[2021] UKFTT 0069 (TC)

TC08054

substantial shareholding exemption – schedule 7AC Taxation of Chargeable Gains Act 1992 – paragraphs 7 and 15A - whether relief available when the shares have been owned by a company in a group for less than 12 months – no

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/04839

BETWEEN

M GROUP HOLDINGS LIMITED **Appellant**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE IAN HYDE

The hearing took place on 17 December 2020. With the consent of the parties, the form of the hearing was a video hearing, with all parties attending remotely, using the Tribunal video platform. A face to face hearing was not held because this was not considered appropriate during the coronavirus pandemic.

I was referred to electronic hearing bundles and skeleton arguments from both parties.

Richard Vallat QC, counsel, instructed by Gowling WLG (UK) LLP for the Appellant

John Brinksmead-Stockham, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

1. This appeal concerns the availability of the substantial shareholding exemption from corporation tax on chargeable gains arising on the sale of shares ("SSE"). Specifically, the point in issue whether SSE is available when the shares in the subsidiary being sold have been owned for less than 12 months and where there has not been a group of companies in existence for the 12 months prior to the share sale.

2. All references to legislation in this decision are to the Taxation of Chargeable Gains Act 1992 ("TCGA") and references to paragraphs are to paragraphs in Schedule 7AC of TCGA "Schedule 7AC") unless stated otherwise.

THE FACTS

3. A witness statement from Mr Peter Jeffreys, the owner of the appellant, was produced in evidence to the Tribunal but he was not required to give oral evidence at the hearing.

4. Subject to the question as to the advice given to Mr Jeffreys, the facts relevant to this appeal are agreed and I find them as set out below.

5. The appellant is a private limited company and the entire issued share capital of the appellant is owned by Mr Jeffreys.

6. Prior to 29 June 2015, the appellant traded as a stand-alone company, that is to say it was not a member of a corporate group. The appellant provided services under NHS contracts to hospitals and clinics.

7. In 2015 Mr Jeffreys started to receive interest from potential buyers for the shares in the appellant. However, there were contingent tax liabilities in the appellant arising from tax investigations by HMRC which would have made the appellant less attractive to buyers. Mr Jeffreys therefore decided to take advice as to the most tax efficient way of structuring the sale.

8. On 29 June 2015 the appellant incorporated Medinet Clinical Services Limited ("MCS"), a private company limited by shares as its wholly-owned subsidiary.

9. On 30 July 2015 the appellant acquired the entire issued share capital of M5 Associates Limited ("M5 Associates"), being 100 £1 ordinary shares, from Mr Jeffreys for the par value of those shares.

10. On 30 September 2015, the appellant transferred its trade and assets to MCS ("the Hive Down").

11. On 28 October 2015 M5 Associates began to trade as a provider of short-term finance.

12. On 27 May 2016 the appellant sold the entire issued share capital of MCS to Medinet Bidco Limited ("Bidco"), a third-party purchaser, for a consideration of £54,874,324 ("the Share Disposal").

13. On 3 February 2017 the appellant filed its tax return for the accounting period 1 October 2015 – 31 May 2016 ("the 2015-16 Return"). The 2015-16 Return was filed on the basis that SSE applied to exempt the chargeable gain of £53,219,643 realised on the disposal of its shareholding in MCS on 27 May 2016.

14. On 2 February 2018 HMRC opened an enquiry into the 2015-16 Return under Schedule 18 Finance Act 1998.

15. On 27 March 2019 HMRC issued a closure notice to the appellant, amending the 2015-16 Return by disallowing the appellant's claim for SSE in respect of the chargeable gain arising

on the share disposal ("the Closure Notice and the Amendment"). The effect of the Amendment was that the appellant became liable to corporation tax of £10,608,480.60, in respect of its accounting period ended 31 May 2016.

16. Following an appeal against the Closure Notice and the Amendment and an independent review by HMRC upheld the Closure Notice. The appellant appealed to this Tribunal on 16 July 2019.

17. Mr Jeffreys' evidence, in addition to supporting the above factual background, was that he took tax advice on the application of SSE both from his tax advisers, OneE, and Joseph Howard, tax counsel. Mr Jeffreys was advised that SSE would be available even if the appellant did not own the shares in MCS for a year and notwithstanding HMRC's public guidance to the contrary.

18. I do not find Mr Jeffreys' evidence as to the advice he was given relevant to the issue before me, which is purely one of statutory construction, where prior advice is entirely irrelevant. Further, I am reluctant to draw any conclusions - or find facts upon which others might draw conclusions - as to the nature and adequacy of the advice provided to Mr Jeffreys and the appellant. Conceivably, were the advisers party to these proceedings they might have different views and produce different evidence as to the extent and nature of the advice provided. I therefore make no findings as to the advice provided to Mr Jeffreys and the appellant save, to the extent it is relevant, that Mr Jeffreys understood he had been provided with advice that SSE would be available notwithstanding the appellant had not owned the shares in MCS for 12 months and that the appellant had not been in a group for 12 months prior to the disposal of the MCS shares.

