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Case Number: UT/2024/000105

UPPER TRIBUNAL

(Tax and Chancery Chamber)

Rolls Building

Fetter Lane

London

EC4A 1NL

Heard on: 11 April 2025

Judgment date: 30 June 2025

Income Tax – Business Investment Relief – meaning of 'extraction of value' in s809VH(2) Income Tax Act 2007 – whether director's loan account was extraction of value - appeal dismissed

Before

MR JUSTICE MARCUS SMITH

JUDGE GREG SINFIELD

Between

BENOIT D'ANGELIN

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

<u>Representation:</u>

For the Appellant: Michael Firth KC instructed by McGrath Elliott LLP

For the Respondents: Rebecca Murray, counsel, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

DECISION

INTRODUCTION AND ISSUES

1. The only issue in this appeal is whether the provision of a director's loan account ('DLA') to the Appellant, Mr d'Angelin, constituted a breach of the 'extraction of value rule' in section 809VH(2) of the Income Tax Act 2007 ('ITA 2007'). All references to sections in this decision are to sections of the ITA 2007, unless otherwise stated, and refer to those provisions as they were in force at the relevant time in relation to this appeal.

2. In December 2016, Mr d'Angelin, a banker, financier, and entrepreneur, invested £1.5 million of his foreign income in a limited company, d'Angelin and Co Ltd (the 'Company'), registered in England and Wales. Mr d'Angelin, who was resident but not domiciled in the United Kingdom at all relevant times, was subject to income tax on income and gains remitted to the United Kingdom in accordance with the remittance basis provisions in Part 14 of the ITA 2007. Mr d'Angelin claimed Business Investment Relief ('BIR') under section 809VA in relation to the sum of £1.5 million. The effect of BIR was that the foreign income invested was treated as not remitted to the United Kingdom and was, therefore, not subject to income tax.

3. It was common ground that the sum of £1.5 million invested by Mr d'Angelin had properly attracted BIR. The only issue in this appeal is whether BIR was lost. Having been claimed, BIR is lost if a 'potentially chargeable event' occurs subsequently and certain conditions are met. One such potentially chargeable event is a breach of the 'extraction of value rule' in section 809VH(2). Between at least 1 April 2017 and 31 December 2018, the Company provided Mr d'Angelin with a DLA which he used to pay (amongst other things) personal expenses. As would be expected, the balance on the account varied over time. The balance was £37,825 on 31 December 2017, it stood at £71,515 on 28 March 2018 and closed the year at £57,303. If the provision of a DLA were an extraction of value then BIR would cease to apply and the sum of £1.5 million would be treated as having been remitted to the United Kingdom with the result that Mr d'Angelin would be liable to pay income tax of some £675,000. After an enquiry, the Respondents ('HMRC') concluded that the DLA constituted a breach of the extraction of value rule and, on 15 June 2022, issued a Closure Notice amending Mr d'Angelin's Self Assessment tax return for 2017/18 to include the foreign income of £1.5 million, thereby creating a liability to pay tax of £675,307.35.

4. Mr d'Angelin appealed to the First-tier Tribunal (Tax Chamber) ('FTT') on the ground that the extraction of value rule was not breached because:

(1) receipt of value for the purposes of the extraction of value rule means a receipt of net value, ie something which meant that Mr d'Angelin ended up better-off overall;

(2) there was no receipt of net value because, where interest-free credit is provided by an employer to an employee, the employee (Mr d'Angelin) is treated by section 184(2) Income Tax (Earnings and Pensions) Act 2003 as having paid interest on the loan equal to the cash equivalent for the purposes of the Tax Acts (which include the ITA 2007); and

(3) in any event, the DLA was provided to Mr d'Angelin in the ordinary course of business and on arm's-length terms and thus was not a breach of the extraction of value rule by virtue of section 809VH(3).

5. In a decision dated 30 May 2024 ('the Decision'), the FTT concluded that 'value' in section 809VH(2) did not mean 'net value' and there had been an extraction of value which did not fall within section 809VH(3). Accordingly, the FTT dismissed Mr d'Angelin's appeal.

6. With the permission of the FTT, Mr d'Angelin appeals to the Upper Tribunal ('UT') against the FTT's conclusions in the Decision. The first ground of appeal is that the FTT erred in law in its construction and application of section 809VH(2) and, specifically, in failing to conclude that:

(1) a receipt of value means a receipt of net value;

(2) there was no receipt of value;

(3) there was no receipt of value from the Company;

(4) the receipt of value must be attributable to the investment but was not.

7. The second ground of appeal is that, if the DLA was a receipt of value within section 809VH(2), the FTT erred in law in concluding that it was not within section 809VH(3) and, specifically, in failing to find that the DLA was not on arm's-length terms.

