



Neutral Citation: [2025] UKFTT 01272 (TC)

Case Number: TC09673

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

London

Appeal reference: TC/2020/01401

CAPITAL GAINS TAX – company purchase of own shares – part of related arrangements which led to removal of director/shareholder – whether purchase of own shares was for the purpose of the benefit of a relevant trade – yes – appeal allowed

Heard on: 12-14 November 2024

Judgment date: 24 October 2025

Before

**TRIBUNAL JUDGE ANNE FAIRPO
TRIBUNAL MEMBER DUNCAN McBRIDE**

Between

JOHN BOULTING

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Yates KC and Mr Simpson, of counsel, instructed by PKF Francis Clark

For the Respondents: Ms Choudhury KC and Mr Blades, of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

Introduction

1. The appellant (Mr Boulting) appeals against a closure notice dated 9 October 2019 which amended his tax return for the 2014/15 tax year to reflect HMRC's view that the consideration for the purchase from him of own shares by PSC Training and Development Group Ltd (PSC) should be taxed as a distribution and not as a capital gain, for which entrepreneurs relief (as it then was) could be claimed. The effect of the amendment was to increase Mr Boulting's tax liability by £1,008,621.39.

2. The judge apologises to the parties for the delay in producing this decision; although it was substantially written not long after the hearing it has been delayed by health issues thereafter.

Relevant law

3. s1033 CTA 2020 sets out the conditions for a payment by a company in respect of its own shares to be treated as a capital gain and not a distribution. It was agreed that the only point in dispute was whether or not Condition A was met.

The relevant part of Condition A is:

“(2) Condition A is that –

(a) the ... purchase is made wholly or mainly for the purpose of benefiting a trade carried on by the company or any of its 75% subsidiaries ...”

4. There was no dispute that a relevant trade was carried on within the PSC Group.

Evidence

5. The panel had witness statements and heard evidence from Mr Boulting, Mark Boulting (referred to as MB hereafter to minimise the risk of confusion) and Mr Jeffrey, a senior manager of STG. The panel also had a witness statement produced by Ms Chaffe, who had been a manager at STG. Unfortunately, Ms Chaffe passed away before the hearing; her evidence was admitted but in practice we have not had to rely on it to any particular extent. HMRC contended that all of the witness evidence should be approached with some caution given the passage of time; they accepted, however, that MB's recollection was clear and consistent with the documents. The contended that the evidence of Mr Boulting and Mr Jeffrey was less clear on matters of detail and that the documents should be preferred.

6. We considered that all of the witnesses were honest and gave the best evidence that they could; we have considered the oral evidence in the context of the available documents and where necessary have set out the evidence which we have specifically relied upon below.

7. We had the benefit of transcribers in the hearing and so have summarised evidence, to show how and why we reached our decision, rather than set it out in exhaustive detail.

8. We also had reports and evidence on share valuation from two expert witnesses (Mr Rogers and Ms Nelder). For reasons set out below, we did not consider it necessary to delve into the valuation exercises and so have not set out their evidence in any detail; this is not in any way a reflection on their evidence.

Background

9. The general background was not in dispute and so we set it out in brief summary below.

10. In 1993 Mr Boulting and two other individuals undertook the management buyout of a training business via a company. Mr Boulting was the majority shareholder, owning 55% of the company (55 shares); the other two individuals owned 25% and 20%. In 1998 the

company was restructured and PSC was put in place as a holding company. This was done via a share for share exchange, so that the holding company was owned in the same proportions as the original company. Mr Boulting was the managing director of PSC from its formation until he retired, and was until chairman of the board of directors of both PSC and the operating company (STG) until he retired; he had also managed STG until 2003, at which point Mark Boulting had taken over that role.

11. Following various transactions with family members, before the events involved in this appeal, Mr Boulting had reduced his shareholding in the company and held 50 B shares. The other shareholders at the time of Mr Boulting's retirement were one of his sons (Mark), who owned 25 B shares, acquired from one of the other original shareholders; another son (Andrew) owned one B share which had been gifted to him by Mr Boulting. Mr Boulting's late wife's estate owned 4 A shares. In addition, Jeffrey Rowlands (one of the original shareholders) owned 16 B shares and Julia Rowlands (Mr Rowlands' wife) owned 4 A shares.

