Neutral Citation: [2026] UKUT 00300 (TCC)

Case Number: UT-2025-000079

UPPER TRIBUNAL
(Tax and Chancery Chamber)

Hearing venue: The Rolls Building
Fetter Lane
London
EC4A 1NL

Heard on: 23 June 2026
Judgment date: 06 August 2026

INCOME TAX – section 415 Income Tax (Trading and Other Income) Act 2005 – whether director's loan account was "written off" – yes – in which year did the write-off occur - 2018/19 – Appeal allowed

Before

JUDGE SWAMI RAGHAVAN
JUDGE GUY BRANNAN

Between

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Appellants

And

GARY QUILLAN

Respondent

Representation:

For the Appellants: Mr Charles Bradley, Counsel, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

For the Respondent: The Respondent appeared in person

DECISION

INTRODUCTION

1. The main issue in this appeal is whether an amount outstanding on a director's loan account was written off, for the purposes of s415(1) Income Tax (Trading and Other Income) Act 2005 ("ITTOIA"), in the course of a creditors' voluntary liquidation of the company. The company concerned was BOH Investments Ltd ("BOH"), which was wholly owned by the Respondent ("Mr Quillan") and of which he was the sole director. The second question, if we find that the loan was written off, relates to the timing of that write-off.

2. The significance of the first issue is that that if a close company writes off a debt owed to it by a participator, such as Mr Quillan, a charge to income tax arises for Mr Quillan under s415(1) ITTOIA. The significance of the second issue is whether the alleged write off occurred in the year of assessment for which the Closure Notice was issued by the Appellants ("HMRC") i.e. 2018/19. Mr Quillan argues that his loan was written off either before or after that year of assessment.

3. The First-tier Tribunal ("FTT"), in a decision released on 10 April 2025 ([2025] UK FTT 00421 (TC) ("the Decision"), held that the loan to Mr Quillan had not been written off for the purposes of s415(1) ITTOIA and, consequently, the FTT did not have to decide the second issue.

4. HMRC now appeal to this Tribunal with the permission of the FTT granted on 10 July 2025.

5. For the reasons given below, we allow HMRC's appeal, set aside the decision of the FTT, remaking it to dismiss Mr Quillan's appeal against the Closure Notice for 2018/19.

6. We are grateful for the submissions of Mr Bradley and Mr Quillan which we found of considerable assistance.

BACKGROUND

7. The facts are not in dispute and were not in dispute before the FTT. It is, however, worth noting that before the FTT it was also argued that there was a "release" of Mr Quillan's debt to BOH for the purposes of s415(1) ITTOIA. Before us, it was common ground that there was no such release. It also appears to have been common ground before the FTT and before us that BOH was a close company for the purposes of s415 ITTOIA. References in square brackets are to the relevant paragraphs of the Decision, unless the context otherwise requires.

8. The facts are as found by the FTT at [13]-[31] of the Decision, as follows:

> "13. Mr Quillan was the sole director of BOH.
>
> 14. On 16 January 2017, BOH passed a resolution for the voluntary winding up of the company and Andrew Rosler of Ideal Corporate Solutions Limited was appointed as liquidator.
>
> 15. The director's loan account (the Director's Loan Account) was overdrawn in the amount of £439,954.
>
> 16. The liquidator's Annual Progress Report of 25 January 2018 noted that:

"The Statement of Affairs included the overdrawn director's loan account in the sum of £439,954.00. An initial demand for payment was made although the director advised that he had no means to pay. Initial enquires were made with the Director with a view to reaching a settlement to discharge his overdrawn director's loan account. A statement of means was received which suggested the Director has no assets and insufficient income to make an offer of settlement.

Following protracted correspondence and the threating of legal action, the Director has made an offer of £57,500 to settle the claim. The payments are due in instalments over a six month period and although I am still continuing my enquiries into the Directors current financial position."

17. Between February 2018 and July 2018, Mr Quillan made six payments of £9,583 towards the outstanding balance of the Director's Loan Account, a total of £57,498.

18. The liquidator's notice of final account dated 18 March 2019 (the Report) included the following statement:

"Enquiries were made with the Director with a view to reaching a settlement to discharge his overdrawn director's loan account ... Following protracted correspondence and the threat of legal action, the Director made an offer of £57,500 to settle the claim. To date, £57,498.00 has been received in respect of the overdrawn Director's Loan Account."

19. The Report goes on to note that "no further funds are expected into the Liquidation in this respect."

20. The outstanding balance of the Director's Loan Account following Mr Quillan's six payments stands at £382,456[1].

21. On 15 April 2020, BOH was dissolved.

22. On 10 September 2020, HMRC wrote to Mr Quillan to let him know that an enquiry had been opened into his self-assessment tax return for 2018-19. In particular, Mr Quillan was asked to confirm the amount of the Director's Loan Account released or written off by the liquidator, the date of the agreement to do this, and for full details of payments made in relation to the overdrawn Director's Loan Account.

23. In response to HMRC's enquiries, Mr Rosler wrote to HMRC by letter dated 24 September 2020 (Liquidator Letter 1) as follows:

"I can confirm that the original balance of the Directors Loan Account was £439,954.00. The Director made payments towards the Directors Loan Account as stated in my final report although the matter remained unresolved and was not formally written off."

24. By letter dated 27 November 2020, HMRC wrote to Mr Rosler asking for further information about the Director's Loan Balance. The following questions were asked:

"1. If the outstanding balance was not written-off, could you tell me what happened to this debt?

2. Was the outstanding balance released?

3. If it was not released,

a. Are the Liquidators still seeking repayment?