SSE AND THE ISSUE IN THIS APPEAL

19. SSE exempts from corporation tax on chargeable gains the disposal of shares in trading companies where certain conditions are satisfied.

20. The relevant provisions were set out in TCGA section 192A and Schedule 7AC, the principal provisions relevant to this appeal being for the 2015-16 tax year, as follows:

> "**Schedule 7AC**
>
> 1(1) A gain accruing to a company ("the investing company") on a disposal of shares or an interest in shares in another company ("the company invested in") is not a chargeable gain if the requirements of this Schedule are met.
>
> (2) The requirements are set out in—
>
> Part 2 (the substantial shareholding requirement), and
>
> Part 3 (requirements to be met in relation to the investing company and the company invested in)
>
> (3) The exemption conferred by this paragraph does not apply in the circumstances specified in paragraph 5 or the cases specified in paragraph 6.
>
> …
>
> 7. The investing company must have held a substantial shareholding in the company invested in throughout a twelve-month period beginning not more than two years before the day on which the disposal takes place."

21. Subject to one exception, it is common ground between the parties that all of the conditions for SSE relief are met and so there is no need to rehearse these conditions.

22. The exception is the requirement in paragraph 7 that the shares in the investee company, that is to say MCS, must have been held by the investing company, the appellant, throughout a period of 12 months beginning not more than 2 years before the date of disposal.

23. MCS was only incorporated and acquired by the appellant on 29 June 2015 and its shares sold on 27 May 2016, a period of ownership of 10 months and 28 days. Accordingly, both parties agree that, taken in isolation the disposal did not satisfy the condition in paragraph 7.

24. However, paragraph 15A deems paragraph 7 to be satisfied in certain circumstances:

> "15A(1) For the purposes of this Part, the period for which the investing company is treated as holding a substantial shareholding in the company invested in is extended in accordance with sub-paragraph (3) if the following conditions are met.
>
> (2) The conditions are—
>
> (a) that, immediately before the disposal, the investing company holds a substantial shareholding in the company invested in,
>
> (b) that an asset which, at the time of the disposal, is being used for the purposes of a trade carried on by the company invested in was transferred to it by the investing company or another company,
>
> (c) that, at the time of the transfer of the asset, the company invested in, the investing company and, if different, the company which transferred the asset were all members of the same group, and
>
> (d) that the asset was previously used by a member of the group (other than the company invested in) for the purposes of a trade carried on by that member at a time when it was such a member.
>
> …
>
> (3) The investing company is to be treated as having held the substantial shareholding at any time during the final 12 month period when the asset was used as mentioned in sub-paragraph (2)(d) (if it did not hold a substantial shareholding at that time).
>
> (4) "The final 12 month period" means the period of 12 months ending with the time of the disposal"

25. It is common ground that the conditions in paragraph 15A(2) are satisfied and that in principle the deeming provision in paragraph 15A(3) applies. Thus:

(1) The appellant held a substantial shareholding in MCS immediately before the disposal (paragraph 15A(2)(a));

(2) The assets being used by MCS at the time of the disposal had been transferred to it on 30 September 2015 by the appellant (paragraph 15A(2)(b));

(3) MCS and the appellant were in the same group at the time of the transfer of the assets on 30 September 2015 (paragraph 15A(2)(c)); and

(4) The assets transferred to MCS were previously used by the appellant for the purposes of its trade when it was a member of the group, being from 29 June 2015 until 30 September 2015 (paragraph 15A(2)(d))

26. The issue between the parties – and the entire issue in this appeal - was how to construe paragraph 15A(3). The appellant owned the shares in MCS for less than 12 months and so the appellant does not satisfy paragraph 7. The appellant therefore must rely on paragraph 15A to

deem its ownership for the purposes of paragraph 7 to have started 12 months before the disposal, on 28 May 2015 rather than 29 June 2015.

27. HMRC argues that paragraph 15A(3) treats the appellant as holding the shares in MCS for only such period as the appellant satisfies the condition in paragraph 15A(2)(d). As the appellant was only a member of a group from 29 June 2015, the date of incorporation of MCS, it does not extend the deemed period of ownership of the MCS shares to before that date to the additional disputed period of 28 May – 28 June 2015 required to satisfy paragraph 7. Accordingly, SSE is not available.