12. In 2013, it was decided that Mr Boulting would retire as a director to allow his son Mark to take forward a new management strategy. The retirement process took over a year, during which there were discussions as to how to achieve Mr Boulting's retirement from the business given financial constraints in the company and the family.

13. Ultimately, it was proposed that Mr Boulting would give 38 shares to Mark Boulting and sell 8 shares to the company; he would retain 4 shares to be given to his grandchildren (these were transferred to his grandchildren in February 2016). This proposal was discussed at a board meeting in September 2014 and it was decided that the purchase was necessary for the long term sustainability of the company.

14. This appeal is concerned with the purchase of the 8 B shares by the company.

Pre-retirement disputes

15. It was not particularly challenged that Mr Boulting's retirement and exit from the business was prompted by disputes within the management of the group. The disputes at board level principally concerned investment in fixed assets to improve (in particular) premises and the business' IT facilities for training. The younger members of the board considered it important to spend distributable reserves improving this aspect of the business; the older members considered it less important. There was also a dispute as to how key management decisions should be made, with the younger members wanting more input and the older members wanting to retain final say in such decisions.

16. The witness evidence was that these disputes were causing problems for the business at the time: one of the STG directors had resigned, and a senior manager was also considering resigning, at least in part because they considered that the older directors' attitude prevented them from running the business effectively. We accept MB's evidence and find that by the November 2013 board meeting he no longer felt able to run the business in the long-term whilst Mr Boulting retained majority control and so was able to block and overturn decisions made by the management of the business.

17. Although the parties did not entirely agree on the details, HMRC did not dispute that there were disagreements at board level for a number of years before Mr Boulting retired. Although they suggested that his retirement was not entirely necessary for the benefit of the trade, the focus of their arguments was on the amount paid for the shares and the reasons for that payment. In summary, they contended that the purpose of the payment was mainly to reward Mr Boulting for his past investment and activity, and to extract cash from the business, rather than being for wholly or mainly for the benefit of the trade.

18. Accordingly, we have not set out the evidence as to the pre-retirement disputes in detail here. We find that there were such disputes and that Mr Boulting's retirement was eventually agreed upon as a means of resolving the disputes over how the business should be operated in the long-term.

Purchase of own shares

19. We have set out the events leading to the purchase of own shares in more detail as the parties' submissions were more closely focussed on these events.

20. Mr Boulting agreed to consider retirement at the 11 November 2013 board meeting; the accountants suggested that it may be possible for the company to purchase Mr Boulting's shares in order to allow him to exit the business whilst management remained in control. MB's evidence, which we accept, was that he considered that the sale of Mr Boulting's shares to an external buyer would not be in the interests of the business; such a sale would have been likely to have forced all shareholder to sell their shares, as Mr Boulting had sufficient shares for drag-along clauses in the shareholder agreement to be invoked if he sold his shares. MB was aware of similar local companies that had been sold to external buyers and had suffered significantly as a consequence.

21. Mr Boulting required that the company be valued (which he was entitled to insist on, under the terms of the shareholders agreement), confirming this at a board meeting on 14 February 2014. The board agreed that MB, who has an MBA, would undertake the valuation exercise. At that meeting, it was acknowledged that PSC's cash reserves of £5m would limit the consideration payable in any deal with Mr Boulting.

22. On 26 February 2014, MB circulated an 'internal valuation', using EBITDA with a multiplier of 9.3 and a weighted average of historical and future profits. This valued the company at approximately £34m. Mr Boulting confirmed that he was interested in the total value of the company, rather than the number of shares which he could sell to the company. He confirmed that he would give away whatever shares could not be sold.