[1] Referred to in this decision as the "Outstanding Balance".

b. Does the matter remain unresolved?

What happened to the outstanding balance upon dissolution of the company?”

25. Mr Rosler replied by letter dated 4 December 2020 to confirm that the Director's Loan Balance remained unresolved prior to his release as liquidator.

26. When asked by HMRC in a follow-up letter why the unpaid loan amount had not been released or written off and whether he would be willing to release or write off the unpaid amount if HMRC restored BOH, Mr Rosler replied by letter dated 8 February 2021 (Liquidator Letter 2):

"Unless a Director insists on a compromise, any payments we receive are on account of an Overdrawn Directors Loan Account repayment. As Liquidator, I then report this to creditors to establish whether they wish to fund/acquire the right of action. Failing that, if the case then closes it allows the Company to be restored if I was made aware of any windfall being received by the Director(s)."

27. By letter dated 4 March 2021, HMRC informed Mr Quillan that an inaccuracy had been found in his tax return and there was some further correspondence between HMRC and Mr Quillan between March and June 2021.

28. On 22 March 2023, HMRC wrote to Mr Quillan (the 22 March 2023 Letter) to confirm their view that a tax charge relating to the Director's Loan Balance should be included. This letter included paragraphs taken from HMRC's Corporation Tax Manual 61560 [CTM61560] (the Guidance). The following paragraph, setting out an example of the application of s 415(1) ITTOIA, was highlighted by the reviewing officer as relevant to Mr Quillan's circumstances:

"Equally, where the liquidator does not write off or release the loan balance, but, on a balanced view of the facts, it is clear that the company and / or liquidator are not intending to pursue the outstanding loan, e.g. where they are not making any attempts to collect it or have given up any attempts to do so, then we should argue that the loan has been written off and the S415 ITTOIA05 should apply to the relevant amount."

29. Following their enquiries, HMRC concluded that the Director's Loan Balance had been omitted from Mr Quillan's 2018-19 tax return and should have been declared. In the Closure Notice dated 9 August 2023, HMRC stated:

"Your overdrawn loan account with BOH Investments Ltd was not repaid in full during the Insolvency Proceedings. The evidence from the Insolvency Practitioner in their report dated 18 March 2019, states the overdrawn loan account was £439,954. You made an offer to settle the claim and repaid £57,498, leaving an outstanding balance of £382,456.

Their report states that no further funds were expected into the Liquidation in this respect. Per HMRC's guidance at CTM61560, any loan balance which is not repaid and is no longer being pursued by the Insolvency Practitioner is considered to have been written off and that S415, ITTOIA05 should apply to the relevant amount."

30. Mr Quillan appealed against the conclusion of the Closure Notice on 5 September 2023 and HMRC provided their view of the matter on 22 September 2023 and offered Mr Quillan a review of that decision.

31. Mr Quillan accepted a review of HMRC's decision, and, by letter dated 23 November 2023 (the Review Conclusion Letter), HMRC upheld the conclusion of the Closure Notice…."

THE LEGAL FRAMEWORK

9. Section 415(1) ITTOIA provides:

"Income tax is charged if–

(a) a company is or was chargeable to tax under section 455 of CTA 2010 (loans to participators in close companies etc.) in respect of a loan or advance, and

(b) the company releases or writes off the whole or part of the debt in respect of the loan or advance."

10. Section 455 Corporation Tax Act 2010 provides:

Charge to tax in case of loan to participator

This section applies if a close company makes a loan or advances money to—

(a) a relevant person who is a participator in the company or an associate of such a participator,

(b) the trustees of a settlement one or more of the trustees or actual or potential beneficiaries of which is a participator in the company or an associate of such a participator, or

(c) a limited liability partnership or other partnership one or more of the partners in which is an individual who is—

(i) a participator in the company, or

(ii) an associate of an individual who is such a participator.

(2) There is due from the company, as if it were an amount of corporation tax chargeable on the company for the accounting period in which the loan or advance is made, an amount equal to such percentage of the amount of the loan or advance as corresponds to the dividend upper rate specified in section 8(2) of ITA 2007 for the tax year in which the loan or advance is made .

(3) Tax due under this section in relation to a loan or advance is due and payable in accordance with section 59D of TMA 1970 on the day following the end of the period of 9 months from the end of the accounting period in which the loan or advance was made.

(4) For the purposes of this section and sections 456 to 459, the cases in which a close company is to be treated as making a loan to a person include a case where—

(a) that person incurs a debt to the close company, or

(b) a debt due from that person to a third party is assigned to the close company.

In such a case, the close company is to be treated as making a loan of an amount equal to the debt.

(5) If a company (C) controls another company (D), a participator in C is to be treated for the purposes of this section as being also a participator in D.

(6) In this Chapter, "relevant person" means—

(a) an individual, or

(b) a company receiving a loan or advance in a fiduciary or representative capacity.

(7) For exceptions to the charge under this section, see section 456.

(8) See also—

(a) section 458 (relief in case of repayment or release of loan),

(b) section 459 (loan treated as made to participator), and

(c) sections 460 to 462 (loan treated as made by close company).

11. The relevant provisions of the Insolvency Act 1986 are as follows:

104A Progress report to company and creditors

(1) The liquidator must—

(a) for each prescribed period produce a progress report relating to the prescribed matters; and

(b) within such period commencing with the end of the period referred to in paragraph (a) as may be prescribed send a copy of the progress report to—

(i) the members and creditors, other than opted-out creditors of the company; and

(ii) such other persons as may be prescribed.

(2) A liquidator who fails to comply with this section is liable to a fine.

