

Tower One St George Wharf Ltd v HMRC: not St George’s Day

Introduction

In *Project Blue v Revenue and Customs Commissioners (Project Blue)*, Lords Hodge and Briggs commented that, in interpreting the provisions enacting stamp duty land tax (SDLT), allowances had to be made for growing pains:

“But SDLT was a new tax created by the [Finance Act 2003 (FA 2003)] and, as I have said, required repeated amendments to make it effective. It is not surprising that lacunas may have existed in the early years of a new tax.”¹

They continued:

“It is no surprise that, in its infancy, SDLT proved to have its own unintended loopholes. During its first decade it has therefore been the subject of frequent tweaking and revision.”²

These comments were not an auspicious welcome for SDLT to appellate litigation, and they retain some truth today. But *Tower One St George Wharf Ltd v Revenue and Customs Commissioners (Tower)*³ may mark the emergence of a more mature jurisprudence. The decision sits at the confluence of several of SDLT’s central themes (the identification of chargeable consideration, the operation of its broad anti-avoidance rule and the scope of key reliefs), and the contentiousness of the questions is highlighted by the tools with which the court addressed

¹ *Project Blue Ltd v Revenue and Customs Commissioners (Project Blue)* [2018] UKSC 30; [2018] S.T.C. 1355 at [31].

² *Project Blue* [2018] UKSC 30 at [93].

³ *Tower One St George Wharf Ltd v Revenue and Customs Commissioners (Tower)* [2025] EWCA Civ 1588; [2026] S.T.C. 1.

them. To a pessimist, resort to a rectifying construction and debates about the scope of statutory fictions may suggest that SDLT remains underdeveloped; but, for those of a more optimistic bent, they may reflect a creditable attempt to think about the workings of the tax as a whole.

Background

The transactions on which the case turned all concerned members of the Berkeley Group, a well-known property development business, in connection with the construction and sale of units within the St George Wharf Tower (the Tower). In 1997, a Berkeley company (SGSL) bought the site in Vauxhall. In 2000, it sold the beneficial interest in the site to another group company (St George), retaining the legal title as bare trustee.

On 5 July 2011, Berkeley implemented a scheme designed by PricewaterhouseCoopers (PwC), consisting of four relevant steps:

- 1) Another group entity made a capital contribution of £1,000 to a first special purpose vehicle (B64).
- 2) B64 acquired a 999-year lease of the Tower from SGSL (the Lease) for a premium equal to St George's book cost at that time (some £30 million) plus a peppercorn rent.
- 3) A second special purpose vehicle (the Taxpayer) acquired a 100% shareholding in B64 for £170 million.
- 4) B64 transferred the Lease to the Taxpayer at a value £50,000 above the premium (the Transfer), and existing lease agreements in respect of the apartments were novated to the Taxpayer.

Upon HMRC's enquiry into the scheme, the Taxpayer accepted that it failed to secure the intended corporation tax advantage. However, the SDLT treatment of the scheme also came under scrutiny. The SDLT returns filed for the grant of the Lease and the Transfer both claimed group relief, which confers an exemption from SDLT.⁴ HMRC disallowed the group relief claim in respect of the Transfer, on the ground that the transaction formed part of arrangements of which a main purpose was the avoidance of corporation tax, in which circumstances, paragraph 2(4A) of Schedule 7 FA 2003 precludes group relief. Accordingly, HMRC assessed the Taxpayer to SDLT of £8 million.

SDLT is charged on the acquisition of a "chargeable interest" in land, including a lease.⁵ The taxable amount is the transaction's "chargeable consideration", which is, subject to exceptions, identified as

"any consideration in money or money's worth given for the subject-matter of the transaction, directly or indirectly, by the purchaser or a person connected with him."⁶

Tax is then charged on the chargeable consideration at a variable rate;⁷ in *Tower*, the applicable rate was 4%.

⁴FA 2003 Sch.7.

⁵FA 2003 ss.42(1), 43(1)–(2) and 48(1).

⁶FA 2003 s.50(1) and Sch.4 para.1(1).

⁷FA 2003 ss.55, 55A and 56, Sch.4A and Sch.5.