28. The appellant argues that paragraph 15A(3), on both a plain construction of the provision and also a purposive interpretation, should be construed as only requiring the assets to have been used by a member of the group during the 12 month period, not that there is a group in existence for the whole 12 month period. According paragraph 7 is satisfied.

THE PRINCIPLES OF CONSTRUCTION

29. Mr Vallat for the appellant and Mr Brinksmead-Stockham for HMRC each made some general submissions about the relevant case law principles of statutory construction that applied in this appeal and in terms of the principles to be applied were in broad agreement and I drew the following points from their submissions.

30. First, legislation must be interpreted purposively. The question is always "whether the relevant provision of the statute, upon its true construction applies to the facts as found" (*Barclays Mercantile Business Finance Ltd v Mawson* [2004] UK HL 51). See also the judgment of Arden LJ in *Astall vHMRC* [210] STC 137;

> "44 Is a purposive interpretation of the relevant provisions possible in this case? In my judgment, there is nothing to indicate that the usual principles of statutory interpretation do not apply and accordingly the real question is how to apply those principles to the circumstances of this case. In my judgment, applying a purposive interpretation involves two distinct steps: first, identifying the purpose of the relevant provision. In doing this, the court should assume that the provision had some purpose and Parliament did not legislate without a purpose. But the purpose must be discernible from the statute: the court must not infer one without a proper foundation for doing so. The second stage is to consider whether the transaction against the actual facts which occurred fulfils the statutory conditions. This does not, as I see it, entitle the court to treat any transaction as having some nature which in law it did not have but it does entitles the court to assess it by reference to reality and not simply to its form."

31. Second, if a plain construction produces injustice or an absurdity and another interpretation, even if strained, avoids the absurdity, then the strained interpretation may be preferred. A convenient summary of the principle can be found in the decision of Neuberger J in *Jenks v Dickinson (HM Inspector of Taxes)* [1997] STC 853 in particular quoting with approval the judgment of Lord Donovan, in giving the majority decision of the Privy Council *Mangin v Comr of Inland Revenue* [1971] AC 739;

> **"The principles of construction**
>
> In *Mangin v Comr of Inland Revenue* [1971] AC 739 at 746, Lord Donovan, giving the majority judgment of the Privy Council, set out four rules of interpretation which are helpful to bear in mind when considering an issue of statutory construction, particularly in the context of a taxing statute:
>
> 'First, the words are to be given their ordinary meaning. They are not to be given some other meaning simply because their object is to frustrate

> legitimate tax avoidance devices ...Secondly ... one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used ... Thirdly, the object of the construction of a statute being to ascertain the will of the legislature it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted. Fourthly, the history of an enactment and the reasons which led to its being passed may be used as an aid to its construction.'

Two cases where the more natural prima facie meaning of words in a taxing statute were rejected in favour of a more strained meaning are *Luke v IRC* [1963] AC 557, 40 TC 630 and *O'Rourke* (*Inspector of Taxes*) *v Binks* [1992] STC 703. In *Luke* [1963] AC 557 at 577, 40 TC 630 at 646 Lord Reid (with whom Lord Dilhorne LC and Lord Pearce agreed) said this of the Crown's construction in that case:

> 'To apply the words literally is to defeat the obvious intention of the legislation and to produce a wholly unreasonable result. To achieve the obvious intention and produce a reasonable result we must do some violence to the words. This is not a new problem, though our standard of drafting is such that it rarely emerges. The general principle is well settled. It is only where the words are absolutely incapable of a construction which will accord with the apparent intention of the provision and will avoid a wholly unreasonable result, that the words of the enactment must prevail.'

He then went on to explain that three possible ways of arriving at the 'reasonable result' had been proffered, and that he preferred the one which involved fastening on a rather obscure provision at the end of the section in question. He said this ([1963] AC 557 at 579 -580, 40 TC 630 at 648):

> 'If it is right that, in order to avoid imputing to Parliament an intention to produce an unreasonable result, we are entitled, and indeed bound, to discard the ordinary meaning of any provision and adopt some other possible meaning which will avoid that result, then what I am looking for in examining the obscure provision at the end of [the relevant section] is not its ordinary meaning (if it has one) but some possible meaning which will produce a reasonable result. I think that the interpretation which I have given is a possible interpretation and does produce a reasonable result, and therefore I adopt it.'

In *O'Rourke*, the Court of Appeal was concerned with the construction of s 72(4) of the 1979 Act. Sections 72(2) and (3) were expressly concerned with 'small distributions'; s 72(4) was not so expressly limited, and the question was whether it should none the less be treated as so limited. Scott LJ (with whom the other members of the Court of Appeal agreed) said ([1992] STC 703 at 707):

> 'Vinelott J commented [[1991] STC 455 at 462]: "As a matter of first impression, on a first reading of s 72 it is natural to read sub-s (4) as one of a group of subsections dealing only with cases [of small distributions] ..."

