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A recent tax case highlights that revenue repairs may still be claimed even where the expenditure may appear to replace the ‘entirety’ of an asset as seen by *G Pratt & Sons v Commissioners for HMRC (TC01269)*.

Background

- G Pratt & Sons a farm partnership re-surfaced the farm drive at a cost of £23,300.
- There had been no improvement and nothing new had been added to the drive.
- The work consisted of a new concrete surface being placed over existing tarmac which had been broken up to form a hard-core base.

Relevant Legislation and Guidance

- No deduction is allowed in calculating trading profits for items of a capital nature, s33 ITTOIA 2005.
- In *Lurcot v Wakely and others 1911-13* found a “repair is restoration by renewal or replacement of subordinate parts of the whole. Renewal is distinguished from repair as it is reconstruction of the entirety... substantially the whole,” of the asset.
- A deduction from trading profits is available for repairs whereas the replacement of the ‘entirety’ of an asset is deemed to be a capital item.
- HMRC guidance BIM46903 states, “the question of what is the asset, the ‘entirety’ as it is referred to, is one of fact and degree and a close study of the facts may be needed.”

Decision

- The Commissioner stated “*there was not a renewal of the entirety of the drive but a repair to an existing asset.*”
- HMRC contended that “*the effect of concreting the drive was to provide an entirely new and better surface than before,*” citing *Wheildon Sanitary Potteries TC213*, “there can be cases where the work done may result in no improvement, but merely reinstatement, and yet be work involving capital expenditure on account of its size and importance.”
- The Commissioners noted that they may have reached a different decision if the drive had been altered in some way to accommodate access for larger lorries.

Lovell Consulting View

- This case illustrates that a revenue deduction for repairs may still be possible even where there are substantial construction works to a property, relating to assets that would not otherwise qualify for capital allowances.
- It seems surprising that HMRC challenged this point as the facts and case law on this point seemed uncontentious for the tax payable.
- The level of expenditure is not relevant to a claim for repairs.
- Where there is ‘like-for-like’ replacement of assets and no upgrade or improvement to them, the expenditure is likely to be revenue in nature and not capital.