…

106 Final account prior to dissolution.

(1) As soon as the company's affairs are fully wound up the liquidator must make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of.

(2) The liquidator must, before the end of the period of 14 days beginning with the day on which the account is made up—

(a) send a copy of the account to the company's members,

(b) send a copy of the account to the company's creditors (other than opted-out creditors), and

(c) give the company's creditors (other than opted-out creditors) a notice explaining the effect of section 173(2)(e) and how they may object to the liquidator's release.

(3) The liquidator must during the relevant period send to the registrar of companies—

(a) a copy of the account, and

(b) a statement of whether any of the company's creditors objected to the liquidator's release.

(4) The relevant period is the period of 7 days beginning with the day after the last day of the period prescribed by the rules as the period within which the creditors may object to the liquidator's release.

(5) If the liquidator does not comply with subsection (2) the liquidator is liable to a fine.

(6) If the liquidator does not comply with subsection (3) the liquidator is liable to a fine and, for continued contravention, a daily default fine.

THE FTT'S DECISION

12. The FTT noted at [43] that that there was no statutory definition of the words "written off"[2] in s415(1) ITTOIA.

13. After recording the parties' submissions, the FTT noted at [59] that Mr Quillan did not need to prove that the Outstanding Balance was being pursued but simply that it had not been written off. The FTT concluded that the Outstanding Balance had, indeed, not been written off. The key passages of the FTT's reasoning are at [60]-[62], as follows:

> "60. The ordinary meaning of the term "written off" from the Cambridge English dictionary: "*to accept that an amount of money has been lost or that a debt will not be paid*" is helpful insofar as it seeks to provide a definition where there is otherwise none. *Collins*, also, provides an example of what a written off debt may look like in that it may yet be recovered by a company. But neither of these interpretations need apply in circumstances where there is a formal writing off process which has deliberately not been followed.
>
> 61. Even if we take the ordinary meaning of the term, we do not agree that the actions of the liquidator in writing the Report and in dissolving BOH amount to an acceptance that the money has been lost or that a debt will not be paid. The liquidator states clearly in Liquidator Letter 1 that there was no formal write-off of the Director's Loan Balance. The prospect of a reinstatement of BOH in order that Mr Quillan should be pursued at some future point is unlikely but not impossible. It was within the power of the liquidator to either release or write off the loan, yet he chose to do neither. This leaves the Director's Loan Balance open to be pursued on behalf of BOH should that become appropriate at some point in the future. To suggest otherwise is to ignore the intentions of the liquidator's actions and the plain meaning of his language when he said that the Director's Loan Balance had not, in fact, been written off.
>
> 62. Finally, we are not persuaded that the Guidance is helpful in stating that "any loan balance which is not repaid and is no longer being pursued by the Insolvency Practitioner is considered to have been written off and that S415, ITTOIA05 should apply to the relevant amount." While we agree that there is no statutory definition of "written off", there is a process available to the liquidator to write off or release the loan of an insolvent company, which the liquidator chose in this case not to follow. In our view, in this case, that is the definition of "written off" which should be applied, and an alternative definition should not be substituted for the purposes of the application of s 415(1) ITTOIA."

GROUND OF APPEAL

14. In its application to the FTT for permission to appeal, HMRC put forward a single ground of appeal, viz:

> "That the Tribunal erred in law in holding that the [Outstanding Balance] was not 'written off' within the meaning of s 415 ITTOIA 2005."

[2] the precise statutory wording is "writes off" but nothing turns on the point.

15. In addition, HMRC noted that the Decision expressly stated at [69] that no finding was made as to timing because of the Tribunal's conclusion that the Outstanding Balance was not written off and that, if the appeal succeeded, the Appellant would invite the Upper Tribunal to make a finding on that point.

SUMMARY OF SUBMISSIONS

16. Mr Bradley, who appeared for HMRC (but who did not appear before the FTT), submitted that the words "writes off" in the context of s415(1) ITTOIA allowed for the possibility that a debt, although "written off", remains legally recoverable. This was a distinction between a release of a debt (the other limb of s415(1) ITTOIA) and the writing off of a debt. Thus, a debt that has been written off remains recoverable and can be pursued if circumstances changed in the future.

17. This distinction was, in Mr Bradley's submission, made clear by the decision of the Special Commissioner in *Collins v Addies* [1991] STC 445 when commenting in relation to a predecessor to s415 (1) ITTOIA at 449d-e:

> "It is common ground that releasing and writing off are different operations for a company. A release is a final and conclusive act if completed according to law whereas the act of writing off by a company may not be. A debt which is written off may yet be recovered by a company if it discovers that the debtor's circumstances have changed so that it is no longer unable to repay the creditor company."

18. On this basis, Mr Bradley contended, it was clear that the Outstanding Balance was written off. It was also clear from the liquidator's final account that he had made a considered decision not to pursue the Outstanding Balance. BOH was then dissolved without further action being taken in relation to the Outstanding Balance.

19. Mr Bradley argued that there were two clear errors of law in the reasons given by the FTT for concluding that BOH did not write-off the Outstanding Balance.

20. First, the FTT's conclusion at [61] on the ordinary meaning of the expression "writes off" was clearly wrong. Whether a loan is written off within the meaning of s415(1) ITTOIA could not be determined, Mr Bradley contended, by the language in which the parties choose to describe it after the event. Furthermore, it was clear from the context of the liquidator's letter of 8 February 2021 that what the liquidator meant by "not formally written off" was that the Loan Balance had not been "released". In other words, the liquidator had left open the possibility, were Mr Quillan to come into a "windfall", that the company could be restored to the register to pursue the claim against him. This was the situation described in *Collins v Addies.* The mere fact that BOH might in theory recover a debt in future did not mean that it was not "written off".

