HMRC - VATDSAG08250 - Tribunal: Husband And Wife Cases: P&V Leonidas

In P & V Leonidas LON/1997/1594 VTD 16588, we argued that the appellants, who were husband and wife, were a single entity. The appellants argued that there were two separate entities of

a sole proprietor running a café

a sole proprietor selling ice creams which were consumed off the premises.

In reaching its decision, the Tribunal took the fact that the appellants were husband and wife into account. Despite that, it concluded that there were several factors pointing towards there being one business of a partnership. These included

the businesses did not operate at arm’s length of each other

the lack of a commercial relationship between the two businesses

the till did not separate the takings of the two businesses

a diary used to record daily takings showed a figure for both businesses

wages were split equally between the two businesses, despite the café having more employees

there was no proportionate split in overhead costs

the accounts did not truly reflect the situation of the businesses, but were merely an artificial division by the accountants.

In its decision, the Tribunal made several additional points:

the fact that there was no partnership agreement did not mean there was not a partnership in existence

the fact that the businesses were treated as separate for direct tax purposes was not decisive

the fact that there was no proportionate division of overheads (such as rent, electricity and telephone) was a strong indicator of there being only one business

the burden of proof was on the appellants to satisfy the Tribunal that they were operating two businesses. In this case, this did not happen.

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