8. The Appellant was represented by Mr Michael Firth KC and Ms Rebecca Murray appeared for HMRC. We are grateful to both counsel for their clear submissions, written and oral, on behalf of the parties. Although we have reviewed and considered them when writing this decision, we have not found it necessary to refer to each and every argument advanced or all the authorities cited in setting out our decision in this appeal.

9. For the reasons set out below, we have decided that Mr d'Angelin's appeal must be dismissed.

BACKGROUND FACTS

10. In this decision, all references to paragraphs in the Decision are in the form "[*x*]". The FTT set out their findings of fact at [8] – [26] and [34] – [37]. We accept the findings of fact which were not challenged on appeal, the appeal being on points of law only. The relevant facts for the purposes of this appeal may be summarised as follows:

(1) Mr d'Angelin was at all relevant times resident but not domiciled in the United Kingdom, and was taxable on the remittance basis: [8].

(2) The Company was incorporated on 14 December 2016. Mr d'Angelin was appointed its sole director, acquired its single issued share (a single £1 share) and the company began trading at about this time. Its principal activity was as an "advisory boutique offering executive bespoke personal advice and high-end transaction execution services to global corporate clients at the CEO and board of directors level as well as family holdings and fast-growing private companies": [9].

(3) At all relevant times, Mr d'Angelin was a director, company secretary and sole shareholder of the Company. Mr d'Angelin was the Company's 'controlling party', meaning that the Company was under his control: [10]. Mr d'Angelin was the Company's sole director until 8 May 2017, when a second director was appointed: [11].

(4) On 6 December 2016, Mr d'Angelin remitted £1.5 million of his foreign income to the United Kingdom: [12]. On 7 December 2016, he received advice in writing from his legal advisors as to BIR, including as to the circumstances in which the relief could be lost: [13]. Also on 7 December 2016, Mr d'Angelin forwarded that advice to his accountants, with instructions that the £1.5 million was a capital subscription and was to be treated as an equity investment in the Company. He asked that the new shares subscribed in the Company be registered in his sole name: [14]. A further ordinary £1 share was issued to him in due course: [15].

(5) For the tax year 2016/2017, Mr d'Angelin claimed BIR under section 809VA in respect of the investment as a 'qualifying investment' in the Company, so that the £1.5 million of foreign income was treated as not remitted to the United Kingdom and not taxable: [16].

(6) During the tax year 2017/2018, Mr d'Angelin became increasingly indebted to the Company (the 'Indebtedness'). As at 28 March 2018, the Indebtedness stood at £71,515: [17]. The Indebtedness reflected the fact that the Company sometimes paid personal expenses on behalf of Mr d'Angelin: [34(12)]. This occurred when Mr d'Angelin used the Company's credit card or debit card for personal expenditure, with that expenditure then being identified, at some time after the event, by Mr d'Angelin's assistant and posted to the Company: [34(13)]. The items so posted ranged from a £0.79 monthly subscription to iTunes, through purchases such as flowers for his wife, dry cleaning, taxis, currency for travelling, clothing and books: [34(14)]. The largest individual items debited to the Company were for personal travel: £20,380 on private use of a jet on 15 December 2017; £15,422 on flights and £12,576 on 24 January 2018 on personal travel for him and his family to Dubai: [34(15)].

(7) Mr d'Angelin personally paid Company expenses on behalf of the Company: [34(11)]. These were netted off in the Company's accounts. Thus, between 5 April 2017 and 28 March 2018, the Company was debited by £75,758 across about 80 transactions and credited with £4,466 across seven payments, leaving the Indebtedness of £71,515 referred to above: [34(16)]. For the period ending 31 December 2017, the Notes to the Company's Annual Report and Financial Statements, signed by Mr d'Angelin on 20 March 2018, recorded amounts advanced to Mr d'Angelin by the Company of £49,369 and amounts repaid of £11,554, leaving a closing balance of £37,825: [34(17)]. For the period ending 31 December 2018, the Notes to the Company's Annual Report and Financial Statements, approved by Mr d'Angelin on 26 March 2019, recorded a carried across loan opening balance of £37,285; amounts advanced by the Company of £86,734 and payment by Mr d'Angelin of £67,256, leaving a closing balance of £57,303: [34(18)].

(8) There was no necessity for Mr d'Angelin to transact in this way: at all times, Mr d'Angelin had money in a personal bank account with his wife to pay the personal expenses incurred by the Company and to have paid off the Indebtedness to the Company at any time: [34(20)]. The expectation was that Mr d'Angelin would repay the debt, but the loan account was not paid off in full at any time, and there was never any identifiable pattern of repayment: [34(21)]. The account was operated interest free and repayable on demand: [34(22)].