21. Secondly, the FTT erred when it held that the ordinary meaning of "writes off" need not apply "in circumstances where there is a formal writing off process which has deliberately not been followed." (FTT [60]).

22. The FTT said at [62]:

> 'While we agree that there is no statutory definition of "written off", there is a process available to the liquidator to write off or release the loan of an insolvent company, which the liquidator chose in this case not to follow. In

> our view, in this case, that is the definition of "written off" which should be applied, and an alternative definition should not be substituted for the purposes of the application of s 415(1) ITTOIA.'

23. Mr Bradley argued that the FTT's analysis appeared to be premised on the belief (which was not explained elsewhere in the Decision) that there was some prescribed or formal process, specific to insolvent companies, the liquidator must or may follow in order to "write-off" a debt owed to the company. There was, however, in Mr Bradley's submission no such process.

24. These points were, in Mr Bradley's submission, supported by a decision of the FTT in *Boulton v RCC* [2026] UKFTT 583 (TC). In that case the FTT said at [70]-[71]:

> "We consider that the legal test is whether, as a matter of substance, the debt was written off….
>
> While the liquidator did not undertake a formal statutory write-off process, section 415 does not require adherence to any particular insolvency mechanism. It requires a substantive write-off, which may be effected by an unequivocal communication and the cessation of enforcement…."

25. Mr Bradley disagreed with the implicit suggestion by the FTT that there was a relevant "insolvency mechanism" – in his submission no such mechanism existed. Nonetheless, he contended that the approach of the FTT in *Boulton* was correct.

26. In relation to the timing of the write-off, this question turned on the limited amount of documentary evidence before the FTT. There were, Mr Bradley said, only two relevant documents. First, the liquidator's annual progress report dated 29 January 2018, quoted by the FTT at [16], where the liquidator stated: "I am still continuing my enquiries into the director's current financial position." Secondly, there was the final account drawn up in pursuance of s106 of the Insolvency Act 1986, quoted by the FTT at [18].

27. In answer to questions from the Tribunal, Mr Bradley accepted that the wording of the final account constituted a write-off of the Outstanding Balance. This took place on 18 March 2019 and thus the write-off took place in the tax year 2018/19.

28. Mr Quillan argued that HMRC, in disputing the FTT's conclusion at [61], was challenging an evaluative opinion based on the evidence provided and that this was not an error of law that was being challenged.

29. Secondly, Mr Quillan argued that the FTT meant what it said when it referred to the Loan Balance not being "formally written off", referring to the subsequent correspondence between HMRC and the liquidator. Mr Quillan suggested that when the liquidator asked HMRC: "I should be grateful if you would confirm why HMRC would want the [Outstanding Balance] written off/compromised", this indicated that the liquidator believed that the writing off of the loan would compromise the future rights of creditors. He therefore had made a deliberate decision not to write-off the Outstanding Balance and left the matter unresolved. However, the liquidator did not write the Outstanding Balance off, when he was aware that he had the power to do so.

30. As regards HMRC's argument that the FTT erred in indicating that there was a prescribed formal process to write-off the Outstanding Balance, the FTT was simply saying that there was a procedure available for the liquidator to write-off or release a loan, and he deliberately chose not to follow the procedure.

31. Mr Quillan also drew attention to the fact that in *Boulton*, the FTT said at [70]:

> "We consider that the legal test is whether, as a matter of substance, the debt was written off. The Appellant placed weight on the non-admission clause in the Settlement Deed. We accept that this clause means the Appellant did not concede liability. However, section 415 does not require an admission of liability, and we do not consider the non-admission clause precludes a write-off where the liquidator, having actively pursued recovery, then notifies the Appellant that they regard the balance as concluded and ceases enforcement. In *Quillan*, the liquidator expressly stated the loan had not been written off. Here, the liquidator expressly stated it had been effectively written off and ceased enforcement. It is our finding that the liquidator's letter reflected a clear, unilateral decision no longer to pursue the balance. As section 415 applies to a unilateral write-off, this is sufficient." (Emphasis added)

32. *Boulton* was, therefore, in Mr Quillan's submission, unhelpful to HMRC. Furthermore, at [71]-[72] the FTT stated:

> "71. While the liquidator did not undertake a formal statutory write-off process, section 415 does not require adherence to any particular insolvency mechanism. It requires a substantive write-off, which may be effected by an unequivocal communication and the cessation of enforcement. In our judgment, the combination of the settlement and the subsequent letter by the liquidator satisfies the statutory requirement.
>
> Our finding is therefore that the debt was written-off. A finding to the contrary would ignore the intentions of the liquidator's actions and the plain meaning of his language when he said that the loan balance had been effectively written off (see *Quillan* at [61] above)." (Emphasis added)

33. The FTT's decision in *Boulton* therefore supported, in Mr Quillan's view, the decision of the FTT in the present case, viz that the intentions of the liquidator were critical to determine whether the Outstanding Balance was written off or not.

34. In his oral submissions, Mr Quillan argued that there were three relevant categories:

(i) a release of a debt;

(ii) a write-off of debt; and

(iii) a category where the debt was neither released nor written off but the status of which was left undetermined.

35. In Mr Quillan's submission, the Outstanding Balance fell into this third category.

36. As regards the timing of any write-off, if we were to agree with HMRC's submissions, Mr Quillan drew attention to the liquidator's annual progress report dated 19 January 2018. In that report, under the section "Overdrawn Directors Loan Account" it said:

> "…the Director has made an offer of £57,500 to settle the claim. The payments are due in instalments over a six-month period and although I am still continuing my enquiries into the director's current financial position…."

