TC04094

Appeal number: TC/2012/03270

CORPORATION TAX – deemed loan transactions under section 730A ICTA 1988 – whether effect of section 195 FA 2003 that acquisition of own shares disregarded for purposes of section 730A – no – alternatively whether section 27 F(No 2)A 2005 applies in relation to £214,108,391 paid by BCHL to BJL on 25 September 2008 – no - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

BIFFA (JERSEY) LTD

Appellant

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS

Respondents

TRIBUNAL: JUDGE GREG SINFIELD
IAN MENZIES CONACHER ACIB, CTA, FCA

Sitting in public in London on 5 and 6 June 2014

Jonathan Peacock QC and Philip Walford, counsel, instructed by Deloitte LLP, accountants, for the Appellant

Sam Grodzinski QC and David Yates, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This is an appeal by Biffa (Jersey) Limited ("BJL") against an amendment made by the Respondents ("HMRC") to BJL's corporation tax self-assessment return ("CTSA") for the accounting period from 12 to 30 September 2008. BJL is a company incorporated in Jersey and a UK-resident member of the Biffa group for the purposes of corporation tax. The amendment increased BJL's profit for the period for corporation tax purposes by £14,108,391. The amount of £14.1 million related to transactions entered into by BJL and other members of the Biffa group in 2007 and 2008.

2. The facts are described more fully below but the key transactions were as follows (all numbers are rounded). On 12 September 2007, BJL was formed in Jersey and issued ten thousand no par ordinary shares ("BJL Shares") to Biffa Corporate Holdings Limited ("BCHL"). Two weeks later, on 26 September, BJL issued 200 million BJL shares to BCHL for £200 million. On the same day, all the BJL shares held by BCHL were transferred to Biffa Holdings Limited ("BHL") by share exchanges via another group company. On the next day, 27 September, BHL sold 200 million BJL shares to BJL for £200 million. BJL cancelled the shares. Also on 27 September 2007, BJL agreed to issue 200 million BJL shares to BCHL on 26 September 2008 for £214 million and, under a separate agreement, BHL agreed to buy 200 million BJL shares from BCHL on 26 September 2008 for £214 million. Just under one year later, on 25 September 2008, BJL issued 200 million BJL shares to BCHL for £214 million. On the following day, 26 September 2008, BCHL sold 200 million BJL shares to BHL for £214 million.

3. BHL considered that, under section 730A of the Income and Corporation Taxes Act 1988 ("ICTA 1988"), the difference between:

> (1) the amount (£200 million) which it received on the sale of the BJL shares to BJL in September 2007 and
>
> (2) the amount (£214 million) which it paid to buy the BJL shares from BCHL in September 2008

should be treated as interest on a deemed loan of £200 million by BJL to BHL. BHL treated the £14 million as an interest expense and apportioned it between its two relevant accounting periods, namely periods ended 28 March 2008 and 27 March 2009. In its CTSA returns for the periods, BHL deducted £14 million when calculating its profits for the purposes of corporation tax. HMRC now accept (although they did not always do so) that BHL was entitled to deduct £14 million as deemed interest in computing its profits for corporation tax purposes.

4. In its CTSA returns for the relevant accounting periods, BJL described the £14 million as "Income on buy-back and issue" but did not include it when computing its liability to tax. BJL contended that the effect of section 195 of the Finance Act 2003 ("FA 2003"), which provides that the acquisition by a company of its own shares is

not to be treated as the acquisition of an asset by the company, was that, from BJL's perspective, the transactions did not fall within section 730A(1) ICTA 1988.

5. The transactions were notified to HMRC under the Disclosure of Tax Avoidance Scheme (DOTAS) rules and allocated reference number 21163256. Notwithstanding the DOTAS notification, BJL's position was and remained that the transactions were entered into for genuine commercial reasons, namely to recapitalize the group's main trading company, Biffa Waste Services Limited ("BWSL").

6. HMRC did not accept that the transactions had a bona fide commercial purpose. HMRC took the view that the transactions were a tax avoidance scheme designed to achieve a corporation tax deduction for BHL without any corresponding taxable receipt by BJL. HMRC submitted that the scheme failed because BJL's analysis of the effect of section 195 FA 2003 was wrong. HMRC's position was that section 195 did not disapply section 730A ICTA 1988. HMRC contended that BJL was liable to tax on the £14 million that section 730A deemed to be interest paid by BHL on a deemed loan by BJL. If section 730A applies, HMRC accept that they are limited to recovering tax in relation to the deemed interest accruing during BJL's second accounting period from 12 to 30 September 2008 as that is the period to which the closure notice under appeal related. On that basis, the amount of interest to be brought into account is approximately £500,000.

7. If HMRC's arguments on section 195 FA 2003 were not accepted, they contended that BJL was liable to tax on the full amount of £14 million deemed interest under sections 26 and 27 of the Finance (No 2) Act 2005 ("F(No 2)A 2005"). Those provisions are intended to counter certain kinds of tax arbitrage, ie where a company seeks to take advantage of different treatments under different tax regimes. Section 26 contains five conditions that must be satisfied in relation to the company before it can be required to recompute its liability to corporation tax. If the tax arbitrage provisions applied then BJL was liable to bring the whole £14 million into account as income chargeable under Case VI of Schedule D. BJL contended that the conditions for the legislation to apply were not met.

8. For the reasons set out below, we have decided that section 195 FA 2003 does not require the acquisition of the shares by BJL to be disregarded. Accordingly, section 730A(1) ICTA 1988 applied to BJL as it did to BHL and BJL's appeal is dismissed.

Facts

9. There was no dispute about the facts. The narrative that follows incorporates passages from the statement of agreed facts and the documents provided by the parties.

10. On 12 September 2007, BJL was incorporated under the laws of Jersey. On 17 September 2007, BJL issued ten thousand BJL shares to BCHL for £10,000.

11. On 26 September 2007, BCHL borrowed £200 million under a daylight facility with Barclays Bank and used this cash to subscribe for an additional 200 million BJL shares. On the same day, BJL made a loan of £200 million to BCHL, which BCHL used to repay the £200 million loan from Barclays Bank. Also on 26 September 2007, BCHL entered into a Share Exchange Agreement with another group company, Reclamation and Disposal Limited ("RDL"), whereby BCHL transferred 200,010,000 BJL shares to RDL in return for the issue of 200,010,000 £1 ordinary shares in RDL at par value. At the same time, RDL entered into a Share Exchange Agreement with BHL whereby RDL transferred 200,010,000 BJL shares in BJL to BHL in return for the issue of 200,010,000 £1 ordinary shares in BHL at par value.