However, as Scott LJ went on to say (at 707):

'It is said that, read literally, and there being no express limitation, [sub-s (4)] applies to all distribution cases, whether or not small. I agree that, read literally, that is so ... [Counsel] …contended that on a literal reading of sub-s (4) the meaning was clear, there was no ambiguity, and a court of construction had no alternative but to give effect to the express statutory language contained in the subsection. I am unable to accept that this strict approach is the right one. An ambiguity in a statutory provision may arise in more than one way. In the present case, s 72(4) read in the context of the 1979 Act as a whole and, in particular, in the context of s 72 as a whole, leads the reader to conclude that the statutory intention was to limit the subsection to small distributions ... The natural construction of sub-s (4) in its context is, in my opinion, that it is limited in its scope. But the absence of any express limitation makes it possible that no limitation was intended ... it is permissible as an aid to construction, as an aid to identifying the legislative intention behind s 72(4), to take into account the anomalies that the absence of any limitation to the scope of the subsection will produce.'

Scott LJ considered the anomaly which the literal construction produced (which he described (at 708) as 'absurd') and concluded (at 709) that 'all the signposts point in the same direction and confirm the first impression that ... any reader would have on reading s 72 of the 1979 Act'. He set out extracts from the passages I have already quoted from Lord Reid and Lord Donovan and said this (at 709-710):

'The approach indicated in these passages justifies, in my judgment, implying into s 72(4) the natural limitation as to its scope that would correspond with the obvious intention of the legislature, namely, that the subsection should apply only to cases where the amount of the distribution was, in comparative terms, small ... In my judgment, it would be a very rare case in which effect could not be given by a permissible process of interpretation to the apparent intention of the legislature. At all events, in the present case I cannot accept that there is any reason why the limitation to which I have referred should not be implied, thereby giving effect to the presumed, the apparent, intention of the legislature.'

Another case to which I should make reference is *Marshall* (*Inspector of Taxes*) *v Kerr* [1993] STC 360. In giving what effectively amounted to the judgment of the Court of Appeal, Peter Gibson J said this (at 366), in relation to s 24(11) of the Finance Act 1965 -

'... I take the correct approach in construing a deeming provision to be to give the words used their ordinary and natural meaning, consistent so far as possible with the policy of the Act and the purposes of the provisions so far as such policy and purposes can be ascertained; but if such construction would lead to injustice or absurdity, the application of the statutory fiction should be limited to the extent needed to avoid such injustice or absurdity, unless such application would clearly be within the purposes of the fiction. I further bear in mind that because one must treat as real that which is only deemed to be so, one must treat as real the consequences and incidents inevitably flowing from or accompanying that deemed state of affairs, unless prohibited from doing so.'

Although the House of Lords allowed an appeal (on a ground not raised in the Court of Appeal), Lord Browne-Wilkinson ([1994] STC 638 at 649, [1995] 1 AC 148 at 164) set out the passage I have quoted from the judgment of Peter Gibson J and described it as 'the correct approach to deeming provisions'."

32. Third, even if such a construction is not linguistically possible, the courts can go further to correct drafting mistakes. *Inco Europe Ltd v First Choice Distribution* [2000] 1 WLR 586, concerned whether the Arbitration Act 1996 excluded a parties right to appeal from a High Court decision as to the stay of an arbitration. Read literally the legislation did exclude such a right but the House of Lords concluded that, based on the relevant legislative history and that the schedule was only intended to make consequential amendments which was intended to reflect the position under the Arbitration Act 1979, it was permissible to read into the Act words to give effect to that intention, and allow a right of appeal.

33. Lord Nicholls of Birkenhead said at 592:

> "It has long been established that the role of the courts in construing legislation is not confined to resolving ambiguities in statutory language. The court must be able to correct obvious drafting errors. In suitable cases, in discharging its interpretative function the court will add words, or omit words or substitute words….This power is confined to plain cases of drafting mistakes. The courts are ever mindful that their constitutional role in this field is interpretative. They must abstain from any course which might have the appearance of judicial legislation. A statute is expressed in language approved and enacted by the legislature. So the courts exercise considerable caution before adding or omitting or substituting words. Before interpreting a statute in this way the court must be abundantly sure of three matters: (1) the intended purpose of the statute or provision in question; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed. The third of these conditions is of crucial importance. Otherwise any attempt to determine the meaning of the enactment would cross the boundary between construction and legislation.
>
> Sometimes, even when these conditions are met, the court may find itself inhibited from interpreting the statutory provision in accordance with what it is satisfied was the underlying intention of Parliament. The alteration in language may be too far-reaching. In *Western Bank Ltd. v. Schindler [1977]* Ch 1, 18, Scarman L.J. observed that the insertion must not be too big, or too much at variance with the language used by the legislature. Or the subject matter may call for a strict interpretation of the statutory language, as in penal legislation. None of these considerations apply in the present case. Here, the court is able to give effect to a construction of the statute which accords with the intention of the legislature."