37. Furthermore, later in the same report it was stated that the anticipated future realisation of the Overdrawn Director's Loan Account was £57,500. Therefore, in Mr Quillan's submission, the loan was judged to be written off then. This was confirmed by the first monthly

payment being paid on 28 February 2018. Mr Quillan would not have started making payments unless an agreement had been reached. Accordingly, any write-off took place before the tax year 2018/19.

38. In the alternative, Mr Quillan argued that the loan was written off on the dissolution of BOH on 15 April 2020 i.e. after the tax year 2018/19. Mr Quillan referred to the letter from HMRC to him dated 22 March 2023 which stated:

> "On 15 April 2020 the company exited Liquidation and moved to Dissolution and therefore for the purposes of section 415 ITTOIA 2005, if the remaining outstanding amount is not found to have been written off following payment of £57,498 and the statement from the Liquidator that no further funds were expected in this respect, then it was written off upon the company being dissolved on 15 April 2020."

39. Furthermore, Mr Quillan referred to HMRC's letter of 22 September 2023 which stated:

> "However in not pursuing the remaining balance and by allowing the company to exit Liquidation and enter dissolution, I consider this does equate to a write-off of the outstanding amount of the Director's Loan Account…."

40. Therefore, in Mr Quillan's alternative argument, the date of dissolution provided a firm date on which it could be argued that the liquidator would not be pursuing any further funds, as he would need to reinstate the company. Therefore, on this basis, the Outstanding Balance was written off not in the tax year 2018/19 but in the year 2020/21.

DISCUSSION

"Writes off"

41. As the FTT correctly observed, there is no definition of the expression "writes off" found in s415(1) ITTOIA. It follows, therefore, that the words "writes off" should be construed purposively and in their statutory context.

42. Section 415(1) ITTOIA is an anti-avoidance provision, the antecedents of which go back over 50 years. Section 415(1) ITTOIA is not, however, an isolated provision. It needs to be read in conjunction with s455 Corporation Tax Act 2010 ("CTA"). In short, when a close company makes a loan to a participator (such as Mr Quillan) or to an associate of a participator, the company is subject to a temporary corporation tax charge (under s455 CTA 2010). If the company later writes off or releases the debt rather than receiving repayment, the write off or release engages s415(1) ITTOIA, with the result that the participator becomes liable for income tax on the written-off or released amount. When the s415(1) income tax charge arises, the company can reclaim the s455 corporation tax it previously paid.

43. The purpose of s415(1) ITTOIA is clear. If a close company lends money (e.g. on a director's loan account) to a participator, income tax would be avoided unless a release or writing off of the loan was brought into the charge to income tax. In other words, the assets of the company have been depleted (by the release or the write-off) and the participator has benefited. Therefore, unless s415(1) ITTOIA applied, value would have been received by the participator out of the assets of the company free from tax. Section 455 CTA, as already noted, imposes a temporary corporation tax charge on the company.

44. Earlier versions of these provisions (which, for present purposes, were materially the same) were considered in a case relied on by Mr Bradley, *Collins v Addies (HM Inspector of Taxes)* ("*Collins*") [1991] STC 445, which was heard by a Special Commissioner, then on appeal by way of case stated by Millett J in the High Court and finally by the Court of Appeal ([1992] STC 746). In that case two directors who were also participators, Mr Collins and Mr Greenfield, together owed a close company £68,000, subsequently ascertained to be £79,000. In an agreement between them, the company and another shareholder, Mr Brent, and as part of an agreement whereby Mr Brent would acquire all the shares in the company, it was agreed that Mr Brent would assume £68,000 of the debt and Mr Collins and Mr Greenfield would pay Mr Brent £11,000; Mr Brent subsequently repaid the £68,000 to the company. The question that the Special Commissioner and the higher courts had to consider was whether the transaction amounted to a release of the debt, the burden of which had been novated to Mr Brent, which the two participators had previously owed the company.

45. At [1991] STC 449 the Special Commissioner said:

> "It is also the contention of counsel for the taxpayer that one must look to see whether anything has left the company. That contention is denied by Mr Ali for the inspector who submits that one must look only at what has reached the taxpayer. In that context it is helpful to look at the words of [section 415 (1) ITTOIA] and to note that there is reference to '... a sum equal to the amount so released or written off'. It is common ground that releasing and writing off are different operations for a company. A release is a final and conclusive act if completed according to law whereas the act of writing off by a company may not be. A debt which is written off may yet be recovered by a company if it discovers that the debtor's circumstances have changed so that it is no longer unable to repay the creditor company. A release is generally a transaction involving more than one person, whereas by its very nature an act of writing off by a company is unilateral. It does not seem to me that one's attention is necessarily directed to the sum of money which leaves the company. The taxpayers received £68,000 from the company by way of loan which the company released subsequently. In my view the facts of this case fall clearly within the ambit of [section 415(1) ITTOIA]. Although counsel has argued his clients' case in a most persuasive manner, I cannot accept his contentions."