(9) The Indebtedness to the Company was £223.24 (1 April 2017), £37,825 (31 December 2017), £71,515 (28 March 2018) and £57,303 (31 December 2018): [35].

(10) The Company paid a salary to Mr d'Angelin and declared various dividends over time. It is unnecessary to set these out. They were higher than the Indebtedness owed to the Company by Mr d'Angelin by a significant amount.

(11) On 26 July 2019, HMRC opened an enquiry into Mr d'Angelin's self-assessment return for 2017/2018: [22]. On 15 June 2022, HMRC issued a Closure Notice: [25]. The Closure Notice concluded that there was a DLA between Mr d'Angelin and the Company and that in relation to that account there had been an omission of employment benefit from Mr d'Angelin's tax return for 2017/2018 and that there was tax payable in addition of £675,307.35: [5]. This was because there had been an extraction of value from the Company which was not within any statutory exception which caused Mr d'Angelin to lose the BIR previously claimed.

RELEVANT LEGISLATION

11. Chapter A1 (remittance basis) of Part 14 of the ITA 2007 provides that an individual taxpayer who is resident but not domiciled in the United Kingdom who has elected (including by paying the appropriate annual charge) to be taxable on the remittance basis will be chargeable to income tax in respect of their foreign income and gains if money or other property which is or derives from the foreign income and gains is brought to or received or used in the United Kingdom by or for the benefit of a 'relevant person'. A relevant person is defined in section 809M(2) as:

> "(a) the individual,
>
> (b) the individual's husband or wife,
>
> (c) the individual's civil partner,
>
> (d) a child or grandchild of a person falling within any of paragraphs (a) to (c), if the child or grandchild has not reached the age of 18,
>
> (e) a close company in which a person falling within any other paragraph of this subsection is a participator or a company which is a 51% subsidiary of such a close company,
>
> (f) a company in which a person falling within any other paragraph of this subsection is a participator, and which would be a close company if it were resident in the United Kingdom, or a company which is a 51% subsidiary of such a company,

(g) the trustees of a settlement of which a person falling within any other paragraph of this subsection is a beneficiary, or

(h) a body connected with such a settlement."

12. BIR is provided for in section 809VA as follows:

"**809VA Money or other property used to make investments**

(1) Subsection 2 applies if –

(a) a relevant event occurs,

(b) but for subsection (2), income or chargeable gains of an individual would be regarded as remitted to the United Kingdom by virtue of that event, and

(c) the individual makes a claim for relief under this section.

(2) The income or gains are to be treated as not remitted to the United Kingdom.

(3) A 'relevant event' occurs if money or other property—

(a) is used by a relevant person to make a qualifying investment, or

(b) is brought to or received in the United Kingdom in order to be used by a relevant person to make a qualifying investment."

13. It was common ground that the sum of £1.5 million invested by Mr d'Angelin had properly attracted BIR, the only issue in this appeal being whether BIR was lost. BIR is lost in the circumstances specified in section 809VG.

809VG Income or gains treated as remitted following certain events

(1) Subsection (2) applies if-

(a) income or chargeable gains are treated under section 809VA(2) as not remitted to the United Kingdom as a result of a qualifying investment,

(b) a potentially chargeable event occurs after the investment is made, and

(c) the appropriate mitigation steps are not taken within the grace period allowed for each step.

(2) The affected income or gains are to be treated as having been remitted to the United Kingdom immediately after the end of the relevant grace period."

14. It was common ground that conditions in (a) and (c) of section 809VG(1) were met in this case. The question was whether there had been a 'potentially chargeable event' within the meaning of the second condition.

15. Section 809VH defines 'potentially chargeable event' to include a breach of the extraction of value rule. It also defines that rule and sets out when it is breached.

> "**809VH Meaning of 'potentially chargeable event'**
>
> (1) For the purposes of section 809VG, a 'potentially chargeable event' occurs if—
>
> …
>
> (b) the relevant person who made the investment ('P') disposes of all or part of the holding,
>
> (c) the extraction of value rule is breached, or
>
> …
>
> (2) The extraction of value rule is breached if—
>
> (a) value (in money or money's worth) is received by or for the benefit of P or another relevant person,
>
> (b) the value is received—
>
> (i) from an involved company, or
>
> (ii) from anyone else but in circumstances that are directly or indirectly attributable to the investment or to any other investment made by a relevant person in an involved company, and
>
> (c) the value is received other than by virtue of a disposal that is itself a potentially chargeable event.
>
> (3) But the extraction of value rule is not breached merely because a relevant person receives value that—
>
> (a) is treated for income tax or corporation tax purposes as the receipt of income or would be so treated if that person were liable to such tax, and
>
> (b) is paid or provided to the person in the ordinary course of business and on arm's length terms.
>
> (4) Each of the following is an 'involved company'—
>
> (a) the target company,

> (b) if the target company is an eligible stakeholder company, any eligible trading company in which it has made or intends to make an investment,
>
> (c) if the target company is an eligible holding company, any eligible trading company that is a 51% subsidiary of it, and
>
> (d) any company that is connected with a company within paragraph (a), (b) or (c).”