34. In the Court of Appeal decision in *Pollen Estate Trustee Ltd v HMRC* [2013] EWCA Civ 753, a case concerned with stamp duty land tax exemption for charities, the Court agreed with Lord Reid and read in words into the legislation to correct drafting mistakes. The relief was not available to the charity on a pure construction of the legislation because it purchased land with third parties and so acquired an undivided share in the land. The Court thought that was anomalous and agreed with the Upper Tribunal that there was not any identifiable policy which would have led Parliament to exclude exemption in the circumstances under appeal. Lewison LJ in giving the judgement of the Court said:

> "23….If Parliament did not deliberately exclude exemption in the cases under appeal, then it seems obvious that, if it did so, it did so by mistake"

35. Lewison LJ then sought to identify what additional wording should be read into the legislation to ensure the legislation matched Parliament's intentions;

"46 I agree with the Upper Tribunal that the mere substitution of plural for singular does not solve the problem. But I do not agree that to read the paragraph as applying where the purchasers include a charity goes "beyond any process of construction"…in my judgment the process of construction could allow the court to read "the purchaser" as "one of the purchasers" if that reading is necessary to make sense of the statute as a whole.

47 However, I do not favour that reading. I do not favour it because its consequence would appear to be that the whole land transaction would then be exempt from SDLT, which cannot have been Parliament's intention. The reading of paragraph 1(1) which I would favour is: "A land transaction is exempt from charge [to the extent that] the purchaser is a charity and the following conditions are met."

48 Thus exemption would be available to the extent that the purchaser is a charity and to the extent that the conditions are met. This reading would have the consequence that a land transaction is partially exempt, but only to the extent of a charity's interest. Ms Tipples objected that this reading did not work because the condition in paragraph 1(2) could not be satisfied. The argument was that because the "purchaser" was not the charity alone, it could not be said that the "purchaser" would hold "the subject matter of the transaction" for qualifying charitable purposes. But the essence of HMRC's case (which I have accepted) is that the beneficial owners of the property in question (here the equitable estate in fee simple) must be viewed collectively. Viewed collectively, I cannot see why it is impossible to determine the extent to which, collectively, they hold the equitable estate for qualifying charitable purposes. Ms Tipples then submitted that the reading I favour goes too far, because it would have the result that the whole transaction would escape SDLT. But I do not consider that that is correct. If the exemption is afforded "to the extent that" the conditions are met, this concern evaporates. The third objection is that there is no machinery for determining what part of the interest is held for qualifying charitable purposes. But under paragraph 3 of Schedule 8 to the 2003 Act a charity is entitled to relief if it holds the "greater part" of the subject matter of the transaction for qualifying charitable purposes. There is no machinery for determining whether that condition is satisfied, so the absence of machinery cannot be an insuperable objection. Moreover, there is no indication in paragraph 3 whether the "greater part" is greater by area or greater in value. Uncertainty at the edges cannot be decisive either.

49 Despite Ms Tipples's objections it seems to me there is a sufficient "policy imperative" to justify the reading I favour. I believe that it is also consonant with the approach of Lord Nicholls in *Inco Europe Ltd v First Choice Distribution* [2000] 1 WLR 586. We are not parliamentary draftsmen; and it is sufficient that we can be confident of the gist or substance of the alteration, rather than its precise language. In substance what this means is that the exemption would apply as regards that proportion of the beneficial interest that is attributable to the undivided share held by the charity for qualifying charitable purposes. I do not see that this gives rise to any conceptual uncertainty or to any insuperable practical administrative problems. In my judgment this reading is necessary in order to give effect to what must have been Parliament's intention as regards the taxation of charities. There has been no principled reason advanced why a charity should be exempt from SDLT in the situations to which I have referred in para 19 above; but not be entitled to any relief at all on its proportionate undivided share in a jointly acquired property. Not to afford a charity relief in such circumstances would, in my judgment, be capricious."

Paragraph 15A and its ordinary meaning

36. Both parties considered in detail the wording in paragraph 15A and how it might be construed, initially on its ordinary and natural meaning.

37. Both parties agree that the conditions in paragraph 15A(2)(a)-(d) are satisfied and paragraph 15A(3) therefore applies;

> "(3) The investing company is to be treated as having held the substantial shareholding at any time during the final 12 month period when the asset was used as mentioned in sub-paragraph (2)(d) (if it did not hold a substantial shareholding at that time)."