46. In the High Court, Millett J analysed the position as follows at [1991] STC at 452-453:

> "Counsel for the taxpayers submitted that while it was true as a matter of technical analysis that a novation amounted to the release of a debt due from the original debtor and its replacement by a debt due from a new debtor, this was not enough to bring the transaction within the meaning of the word 'releases' in [section 415(1) ITTOIA]. He submitted that the meaning of the word 'releases' must be qualified by importing the requirement that any such release must be wholly voluntary or gratuitous or made for less than full consideration. He pointed to the fact that the word 'releases' went with 'writes off' and while the writing off of a debt did not affect the legal relationship of the parties, it constituted for all practical purposes a release of the debt in the sense that the debtor would be unlikely to be pursued by the company for repayment of the debt, and the writing off of a debt would invariably be voluntary or gratuitous. He submitted that the word 'releases' should be similarly construed.
>
> I do not find that argument of much help. The mere fact that the writing off of a debt is almost certainly gratuitous does not mean that the release of a debt

> must mean a gratuitous release. In my judgment, it is not permissible to import any such qualification into the word 'releases'. To adopt the language of Lord Wilberforce in *IRC v Plummer* [1979] STC 793 at 800, [1980] AC 896 at 911, that would be legislation not interpretation. If Parliament had intended the word to mean 'releases otherwise than for full value' it could and must have said so. Nor am I impressed by counsel for the taxpayers' submission that ss 286 and 287 are concerned with the depletion of the assets of the company. If the company claims full value for the release of the loan its assets are unaffected and, it is submitted, the section should have no application. But in my judgment s 286 is focused on the company's position and [section 415 ITTOIA] on that of the participator. The question under [section 415 ITTOIA] is not whether the company's assets are or are not depleted but whether the legal obligation of the participator has been released."

47. In the Court of Appeal, Nourse LJ (with whom Glidewell and Stocker LJJ agreed) said [1992] STC 746 at 748:

> "The taxpayers contend that [section 415 ITTOIA] applies only to releases given gratuitously or for less than full value and not to releases given for full value such as those which were given by the company in the present case. On their behalf Mr Thornhill QC, recognises that this contention necessarily invites us to put a limitation on the ordinary meaning of 'release', which comprehends a release given for full value no less than one given gratuitously or for less than full value. But he says that the limitation is required by the context both of [section 415 ITTOIA] itself and of the provisions of the 1970 Act relating to company distributions as a whole.
>
> With regard to [section 415 ITTOIA] itself, Mr Thornhill relies on its application not only to releases but also to the writing off of loans or advances. He submits that the inclusion of writing off, an inherently gratuitous exercise, demonstrates that the releases which the subsection has in view are likewise confined to those given gratuitously or for less than full value. Although it may be possible, in theory at any rate, to conceive of a case where a writing off was not gratuitous, I will certainly accept that Parliament did not have such a case in mind. But on the wording of [section 415 ITTOIA] itself I can see no warrant at all for putting a similar limitation on the releases which are contemplated."

48. *Collins* was a case which was concerned with the question whether a debt had been "released". However, and relevant to the present appeal, it is clear from the comments both of Millett J and of Nourse LJ that in most cases where a company "writes off" a debt this will involve a gratuitous act (although Nourse LJ did leave open the theoretical possibility that a debt could be written off otherwise than gratuitously). Secondly, Millett J rejected the proposition that s415 ITTOIA was necessarily concerned with a depletion of the company's assets.

49. Plainly, Mr Quillan was left in a better financial position than he had previously been in. He originally owed £439,954 and after payment of £57,498 was left £382,456 better off when the debt was no longer pursued by the liquidator. The question before us, however, was whether the amount of £382,456 was an amount which BOH, acting through the liquidator, had written off.

50. We consider that BOH wrote off £382,456 within the meaning of s415(1) ITTOIA.

51. The Liquidator's notice of final account dated 18 March 2019 stated under the heading "Realisation of assets":

> “**Overdrawn Directors Loan Account**
>
> The Statement of Affairs listed an overdrawn Director’s Loan Account in the sum of £439,954 .00. An initial request for payment was made although the director advised that he had no means to pay. Enquires [sic] were made with the Director with a view to reaching a settlement to discharge his overdrawn director’s loan account. A statement of means was received which suggested the director has no assets and insufficient income to make an offer of settlement.
>
> Following protracted correspondence and the threat of legal action, the Director made an offer of £57,500 to settle the claim. The funds were due in instalments over a six-month period. To date, £57,498.00 has been received in respect of the overdrawn Director’s Loan Account. No further funds are expected into the liquidation in this respect.”

52. A liquidator’s final statement of account in the context of a creditors’ voluntary liquidation is a detailed financial report prepared by the liquidator at the conclusion of the liquidation process – it is the “account of the winding up” prepared pursuant to s106 Insolvency Act 1986: “As soon as the company’s affairs are fully wound up….” It contains a report of the company’s financial affairs, detailing all the transactions that took place during the liquidation and all the company’s liabilities and recoverable assets. In accordance with s106(1) Insolvency Act 1986 it shows “how the winding up has been conducted and the company’s property has been disposed of”. It is produced both to the members and to the creditors. In our view, it is at this final stage of the liquidation process that Mr Quillan’s outstanding debt of £382,456 was written off. To the extent that Mr Quillan submitted that a write-off required communication to the debtor, the final account satisfied any such requirement, since it was a document communicated pursuant to s106 Insolvency Act 1986.

53. In our judgment, in the context of a creditors’ voluntary liquidation, a debt is written off by a liquidator when and to the extent that a liquidator reaches the view that there is no recoverable value in the whole or part of an asset (in this case the Outstanding Balance owed by Mr Quillan) and reports this fact in the liquidator’s final report. It is clear from the extract from the final statement of account quoted above that the liquidator had concluded that the debt of £382,456 was irrecoverable. There is no reason to question the liquidator’s judgment, as stated in the final report, in this respect. Frequently, a liquidator will be called upon to decide whether and to what extent a debt is recoverable and whether taking additional steps to recover a debt will simply be throwing good money after bad. It is in this context that the words “writes off” should be construed. That is plainly what happened in the present case.