12. On 27 September 2007, the following agreements were entered into:

(1) BJL entered into a Share Purchase Agreement with BHL whereby it agreed to buy back 200 million BJL shares from BHL for £199,989,197;

(2) BJL entered into a credit facility under which it lent £10,803 to BHL to replace funds used to purchase the BJL shares with interest charged at LIBOR plus 0.5%;

(3) BJL entered into a credit facility with BHL for the £214,108,391 with interest charged at LIBOR plus 0.5% "to be used by [BHL] to replace funds used by [BHL] to subscribe for shares in [BJL]" under which BJL would make a single advance of £214,108,391 on 25 September 2008;

(4) BCHL entered into a Forward Subscription Agreement with BJL to subscribe for 200 million BJL shares for £214,108,391 within 364 days of 27 September 2007;

(5) BHL entered into a Forward Purchase Agreement with BCHL to purchase 200 million BJL shares for £214,108,391 on 25 September 2008.

13. Also on 27 September 2007, BJL recalled the loan that it had made to BCHL on 26 September and, under the Share Purchase Agreement, purchased 200 million BJL shares from BHL for £199,989,197. BJL then cancelled the shares.

14. On 25 September 2008, BCHL borrowed £214,108,391 under a daylight facility with Barclays Bank and used the money to pay for 200 million BJL shares issued by BJL pursuant to the Forward Subscription Agreement. On the same day, BHL borrowed £214,108,391 from BJL under the credit facility, at 12(3) above, entered into on 27 September 2007. BHL used the £214,108,391 to purchase 200 million BJL shares from BCHL under the Forward Purchase Agreement. BCHL then used the £214,108,391 to repay the £214,108,391 daylight facility.

15. The transactions above were shown in the financial statements and CTSA returns of BHL and BJL as follows:

(1) Note 4 to the financial statements of BHL, for the accounting periods ended 28 March 2008 and 27 March 2009 was headed "Interest Payable and Similar Charges" and showed "Interest payable on forward purchase agreement" of £6,978,000 and £7,130,000, respectively (in aggregate,

£14,108,000). These costs were further described in note 8 to the financial statements as funding costs under arrangements to repurchase shares in BJL. Deductions of £6,978,000 and £7,130,391 were claimed as tax allowable by BHL on schedule A5 of each of its CTSA returns for the accounting periods ended 28 March 2008 and 27 March 2009 on the basis that section 730A ICTA 1988 applied.

(2) Note 8 to the financial statements of BHL for the accounting period ended 28 March 2008 was headed "Creditors: Amounts falling due within one year" and showed a creditor "Forward purchase agreement" of £206,968,000. In Note 8, this was explained further:

> "On 27 September 2007, the Company sold shares in [BJL] for consideration of £200,000,000 and, under a related agreement, agreed to repurchase shares in that entity for delivery on 25 September 2008 for consideration of £214,108,000. The funding costs under these arrangements total £14,108,000 of which £6,968,000 accrued in the period."

(3) Note 6 to the financial statements of BHL for the accounting period ended 28 March 2008 was headed "Fixed Asset Investments" and showed additional investments in the accounting period of £599,999,000 being an additional investment in Biffa Waste Services Limited of £400,000,000 and in [BJL] of £199,999,000. No disposals of investments were shown.

(4) Note 8 to the financial statements of BHL for the accounting period ended 27 March 2009 was headed "Creditors: Amounts falling due within one year" and showed a creditor "Forward purchase agreement" of £nil. In Note 8, this was explained further:

> "On 27 September 2007, the Company sold shares in [BJL] for consideration of £200,000,000 and, under a related agreement, agreed to repurchase shares in that entity for delivery on 25 September 2008. The consideration was satisfied by a loan from Biffa Jersey Co [*sic*]. The funding costs under these arrangements total £19,563,000 (2008: £14,108,000) of which £7,140,000 (2008: £6,968,000) accrued in the period."

Out of the £19,563,000, £5,455,000 was loan interest on a loan from BJL of £214,108,000 made on 25 September 2008 to finance the purchase of shares in BJL from BCHL.

(5) Note 6 to the financial statements of BHL for the accounting period ended 27 March 2009 was headed "Fixed Asset Investments" and showed no additional investments nor disposals in the accounting period.

(6) Note 2 to the financial statements of BJL for the period from the date of incorporation, 12 September 2007, to 30 September 2008 was headed "Interest receivable and similar income" and showed income from group undertakings of £14,308,000. This was further described as "income arising as a result of the buyback of shares from Biffa Holdings Limited and subsequent issuance of shares to Biffa Corporate Holdings Limited". In the CTSA return of BJL, the £14,308,000 was analysed as £14,108,391 "Income on buy-back and issue" and

£199,450 "Intercompany interest". The income of £14,108,391 was not brought into charge by BJL in its CTSA return for this period.

(7) The balance sheet of BJL at 30 September 2008 showed called-up share capital of £200,010,000 and profit and loss account reserve of £14,303,000.

16. On 28 January 2011, HMRC issued a notice under section 26 F(No 2)A 2005 2005 to BJL. The notice stated that HMRC considered that the conditions in section 26 are or may be satisfied in relation to BJL and stated that the qualifying payment for the purposes of Conditions B to E of section 26 was:

> "Payment of £214,108,391 received by Biffa (Jersey) Limited on 25 September 2008 under a forward purchase agreement for shares issued by Biffa (Jersey) Limited."

The notice further specified that the accounting period in relation to which the qualifying payment was made was the accounting period ended 30 September 2008. It then set out the effect on BJL's liability to tax as follows:

> "The Commissioners consider that section 27 F(No 2)A 2005 2005 has effect in respect of the above qualifying payment(s), and that accordingly £14,108,391 of the payments(s) is chargeable under Case VI of Schedule D to the Income and Corporation Taxes Act 1988."

17. BJL contended in correspondence with HMRC that the notice dated 28 January 2011 was invalid because BJL did not receive any payment under a forward purchase agreement. HMRC did not accept that the original notice was invalid but, on 28 March 2011, they issued a revised notice to BJL. The revised notice specified the qualifying payment as follows:

> "Under the forward subscription and forward purchase agreements the payment of £214,108,391 received by Biffa (Jersey) Limited on 25 September 2008 in respect of the 200,000,000 ordinary shares issued by Biffa (Jersey) Limited and acquired by Biffa Holdings Limited."