23. We consider that MB's evidence regarding the agreement reached at this meeting is accurate: that the board agreed that Mr Boulting would sell shares for £5m; the number of shares to be sold would be calculated from the valuation of the business; the balance of Mr Boulting's shares would be gifted to MB. A small number of shares (4) would be retained by Mr Boulting to be given to his grandchildren. Mr Boulting stated, and we accept his evidence, that he would not have gifted his shares to MB without the share purchase by the company also taking place.

24. Mr Boulting's will had been drafted prior to this to give his shareholding to MB. MB understood that the gift was effectively being accelerated in order to ensure that PSC remained in the family on Mr Boulting's retirement and also to ensure that Mr Boulting disposed of enough of his overall shareholding to be able to qualify for Entrepreneur's Relief on the shares sold to PSC.

25. We accept MB's evidence that he did not consider that he gained any particular benefit from the gift as he would otherwise have acquired those shares at market value on his father's death when they would have been subject to Business Property Relief and no inheritance tax would be payable. Given that he had agreed to hold-over relief in respect of the gift of the shares, he would be arguably worse off as he would have a larger tax charge on an eventual disposal than would otherwise be the case.

26. On 28 February 2014, Mr Boulting transferred one share to Andrew Boulting so that his shareholding amounted to 5% of the overall share capital. He was also appointed as a director, so that his shareholding would eventually qualify for Entrepreneur's Relief.

27. A clearance application was submitted to HMRC and approved on 27 March 2014 in respect of the proposed purchase of own shares.

28. On 10 April 2014, a board meeting was held and the purchase of Mr Boulting's shares was discussed. The company had performed well over the preceding quarter and year-end projections were expected to be exceeded. Mr Boulting then reminded the board that the clearance application was not binding and that no agreement had been entered into to sell the company. It was noted that a venture capital company had recently expressed an interest in the business. The multiple of EBITDA which that company was proposing was in excess of that used in the valuation undertaken by MB earlier. Mr Boulting argued that he considered he might do better to sell to a venture capital company. MB threatened to resign, considering that it would be disastrous for PSC if Mr Boulting were to sell his shares to such a purchaser. He had only spoken with the interested company because it was his responsibility as managing director to explore such business opportunities, and because he thought the conversation might be useful in respect of the valuation exercise that he had been asked to undertake.

29. The board met again on 5 May 2014 to consider a report which had been prepared by a board member of the Association of Learning Providers for PSC regarding private equity investment. The report noted that evidence suggested that private equity involvement was incompatible with the provision of training, as it would seriously compromise the viability of such a business, and that such involvement should only be justified as a last resort where business failure would otherwise occur. The PSC board agreed that, in principle, sale to a venture capital firm was a bad idea. Mr Boulting nevertheless stated that it remained open to him to sell as a shareholder and that, if the company wanted him to sell any of his shares to the company, they would need to come up with a competitive offer. He considered that the company had been undervalued in the valuation exercise to date.

30. In July 2014, PSC was approached by another education business, who indicated that they would consider "a multiple of 12 EBITDA". This was discussed informally with other board members.

31. On 25 September 2014 at a further board meeting, the board requested that MB liaise with the accountants to establish a new valuation for the company in order to agree an acquisition price for Mr Boulting's shares. A revised valuation of £73,125,740 was produced on 27 September 2014.

32. At a board meeting on 2 October 2014, the board agreed that MB and Jeffery Rowlands should meet with Mr Boulting to negotiate a final price for the share purchase, based on the valuation and the available funds for a company purchase of own shares. MB noted that he would expect the final price to be lower than the valuation as it would be normal for a purchaser (the company) to seek to achieve either an earn-out or a 20-25% discount on the vendor's initial position. The valuation exercise had produced a starting point for negotiations to establish a fair value in accordance with the shareholders' agreement.

33. On 7 October 2014 at a further board meeting it was noted that the price agreed was £600,000 per share for eight shares, being approximately a 20% reduction from the valuation put to the board on 2 October 2014.

34. On 9 October 2014, the accountants applied to HMRC for clearance and for confirmation that the proposed purchase would be subject to CGT only. The application contained all of the information required by Statement of Practice 2/82, including that the purchase was to be made wholly or mainly for the purpose of benefiting the trade carried on by the company and was not part of a scheme to enable Mr Boulting to avoid tax or to participate in the profits of the company without receiving a dividend.

