantially the whole

### KEY POINTS

- Improving a dilapidated outbuilding.
- Deducting expenditure on repairs from rental income.
- Entirety or substantially the whole property.
- Notional repairs.

property, (which would be an improvement). HMRC were focusing on the definition of 'entirety', because they claimed that the entirety that was being repaired was the outbuilding.

However, in *Wills* the outbuilding provided ancillary living space to the main house and, since some £24,000 was also spent on repairing the main house, Mr Wills considered the entirety to be the whole of the let property at The Old Rectory. It was further pointed out that this was not a renewal or replacement of substantially the whole of the outbuilding, because most of the expenditure was on separately distinguishable repairs, and the main structure of the outbuilding remained present throughout.

HMRC also referred to *William P Lawrie v CIR* 34 TC 20. In this case the roof was in need of repair, but instead the taxpayer extended the building and raised the level of the roof, before adding a new roof of a different design. The repairs were not required due to the improvements which took place instead, and the notional repair costs, which the taxpayer claimed, were calculated based on the original area of the old roof compared with the increased area of the new roof. The view that notional repairs cannot be claimed was upheld by the judge.

However, it was pointed out that in the *Wills* case, the repairs to the roof (and windows, doors and walls) were not notional. They were actually carried out with no increase in the dimensions of the building. The cost of the repairs that took place on the outbuilding were clearly distinguishable from the works which were additions to the building and capital in nature, such as electrical and heating installations.

It was also pointed out on behalf of Mr Wills that HMRC's *Property Income Manual* at para 2020 under the subheading

'Capital work and revenue repairs at the same time', confirmed that, where work is undertaken that includes both repairs and improvements, deduction will be allowed for the repair element.

The manual goes on to state under the heading 'Extensive alterations to a property' that it is specified 'the actual cost of normal revenue repairs to a part of the old building which is preserved in the rebuilt structure is allowable as an ordinary revenue business expense'.

## No evidence

The tribunal found that the disputed work undertaken was one of essential repair, and that there was no evidence to support HMRC's contention that after the building work there was a change of use of the outbuilding from games room and storage to additional accommodation or living space. Furthermore, this was supported by the fact that the letting income from The Old Rectory had not increased by any more than inflation.

Tax commentators have since expressed surprise that HMRC took this case to the tribunal at considerable cost to the taxpayer. However, it is perhaps even more surprising that the department was fully supported by the internal review requested by the taxpayer, who was hoping to avoid a tribunal hearing. This surely adds to the previously expressed concern that the HMRC process is not sufficiently impartial and objective. ■

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