18. HMRC issued a closure notice on 9 September 2011 amending BJL's CTSA return for the accounting period ending 30 September 2008. The amendment increased BJL's profit for the period for corporation tax purposes by £14,108,391. On 5 October 2011, BJL appealed and HMRC conducted a review under section 49E of the Taxes Management Act 1970. HMRC notified the conclusions of their review and confirmed the amendment in a letter dated 23 January 2012. BJL notified its appeal to the Tribunal on 17 February 2012.

Issues

19. As already discussed at [6] and [7] above, there are two principal issues in this appeal which are as follows:

(1) Does section 195 FA 2003 disapply section 730A ICTA 1988?

(2) Do sections 26 and 27 F(No 2)A 2005 require BJL to recompute its liability to corporation tax as if the amount of £14 million deemed interest under section 730A ICTA 1988 were income chargeable under Case VI of Schedule D.

Does section 195 FA 2003 disapply section 730A ICTA 1988?

Legislation

20. At the time with which this appeal is concerned, section 730A ICTA 1988 provided as follows:

> "730A Treatment of price differential on sale and repurchase of securities
>
> (1) Subject to subsection (8) below, this section applies where
>
> (a) a person ('the original owner') has transferred any securities to another person ('the interim holder') under an agreement to sell them;
>
> (b) the original owner or a person connected with him
>
> (i) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement,
>
> …; and
>
> (c) the sale price and the repurchase price are different.
>
> (2) The difference between the sale price and the repurchase price shall be treated for the purposes of the Corporation Tax Acts -
>
> (a) where the repurchase price is more than the sale price, as a payment of interest made by the repurchaser on a deemed loan from the interim holder of an amount equal to the sale price;
>
> …
>
> (3) Where any amount is deemed under subsection (2) above to be a payment of interest, that payment shall be deemed for the purposes of the Corporation Taxes Acts to be one that becomes due at the time when the repurchase price becomes due and, accordingly, is treated as paid when that price is paid."

21. Section 730B ICTA 1988 provided as follows:

> "730B Interpretation of section 730A
>
> (1) For the purposes of section 730A agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).
>
> (2) References in section 730A to buying back securities
>
> (a) shall include references to buying similar securities …"

22. Prior to 2003, if a UK company purchased its own shares in accordance with Chapter VII of Part V of the Companies Act 1985, the shares would automatically be treated as cancelled. With effect from 1 December 2003, UK listed companies were allowed to purchase and continue to hold their shares as "treasury shares" in accordance with particular statutory provisions. At the same time, section 195 FA 2003 was brought into force in order to provide that where a company purchased its own shares then, regardless of the company law position, the shares would be treated as cancelled for tax purposes. Section 195 FA 2003 provides that:

> "(1) This section applies for the purposes of the Taxes Acts and the Inheritance Tax Act 1984 (c 51) where a company acquires any of its own shares (whether by purchase, the issuing of bonus shares or otherwise).
>
> (2) The acquisition of any of those shares by the company is not to be treated as the acquisition of an asset.
>
> (3) The company is not, by virtue of the acquisition or holding of any of those shares or its being entered in the company's register of members in respect of any of them, to be treated as a member of itself.
>
> (4) Subject to subsection (5)
>
> (a) the company's issued share capital is to be treated as if it had been reduced by the nominal value of the shares acquired,
>
> (b) such of those shares as are not cancelled on acquisition are to be treated as if they had been so cancelled, and
>
> (c) any subsequent cancellation by the company of any of those shares is to be disregarded (and, accordingly, is not the disposal of an asset and does not give rise to an allowable loss within the meaning of the Taxation of Chargeable Gains Act 1992 (c 12))."

23. The Explanatory Notes to the Finance Bill 2003 in relation to clause 192 (which became section 195 FA 2003) stated as follows:

> "Summary
>
> 1. Due to changes in company law, listed companies will be able to acquire shares in themselves ("own shares"), hold and dispose of them. Own shares held in this way are often called "treasury shares". This clause and schedule treat own shares held without cancellation as if they are cancelled for tax purposes, and as newly issued shares if they are subsequently sold.
>
> Details of the Clause
>
> 2. Subsection 1 explains that this clause applies where a company acquires its own shares by any means including by purchase or by issue to it of bonus shares. It is effective for income, corporation, capital gains and inheritance tax purposes.
>
> 3. Subsection 2 provides that on acquisition of own shares by a company, those shares do not become an asset."

Submissions on application of section 730A and effect of section 195

24. HMRC's position was that, on 27 September 2007, BJL acquired 200 million of its own shares for £199,989,197 from BHL. Accordingly, under section 730A(1)(a) ICTA 1988, BHL was the "original owner" and BJL was the "interim holder" of the relevant shares. On the same day, BHL agreed, in the Forward Purchase Agreement, to purchase 200 million BJL shares from BCHL for £214,108,391 on 26 September 2008. This satisfied section 730A(1)(b)(i) in that BHL, the original owner, was required to buy the BJL shares (which, under section 730B(2), includes similar shares) back under a related agreement. BJL did not dispute that the Forward Purchase Agreement was a related agreement within the meaning of section 730B(1).

25. The completion of the Forward Purchase Agreement duly took place on 26 September 2008. The repurchase price (£214,108,391) was greater than the purchase price (£199,989,197). Accordingly, section 730A(2)(a) applied and the difference (£14,119,194) was treated as a payment of interest from BHL to BJL on a deemed loan. Since both BHL and BJL were companies, section 730A(6) provided that the loan relationships code (then contained in Chapter 2 of Part 4 of the Finance Act 1996) applied. BHL therefore claimed a debit under the loan relationships code in respect of the interest that it was treated as having paid.

26. Mr Jonathan Peacock QC, who appeared, with Mr Philip Walford, for BJL, accepted that section 730A ICTA 1988 applied to the transfer of the shares under consideration in this appeal. Indeed, it was only by the application of section 730A that BHL was entitled to treat the £14 million as an interest expense that is deductible when computing its profits for corporation tax purposes. He contended that BHL fell squarely within section 730A ICTA 1988 in that it disposed of shares and then repurchased similar shares whereas BJL did not come within the section because the effect of section 195 FA 2003 was that BJL did not acquire any shares.