35. On 22 October 2014, HMRC gave clearance in which it was stated that section 1033 of the 2010 Act would apply to the proposed purchase in the circumstances described in the clearance application.

36. At a STG board meeting on 19 November 2014 Mr Boulting continued to refuse to agree to investments proposed in IT and premises, even though he had agreed to exit the business. At the next PSC board meeting, on 10 December 2014, MB obtained the agreement of the board to execute the purchase of own shares as soon as possible noting that there was a significant risk that more problems would arise in STG if this did not happen and Mr Boulting continued to block proposals.

37. On 21 January 2015, following PSC board resolutions, 4 A Ordinary shares were transferred to Andrew Boulting from the late Mrs Boulting's estate and Mr Boulting transferred 38 B Ordinary shares to MB by way of gift.

38. On 22 January 2015, PSC purchased Mr Boulting's eight shares for £4.8m by way of company purchase of own shares. These shares were then cancelled.

39. The company's accountants notified HMRC in February 2015 that the purchase had been completed in accordance with the clearance.

40. In October 2016, HMRC opened an enquiry into Mr Boulting's self-assessment tax return for the tax year ended 5 April 2014, which treated the sale of his shares to the company as subject to capital gains tax. In October 2019, HMRC issued the closure notice which is the subject of this appeal, treating the sale as subject to income tax and concluding that the clearance was void on the basis that the share value used by the company was materially greater than market value and, as this had not been disclosed in the clearance application, HMRC were not bound by the clearance.

41. An application for judicial review of the decision to void the clearance was made. This was refused on the basis that, if the grounds were arguable, there was an alternative remedy to the parties in the form of an appeal to this Tribunal.

Summary submissions

42. HMRC contended that the purchase was not actually necessary to benefit the relevant trade: the business was already profitable and growing. HMRC contended that there was no clear evidence that the purchase was essential to unlock investment or resolve deadlock.

43. They also submitted (in summary) that because (as they contended) the price paid was excessive, it followed that it could not be regarded as a payment whose whole or main purpose was to benefit PSC's trade. In closing submissions, they contended that the purchase was a mechanism to remunerate John Boulting for his historic investment and risk in the business, not to benefit the ongoing trade.

44. For Mr Boulting, it was contended (in summary) that the price paid was not excessive and that the purchase was wholly or mainly for the purposes of benefitting the trade, as it removed a majority shareholder who had been blocking investment and who would not relinquish key decision-making responsibility.

Whether the purchase was necessary to benefit the relevant trade

45. HMRC accepted, in their note of evidence, that "tension was hindering the Group's progress ... leading to the resignation of ... a director of STG ... and the threatened resignation ... of a senior manager". They nevertheless contended that STG continued to be profitable and that its financial performance improved and they had developed into a market leader in their sphere.

46. On balance, we prefer the evidence of MB, which was that the profitability of STG at the time was not sustainable without the investment that was being blocked by Mr Boulting. He noted that although the business had done well in 2014, profits had dropped in 2015 and 2016. Because the business had been able to invest following the purchase of own shares in 2015, profits had recovered in 2017.

47. MB explained, and we accept, that this was because their business sector involves a two to three year investment period given that most of the training that they deliver takes place over that timescale. Accordingly, investments made in 2011 had produced very good results by 2014, but those results would have disappeared within another two to three years if no further investment was made. His evidence was also clear that although the business had achieved an outstanding Ofsted grade, the accompanying report had identified weakness in connection with IT in particular which he considered would need to be remedied. If they had not made the necessary investments, their competitors would have overtaken them.

48. We accept MB's evidence that the company was not "thriving" and that although the company was profitable, that was not sustainable without continued investment. We also accept his clear evidence that Mr Boulting was blocking proposals for such continued investment.