The section 54 FA 2003 issue

Before the First-tier and Upper Tribunals, the Taxpayer contended that group relief was available to exempt the transactions from SDLT entirely. In both cases, the argument was unsuccessful, and the issue was not pursued before the Court of Appeal. Instead, the Taxpayer relied on the argument that the taxable amount was limited to the actual consideration given for the Transfer (resulting in a charge of £1.2 million), and could not be set at the market value of the Lease (which yielded the £8 million figure contended for by HMRC). This turned on the scope of section 54(4) FA 2003.

Section 53 FA 2003 lays down an exception to the rule that the chargeable consideration consists of the consideration actually given by the purchaser “for the subject-matter of the transaction”. Where the purchaser is a company, section 53 deems that the chargeable consideration shall be no less than the interest’s market value.

Section 54 FA 2003, however, enumerates three exceptions to the exception in section 53. The Taxpayer relied on Case 3:

“54—*Exceptions from deemed market value rule*

- 4) ...
Case 3 is where—
- a) the vendor is a company and the transaction is, or is part of, a distribution of the assets of that company (whether or not in connection with its winding up), and
 - b) it is not the case that—
 - i) the subject-matter of the transaction, or
 - ii) an interest from which that interest is derived, has, within the period of three years immediately preceding the effective date of the transaction⁸, been the subject of a transaction in respect of which group relief was claimed by the vendor.”

HMRC argued that, because B64 and the Taxpayer were connected companies, section 53 applied to deem the Transfer to have been at market value. But the Taxpayer contended that section 54(4) was engaged, disapplying section 53. HMRC conceded that section 54(4)(a) was satisfied,⁹ but maintained that section 54(4)(b) was not.

In that connection, two interpretive issues arose, which formed the basis of the Taxpayer’s two grounds of appeal to the Court of Appeal. First, did the reference to a claim in section 54(4)(b) FA 2003 include claims that were invalid or ineffective? Secondly, did the reference in section 54(4)(b) to “the period of three years immediately preceding the effective date of the transaction” include the date of the transaction itself? The Taxpayer contended that both questions were to be answered in the negative; success on either ground would suffice.

⁸ The “effective date” of a transaction is defined in FA 2003 s.119, which defines it as “the date of completion”, “except as otherwise provided” and subject to HMRC’s prescription of an alternative date by regulations. The most significant exception is found in FA 2003 s.44(4), which accelerates the effective date to the time of substantial performance of the contract if this is prior to completion.

⁹ The Court of Appeal observed that its judgment should not be taken as determining the issue and remarked that it was “not obviously straightforward”: *Tower* [2025] EWCA Civ 1588 at [29]–[30].

Falk LJ noted that the policy basis of Case 3 was “not immediately apparent”, but the purpose of its proviso was “clearer”.¹⁰ The reference to group relief, combined with the prescription of the three-year period, which mirrors the period within which group relief can be clawed back if a company that is party to a relieved transaction exits the group,¹¹ sufficed to show that

“[t]he evident intention is that paragraph 3 of Schedule 7 [providing for clawback of group relief] should not be capable of being sidestepped via a distribution of the property interest enjoying the Case 3 exception.”¹²

Falk LJ, therefore, answered the question posed by Ground 1 in favour of the Taxpayer. Since the clawback in paragraph 3 of Schedule 7 FA 2003 applies only if group relief was, in fact, enjoyed (as well as claimed), “the mischief” towards which Case 3 is directed disappears in the case of an ineffective claim;¹³ if there is no possibility of a clawback, there is no possibility of sidestepping that clawback by way of a distribution of land. Accordingly, the word “claim” was limited to effective claims. To hold otherwise would produce arbitrary results: the taxable amount would be determined by market value wherever a claim for group relief was made, however erroneous that claim was. For Falk LJ, it was hard to see what legislative purpose that might advance.¹⁴

With respect, it is not clear that Falk LJ’s approach to Ground 1 is the correct one. The question is how readily the court will accept that Parliament has adopted a heuristic. Falk LJ’s approach amounts to the identification of the “purpose” of the provision with the rationale that is most persuasive in the abstract. That is, of course, precisely what the task of purposive interpretation ordinarily demands. But, especially in matters of an administrative nature, such as the making of claims, it overlooks the fact that Parliament may consider prudential considerations to justify the simpler (if harsher) answer. Once that has been grasped, the remainder of Falk LJ’s reasoning on Ground 1 begs the question: is it only relevant to ask questions, such as “how it could ever have been determined that B64 was entitled to group relief”, if entitlement, rather than the making of the claim, is the statutory criterion. But that is not the question posed by the text of the proviso—and when that text is capable of a sound purposive justification, as it is here, it is an error to depart from it. HMRC’s submissions grazed this point in so far as they pointed to the risk of uncertainty;¹⁵ but it completes the thought to consider that it may be an error to privilege the interpretation that is theoretically pure over the one that promotes ease of administration.