27. Mr Peacock accepted that, without section 195 FA 2003, section 730A would apply to BJL which would be required to bring that part of the £14 million that accrued during its accounting period ending 30 September 2008 into account as part of its profits for corporation tax purposes. Mr Peacock submitted that the effect of section 195 FA 2003 was that the acquisition of shares by BJL was not to be treated as the acquisition of an asset and the shares were to be treated as cancelled. Accordingly, BJL did not acquire the shares and was never an interim holder. BJL was treated by section 195 has not making an acquisition of the shares and thus, from BJL's point of view, there was no transfer. The consequence was that section 730A did not apply to a company purchasing its own shares, such as BJL, because the section required a "transfer" which necessarily required a transferee who acquired the shares. It was BJL's case that the effect of section 195 was to disapply what would otherwise be the tax consequences for BJL, under section 730A, of a sale and repurchase of shares.

28. Mr Sam Grodzinski QC, who appeared with Mr David Yates on behalf of HMRC, submitted that section 195 did not provide that, where a company bought its own shares, there was no transfer of shares to it. The section only provided that the "acquisition of any of those shares by the company is not to be treated as the

acquisition of an asset". Such precise wording was not enough to prevent section 730A applying to BJL. He further contended that BJL's construction of section 195 went further than was permissible for a deeming provision. Mr Grodzinski relied on the summary of the proper approach to such deeming provisions by Lord Walker in *DCC Holdings (UK) Ltd v HMRC* [2011] STC 326 at [36]-[39].

29. Mr Peacock submitted that BHL's and BJL's positions must be analysed separately. He referred us to *Westcott v Woolcombers* [1987] STC 600 and *NAP Holdings v Whittles* [1994] STC 979 as authority for the proposition that it is necessary to look at the tax position of a shareholder separately from that of the company issuing the new shares for the purposes of capital gains tax legislation. Those cases concerned different legislation to the provisions which we have to consider and we did not find them of any great assistance. Nevertheless, we accept that we should consider the positions of BHL and BJL separately and from each company's point of view when determining whether section 730A applies to them. That does not mean, however, that we should only have regard to one half of the transaction in determining the tax position of BJL.

Effect of section 195 FA 2003

30. Section 195(2) FA 2003 provides that the acquisition by a company of its own shares is not to be treated as the acquisition of an asset by the company. Mr Peacock contended that the effect of section 195 is that, from its point of view, BJL did not acquire the shares and so the transaction did not fall within section 730A because, without an acquisition, there was no transfer.

31. We do not accept the proposition that the effect of section 195 is that there was no acquisition of shares by BJL. Section 195(2) is precisely drafted. It provides that the acquisition of the shares by the company is not to be treated as the acquisition of an asset. It does not say that, where a company buys its own shares, the transaction is not to be treated as an acquisition of shares. The effect of section 195(2) is that the shares acquired are not to be treated as assets of the acquirer, not that no shares are acquired. It is accepted that BHL transferred the BJL shares and, in our view, BJL acquired those shares notwithstanding that it was not treated as having acquired an asset for tax purposes. Accordingly, we consider that section 730A(1) ICTA 1988 applied to BJL as it did to BHL.

Meaning of transferred

32. Mr Peacock submitted that section 730A ICTA 1988 only applied where there was both a disposal and an acquisition of shares. It follows from our interpretation of section 195 FA 2003 that we do not need to consider whether a person can be regarded as having transferred shares to another if the other does not acquire them. In case we are wrong in relation to the effect of section 195 and, contrary to our view, BJL should not be regarded as having acquired any shares from BHL, we consider the meaning of "transferred" in section 730A.

33. In relation to his submission that a "transfer" for the purposes of section 730A ICTA 1988 requires both a disposal by the transferor and an acquisition by the transferee, Mr Peacock relied on the Australian case of *Coles Myer Ltd v Commissioner of State Revenue* [1998] VSC 288, [1998] 4 V.R. 728) which was a decision of the Court of Appeal of the Supreme Court of Victoria. In that case, a company bought some of its own shares under a "buy-back". The Australian Corporations Law provided that, immediately after the transfer to a company of its own shares, the shares were cancelled and all rights attached to the shares were extinguished. The Australian Stamps Act 1958 provided that ad valorem stamp duty was payable on the "transfer of any marketable security". The issue was whether the buy-back transaction was a transfer of the shares.

34. In the Victoria Court of Appeal, Ormiston JA, giving the majority judgment, carefully analysed the concept of transfer at p739 et seq. He emphasised the bilateral nature of the act of transfer and observed at p740:

> "Although the word 'transfer' is not a term of art and is a word of wide connotation, to my way of thinking it is the passing of rights to another, so as to vest them in that other person, which is essential to a transfer, properly understood. It is not a mere disposition, a ridding oneself of the right or interest, it is the vesting in the transferee of that right or interest, precisely or substantially, which is necessary to effect a transfer, as ordinarily understood in the law.
>
> … [H]owever broadly the word 'transfer' be defined, it requires at the least that the transferee should, at the end of the transaction, have substantially the same right or interest in the subject matter as did the transferor before the transfer took place."

35. Ormiston JA went on to hold, at p741, that, bearing in mind that "the vesting in the transferee of the same right or interest, or substantially the same right or interest, as was formerly held by the transferor" is essential to a transfer, "… because Coles Myer could, and did not, hold the same right and interest in the shares formerly held by [the transferor] … no interest properly characterised as that of a share was ever held by Coles Myer as a result of the execution of this instrument." He concluded at p747:

> "The issue is therefore whether the instrument was a 'transfer of marketable securities' within the meaning of the Stamps Act and, for the reasons I have already stated, upon a consideration of the real nature and substance of the instrument calling itself a 'transfer', it was not a transfer of the kind subject to duty under Heading IV in that it failed to vest any property, right or interest in the transferee Coles Myer."

36. Ormiston JA reached that conclusion because the Australian Corporations Law provided that, when a company acquired its own shares, the shares and all rights attached to them were immediately extinguished. That is not necessarily the consequence of a company acquiring its own shares. Ormiston JA recognised that when he said at p744:

> "In truth the term 'buy-back' was chosen for the provisions here in question not because there was intended to be any passing of property of the kind essential to a true transfer, but because it was a term used in other jurisdictions generally, but regrettably loosely, to describe schemes to extinguish shares of the kind here described: I have referred to sufficient articles in journals as indicate how the pressure arose for the introduction of provisions such as were contained in Division 4B. At least in the United States there were some buy-back schemes permitted which involved the company holding the shares, albeit as treasury shares, with certain rights of disposition, at least of a qualified kind. Under [the Australian buy-back provisions in force at the time] no such right was contemplated."