54. Following the hearing, both parties provided, at our direction, short written submissions concerning accounting usages of the expression "write off". HMRC referred us to accounting materials which distinguish between the continuing legal existence of a debt and its recognition as a recoverable asset for accounting purposes. In particular, HMRC relied on the application guidance in IFRS 9 (Financial Instruments), which gives as an example of a "write off" a case where an entity has no reasonable expectations of recovering the contractual cash flows of a financial asset in whole or in part. HMRC also referred to a 2011 IASB/FASB staff paper in which a write-off was described as a direct reduction in the amortised cost of a financial asset resulting from uncollectibility, and which stated that a financial asset should be written off when there is no reasonable expectation of recovery. Mr Quillan submitted that those materials supported his position because the liquidator's subsequent correspondence demonstrated that he wished to preserve the possibility of future recovery if BOH were restored to the register and Mr Quillan's financial circumstances improved. In particular, Mr Quillan submitted that, "in order to be written off there must be a reasonable expectation that the loan will never be

recovered". We do not read the accounting materials in that way. The accounting formulations relied upon by HMRC are expressed in terms of there being "no reasonable expectation of recovery". They do not require a conclusion that recovery is impossible or that the debt will never be recovered.

55. We have considered those submissions but on reflection we do not consider the accounting treatment is material. The issue before us is one of statutory construction of s415 ITTOIA in the light of the facts found by the FTT in circumstances where the legislation does not indicate any recourse to the accounting treatment. That said, the accounting materials on "write off" do not appear inconsistent with our conclusion. The liquidator's final account recorded that no further funds were expected in respect of the Outstanding Balance, reflecting a conclusion that no further recovery could realistically be anticipated at that stage. The fact that the liquidator later contemplated the possibility of future recovery in the event of restoration of the company does not, for the reasons already given, prevent the debt having been written off for the purposes of s415(1) ITTOIA.

56. We consider that the FTT made two material errors of law which we shall examine below.

57. For convenience, we repeat the relevant paragraphs of the FTT's decision:

> 60. The ordinary meaning of the term "written off" from the Cambridge English dictionary: "*to accept that an amount of money has been lost or that a debt will not be paid*" is helpful insofar as it seeks to provide a definition where there is otherwise none. *Collins*, also, provides an example of what a written off debt may look like in that it may yet be recovered by a company. But neither of these interpretations need apply in circumstances where there is a formal writing off process which has deliberately not been followed.
>
> 61. Even if we take the ordinary meaning of the term, we do not agree that the actions of the liquidator in writing the Report and in dissolving BOH amount to an acceptance that the money has been lost or that a debt will not be paid. The liquidator states clearly in Liquidator Letter 1 that there was no formal write-off of the Director's Loan Balance. The prospect of a reinstatement of BOH in order that Mr Quillan should be pursued at some future point is unlikely but not impossible. It was within the power of the liquidator to either release or write off the loan, yet he chose to do neither. This leaves the Director's Loan Balance open to be pursued on behalf of BOH should that become appropriate at some point in the future. To suggest otherwise is to ignore the intentions of the liquidator's actions and the plain meaning of his language when he said that the Director's Loan Balance had not, in fact, been written off.
>
> 62. Finally, we are not persuaded that the Guidance is helpful in stating that "any loan balance which is not repaid and is no longer being pursued by the Insolvency Practitioner is considered to have been written off and that S415, ITTOIA05 should apply to the relevant amount." While we agree that there is no statutory definition of "written off", there is a process available to the liquidator to write off or release the loan of an insolvent company, which the liquidator chose in this case not to follow. In our view, in this case, that is the definition of "written off" which should be applied, and an alternative definition should not be substituted for the purposes of the application of s 415(1) ITTOIA.

58. The FTT's first error is contained in [61] where it considers that the liquidator's final report does not constitute an acceptance that "the money has been lost or that a debt will not be paid." Instead, the FTT relies on the *ex post facto* characterisation of events by the liquidator in the letter of 24 September 2020 where the liquidator states that the "matter remained unresolved and was not formally written off". That, in our view, was an error of law. We accept Mr Bradley's submission that the subsequent characterisation by the liquidator of what had previously happened cannot be determinative.

59. In any event, in the correspondence between the liquidator and HMRC it appears that the liquidator was using the expression "was not formally written off" in respect of the Outstanding Balance to refer to a process more akin to a "release". The liquidator's meaning when he said the Outstanding Balance "was not formally written off" is explained in his subsequent letter dated 8 February 2021 in which he envisages a situation where circumstances have changed so that BOH may be restored to the register and the Outstanding Balance may eventually be collected. In other words, he is using words which are descriptive of a write-off of a debt and which were those in essence used by the Special Commissioner in *Collins* - what he is really describing is a debt being unilaterally written off. It seems to us that the FTT was in error when it indicated at [61] that the fact that the Outstanding Balance could be pursued on behalf of BOH at some point in the future was a factor pointing away from a write off – it was, instead, in our view a factor that pointed to it being a write off.

