

First-tier Tribunal Upholds Corporation Tax Charge on Exit from United Kingdom

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The United Kingdom's First-tier Tax Tribunal has upheld a corporation tax assessment by His Majesty's Revenue and Customs (HMRC) in the case of *Redevco Properties UK 1 Limited v The Commissioners For His Majesty's Revenue And Customs* [\[2023\] UKFTT 655 \(TC\)](#).

a) Facts. In 2008, Redevco Properties UK 1 Limited (Redevco) ceased to be a UK resident for corporation tax purposes and became a resident in the Netherlands. In such cases, section 185 of the Taxation of Chargeable Gains Act 1992 (TCGA 1992) deems a company to have disposed of its assets and reacquired them at market value. This resulted in a taxable gain of about GBP 140 million. The company was also, under paragraph 10A of Schedule 9 to the Finance Act 1996, deemed to have assigned and reacquired the assets and liabilities that represented its loan relationships, resulting in profits of GBP 2,700,114.

b) Issue. Both Redevco and HMRC agreed that when the company left the UK, the above provisions were incompatible with EU law because they did not include the facility to defer payment. It was also accepted that the company could rely on the freedom of establishment principle under Article 49 of the Treaty on the Functioning of the European Union (TFEU). However, the HMRC considered that the remedy to the incompatibility was that a conforming construction should be applied to the UK legislation to allow payment over 5 years. This would follow the decision in *Trustees of the P Panayi Accumulation and Maintenance Trusts Nos 1-4 v HMRC* [\[2020\] SFTD 209 \(Panayi\)](#), whereas Redevco argued that the exit charge provisions were incompatible with EU law and should therefore be disapplied.

c) Decision. After considering the case law and a 2007 paper on exit charges by the Law Society's International Tax Sub-Committee, the First-tier Tribunal concluded that the principle of conforming interpretation should be applied to section 59 D (1) of the Taxes Management Act 1970 (TMA) which provides the general rules for the payment dates of UK corporation tax. This section should be interpreted to mean that corporate tax is due and payable "in cases where the taxpayer's right of freedom of establishment would otherwise be infringed, in five equal annual installments following the end of that period." In reaching this decision, the tribunal followed the conclusions of Judge Mosedale in the *Panayi* case which related to UK exit tax provisions relating to the relocation of trustees within the EU.