37. We consider that the reference in *Coles Myers*, at p744, to the position in the United States shows that Ormiston JA was concerned with the position under Australian law and not seeking to make any general statement about the nature of a transfer of shares. The issue in the case was whether the instrument was a transfer within the meaning of the Stamps Act and that was considered in the context of the Australian Corporations Law which provided that the shares ceased to exist on a buy-back. That is not the situation in this case: the shares were cancelled after they had been bought by BJL. In *Coles Myers*, Phillips JA, at p752 in a dissenting judgment, concluded that a transfer had taken place because the shares transferred were only cancelled after the transfer was registered. We do not consider that *Coles Myers* is authority for the proposition that a transfer, either generally or in section 730A specifically, requires both a disposal and an acquisition. In our view, *Coles Myers* was a decision given in a very different statutory and factual context and provides only limited assistance in determining whether a transfer for the purposes of section 730A ICTA 1988 requires an acquisition of shares by the person to whom they are transferred.

38. Mr Peacock also referred to *First Nationwide v HMRC,* [2012] EWCA Civ 278, [2012] STC 1261. In that case, one of the questions was whether section 730A ICTA 1988 applied where some securities were sold and there was an agreement to subscribe for similar securities in the future. The question was whether the subscription for and issue of shares could amount to buying back shares (within the extended meaning of that term given by section 730B). Moses LJ, giving the only reasoned judgment, said, at [30]:

> "These carefully articulated provisions do not admit of a construction which elides the buying of similar securities (the Second Issued Preference Shares in Blueborder) with the subscription and issue of those shares. The provisions relate to the purchase of shares, the transfer of a chose in action and not to the creation of a chose in action which is not in issue at the time of subscription and which only comes into existence following subscription on the issue of the shares by Blueborder. If Parliament had meant to include within the scope of the provisions a subscription for shares it would have said so."

Mr Peacock submitted that if, as Moses LJ made clear in *First Nationwide*, there cannot be a transfer where something is created then, by parity of reasoning, there cannot be a transfer where the shares are cancelled or disappear.

39. Although *First Nationwide* was concerned with the sale and repurchase of securities, the meaning of transfer in section 730A ICTA 1988 was not an issue in the case. It seems to us that *First Nationwide* is only authority for the proposition that the term "buying securities" does not include "subscribing for securities". In our view, it does not follow from that proposition, which is self-evidently correct, that the transfer of shares does not include the situation where shares are transferred to a person but are not treated as acquired by that person. In our view, the observations of Moses LJ in *First Nationwide* provide no assistance in understanding the meaning of "transferred" in section 730A.

40. Mr Peacock also referred to section 66 of the Finance Act 1986, which related to a purchase by a company of its own shares under section 162 of the Companies Act 1985. Section 66(2) provided that any return relating to the purchase by a company of its own shares delivered to the registrar of companies

> "… shall be charged with stamp duty, and treated for all purposes of the Stamp Act 1891, as if it were an instrument transferring the shares to which it relates on sale to the company …"

Mr Peacock submitted that the effect of section 66(2) was to deem a purchase by a company of its own shares to be a transfer on sale which, by implication, it would not otherwise have been.

41. Mr Grodzinski pointed out that, under the Companies Act 1985, there was no need for a written instrument to transfer the shares where a company bought back its own shares as the purchase could be completed by delivery of the shares to the company. Under what was section 169 of the Companies Act 1985, the company was then obliged to make a return to the registrar of companies of any shares so delivered. He submitted that section 66(2) did no more than deem the return to be a share transfer instrument for the purpose of making it chargeable to stamp duty. We agree with Mr Grodzinski's view. Section 66(2) did not deem the purchase by a company of its own shares to be a transfer: it deemed the company's return to the registrar to be an instrument transferring the shares. In our view, section 66(2) provides no support for the submission that the purchase by a company of its own shares is not a transfer and sheds no light on the meaning of transfer for the purposes of section 730A.

42. Mr Peacock also sought to rely on comments by Lawrence Collins LJ (as he then was) in *HMRC v Bank of Ireland Britain Holdings* [2008] EWCA Civ 58, [2008] STC 398, which was a tripartite repo case and considered the language of section 730A. We did not find this case of any real help in determining the meaning of "transferred" in section 730A. In short, the case shows that it is not permissible to read words into a section in order to plug a perceived gap in the legislation which resulted in non-taxation of the deemed interest under the section. That is not the situation that in this case. Mr Grodzinski said that HMRC simply asked us to read the language of section 730A on its face. He also pointed out that Mr Peacock had not identified what words had to be read in to the section. We consider that our task is to identify the meaning of "transferred" in section 730A and, in doing so, we are not required to apply any legislative gloss or interpolate the section.

43. Section 730A applies where a person “has transferred any securities to another person … under an agreement to sell them”. The word “transferred” is not defined: it is an ordinary English word and should be given its ordinary meaning, consistent with the context in which it is found. In section 730A, “transferred” does not appear alone but is qualified by “to another”. We consider that the phrase “has transferred any securities to another person” requires the other person to have received the securities. If no one acquires the securities then they have not been transferred to another person. In this case, if we are wrong in our interpretation of section 195 FA 2003 and BJL must be regarded as not having acquired the shares, then we would conclude that BHL had not “transferred any securities to another person” and section 730A did not apply. Applying the same reasoning, it could be argued that, where there was no acquisition of shares by BJL, the disposal by BHL would not be a transfer for the purposes of section 730A either but neither party argued for that analysis and we reach no firm conclusion on that issue.

Does section 27 F(No 2)A 2005 apply in relation to the £214,108,391 paid by BCHL to BJL on 25 September 2008?

Legislation

44. The F(No.2)A 2005 introduced legislation to deal with certain kinds of “tax arbitrage”, ie where a person seeks to take advantage of different treatments under different tax codes. The legislation is contained in Chapter 4 of Part 2 of F(No.2)A 2005 and makes provisions for “deductions cases” (see sections 24 and 25) and “receipts cases” (see sections 26 and 27). The rules relating to deductions cases are not relevant to this appeal.