38. Both parties agree that paragraph 15A(3) allows the "final 12 month period" (being defined by paragraph 15A(4) as the 12 months immediately preceding the disposal) to be taken as the period of ownership of the shares for the purposes of paragraph 15A(7) "…at any time during the final 12 month period when the asset was used as mentioned in sub-paragraph (2)(d)…"

39. Paragraph 15A(2)(d) provides;

> "(d) that the asset was previously used by a member of the group (other than the company invested in) for the purposes of a trade carried on by that member at a time when it was such a member."

40. Paragraph 15A(3), therefore, operates to deem the appellant to have held a substantial shareholding in MCS "at any time…when the [asset was] used as mentioned in sub-paragraph (2)(d)".

41. HMRC argued that paragraph 15A(3) does not sufficiently extend the period in paragraph 7 to a year because, although the relevant assets were "used as mentioned in sub-paragraph (2)(d)" in the period 29 June – 30 September 2015, they were not so used in the disputed period (i.e. 28 May – 28 June 2015). Paragraph 15A(3) deems the shares to be held "at any time…when" the asset is used "as mentioned in sub-paragraph (2)(d)". Paragraph 15A(2)(d) requires those assets to be used "by a member of the group (other than [MCS]) for the purposes of a trade carried on by that member at a time when it was such a member".

42. During the period of 28 May – 28 June 2015, prior to the incorporation of MCS, the appellant was a stand-alone company and not a member of any group. It follows that during that period the appellant was not using the relevant assets that it subsequently transferred to MCS "for the purposes of a trade carried on by it at a time when it was such a member", that is to say at a time when it was a member of the group.

43. This analysis is confirmed by the subsequent proviso that the deeming in paragraph 15A(3) has effect "if [the investing company] did not hold a substantial shareholding at that time". The deeming, therefore, applies at the specific times identified in paragraph 15A(3), and not automatically to the whole of the "final 12 month period".

44. Consequently, according to HMRC, on the plain and ordinary meaning of the words of paragraph 15A, and looking at the purpose of the legislation as discerned from the statute itself (as required by *Astall*) that provision does not operate to deem the appellant to have held a substantial shareholding in MCS throughout the disputed period. It follows that the appellant is not entitled to SSE.

45. Mr Vallat for the appellant disagreed with HMRC's interpretation. HMRC were seeking to read into the requirement in paragraph 15A(3) that "…used as mentioned in sub-paragraph (2)(d)…" required compliance with two conditions;

(1) the asset must have been " …used…[by another company]… for the purposes of a trade" (the “use aspect”); and

(2) that other company so used the asset "…at a time when it was such a member" (the “temporal aspect”)

46. It was the appellant's case that on a correct construction of paragraph 15A there is no need to read in the temporal aspect into paragraph 15A(3). Sub-paragraph (3) requires that the time period to be added to the actual period of ownership is the time in the last 12 months "when the asset was so used as mentioned in subparagraph (2)(d)". Had Parliament intended to incorporate the temporal aspect, instead of using the words "used as mentioned in subparagraph (2)(d)" it could have said "when the condition in subparagraph (2)(d) was met" but it did not do so.

47. Accordingly, it is only the use as described in sub-paragraph (2)(d), that is to say for the purposes of a trade, that is imported into paragraph 15A(3), not the additional requirement that during that period the user of the asset was also a member of the group.

48. Mr Vallat also argued that paragraph 15A was not, as HMRC argued, a provision concerned with groups. Thus sub-paragraphs (2)(a) and (2)(b) do not refer to groups at all. Sub-paragraph (2)(c) requires the parties to the transfer of assets to be in a group but only at the time of the transfer. It would be entirely possible to sell the transferor company after the transfer and before the sale of the investee company and still satisfy sub-paragraph (2)(c). Sub-paragraph (2)(d) similarly only requires there to be a group for a moment, thus the assets transferred must have been used by a member of the group at any time when it was a member of the group. The only place in paragraph 15A that HMRC can use to construe the requirement for a continuing group relationship is sub-paragraph (3).

Extra statutory materials

49. Mr Brinksmead-Stockham argued that to the extent required, extra statutory materials demonstrate that the purpose of paragraph 15A was to extend the availability of SSE in circumstances where a trade had been carried on by a member of a group prior to the sale of shares in a company which had not been owned for 12 months.

50. Paragraph 15A's purpose was not to extend the availability of SSE to stand-alone companies and the appellant had not identified any extra-statutory materials to support the proposal. The appellant's interpretation would allow a stand-alone company that had been trading for 12 months to benefit from SSE by hiving down the trade to a newly-incorporated wholly-owned subsidiary and then selling the shares of that subsidiary.