16. As the person who made the investment, Mr d’Angelin was ‘P’ in this case. There was no dispute that, if value had been received by him, then it had come from the Company which was, for these purposes, an ‘involved company’. It was also common ground that, if it was a receipt of value, the provision of the DLA was not received by virtue of a disposal that was a potentially chargeable event.

17. As the FTT pointed out at [42], the definition of ‘potentially chargeable event’ in section 809VH(2)(b) was amended by section 15(5)(c) Finance (No 2) Act 2017. For investments made on or after 6 April 2017, the extraction of value rule applied where “the value is received from any person in circumstances that are directly or indirectly attributable to the investment”. The amended rule does not apply in this case as the investment was made in December 2016.

DISCUSSION

18. The first ground of appeal in this case (see [6] above) relates to the proper meaning of ‘value’ in section 809VH(2) and its application to the facts. Mr d’Angelin’s case was that no value had been received by him for the purposes of the section for one or more of the following reasons:

(1) a receipt of value means a receipt of net value;

(2) there was no receipt of value;

(3) there was no receipt of value from the Company;

(4) the receipt of value must be attributable to the investment but was not.

19. We begin by considering whether ‘value’ in section 809VH(2)(a) means ‘net value’. In summary, Mr Firth submitted that the consequences of giving ‘receipt of value’ a broad interpretation so as to apply where something of value was received (even if the recipient was no better off overall) produces results that are absurd and would defeat the purpose of BIR. In support of his submission, Mr Firth relied on various ‘scenarios’ which, he contended, showed that applying HMRC’s wide interpretation led to the extraction of value rule being breached in

circumstances that cannot have been intended by Parliament as that would undermine the purpose of BIR. Mr Firth relied on the Supreme Court's decision in *R (oao Cobalt Data Centre 2 LLP) v HMRC* [2024] UKSC in support of his submission that we should pay very close attention to the purpose of BIR, as well as the restriction, when interpreting the legislation.

20. All the scenarios were variations on a single theme and involved at least one 'close company', ie a United Kingdom resident company which is under the control of 5 or fewer participators or of participators who are directors, and a 'participator' includes a shareholder and a loan creditor (see section 439 Corporation Tax Act 2010). It is sufficient to illustrate Mr Firth's submissions to set out only one. P establishes X Ltd (and claims BIR). X Ltd, which is a close company, establishes Y Ltd as its subsidiary and invests £100 as share capital. X Ltd is an involved company (section 809M(2)(e)). Y Ltd is a relevant person (section 809VH(4)). X Ltd sells an asset worth £100 to Y Ltd for £100. On HMRC's interpretation, the extraction of value rule is breached because Y Ltd, a relevant person, received something of value (the asset) from X Ltd, an involved company. This would be a breach of the extraction of value rule (on HMRC's interpretation) notwithstanding the fact that X Ltd and Y Ltd have merely exchanged assets of equal value and their value remains unchanged. That is so even if the transaction is in the ordinary course of business and on arm's length terms because the value received by Y is not treated as the receipt of income for income tax or corporation tax purposes (see section 809VH(3)(a)). Similarly, the extraction of value rule would also be breached if Y Ltd sold an asset worth £100 to X Ltd for £100 because Y Ltd is an involved company and X Ltd is a relevant person.

21. Mr Firth submitted that, on HMRC's construction, the extraction of value rule would be breached by any transaction between a parent and subsidiary and almost any intra-group transaction within a larger group where a close company was a relevant person in relation to the person who had claimed BIR. He contended that HMRC's interpretation would make normal commercial activity effectively impossible and, rather than encourage investment in the United Kingdom would operate as a disincentive to do so. Mr Firth said that the result of HMRC's application of the extraction of value rule was that a person such as Mr d'Angelin could not establish or invest in a holding company that was a close company and claim BIR. Mr Firth submitted that this was inconsistent with the purpose of BIR and could not be what Parliament had intended. He asked us to look at other possible interpretations which gave effect to the purpose of BIR. He submitted that it is possible to interpret 'value' as 'net value' to avoid the absurd results that would follow from a broader interpretation.

22. Ms Murray submitted that, even if HMRC's interpretation were to lead to absurd results in certain cases, that would not justify giving section 809VH(2) a different, narrower interpretation than it would be given using a straightforward purposive construction. Mr Firth accepted that the interpretation he proposed was 'strained' but submitted that it should be adopted to avoid absurd consequences that he had outlined.