45. Section 26 F(No.2)A 2005 provides as follows:

> “(1) If the Commissioners for Her Majesty’s Revenue and Customs consider, on reasonable grounds, that conditions A to E are or may be satisfied in relation to a company resident in the United Kingdom, they may give the company a notice under this section.
>
> (2) Condition A is that a scheme makes or imposes provision (“the actual provision”) as between the company and another person (“the paying party”) by means of a transaction or series of transactions.
>
> (3) Condition B is that the actual provision includes the making by the paying party, by means of a transaction or series of transactions, of a payment that is a qualifying payment in relation to the company.
>
> (4) Condition C is that, as regards the qualifying payment made by the paying party, there is an amount that—
>
> (a) is available as a deduction for the purposes of the Tax Acts, or
>
> (b) may be deducted or otherwise allowed in respect of the payment under the tax law of any territory outside the United Kingdom,
>
> and does not fall to be disregarded as described in subsection (5) [which does not apply in this case].

…

(8) Condition D is that at least part of the qualifying payment is not an amount to which subsection (9) or (10) applies.

(9) This subsection applies to an amount that is, for the purposes of the Corporation Tax Acts—

(a) income or gains arising to the company in the accounting period in which the qualifying payment was made in relation to the company, or

(b) income arising to any other company resident in the United Kingdom in a corresponding accounting period.

(10) This subsection applies to an amount that is taken into account in determining the debits and credits to be brought into account by a company for the purposes of Chapter 2 of Part 4 of FA 1996 as respects a share in another company by virtue of section 91A or 91B of FA 1996 (shares treated as loan relationships).

(11) Condition E is that the company and the paying party expected on entering into the scheme that a benefit would arise as a result of condition D being satisfied (whether by reference to all or part of the qualifying payment).

(12) A notice under this section is a notice—

(a) informing the company of the Commissioners' view under subsection (1),

(b) specifying the qualifying payment by reference to which the Commissioners consider conditions B to E are or may be satisfied,

(c) specifying the accounting period of the company in which the payment is made, and

(d) informing the company that as a consequence section 27 has effect in relation to the payment.

(13) For the purposes of this section a payment is a qualifying payment in relation to a company if it constitutes a contribution to the capital of the company.

(14) For the purposes of this section the accounting period of a company ("company A") corresponds to the accounting period of another company ("company B") if at least one day of company A's accounting period falls within company B's accounting period."

46. Section 27 F(No.2)A 2005 is the operative receipts provision and provides as follows:

"(1) The following provisions of this section apply in relation to a payment that is a qualifying payment in relation to a company if

(a) a notice specifying that payment is given to the company under section 26, and

(b) when the notice is given, conditions A to E of section 26 are satisfied in relation to the company.

> (2) The company must compute (or recompute) for the purposes of corporation tax for the accounting period specified in the notice its income or chargeable gains, or its liability to corporation tax, as if the relevant part of the qualifying payment were an amount of income chargeable under Case VI of Schedule D arising to the company in that period.
>
> (3) The relevant part of the qualifying payment is the part by reference to which conditions C and D are satisfied; and, where conditions C and D are satisfied in relation to the whole of the qualifying payment, the relevant part is the whole of the qualifying payment.
>
> (4) In this section "qualifying payment" has the same meaning as in section 26."

47. Section 28 F(No.2)A 2005 makes provisions for notices under sections 24 and 26 to be given before, during and after an enquiry. In this case, the revised notice was given during the enquiry and the relevant provision was section 28(3) which is as follows:

> "If a company has made a company tax return for an accounting period, the Commissioners may only give the company a notice under section 24 or 26 in relation to that period if a notice of enquiry has been given to the company in respect of its return for that period."

48. Section 30 F(No.2)A 2005 is an interpretation provision. Section 30(1) provides as follows:

> "(1) For the purposes of this Chapter
>
> (a) references to a scheme are references to any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions;
>
> (b) it shall be immaterial in determining whether any transactions have formed or will form part of a series of transactions or scheme that the parties to any of the transactions are different from the parties to another of the transactions; and
>
> (c) the cases in which any two or more transactions are to be taken as forming part of a series of transactions or scheme shall include any case in which it would be reasonable to assume that one or more of them
>
> (i) would not have been entered into independently of the other or others, or
>
> (ii) if entered into independently of the other or others, would not have taken the same form or been on the same terms."

Discussion

49. In a notice dated 28 January 2011 to BJL, HMRC stated that they considered that the conditions in section 26 F(No.2)A 2005 are or may be satisfied in relation to BJL and specified as the qualifying payment:

> "Payment of £214,108,391 received by Biffa (Jersey) Limited on 25 September 2008 under a forward purchase agreement for shares issued by Biffa (Jersey) Limited."

50. In fact, BJL did not receive any payment under the Forward Purchase Agreement. BHCL paid £214,108,391 to BJL under the Forward Subscription Agreement on 25 September 2008. On the same day, BJL paid £214,108,391 to BHCL under the Forward Purchase Agreement.

51. HMRC did not accept that the original notice was invalid but, to put the matter beyond doubt, they issued a further notice, dated 28 March 20, to BJL which specified the following as the qualifying payment:

> "Under the forward subscription and forward purchase agreements the payment of £214,108,391 received by Biffa (Jersey) Limited on 25 September 2008 in respect of the 200,000,000 ordinary shares issued by Biffa (Jersey) Limited and acquired by Biffa Holdings Limited."

52. There was no dispute in relation to Conditions A and D in section 26 F(No.2)A 2005. The focus of the submissions was on whether conditions B, C and E of section 26 were satisfied in relation to BJL. In relation to Condition A, BJL accepted that the arrangements in the present case could be regarded as a scheme, as defined in section 30(1), that made provision between BJL ("the company") and another person ("the paying party") by means of a series of transactions and thus Condition A was satisfied. BJL accepted that there had been a qualifying payment, ie a contribution to the capital of BJL, of £214 million by BHCL. BJL did not accept that BHL could be regarded as having made a contribution to the capital of BJL, so that Condition B was not satisfied in respect of the payment of £214 million by BHL to BHCL. BJL also contended that Condition C was not met because, even if BHL was regarded as making a qualifying payment, the £214 million paid by BHL was not deductible for tax purposes. In relation to Condition D, BJL accepted that if Conditions B and C were satisfied (which BJL denied) then at least part of the qualifying payment would not be income or gains of BJL. BJL contended that condition E was not satisfied because BJL and BHL did not have any expectation of obtaining a benefit as a result of Condition D being satisfied. In order for section 27 F(No.2)A 2005 to apply, all the Conditions must have been satisfied at the time that the section 26 notice was given. We now examine the disputed Conditions B, C and E in more detail.