¹⁰ *Tower* [2025] EWCA Civ 1588 at [42]–[43]. Some clarity can be drawn from Her Ladyship’s explanation of Case 3’s operation in case of dividends in specie of land: the absence of consideration in such transactions does not signal departure from fair market value, but reflects a return on capital.

¹¹ FA 2003 Sch.7 para.3(1).

¹² *Tower* [2025] EWCA Civ 1588 at [43]. See also [49]–[52]: this reflects the understanding stated in HMRC’s own SDLT Manual: HMRC, Internal Manual, *Stamp duty land tax manual* (27 January 2026), SDLTM30220, “Application: Companies: Deemed market value FA03/S53”, quoting Tax Bulletin 70 (April 2004), which was published shortly after the provisions’ enactment and was therefore said to be capable of constituting an external aid to interpretation.

¹³ *Tower* [2025] EWCA Civ 1588 at [45].

¹⁴ *Tower* [2025] EWCA Civ 1588 at [45]–[47].

¹⁵ *Tower* [2025] EWCA Civ 1588 at [53]–[54]. HMRC’s argument was that the exclusion of ineffective claims from the meaning of “claim” would make it impossible to determine, at the time when the SDLT return is filed, whether to compute the tax due on the basis of the consideration actually received or the interest’s market value; it would be necessary to await the resolution of the group relief claim. Falk LJ’s response was that (1) SDLT returns need not be accurate, only, as stated in FA 2003 Sch.10 para.1(1), “to the best of [the purchaser’s] knowledge, correct and

Given the Taxpayer’s success on Ground 1, the Court of Appeal’s consideration of Ground 2 was strictly obiter. Ground 2 concerned whether the three-year period must be taken as ending with the “effective date” of the transaction (as the text of the legislation prescribes) or the transaction itself (so that a claim made on the same day as the transaction could engage the proviso and deprive the Taxpayer of protection under Case 3).

On Ground 2, the Court of Appeal agreed with HMRC; notwithstanding the clear formulation of the period in terms of the “effective date”, it would be absurd to interpret the proviso as containing a “nonsensical gap” for transactions occurring on the same day as the distribution.¹⁶

Unlike the tribunals below, which reached the same conclusion by way of purposive interpretation, Falk LJ applied the rectificatory jurisdiction described in *Inco Europe Ltd v First Choice Distribution (Inco)*:¹⁷ the difficulty was attributable to “a simple error in the drafting”.¹⁸ In *Inco*, Lord Nicholls stated that such errors can be treated as rectified by the court if it is “abundantly sure” of three matters: first, “the intended purpose of . . . the provision in question; secondly, that the draftsman and Parliament failed to give effect to that purpose in the provision”; and thirdly, “the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed.”¹⁹

In the Court of Appeal’s judgment, all three conditions were satisfied. It was “clear” that the intended purpose of section 54(3)(b) FA 2003, in so far as the reference to the three-year period was concerned, was to prevent circumvention of the clawback of group relief; that, “through inadvertence”, a lacuna was left in respect of transactions on the effective date; and that, had the error been noticed, that lacuna would have been filled.²⁰ The Court of Appeal emphasised that “a determination of the precise words” is “inessential”, but observed that the rectification could take the simple form of “reading the words ‘preceding the effective date’ as reading ‘preceding and including the effective date’”.²¹

The invocation of the *Inco* jurisdiction, which neither party contended for, is among the more striking features of the judgment. Indeed, it serves as something of a capstone to a year of tax litigation in which *Inco*, despite its exceptional status and the high threshold for its application, has played an increasingly prominent role.²² While it remains to be seen whether the wave has already crested, the development is to be welcomed; when the dictates of purposive interpretation come into conflict with the statutory text, it is preferable by far for the court to square up to the anomaly directly and in this structured manner than to break the tie by less transparent means.

complete”; and (2) SDLT returns can be “amended within 12 months of the filing date”. But to show that a difficulty is superable is not necessarily to exorcise the suspicion that Parliament intended a scheme under which such difficulties would not arise at all.