23. Ms Murray accepted that there would be a breach of the extraction of value rule in the circumstances described above, ie where, after the qualifying investment is made, Y Ltd receives value from X Ltd or X Ltd receives value from Y Ltd (otherwise than by, for example, dividends or management fees falling within the exclusion in section 809VH(3)). She stated that it may be difficult to avoid a clawback of BIR unless there is a strict ring-fencing of X Ltd's and Y Ltd's respective assets. However, she submitted that was not an absurd result and it could not be said that HMRC's interpretation was contrary to the intent of Parliament. The definition of 'relevant person' in section 809M(2)(e) and (f) referred specifically to 'close companies' and showed that Parliament was concerned that such entities might be used to exploit BIR to avoid United Kingdom tax. She said that Parliament could have provided that transactions such as those in Mr Firth's scenarios did not breach the extraction of value rule but Parliament did not do so, making no special provision at all in relation to close companies, and that did not mean that the result is absurd.

24. Ms Murray further submitted that an argument based on absurdity cannot be relied on where the meaning of legislation is free from any doubt, as is the case with section 809VH(2)(b)(i). Both parties referred us to various authorities on this point but we do not need to grapple with it for reasons set out below.

25. In our view, the ordinary meaning of the word 'value' in section 809VH(2) is clear. It does not require the recipient to be better off overall or on a net basis and that interpretation does not lead to absurdity. We have reached this conclusion for the following reasons.

26. We consider that qualifying the phrase "value (in money or money's worth)" in section 809VH(2)(b)(i) by inserting the term "net" into the definition would be a material re-writing of a definition which Parliament could very easily have made express, and chose not to. That does not necessarily mean that the section cannot or should not be read in that way but such a radical change from the plain meaning would need to be clearly justified. In his written submissions post-hearing, Mr Firth cited [24] and [25] from the Supreme Court's decision in *R v. McCool* [2018] UKSC 23:

> "24. In *Bennion on Statutory Interpretation* (6th ed) at section 312 of what the author describes as the Code, the following statements are made:
>
> > '(1) The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by Parliament. Here the courts give a very wide meaning to the concept of 'absurdity', using it to include virtually any result which is unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief.
> >
> > (2) In rare cases, there are overriding reasons for applying a construction that produces an absurd result, for example where it appears that Parliament really intended it or the literal meaning is too strong.'
>
> 25. Bennion suggests that the courts have been prepared to give the concept of absurdity an expansive reach. In support of that view, he cites *Lord Millett in R (Edison First Power Ltd) v Central Valuation Officer* [2003] UKHL 20, [2003] 4 All ER 209 at paras 116 and 117, where he said:
>
> > 'The courts will presume that Parliament did not intend a statute to have consequences which are objectionable or undesirable; or absurd; or unworkable or impracticable; or merely inconvenient; or anomalous or illogical; or futile or pointless. But the strength of these presumptions depends on the degree to which a particular construction produces an unreasonable result. The more unreasonable a result, the less likely it is that Parliament intended it ...'
>
> See also Lord Scott of Foscote's approval of this dictum in *Gumbs v Attorney General of Anguilla* [2009] UKPC 27, para 44."

27. The facts of *McCool* were very different from those in this case but the approach articulated is a general one. We should not apply the concept of 'absurdity' restrictively but should give it a wide meaning as explained in the passage above from Bennion. The difficulty faced by Mr d'Angelin in this case is that section 809VH(2)(b)(i) does not produce a result which is unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief. It is not, in Lord Millett's terms, sufficiently unreasonable to indicate that Parliament cannot have intended it. As the FTT observed at [135] of the Decision, the extraction of value rule may be seen as harsh in that the extraction of a trivial amount will, if appropriate mitigation steps are not taken in time, result in the loss of BIR and the entirety of the remitted income invested (and not simply the

extracted part) becoming taxable. However, a harsh result is not to be equated with an absurd or unreasonable result and, in our view, there are good reasons why Parliament can be presumed to have intended that any extraction of value (including where there is no net gain to the recipient) would breach the extraction of value rule.