49. HMRC were, in effect, contending that the business was doing well and so there was no particular reason for Mr Boulting to relinquish control and that therefore the purpose of the share purchase could not be the benefit of the relevant trade. We prefer MB's evidence and conclude that (as HMRC accepted) the group's progress was being hindered by the disputes and also that, notwithstanding the profitability at the time of the purchase, the business would suffer and decline if investment was not made. We also find that Mr Boulting was blocking proposals for such investment and that his removal enabled the business to make such investments.

50. We find, therefore, that Mr Boulting's retirement as a director and relinquishing control was intended to benefit the relevant business by enabling investments to be made and resolving related management level disputes and tensions.

51. The question for us is then what the purpose of the share purchase was, having concluded that Mr Boulting's exit was for the benefit of the trade.

Purpose of the purchase

52. HMRC contended (in brief) that the purchase had two purposes, neither of which was the benefit of the trade: firstly, to extract the cash reserves from PSC for the benefit of Mr Boulting regardless of the value of the shares provided in return and secondly, to remunerate Mr Boulting for his historic investment and risk.

53. It was agreed that, as set out in Statement of Practice 2 (1982), where there is a disagreement between the shareholders over the management of the company and the disagreement is having or is expected to have an adverse effect on the company's trade, a purchase of own shares will be regarded as satisfying the trade benefit test, provided the effect of the transaction is to remove the dissenting shareholder.

54. HMRC contended that the circumstances of this case did not qualify because Mr Boulting did not sell all of his shares to PSC, noting that paragraph 3 of the Statement of Practice states that "If the company is not buying all the vendor's shares save for the small number held back for sentimental reasons, it would seem unlikely that the transaction could benefit the company's trade so that the trade benefit test will probably not be satisfied".

55. However, that quote omits the rest of the paragraph which makes it clear that this paragraph is envisaging a situation where the shareholder continues to hold onto the balance

of his shares. It does not, in our view, provide any guidance in circumstances where the shareholder disposes of substantially all of his shareholding in connected transactions, only one of which is a company purchase of own shares. We also note that this is a statement of practice; it is a guide to HMRC's view of matters and not a definitive interpretation of the law.

56. HMRC contended that the purchase of shares should be considered separately from the gift of shares to MB, and that there was no authority for considering the disposals together. They contended that the question for the Tribunal was whether the sum payable for Mr Boulting's 8 B shares was paid mainly or wholly for the purposes of benefitting the trade. They initially submitted that, if the amount was excessive because it did not reflect the true value of the 8 B shares, it could not be for the purposes of benefitting the trade. In closing submissions Ms Choudhury accepted that a share price above market value does not automatically mean that the purchase cannot be for the purposes of benefitting the trade. However, HMRC contended that "what the legislation is focusing on is the payment by the company, so it's that payment of £4.8 million for only eight shares in relation to which the tribunal has to make its decision."

57. We do not agree. We note that Condition A requires that the *purchase* of the shares is made wholly or mainly for the purpose of benefitting PSC's trade. Given that the focus of the legislation is on the purpose of the purchase (why were the shares purchased at all) and not on the payment element of the purchase alone, we consider that all of the circumstances of the purchase need to be considered. That is, we need to decide why the company purchased the shares, not necessarily why it paid £4.8m for them. The amount paid may be a factor to be considered in determining why the company purchased the shares, but it is not the only factor.

58. Further, we also do not consider that the legislation requires that the purchase of shares achieves the trade benefit purpose in isolation. All that is required in the statutory test is that the purpose of the purchase is to benefit the trade of the company. There is nothing in the wording that precludes the trade benefit purpose from being achieved by the purchase of the shares in conjunction with one or more other actions.

Whether remuneration for historic risk and investment

59. HMRC contended that PSC and Mr Boulting "were motivated by remunerating [Mr Boulting] for his historic risk and/or investment, that is a factor that militates against the sum payable accurately reflecting the value of the shares". In effect, they argued that the purchase was to placate Mr Boulting's ego or vanity.