¹⁶ *Tower* [2025] EWCA Civ 1588 at [60]–[61].

¹⁷ *Inco Europe Ltd v First Choice Distribution (Inco)* [2000] 1 W.L.R. 586; [2000] C.L.C. 1015.

¹⁸ *Tower* [2025] EWCA Civ 1588 at [62].

¹⁹ *Inco* [2000] 1 W.L.R. 586 at 592.

²⁰ *Tower* [2025] EWCA Civ 1588 at [67].

²¹ *Tower* [2025] EWCA Civ 1588 at [67] and [63].

²² For two successful examples of the invocation of *Inco* [2000] 1 W.L.R. 586 in 2025, see *JD Wetherspoon Plc v Revenue and Customs Commissioners* [2025] UKFTT 658 (TC) and *Cascade Care Ltd v Revenue and Customs Commissioners* [2025] UKFTT 1332 (TC).

The upshot was that, on its true construction,²³ the proviso included claims made on the effective date prior to the transaction itself.

The section 75A FA 2003 issue

Given that the Taxpayer succeeded in establishing that, by virtue of Ground 1, section 54(3) FA 2003 applied, HMRC's fallback position—that the anti-avoidance rule contained in section 75A FA 2003 applied—came to prominence. The Court of Appeal was the first forum in which the issues were fully ventilated.

Section 75A, in so far as relevant, provides as follows:

“75A—Anti-avoidance

- 1) This section applies where—
 - a) one person (V) disposes of a chargeable interest and another person (P) acquires either it or a chargeable interest deriving from it,
 - b) a number of transactions (including the disposal and acquisition) are involved in connection with the disposal and acquisition (“the scheme transactions”), and
 - c) the sum of the amounts of stamp duty land tax payable in respect of the scheme transactions is less than the amount that would be payable on a notional land transaction effecting the acquisition of V's chargeable interest by P on its disposal by V.

...

- 4) Where this section applies—
 - a) any of the scheme transactions which is a land transaction shall be disregarded for the purposes of this Part, but
 - b) there shall be a notional land transaction for the purposes of this Part effecting the acquisition of V's chargeable interest by P on its disposal by V.
- 5) The chargeable consideration on the notional transaction mentioned in subsections (1)(c) and (4)(b) is the largest amount (or aggregate amount)—
 - a) given by or on behalf of any one person by way of consideration for the scheme transactions, or
 - b) received by or on behalf of V (or a person connected with V within the meaning of section 1122 of the Corporation Tax Act 2010) by way of consideration for the scheme transactions.
- 6) The effective date of the notional transaction is—
 - a) the last date of completion for the scheme transactions.” (footnotes omitted)

Further provision is contained in sections 75B and 75C FA 2003. Section 75B(1) operates to exclude from the section 75A(5) computation of chargeable consideration the consideration for

²³ Although the jurisdiction in *Inco* [2000] 1 W.L.R. 586 is most commonly described as rectificatory, this is a misnomer, in that the statute persists unamended. Rather, the purposive construction of the legislation in context reveals the need to depart from its text: *Bogdanic v Secretary of State for the Home Department* [2014] EWHC 2872 (QB) at [43] (per Sales J).

transactions that are “merely incidental to the transfer of the chargeable interest from V to P”. Section 75B(2) provides that certain transactions are “not incidental”. Section 75C makes supplemental provision, confirming in subsection (6) that “[s]ection 53 applies to the notional transaction under section 75A” and, in subsection (2), that

“[t]he notional transaction under section 75A attracts any relief under this Part which it would attract if it were an actual transaction (subject to the terms and restrictions of the relief).”

The notional transfer prescribed by section 75A would, therefore, simply be the grant of a lease over the Tower by SGSL to the Taxpayer. HMRC argued that the assessment could be upheld on the footing that the notional transaction generated by section 75A was, unlike the actual Transfer, not capped by Case 3.

The Taxpayer’s primary response was that the notional transaction would have qualified for group relief, as it would not have fallen afoul of the purpose test that denied that relief in respect of the actual transactions. The transfer of the Tower to the Taxpayer was itself motivated not by tax but by the desire to ring-fence risk and to enable securitised borrowing; it was merely the means by which that transfer was actually implemented, which were disregarded by dint of section 75A(4)(a), which impeached the claim for group relief. HMRC disagreed that group relief would be available in respect of the transaction; there was nothing in the fiction generated by section 75A to justify the disregard of the tax avoidance purpose.