28. Moreover, a construction qualifying the phrase "value (in money or money's worth)" in section 809VH(2)(b)(i) by inserting the term "net" into the definition brings with it is own difficulties. The first reason for not construing 'value' in section 809VH(2)(a) as 'net value' is that it would oblige HMRC and, on any appeal, the FTT to evaluate both sides of a transaction so as to determine whether there is equivalence between the value provided by (here) the Company to Mr d'Angelin and the value provided by Mr d'Angelin to the Company. That would require an assessment of the commerciality of the transaction which courts and tribunals are singularly ill-equipped to undertake and which, in general terms, they avoid. It is well-known – indeed, trite – that when determining whether a contract is properly supported by consideration, the adequacy of the consideration is not considered by the court. That is because the bargain that is made by between the contracting parties is for them, and it is not for the court to police whether bargain is 'good' or 'bad' or (to use the language of Mr d'Angelin) whether a relevant person receives something of 'net value'. In our view, a rule that required the taxpayer, HMRC and, potentially, the FTT to determine whether an extraction was of net value to the recipient would be unworkable or impracticable.

29. The second reason is that if 'value' means 'net value' then section 809VH(3)(b) – which removes from the extraction of value rule any value that is paid for or provided "to the person in the ordinary course of business and on arm's length terms" – is effectively deprived of meaning. The point of this provision is to enable commercially concluded transactions to take placed without losing BIR. Section 809VH(3)(b) achieves the objective of the 'net value' gloss without obliging HMRC or the FTT to assess the value provided by each of the parties to the transaction in order to determine equivalence of value which (as we have already noted) is not an exercise that courts are well-equipped to undertake.

30. Mr Firth submitted that interpreting 'value' broadly contradicts the clear purpose of the extraction of value rule which was stated in the explanatory notes to the Finance Act 2012 to be "to prevent an investor from using the relief as a means of enjoying their overseas income and gains in the United Kingdom tax-free.". The purpose of the rule was clearly stated in the consultation document ('Reform of Taxation of non-domiciled individuals: a consultation' 2011):

> "[2.52] Secondly, the Government proposes to introduce a provision to prevent the value of the investment leaking out to the individual either directly through payments or loans which are not arms-length or through transactions designed to pass value to the individual. For example, it would not be permitted for the company to use the funds invested to guarantee loans made to the individual; nor would it be possible to make payments to a third party which are linked to payments made to the individual. This would not prevent an individual or a connected person enjoying commercial levels of remuneration from the company in which they invest or receiving dividends or interest out of profits made by the business after the investment has occurred."

31. Mr Firth submitted that the reference to 'value' in the consultation document was to a shift of value in favour of the recipient and that 'value' in section 809VH(2)(a) should be interpreted in the same way. Clearly, if the consultation document had stated that 'value' meant that the recipient was better off overall after the relevant transaction then that would have been a powerful (but not conclusive) argument in favour of interpreting section 809VH(2)(a) in that way. However, we do not read 'value' in the consultation document in that way. The use of the term "leaking out" and the reference to payments or loans made either directly or through indirect transactions with third parties shows that the Government was concerned to prevent a broad range of transactions that might be used to pass the value of the investment, ie the amount benefiting from BIR, to the investor without it becoming subject to income tax. Giving 'value' a broad meaning seems to us to be consistent with that purpose. Once 'value' in the consultation document is understood to refer to value in the broad sense and not only as 'net value', the inconsistency contended for by Mr Firth disappears.

32. The consequence of our interpretation is that, as Mr Firth's scenarios show, BIR allows close companies to operate as stand-alone companies (subject to limitations on who they transact with and how) but does not to allow them to operate as holding companies or as part of a group . It would, therefore, severely limit the application of BIR in practice in the case of close companies. Ms Murray did not shy away from the point. She said that taxpayers who are resident but not domiciled in the United Kingdom (and properly advised) may choose not to claim BIR in respect of an investment in a company which is the holding company of a group of close companies. She submitted that did not mean that the result was absurd. We agree. Mr Firth's scenarios show that the extraction of value rule is intended to operate, and does operate, widely. The fact that it may deter some taxpayers from investing in the United

Kingdom is not an argument that the rule should be interpreted to apply on a more limited basis. The reason why the extraction of value rule had a wide application was because the terms "relevant person" and "involved company" themselves had very wide meanings. The obvious purpose of this was to prevent evasion of the rules by extracting value indirectly. This did not occur here. But the legislation operates generally, and the fact that ther was no evasion here is not a reason to interpret 'value' as restricted to situations where there is a value shift in favour of the recipient.

33. Mr Firth's final submission in relation to this issue was that, even if domestic law principles of interpretation did not allow section 809VH to be interpreted in the way he urged above, such an interpretation could be reached by application of Article 1 of the First Protocol of the Human Rights Act 1998 ('A1P1'). On this point, the FTT followed the same approach as Proudman J in *Joost Lobler v HMRC* [2015] UKUT 152 (TCC) and considered the three tests set out by the European Court of Human Rights in *NKM v Hungary* [2013] STC 1104. The FTT reached the following conclusion at [100] of the Decision:

> "We do not consider that it is possible to conclude that the legislation here is generally 'devoid of reasonable foundation'. To adopt Mrs Justice Proudman's expression, 'the scales tip in favour of reasonable foundation'. The legislation is not irrational or arbitrary. As in *Lobler*, there might have been fairer ways of accomplishing the same taxation objective - for instance taxing only the value extracted pro tanto, and not the entirety. But the provision that an extraction of value should lead to taxation of the whole is not disproportionate. The fact that the law might in certain circumstances be fairer does not mean that there is a breach of human rights."