60. We consider that the only person whose purpose is relevant in this situation is that of the company: what is required is that the company enter into the purchase to benefit its trade. This is clear from the fact that the legislation refers to the purpose of the *purchase*; the only person purchasing is the company. The motives of a seller, particularly a dissenting shareholder, are not necessarily going to be concerned with benefitting the trade of the company that they are leaving and we do not consider that they are relevant to the consideration of the purpose of the purchase (for the avoidance of doubt, this is a generic statement as to the approach to be taken and not a finding in respect of Mr Boulting specifically).

61. We accept Mr Boulting's evidence that he wanted to ensure that the overall valuation exercise reflected what he considered the company was worth and that he would not have disposed of his shares if that had not been achieved. He reluctantly admitted that there was some element of pride to this. As noted above, we do not consider that his motive is automatically relevant to the company's purpose in making the purchase. It was also clear

from his evidence that he was focussing on the value attributed to the company in this exercise and not the individual share value, nor even the value of the block of the shares to be sold back to the company.

62. We note that the overall value derived by Mr Boulting from the entire arrangements was £5,000,000 in the context of a company which was worth at least £42,000,000 (taking the lowest figure produced by the expert witnesses; this is not a finding of value, it is merely illustrating the point that what Mr Boulting received in giving up control was by any calculation rather less than the value of the total shares which he disposed of). This seems to us not likely to be particularly reflective of his historic risk and investment.

63. MB's evidence was that he knew he had to persuade Mr Boulting to relinquish control of the company but that he was also conscious of his responsibilities as a director and was trying to establish an appropriate valuation for the company. We considered that MB was a reliable and careful witness and accept his evidence.

64. Having considered the evidence before us, we conclude that to the extent that Mr Boulting's ego or vanity, or any aspect of return on investment, were considered by PSC, it was in the context of an awareness of his motivations. We consider that his motivations were not a purpose of the purchase even on a subconscious level on the part of the directors. They were factors of importance to Mr Boulting which we find were taken note of by the directors in their negotiations. Indeed, Mr Rogers (HMRC's expert witness) agreed that it would be a commercially sensible strategy in such circumstances to open negotiations with a high, flattering, opening valuation with the expectation that the eventual price would be negotiated lower.

65. We find therefore that although Mr Boulting obtained some degree of pride in the results of the company valuation exercise and may have wanted to ensure that the valuation exercise reflected his efforts historically, the purpose of the purchase for the company was neither to remunerate him for his historic investment nor to bolster his sense of pride. At most, these were factors that the company was aware that Mr Boulting considered important and so took into account as part of the process to achieve the object of the arrangements but we find that they were not an object of the arrangements.

66. In submissions, HMRC accepted that it was clear from the evidence that Mr Boulting was not going to give all his shares away. They also accepted that MB could not buy Mr Boulting's shares, and that PSC could not have purchased all of Mr Boulting's shares. We note and accept the clear evidence of Mr Boulting that he would not have gifted shares to MB without the share purchase also taking place. From this, we find that Mr Boulting would not have retired from the business and relinquished control without the share purchase taking place, and we find that the company knew this.

67. Given the evidence before us, we find that the company's purpose in undertaking the share purchase was to secure Mr Boulting's exit from the business in order to benefit the trade by resolving management level disputes and enabling investments to be made. For the avoidance of doubt, we are not conflating effect with purpose: the evidence was clear that the share purchase was undertaken in order to remove Mr Boulting from the business. Whilst the share purchase did not achieve his exit in isolation, it was a prerequisite for the rest of the arrangements to take place and the legislation does not state that the purchase must achieve the purpose in isolation.

Extraction of cash reserves and valuation generally

In effect, HMRC contended that the company intended to pay Mr Boulting £4.8m for some shares and that the number of shares purchased was more or less irrelevant, and so the share purchase was not for a trade benefit purpose.

68. This argument was based upon HMRC's view that the price paid was excessive for eight shares.

69. Despite this, and the emphasis placed on valuation before the hearing - to the extent of having two expert witnesses provide reports on the valuation of PSC – and this submission, Ms Choudhury stated (whilst cross-examining MB) that this “case isn't revolving around whose valuation is correct” and further that this was “not a case where either party has to establish whose valuation is correct in relation to a particular number. These statements were not wholly inconsistent with the contentions that the company had over-paid for the shares.