The Taxpayer’s secondary case was that, if group relief were not available, the notional transaction would constitute a distribution of the Tower by SGSL to the Taxpayer. Such a distribution would fit within Case 3, disapplying section 53 FA 2003 in relation to section 75A for the same reasons as prevailed in relation to the actual transaction. HMRC’s response was that Case 3 was unavailable because SGSL, as a bare trustee, could not be treated as having made a distribution.

For Falk LJ, both of the Taxpayer’s arguments turned on “the extent to which statutory fictions must be treated as replacing the actual facts”.²⁴ The leading authority on such “scope of the deeming” questions is the summary of Lord Briggs in *Fowler v Revenue and Customs Commissioners (Fowler)*, the crux of which is that the scope of the deeming is a question of purposive construction to be undertaken with an eye to the presumption against absurdity, without “shrink[ing] from applying the fiction ... to the consequences which would inevitably flow from the fiction being real”.²⁵ Falk LJ rejected the Taxpayer’s first argument, reasoning that “by the time that the actual transactions were implemented on 5 July 2011 (the effective date of the notional transaction ...) the parties had a main purpose of avoiding corporation tax”.²⁶ Applying *Fowler*, the circumstances surrounding the disregarded transactions were not themselves subject to the disregard. The Court of Appeal’s reasoning was, therefore, that whether the notional transaction was tainted by a tax avoidance purpose had to be decided not by reference to the features of the notional transaction, but by whether the parties factually had a main purpose of tax avoidance on the notional transaction’s effective date.

²⁴ *Tower* [2025] EWCA Civ 1588 at [78].

²⁵ *Fowler v Revenue and Customs Commissioners (Fowler)* [2020] UKSC 22; [2020] S.T.C. 1476 at [27].

²⁶ *Tower* [2025] EWCA Civ 1588 at [91].

The issue is contestable, and Falk LJ’s conclusion may seem especially implausible when it is considered that the group relief purpose test asks whether the transaction “forms part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax”.²⁷ But the Court of Appeal’s conclusion is correct when considered against the background of the substantial body of case law establishing that references to the purposes of a transaction, or of arrangements, are to be taken as references to the subjective purposes of the parties.²⁸ There is, no doubt, an unusual blend of reality and unreality in this conclusion (how could it be anything other than artificial to discuss parties’ factual subjective intentions in relation to a transaction that did not, in fact, happen?); but, were it otherwise, section 75C(2) FA 2003’s reference to the “restrictions of the relief” would be a dead letter in respect of purpose tests. Parliament cannot have intended such an outcome.

The Court of Appeal also rejected the Taxpayer’s second argument: the notional transaction involved no “distribution” within the Case 3 exception.²⁹ The difficulty for the Taxpayer was that SGSL was bare trustee; St George was the beneficial owner.³⁰ It “would go further than the deeming requires” to treat the assets of the bare trustee as available for distribution.³¹ That is a sufficiently cogent basis on which to reject the ground of appeal, though Falk LJ fairly observed that “the scope of the deeming” enquiry was clouded by “lack of clarity” as to the purpose of the provisions in question.³²

Quantification

Although HMRC’s submissions on section 75A FA 2003 were upheld, this was insufficient to dispose of the appeal. Section 75A(1)(c) FA 2003—which articulates one of the preconditions for section 75A’s application—requires that the SDLT “payable in respect of the scheme transactions” is less than the SDLT that “would be payable on a notional land transaction”. The Court of Appeal, therefore, needed to compare the amounts of SDLT on the actual and notional transactions, requiring it to determine whether the SDLT that was chargeable on B64 should be brought into account.

The court regarded itself as bound by the approach adopted in the Court of Appeal’s decision in *Project Blue Ltd (formerly Project Blue (Guernsey Ltd)) v Revenue and Customs Commissioners*,³³ which established that “payable” means “payable on the completion of the transaction”, or “liable to pay (as that expression is used in section 85(1) [FA 2003])”.³⁴ It followed

²⁷ FA 2003 Sch.7 para.2(4A)(b).