34. Mr Firth relied on the decision of the UT in *Reeves v HMRC* [2018] UKUT 293 (TCC). He said that similar points could be made in relation to the extraction of value rule to those accepted by the UT in that case. He submitted that the FTT erred in holding that the legislation was not devoid of reasonable foundation and that this was because they had failed to understand the import and significance of the scenarios. We do not consider that *Reeves* assists in this case. The facts of that case are very different to this one and, as Proudman J said in *Lobler*, each case must be considered individually on its own merits. Nor do we consider that the scenarios show that the extraction of value rule is devoid of reasonable foundation, essentially for the reasons given at [27] above.

35. In view of our conclusion on the meaning of 'value', we can take the next two issues (whether there was a receipt of value on these facts and, if so, whether it was from the

Company) together and briefly. The FTT made findings of fact in relation to this issue at [105] – [110] and [127] of the Decision which may be summarised as follows:

(1) the DLA was interest-free, unsecured, and repayable on demand [127];

(2) the DLA was a facility which was in use, to the tune of tens of thousands of pounds, for a significant period of time [105];

(3) the existence and subsequent use of the DLA had value to Mr d'Angelin, in money or money's worth, over-and-above the absence of interest [107];

(4) the DLA was completely informal - there was no loan instrument or note, Company resolution or Board minute [108];

(5) Mr d'Angelin spent no time negotiating or setting up the DLA (and his managerial or executive time was extremely valuable and scarce) [108];

(6) Mr d'Angelin must have seen something of value in having the DLA [109]; and

(7) the DLA provided some benefit or convenience to Mr d'Angelin [110].

36. The key finding of fact is at [107]:

> "In our view, the existence and subsequent use of the DLA had value to the Appellant, in money or money's worth, over-and-above the absence of interest."

37. In our view, that finding by the FTT is decisive unless it can be successfully challenged on *Edwards v Bairstow* grounds. Mr Firth did not make such a challenge. Setting aside points based on interpreting 'value' as 'net value' which we have already dealt with, Mr Firth submitted, in summary, that the FTT's reasoning for finding that there was a receipt of value was inadequate. He also contended that the finding in [110] that the DLA provided some benefit or convenience to Mr d'Angelin did not explain or justify the finding that the DLA had value in money or money's worth.

38. We do not accept these submissions. Given that the FTT found (indeed, it was not disputed) that Mr d'Angelin was advanced tens of thousands of pounds by way of the DLA, it is difficult to imagine how the FTT could not have concluded that Mr d'Angelin received value in money or money's worth. The DLA was not an arm's length loan. The loan was advanced to Mr d'Angelin. Loans were clearly regarded as capable of being one of the ways in which the value of an investment which had benefited from BIR might leak out (see the consultation document at [30] above). We do not consider that, given the FTT's findings of fact on the

operation of the DLA, there was any need for greater exposition to justify the conclusion that it had value in money or money's worth to Mr d'Angelin.

39. The basis of Mr Firth's submission that the value was not provided 'from' the Company was that there was no realistic sense in which it could be said that the temporary posting of expenditure to the DLA amounted to the receipt by Mr d'Angelin of something from the Company. In view of our conclusion that 'value' does not mean 'net value' and the FTT's findings of fact referred to above, this submission is unsustainable. The DLA operated on beneficial terms to Mr d'Angelin. The account between Mr d'Angelin and the Company operated informally in that Mr d'Angelin drew down on the DLA as and when he pleased and made repayments as and when he pleased. Mr d'Angelin was the debtor and not the creditor in this arrangement, and he paid no interest. Thus, on the face of the dealings, Mr d'Angelin undoubtedly received value from the Company.

40. That analysis is not altered by the fact that Mr d'Angelin was treated as having paid interest (see [4(2)] above) nor by the fact that Mr d'Angelin could have paid for what was paid by way of the DLA out of other resources (see [10(8)]) above). The latter point is completely irrelevant: the fact is that Mr d'Angelin chose to use the DLA and must accept the consequences that follow. The first point arises out of something noted by the FTT at [34(24)] of the Decision:

> "Because the DLA, although on the face of it interest-free, was treated by statute as a cheap loan, it is treated for the purposes of this appeal as bearing interest at 2.5%. Therefore, it would, looked at purely in terms of interest, have cost the Appellant less to have made payments directly from his personal bank account (on the footing that he was in credit and would have remained in credit and not overdrawn) than to have incurred them on the DLA;"

We do not consider that it can be presumed that a rate of 2.5% is a commercial rate of interest. Nor do we consider that what is in effect a deeming provision as to the terms of a loan can affect an assessment of what was actually agreed between the parties to the DLA. That agreement, as was found by the FTT, was for an interest-free loan facility.