60. We also agree with Mr Bradley's submission that the FTT made a second error of law when it considered at [60] and [62] that there was a formal process for writing off a debt owed to a company in liquidation and that that process had not been followed. The FTT did not explain what it meant by a formal process for writing off a debt. As we have indicated, a debt is written off when the liquidator reaches the conclusion that, as a practical matter, there is either no or a limited recoverable amount in respect of the debt in question and that conclusion is recorded in the final account and thereby communicated to the members and creditors. As *Collins* indicates, a debt can (and often will) be written off gratuitously and unilaterally. A write-off of a debt within s415(1) ITTOIA is a matter of substance and not of form: indeed, there is no formal method of writing off a debt. We accept Mr Bradley's submission that a "write off" is essentially an informal and (usually) unilateral act which does not alter the legal relationship between the creditor and the debtor. Clearly, in the context of a creditors' voluntary liquidation, the liquidator must record the write-off which, as we have explained, was set out in the final account sent to the members and creditors of BOH. In our view that was sufficient for the Outstanding Balance to be written off for the purposes of s415(1) ITTOIA.

61. For the reasons already given, we disagree with Mr Quillan's submissions that the liquidator's *ex post facto* characterisation of the write-off of the debt of £382,456 should be determinative. Furthermore, we do not accept his characterisation that there were three categories of debt: debt which is released, debt which is written off and debt the status of which remained unresolved or undetermined. For the purpose of the legislation there was no such third category: the fact that the liquidator may have regarded the position as 'unresolved' in the sense that future recovery remained theoretically possible does not preclude the Outstanding Balance nevertheless having been written off within the meaning of s415(1) ITTOIA. In our view, the status of the Outstanding Balance was made clear in the final statement of account. The liquidator made it plain that the balance of the debt of £382,456 would not be recovered. That was a write off of the Outstanding Balance and BOH was wound up on that basis.

62. It follows, therefore, that the FTT made material errors of law in the Decision. We shall deal with the consequences of that conclusion after we have considered the issue of timing.

Timing

63. Even if we conclude that the debt was written off for the purposes of s415(1) ITTOIA, there remains a question of whether it was written off in the tax year 2018/2019 i.e. the year in respect of which the Closure Notice was issued.

64. The FTT did not reach a conclusion on this matter because it was unnecessary in the light of its decision that Mr Quillan's Outstanding Balance had not been written off.

65. We are in no doubt that the Outstanding Balance was written off in the tax year 2018/2019.

66. As we have indicated, the operative moment at which the Outstanding Balance was written off was the issue of the liquidator's final report on 18 March 2019. We do not consider that the debt was written off at an earlier stage e.g. the liquidator's Annual Progress Report of 25 January 2018. This Report noted that the liquidator was "still continuing [his] enquiries into the Directors [sic] current financial position." The position as regards the Outstanding Balance owed by Mr Quillan to BOH was therefore not finalised and it seems to us impossible to conclude that it was written off at that time.

67. Similarly, we reject the submission made by Mr Quillan that the Outstanding Balance was only finally written off on the dissolution of the company on 15 April 2020. As we have indicated, a debt is written off in a creditors' voluntary liquidation when the liquidator finally reports to the members and creditors that, in his view, a debt cannot be recovered. That report was contained in the final account made by the liquidator on 18 March 2019 and formed the basis on which the company was finally wound up and dissolved. That date falls within the tax year 2018/19. Accordingly, our conclusion is that the Outstanding Balance was written off in the tax year 2018/19.

DISPOSITION

68. We have concluded that the FTT made material errors of law in relation to the question whether BOH, acting through the liquidator, had written off the Outstanding Balance owed by Mr Quillan to BOH. We have further concluded that the Outstanding Balance was written off in the tax year 2018/2019.

69. We therefore set aside the Decision.

70. We must therefore decide whether to remake the Decision or to remit the matter to the FTT for determination.

71. The facts in this appeal are not in dispute. Therefore, there seems little point in remitting the matter to the FTT and, in our view, it would be disproportionate in terms of costs and delay to do so.

72. We therefore remake the Decision, allowing HMRC's appeal, and dismiss Mr Quillan's appeal against the closure notice for the tax year 2018/2019.

CONCLUDING COMMENTS

73. There was one matter, not put forward by the parties but raised by us at the hearing, which gave us pause for thought.

74. As we have indicated, the write-off of a debt will usually be a unilateral and gratuitous act. Unlike a release of a debt, which will usually be a formal act requiring either a Deed or consideration, the write-off of a debt does not preclude a future recovery of the Outstanding Balance if there is a change in Mr Quillan's financial fortunes. There is a six-year limitation period in respect of actions to recover a debt and there is a six-year period in which a company can be restored to the register, although the respective six-year periods can run from different dates.

75. What concerned us was that it would be possible for a tax charge to arise on Mr Quillan under s415(1) ITTOIA and then for the previously "written off" debt subsequently to be recovered and enforced against him if his financial position changed for the better and BOH was restored to the register. In those circumstances, there appears to be no relief available to Mr Quillan in relation to a tax charge under s415(1) ITTOIA. We raised the matter at the hearing, but Mr Bradley was unable to offer any comfort in this respect.

76. This appears to be an anomaly. It is a matter which we think may merit consideration as to whether a legislative amendment or at least an extra statutory concession would be appropriate. However, we do not consider that the existence of a possibly anomalous result should deflect us from the correct interpretation of the words "writes off" used in s415(1) ITTOIA. We note that the Court of Appeal in *Collins* also acknowledged that its interpretation of the predecessor provision to s415(1) ITTOIA produced anomalies and considered that a process of interpretation by anomaly should not deflect it from its view of the true meaning of the word "releases". We adopt the same approach.

COSTS

77. Any application for costs in relation to this appeal must be made in writing and served on the Tribunal and the person against whom it is made within one month after the date of release of this decision as required by rule 10(5)(a) and (6) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

JUDGE SWAMI RAGHAVAN
JUDGE GUY BRANNAN

UPPER TRIBUNAL JUDGES

Release date: 6 August 2026