Condition B

53. In order to satisfy Condition B, the paying party must make a payment that is a contribution to the capital of the company. That payment may be made by means of a series of transactions, which is defined broadly by section 30(1)(b) and (c) F(No.2)A

2005. HMRC contended that, on 25 September 2008, BHL made a payment, by means of a series of transactions, which constituted a contribution to the capital of BJL. The agreed facts, set out at [14] above, show that, on 25 September 2008, the following transactions occurred:

(1) BCHL borrowed £214 million from Barclays under a daylight facility.

(2) BCHL used the money to pay for 200 million shares issued by BJL pursuant to the Forward Subscription Agreement.

(3) BJL lent £214 million, ie the subscription proceeds, to BHL.

(4) BHL used the money borrowed from BJL to buy 200 million BJL shares from BCHL under the Forward Purchase Agreement.

(5) BCHL used the £214 million sale proceeds to repay the £214 million borrowed from Barclays under the daylight facility.

54. Mr Grodzinski submitted that, as a result of that series of transactions, BHL ended up bearing the economic consequence of the subscription to BJL by having to borrow such a sum from BJL. He contended that the fact that the order of the transactions was such that the payment by BHL to BCHL occurred moments after BCHL payment to BJL, rather than moments before, could not take BJL outside of section 26 F(No.2)A 2005. He submitted that the transactions were part of a series and the order in which they took place was not relevant to the application of section 26. Mr Grodzinski accepted that the legislation does not mention economic burden but he contended that, in the context of a provision that refers to a series of transactions, it was appropriate to look at the scheme as a whole and who bore the burden of the contribution to BJL's capital.

55. Mr Peacock submitted that the only payment that could be regarded as a contribution to BJL's capital was the payment by BCHL of £214 million under the Forward Subscription Agreement. He contended that the payment by BHL to BCHL could not be regarded as a qualifying payment because it was not a payment to BJL nor was it a contribution to BJL's capital. Clause 4 of the Forward Purchase Agreement showed that BCHL was the owner of the BJL shares at the time of their sale to BJH. Mr Peacock argued that there was no basis for displacing BCHL, which had clearly made a contribution to BJL's capital, and substituting BJL. If Mr Peacock were correct then, as BCHL was not entitled to a deduction in respect of the payment to BJL, Condition C would not be met.

56. HMRC's revised notice issued under section 26 F(No.2)A 2005 specified a single payment received by BJL but stated that it was made under two agreements which had separate payers, BHL and BCHL, only one of which made a payment to BJL. There was no dispute that BJL received a contribution to its capital when it was paid £214 million by BCHL on that day. Nothing in sections 26 or 30 F(No.2)A 2005 suggests that the same contribution to capital can be paid by several people or that Condition B can be applied to more than one person in respect of the same contribution to capital. We understood Mr Grodzinski to accept this. The issue is whether BHL or BCHL made payment that was a contribution to the capital of BJL.

57. We consider that the only payment that contributed to the capital of BJL was the one made by BCHL to BJL in return for shares in BJL. In our view, there is no doubt that the transactions that took place on 25 September 2008 were a series within the meaning of section 30(1)(c). However, BHL did not bear the economic burden of the contribution to BJL's capital made by BCHL. BHL bore the economic burden of the payment to BHCL for the purchase of the BJL shares owned by BHCL. That payment was not a contribution to BJL's capital but to BHCL's balance sheet. Even if BHL indirectly bore the economic burden of the contribution to BJL's capital, there is nothing in the language of sections 26 or 30 that requires or allows a person who bears the economic burden of a payment to be regarded as making the payment in preference to the person who actually made it.

58. In our view, BCHL made a qualifying payment of £214 million to BJL and BHL did not make and cannot be regarded as having made such a payment. Accordingly, we hold that Condition B was not satisfied in this case and section 27 F(No.2)A 2005 does not apply.

Condition C

59. We now consider whether, in the event that we are wrong in relation to Condition B, Condition C was satisfied. If BHL made a payment that was contribution of capital in relation to BJL, Condition C is that, as regards the payment, there was an amount that was deductible for tax purposes by BHL.

60. HMRC's case was that an amount, namely £14,119,194, was available to BHL as a corporation tax deduction under section 730A ICTA 1988. That amount was part of the £214 million qualifying payment by BHL. Accordingly, Condition C was met.

61. Mr Peacock submitted that Condition C was not satisfied. He contended that the amount of £14 million that BHL deducted related to interest on the deemed loan of £200 million from BJL under the loan relationship rules. He maintained that the £14 million was not a deduction as regards the £214 million paid by BHL to BHCL. Mr Peacock relied on the approach taken by Henderson J in the High Court in *HMRC v Bank of Ireland Britain Holdings* [2008] STC 253 to what, he submitted, was a similar argument by HMRC in the context of who received the deemed interest under section 730A ICTA 1988. HMRC argued the deemed interest was received by the person who received the repurchase price since effectively part of the repo repurchase price represented that interest. Henderson J rejected this at [32]:

> "If the draftsman had intended the result for which the Revenue contends, it seems to me that he would have had to do at least two things. First, he would have had to deem part of the repurchase price itself to constitute a payment of interest; and secondly, he would have had to deem the loan to be made by the person to whom the repurchase price is paid, i.e. the reseller, whether or not that person is also the interim holder. In fact, however, the draftsman has in my judgment done neither of those things. As to the first point, the payment of interest is a purely notional payment. True, it is quantified as the difference between the sale price and the repurchase price, but as

> subsection (3) makes clear it is not itself part of the repurchase price. It is merely a deemed amount which becomes due at the time when the repurchase price becomes due, and is treated as paid when that price is paid. In short, it is a wholly notional payment, divorced from the actual payment of the repurchase price, although quantified by reference to it. …"

62. Mr Peacock submitted that, applying the same approach as Henderson J to deemed interest under section 730A ICTA 1988, the amount of £14 million was a notional amount of interest which was not a deduction as part of the actual payment of £214 million made by BHL. Mr Peacock pointed out that, in this case, the payment made by BHL was distinct from the payment that was received by BJL and thus the deduction in respect of the notional interest was even more remote from the contribution to capital.