²⁸ *Mallalieu v Drummond (Inspector of Taxes)* [1983] 2 A.C. 861; [1983] 3 W.L.R. 409; *BlackRock Holdco 5 LLC v Revenue and Customs Commissioners* [2024] EWCA Civ 330; [2024] S.T.C. 740 at [124].

²⁹ *Tower* [2025] EWCA Civ 1588 at [99]–[100].

³⁰ FA 2003 Sch.16 para.3(1) deems the acts of bare trustees to be the acts of the beneficial owner. Leases, however, are an exception: in relation to the grant of a lease to or by a bare trustee, the bare trustee is treated as (respectively) purchasing or selling the lease.

³¹ *Tower* [2025] EWCA Civ 1588 at [99].

³² *Tower* [2025] EWCA Civ 1588 at [100].

³³ Notably, HMRC reserved its position in respect of subsequent appeals to the Supreme Court: *Tower* [2025] EWCA Civ 1588 at [106].

³⁴ *Project Blue Ltd (formerly Project Blue (Guernsey Ltd)) v Revenue and Customs Commissioners* [2016] EWCA Civ 485; [2016] S.T.C. 2168 at [35] and [52]. FA 2003 s.85(1) provides that “[t]he purchaser is liable to pay the tax in respect of the chargeable transaction”.

that the computation of the SDLT “payable in respect of the scheme transactions”³⁵ should be determined irrespective of the fact that HMRC had not, in fact, assessed B64 to any SDLT.

The grant of the Lease to B64 by SGSL for a premium of some £30 million was the acquisition of a chargeable interest for a chargeable consideration. As Falk LJ observed, the grant would not have qualified for group relief for the same reason as the Transfer, and, due to SGSL’s status as a trustee, could not be a “distribution” within Case 3,³⁶ with the consequence that section 53 FA 2003 would apply to deem the consideration for the grant as being the Lease’s market value (some £200 million). The chargeable consideration on the scheme transactions, which also included the (approximate) £30 million actually paid by the Appellant as consideration for the Transfer,³⁷ was, therefore, £230,447,628. By contrast, HMRC computed the consideration for the notional transaction as £230,448,629, being the aggregate of the capital contribution, the premium for the Lease’s grant, the consideration for the sale of B64’s shares, and the consideration for the Transfer—more than the aggregate actual consideration, albeit by just £1,001, and hence permitting section 75A FA 2003’s application.

The question, therefore, arose of whether any of the components of HMRC’s notional consideration computation could be excluded. To that end, the Taxpayer argued that (1) the share sale was either not a scheme transaction, or was an incidental transaction; (2) section 75A(5)(b) FA 2003 did not permit double-counting of consideration on the grant of the Lease and on the Transfer; and (3) the capital contribution was not consideration.

The sale of the shares was held to be a scheme transaction, with the court emphasising the breadth of “the words ‘in connection with’ in the definition of ‘scheme transactions’”.³⁸ More contentiously, Falk LJ held that the sale of the shares was not an incidental transaction. Because the Transfer was, in the context of the PwC step plan, “conditional on the completion of” the share sale, it was within section 75B(2)(b) FA 2003 and hence a non-incidental transaction. Whether a transaction was “conditional” on another was to be “approached realistically”, rather than by reference to whether it was “legally conditional” thereon.³⁹

With respect, that reasoning is doubtful. The word “conditional” has such strong legal connotations that it does not admit of any other content. It is unclear what it could possibly mean for A to be “realistically”, as opposed to “legally”, “conditional” on B.

Nevertheless, the Court of Appeal reached the correct result. Falk LJ considered herself unable to “derive assistance from” the guidance as to the meaning of “incidental” in *Revenue and Customs Commissioners v Dolphin Drilling Ltd* (endorsed by the Supreme Court).⁴⁰ But, in the writer’s view, close examination of Nugee LJ’s dictum that

³⁵ FA 2003 s.75A(1)(c).

³⁶ FA 2003 s.54(4)(a).

³⁷ Due to the appellant’s success in respect of the FA 2003 s.54 issue.

³⁸ *Tower* [2025] EWCA Civ 1588 at [113], citing *Rix J in Campell v Conoco (UK) Ltd* [2002] EWCA Civ 704; [2003] C.L.Y. 730 at [19]: “as wide a connecting link as one can commonly come across”.

³⁹ *Tower* [2025] EWCA Civ 1588 at [119]–[120].