51. Mr Brinksmead-Stockham relied upon both the Explanatory Notes to Finance (No.3) Bill, the precursor Bill to the Finance Act 2011 ("the Explanatory Notes") and the HM Treasury Consultation Document of February 2010 which considered the concerns around paragraph 7 and led to paragraph 15A ("the Consultation Document").

52. Mr Vallat disputed the significance of the extra-statutory materials relied upon by HMRC and sought to challenge HMRC's justifications for their policy in denying relief in these circumstances.

the Explanatory Notes

53. Mr Brinksmead-Stockham directed the Tribunal to a number of passages in the Explanatory Notes;

> "26. Paragraph 6(1) introduces amendments to the Substantial Shareholding Exemption in Schedule 7AC to TCGA that will allow the exemption to apply

> in situations involving the disposal of part of a group's trading activity that has been transferred to another company in the group.
>
> 27. Paragraph 6(2) inserts a new paragraph 15A into Schedule 7AC which treats the minimum 12 month substantial shareholding requirement as having been met for the period that assets were used for a trade conducted by the group before being transferred to the company being disposed of…..
>
> 31. The changes introduced by this clause follow extensive consultation by HM Treasury and HM Revenue & Customs aimed at simplifying the group aspects of the corporation tax chargeable gains regime."

54. Mr Brinksmead-Stockham argued that these notes showed that the purpose of the new paragraph 15A was to help groups not stand-alone companies. Paragraph 27 in particular referred to the assets being used for 12 months for the purposes of the "trade conducted by the group".

55. Mr Vallat objected to HMRC's reading of the Explanatory Notes. The description in paragraph 26 could just as easily apply to the facts of this appeal. The wording of paragraph 27 was contorted and could be read as simply requiring the trade to have been conducted by members of the group even if those companies were not in a group at that time.

the Consultation Document

56. Mr Brinksmead-Stockham also referred to the Consultation Document. The document was clearly concerned with the taxation of groups not stand-alone companies. It was entitled "capital gains rules for groups of companies – a consultation document" and reference was made throughout to the taxation of groups. For example;

> 4.5 A significant concern with the current degrouping charge rules, expressed by a number of business representatives, is the way that these rules interact with the provisions in the SSE in Schedule 7AC TCGA. A degrouping charge may arise in respect of a trade asset owned by a trading company, yet the share sale which gives rise to the degrouping event would itself be an exempt disposal for chargeable gains purposes by virtue of the provisions in the SSE. The imposition of a degrouping charge in respect of an asset used for a trade in an otherwise exempt sale was one of the major irritants highlighted by business representatives. This particularly concerned groups that organise their business on a divisionalised basis. Although a disposal of a single business will often involve putting assets into a group company prior to sales, the benefits of the SSE may not be available. Stakeholders could see no justification for preventing the exemption applying in cases involving this type of restructuring before a sale.
>
> 4.6 As noted in the July 2009 discussion document, in order to be fully effective for divisionalised businesses that restructure in advance of a business disposal, this option would also require an amendment to the rules in Schedule 7AC TCGA regarding the period of time that the company has carried on the trade prior to disposal, so that account is taken of periods where the trade is carried on by other members of the group.
>
> 4.7 In particular, this would mean that in cases where assets that have been used for the purposes of a trade by the group are transferred to a newly incorporated company that continues to use them for a trade, the condition requiring that the investing company have held shares in a trading company for a period of 12 months would be modified."

57. Paragraph 4.7 in particular was noteworthy, identifying that the relief would apply "in cases where assets that have been used for the purposes of a trade by the group".

58. Mr Brinksmead-Stockham also referred the Tribunal to a passage covering the proposals;

> "4.18 Where assets that have been used for the purposes of a trade by the group are transferred to a company then the current requirement that the investing company must have held shares for a period of 12 months for the SSE to apply will be modified. The investing company would be treated as having the necessary holding of shares in a qualifying company for the period that those assets were being used for a trade conducted by the group. This would allow the exemption to apply when trading activities are placed within a newly incorporated group company which is then sold out of a trading group, to the benefit of groups that have various trading activities conducted within single companies."

59. Again, the proposals are being expressly contemplated in the context of a group.

60. Mr Vallat challenged Mr Brinksmead-Stockham's reading of the Consultation Document. There was a trade conducted by the group albeit this was not the case for all of the time. The final sentence of 4.18 is just an example. HMRC's reading is therefore not impossible but it is not necessary.

Other materials

61. Mr Vallat produced a number of articles in Taxation and Tax Journal magazines. He accepted that the Tribunal should not construe legislation based on articles but suggested they illustrated that the appellant was not the only one to be taking this point.