63. Mr Grodzinski submitted that the phrase "as regards" in section 26(4) F(No.2)A 2005 bore a wide meaning and included circumstances where the legislation deems a deduction to occur as a result of the qualifying payment being made. Mr Grodzinski contended that BJL's approach was too narrow and at odds with the purpose of the legislation, which was to counteract mismatches or arbitrage in relation to tax treatment. He submitted that in *Bank of Ireland Britain Holdings* what Henderson J was not concerned with section 26(4). In any event, the fact that the £14 million was notional interest did not mean that it was not part of a real payment and, as such, an amount available to BJL as a deduction for tax purposes and thus within Condition C.

64. We prefer the submissions of Mr Grodzinski on this point. There was no dispute that the £14 million was an amount that was deductible for tax purposes by BHL. We consider that the £14 million was an amount "as regards the qualifying payment" in that it arose from the payment of £214 million by BHL. Accordingly, we conclude that Condition C was satisfied.

Condition E

65. Assuming that, contrary to our conclusion above, BHL made the qualifying payment and also that, as we have found, condition C has been satisfied, Condition E requires that "the company and the paying party expected on entering into the scheme that a benefit would arise as a result of condition D being satisfied (whether by reference to all or part of the qualifying payment)".

66. Condition D is that at least part of the qualifying payment of £214 million was not an amount to which section 26(9) or (10) applied. Section 26(9) applies where an amount is income or gains of BJL or another UK company. Section 26(10) deals with certain provisions of the loan relationships code. Mr Peacock accepted that section 26(9) or (10) did not apply to any part of the payment of £214 million.

67. Condition E is that BJL and, on HMRC's case, BHL expected, on entering into the scheme, that a benefit would arise as a result of condition D being satisfied ie as a result of no charge to tax arising in relation to all or part of the payment of £214 million. Mr Peacock submitted that Condition E required BJL and BHL to have

expected, on entering the scheme, that a benefit would arise from all or part of the payment of £214 million not being taxable as income or gains in the hands of BJL. He contended that BJL and BHL had no such expectation. That was not the object of the scheme. BJL and BHL was that BHL would obtain a deduction for the deemed interest of £14 million while BJL would not be liable to tax on the receipt of the deemed interest. Mr Peacock submitted there was no expectation that a tax advantage would arise as a result of the qualifying payment, ie the contribution of £214 million to the capital of BJL, not being taxable in the hands of BJL. Accordingly, Condition E was not met.

68. Mr Grodzinski submitted that BJL's case on Condition E was that the benefit did not arise as a result of the qualifying payment from BHL being neither income nor gains in the hands of BJL but from the fact that BHL was entitled to a deduction for the £14 million interest deemed under section 730A ICTA 1988, with BJL not being liable to tax in respect of that same interest. Mr Grodzinski contended that was wrong because no part of the £214 million payment, including the £14 million, was, if BJL is right about section 195 FA 2003, taxable as income or gains arising to BJL. Mr Grodzinski observed that, if Mr Peacock were right and a tax advantage relating to income or gains must relate to the qualifying payment then Condition E would never be satisfied as a capital contribution to a company is never, of itself, income or gain to that company or to another company.

69. The benefit referred to in Condition E was not merely any tax advantage as a result of the scheme but a benefit arising from the non-taxation of all or part of the qualifying payment in the hands of the company, ie BJL, or some other UK company. We do not accept that, in considering whether Condition E is satisfied, we can only have regard to the tax treatment of the qualifying payment as a contribution to capital. We consider that we should also take account of the treatment of the payment under section 730A ICTA 1988 and section 195 FA 2003, on the assumption that BJL's arguments are correct. On that basis, Condition E was clearly satisfied because BJL and BHL intended that the arrangements would produce a benefit (i.e. a corporation tax deduction of £14 million for BHL without any corresponding taxable receipt for BJL). Accordingly, we conclude that Condition E was satisfied.

Decision

70. We have decided that section 195(2) FA 2003 does not mean that BJL must be treated as not having acquired the BJL shares from BHL. Section 195(2) provides that the acquisition of the shares is not to be treated as the acquisition of an asset and no more. Accordingly, section 730A(1) ICTA 1988 applied to BJL as it did to BHL. It follows that BJL's appeal is dismissed.

71. If we are wrong in relation to section 195(2) and section 730A, we have decided that section 27 F(No 2)A 2005 does not apply in relation to the £214,108,391 paid by BCHL to BJL on 25 September 2008 because Condition B in section 26(3) was not satisfied in this case.

BHL's appeal

72. Initially, HMRC did not accept that BHL was entitled to deduct £14 million as deemed interest in computing its profits for corporation tax purposes for the periods ended 28 March 2008 and 27 March 2009. BHL appealed to the Tribunal and that appeal was due to be heard with this one. Before the hearing of this appeal, HMRC confirmed that they were no longer contesting the appeal by BHL under reference TC/2012/03272. Consequently, that appeal must be allowed.

Related cases

73. This appeal is a lead case under rule 18 of the FTT Rules for similar points in dispute in relation to transactions undertaken by another corporate group. Rule 18(3)(b) provides that, subject to rule 18(4), the decision of the tribunal in a lead case is binding on the parties to a related case. Rule 18(4) provides that a party in a related case may apply to the tribunal for a direction that the decision should not bind the parties to a related case. An application under rule 18(4) must be made within 28 days after the date of release of this decision.

74. After the expiry of the 28 day time limit for an application under rule 18(4) and subject to any application that may be made, the tribunal will issue directions under rule 18(5) for the disposal of or further steps in the related cases. The parties to the related cases may make submission as to the appropriate directions to be made under rule 18(5). Such submissions should be served on the tribunal and the other parties within 35 days of the date of release of this decision.

Right to apply for permission to appeal

75. This document contains full findings of fact and reasons for the decision. Any party to this appeal 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 ("FTT Rules"). 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.

Costs

76. Any application for costs in relation to this appeal or the appeal by BHL under reference TC/2012/03272 must be made within 28 days after the date of release of this decision. As any order in respect of costs will be for a detailed assessment, the party making an application for such an order need not provide a schedule of costs claimed with the application as required by rule 10(3)(b) of the FTT Rules.

GREG SINFIELD
TRIBUNAL JUDGE

RELEASE DATE: 23 October 2014