70. Nevertheless, in closing submissions, Ms Choudhury accepted that there had been a bona fide attempt by MB to establish a value for the company. However, she then went to contend that the valuation eventually arrived at by MB of £73,000,000 was indicative of a non-trade benefit intention, as it was considerably above the experts' reasonable range of valuations for the company. She contended that the fact that the negotiated price eventually reached was £60,000,000 did not mean that the valuation had changed.

71. We agree that MB made a bona fide attempt to value the company; we do not agree that the value arrived at was indicative of a non-trade benefit intention; MB was not an expert in company valuations: he had some knowledge of the process from his MBA studies and attending conference lectures on the topic, but his knowledge was that of a well-educated businessman. We also prefer MB's evidence that he expected that the valuation would be reduced in negotiation with Mr Boulting.

72. The expert witnesses confirmed that their respective overall estimates of PSC's equity value were broadly consistent, being £47.4m-£58m for Ms Nelder and £46.0m-£62.0m for Mr Rogers. This is despite there being a difference in the instructions given to the experts, which Mr Rogers being asked to make a series of assumptions which were not included in Ms Nelder's instructions. We note that the eventual share value negotiated between the board and Mr Boulting was £60m and that MB had always expected that the initial valuation number would be negotiated downwards.

73. In the circumstances, we do not consider that the fact that MB's valuation exercise resulted in a value, before negotiation with Mr Boulting, somewhat higher than that arrived at by share valuation experts with more experience and access to industry data means that the valuation he produced was indicative of a non-trade benefit.

74. There was some discussion as to whether any minority discount should have been applied when considering the shares being purchased. The experts disagreed on this, with Ms Nelder noting in the hearing that it was not unusual in these circumstances for founders to be rewarded on a pro rata basis. We note that this would also be how Mr Boulting would have participated on a sale of the company overall and we accept MB's evidence that he believed that this was a credible option for Mr Boulting. We note that the drag-along rights in the shareholder agreement could have enabled Mr Boulting to effectively push through a sale of the entire company.

75. We accept MB's evidence that no minority discount was taken into consideration; the negotiation was aimed at achieving a fair value, as they considered that this was what was required by the shareholder agreement, and Mr Boulting was not prepared to agree to a lower value. It clearly did not occur to either of them that a minority discount might be relevant.

This does not mean that the purchase of the shares was not for the purpose of benefiting the trade.

76. Considering the evidence before us, we do not consider that the share price agreed upon was intended by the company to provide any non-trade benefit: we consider that the evidence shows that the price was arrived at following negotiation and that the board believed that this was the price required to obtain Mr Boulting's agreement to sell his shares.

77. HMRC contended that a detailed consideration of the valuation exercise, compared to expert valuations, had to be undertaken in order to answer the question posed by statute: but the question posed by statute is, we consider, clear. That question is: what is the purpose of the share purchase. The question is not simply why the company paid £4.8m for eight shares; as set out above, that is a factor which may be relevant in considering the test but it is not the statutory test which needs to be applied.

78. We have already reviewed and made findings regarding the purpose of the share purchase set out above. Having considered the evidence before us, and as noted above, we do not consider that the details of the valuation exercises (that undertaken by MB and those undertaken by the experts) displace those findings as to the purpose of the purchase.

79. For these reasons we have not set out the expert evidence nor have we discussed the detail of the valuation methodologies in any particular detail; we have reviewed and taken into account all of that evidence but, given our findings above, do not consider that it would provide any assistance to set out that evidence.

80. We also therefore do not agree with HMRC's contention that the purpose of the share purchase was the extraction of cash reserves; that was an effect of the purchase but not, considering all of the evidence before us, the purpose of the purchase.

Conclusion

81. For the reasons set out above, we find that Condition A was met and that the company purchase of Mr Boulting's shares was wholly or mainly for the purpose of benefiting a trade carried on by PSC or any of its 75% subsidiaries. The appeal is therefore allowed.

Right to apply for permission to appeal

82. 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.

Release date: 24th OCTOBER 2025