41. The final issue under the first ground of appeal is whether the FTT erred in not holding that, for there to be a breach of the extraction of value rule, the value received must be attributable to the investment. Section 809VH(2)(b) provides:

> "(b) the value is received—

> (i) from an involved company, or
>
> (ii) from anyone else but in circumstances that are directly or indirectly attributable to the investment or to any other investment made by a relevant person in an involved company;"

42. Mr Firth accepted that, on a literal interpretation, the requirement that the receipt of value must be attributable to the investment would only apply to a receipt "from anyone else". He submitted, however, that there is sufficient force from context, purpose and absurdity to justify reading that requirement as applying to both (i) and (ii) of section 809VH(2)(b). His key point was that numerous innocuous events having nothing to do with the investment could lead to total loss of BIR. He contended that the extraction of value rule produced results that were contrary to and undermined the purpose of BIR. He submitted that the absurd results could and should be avoided by interpreting the proviso at the end of section 809VH(2)(b) as applying to the whole paragraph.

43. HMRC's view is that if value is received from an involved company, it is not necessary for it to be received in circumstances that are attributable to the qualifying investment: subsections (2)(b)(i) and (2)(b)(ii) are plainly alternatives. Ms Murray submitted that Parliament's intention was clearly that the extraction of value rule should be breached if value is received from an involved company even though it is not received in circumstances that are attributable to the qualifying investment. She contended that to construe it otherwise would defeat that intention.

44. We agree with HMRC on this point. As we have already found that the extraction of value rule was not absurd or unreasonable, there is no reason why the literal interpretation of section 809VH(2)(b) should not be applied.

45. For the reasons given above, we dismiss the first ground of appeal. We should say that our reasoning substantially accords with the construction of the FTT at [57] to [59] of the Decision and their consideration of the purpose of the legislation at [61] to [88]. It is out of deference to the careful argument of the parties that we have stated in different words our reasons for rejecting the 'net value' interpretation.

46. The second ground of appeal (see [7] above) is that the FTT erred in law in its construction and application of the saving provision in section 809VH(3). Specifically, Mr Firth contended that, if it was a receipt of value, the provision of the DLA to Mr d'Angelin was "in the ordinary course of business and on arm's length terms" and thus the extraction of value

rule was not breached. Mr Firth submitted in the FTT and before us that the DLA was provided as part of Mr d'Angelin's director's package and that package was on arm's length terms.

47. The FTT decided, for reasons given in [126] to [133] of the Decision, that the DLA was not provided on arm's length terms because it was created informally and was interest-free, unsecured, and repayable on demand.

48. Ms Murray submitted that the FTT was right to conclude that the DLA was not provided on arm's length terms for the reasons given by the FTT. However, that was not her primary submission on this ground. Ms Murray contended that the provision of the DLA was not saved from being an extraction of value by section 809VH(3) because it did not satisfy the requirement in section 809VH(3)(a). The requirement was not satisfied because the DLA was not treated as the receipt of income by Mr d'Angelin for income tax purposes.

49. We agree with Ms Murray on both points in relation to this ground. Mr d'Angelin did not meet either of the conditions in section 809VH(3) and so the provision of the DLA was not saved from being an extraction of value. In relation to the first condition in section 809VH(3)(a), the amounts advanced under the DLA were not treated as the receipt of income for tax purposes. As explained at [40] above, only the deemed interest was treated as income. The principal amounts advanced, which we have concluded were value in money or money's worth received by Mr d'Angelin, were not (and could not have been) treated as the receipt of income for income tax purposes. The fact that an element representing deemed interest was treated as Mr d'Angelin's earnings from employment and taxed as such does not save the principal amounts loaned to Mr d'Angelin. That being so, it is unnecessary to consider whether section 809VH(3)(b) applied but, in our view, it is not arguable that the DLA was provided 'on arm's length terms' for the reasons given by the FTT and discussed in paragraphs [38] to [40] above. Accordingly, we dismiss the second ground of appeal.

DISPOSITION

50. For the reasons given above, Mr d'Angelin's appeal is dismissed.

COSTS

51. 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.

The Hon Mr Justice Marcus Smith

Upper Tribunal Judge Greg Sinfield

Release date: 01 July 2025