⁴⁰ *Tower* [2025] EWCA Civ 1588 at [123]; *Revenue and Customs Commissioners v Dolphin Drilling Ltd* [2024] EWCA Civ 1; [2024] S.T.C. 157; *Revenue and Customs Commissioners v Dolphin Drilling Ltd* [2025] UKSC 24; [2025] S.T.C. 1142.

“use A is incidental to use B if it arises out of use B, something that is done because of use B, or in connection with use B, or as a by-product of use B”⁴¹

yields an answer.

While Falk LJ was right to observe that “in connection with use B” will often draw too wide a compass, it remains helpful to observe that the sale of the shares did not “arise out of”, and was not “done because of” or “as a by-product of”, the transfer of the chargeable interest from SGSL to the Taxpayer. The share sale was included for corporation tax reasons, rather than due to any feature of the land transactions; it may have been incidental to the same purpose as the transfer of the chargeable interest, but that is distinct from being incidental to the transfer of the chargeable interest itself. The better view is that the share transactions were not “incidental” to the notional transfer as a matter of ordinary language.

Importantly, the Taxpayer’s attempt to exclude overlap between the consideration for the grant of the Lease and the consideration for the Transfer also failed. The Taxpayer argued that the word “or” in “(or a person connected with V)” in section 75A(5)(b) FA 2003 was disjunctive, so consideration received by connected persons was only relevant where V received no consideration. As Falk LJ observed, this would enable circumvention “by ensuring that some consideration was received by V and the remainder by a connected party”; Parliament must have intended “or” to operate conjunctively to include receipt by either or both of V and connected parties.⁴² The consequence that the Lease’s book cost would be counted twice was “not that surprising” given the multiple transactions to which the Lease was subject and, hence, the inclusion of both transfers in the computation of the consideration for actual transactions as well.⁴³ Accordingly, both elements were properly included in the computation, and, despite the Taxpayer’s success on the section 54 FA 2003 issue, the appeal was determined in HMRC’s favour. The implications of the double-counting point are potentially dramatic, and may well persuade the Supreme Court that the case raises a point of “general public importance”⁴⁴ such that it should hear a further appeal. If the Court of Appeal is right, the effect of section 75A FA 2003 could be unexpectedly punitive. If, for example, a chargeable interest were to be passed down a chain of five group companies, but group relief were to be lost due to a main purpose of tax avoidance, the effect of section 75A (as interpreted by the Court of Appeal) would be to impose a quintuple liability, rather than the single liability actually avoided. In that light, the notion that the bracketing of the words “or a person connected with V” connotes substitution rather than conjunction may appear more attractive. Still, the impression is superficial. For while the consequences of Falk LJ’s approach may seem harsh, these flow directly from the (much-criticised) nature of SDLT as a transactional tax:⁴⁵ more transactions mean a greater liability, and it is for those who undertake such transactions in the expectation that they will be relieved to ensure that the conditions for relief are met.

⁴¹ *Revenue and Customs Commissioners v Dolphin Drilling Ltd* [2024] EWCA Civ 1 at [44].

⁴² *Tower* [2025] EWCA Civ 1588 at [125].

⁴³ *Tower* [2025] EWCA Civ 1588 at [127].

⁴⁴ The Supreme Court of the United Kingdom, “Practice Direction 3: Applications for permission to Appeal” (2026), supremecourt.uk, <https://supremecourt.uk/how-to-appeal/practice-directions#practice-direction-3:-applications-for-permission-to-appeal>, 3.2.

⁴⁵ See, e.g. James Mirrlees et al (eds), *Dimensions of Tax Design: The Mirrlees Review* (Oxford: OUP, 2011), p.808.

Conclusion

It is scarcely an exaggeration, then, to say that tax on some £230 million was determined by the breadth of just £1. With the Taxpayer losing by such a slender margin, and in light of the complexity of the reasoning, the possibility of an appeal to the Supreme Court looms large. There is, as the discussion here indicates, much to be debated. But for all the criticisms made above, the approach of the Court of Appeal to the vexed task of interpreting many of FA 2003's slipperier provisions purposively is only to be applauded. At first blush, the legal issues with which the court had to grapple may appear disparate; but if Falk LJ's judgment has a central theme, it is the conviction that the provisions will only disclose their purpose if put into conversation with one another.

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