62. In an article in Taxation magazine of 17 January 2013 entitled "the painless way of splitting" the authors Martin Verral and Rachel Parker described obtaining a clearance from HMRC that SSE applied where a stand-alone company had incorporated a subsidiary, hived down the business and sold the new subsidiary three months after incorporation.

63. In an article in Taxation magazine of 26 June 2016, Peter Miller commented on the consultation on the reform of SSE published in May 2016;

> "Paragraph 2.12 refers to a change made in FA 2011 to allow a trade to be packaged into a new company (the investee company) and disposed of with the SSE applying (see TCGA 1992, Sch 7AC para 15A). Previously, the exemption unnecessarily forced a company to have each separate trading activity in a separate trading subsidiary. Consequently, singleton companies that carried on several trades were at a disadvantage. The 2011 change was intended to permit a singleton company to hive down a trading activity into a new subsidiary and to sell that subsidiary subject to the SSE. For no good reason, however, HMRC interprets the legislation as meaning that the company must, in fact, have been a member of a group *before* the transfer, so that the new rule cannot apply to singleton companies (see HMRC's *Capital Gains Manual* at CG53080C). This is not what was originally envisaged, and nor is it the way in which the draft legislation was interpreted by those of us who were involved in the consultation leading to the 2011 changes. When challenged, HMRC's comment was that this is not a particularly onerous issue to address, which presumably means we are expected to incorporate a £100 dormant subsidiary for every multi-trade singleton company in our client portfolios."

64. A similar point was made by Keith Gregory in his article of 21 March 2015 in Tax Journal.

Correcting injustice and absurdity

65. Mr Vallat argued that even if the Tribunal does not accept that on the natural meaning of the words the temporal aspect of paragraph 15A(2)(d) should not be imported into paragraph

15A(3), the Tribunal may adopt a more strained reading to avoid an "injustice or absurdity" (Lord Donovan in *Mangin*).

66. Allowing SSE in the circumstances permitted by HMRC's interpretation but not allowing relief on the facts of this appeal produced absurd outcomes. In this appeal on HMRC's interpretation SSE would have been available;

(1) If MCS had been incorporated on 27 May 2015 not 29 June 2015

(2) If M5 Associates was owned by the appellant from 27 May 2015 not 30 July 2015

67. Mr Vallat submitted that these counterfactual situations involve tiny differences to the facts in the current appeal but are economically identical. The appellant owning M5 Associates earlier would have no effect on MCS, the trade being carried on by the appellant or MCS. Distinguishing these situations (or indeed others, for example having a dormant holding company for an otherwise stand-alone trading company) is absurd. That being the case it is appropriate to construe the legislation to cover the point.

68. HMRC have failed to identify a policy reason why Parliament would want to exclude a stand-alone company that sets up a subsidiary, hives down its business and sells the shares in the subsidiary but at the same time provide for SSE relief in identical circumstances except that the original trading company already had a dormant subsidiary.

69. Mr Brinksmead-Stockham argued that the comparisons did not assist the appellant, for a number of reasons.

70. First, there is no doctrine in UK tax law that economically equivalent structures (or transactions) must necessarily be taxed in the same way. There are many circumstances where economically identical situations are taxed differently, for example a company owning two subsidiaries and an individual owning two companies. On the appellant's logic these situations should be taxed the same, which cannot be the case.

71. Second, SSE is a generous relief from tax and Parliament has set out a number of what Mr Brinksmead-Stockham called "bright line" rules as to when a company will qualify for it. These rules might be arbitrary to a certain extent but a company can bring itself within the rules by forming a group. However, as with failing to wait 12 months before selling MCS, this is just a matter of bringing oneself within the rules. Where a company fails to satisfy those rules it follows that the relief is simply not available to it.

72. Third, the limits on SSE in these circumstances were clear from the legislation and HMRC's guidance which provided at CG53080C;

> "Note that paragraph 15A extends the holding period by reference to the previous use of trading assets by a member of the group while it was a member of a group. Therefore a capital gains group must have existed at the time. The provision cannot apply where the transferee company is a newly acquired subsidiary of what was previously a single trading company."

73. Indeed, Mr Jeffreys was aware of the issue sufficiently to take advice on the point, including from specialist tax counsel. The taxpayer went against HMRC's clear guidance and doing so does not justify interpreting paragraph 15A in its favour and against the natural meaning of the legislation.

74. It is clear, both from the wording of paragraph 15A and from the Explanatory Notes, that paragraph 15A was concerned with expanding the availability of SSE where a trade had been carried on by a member of a group. Regardless of whether or not it would have been a sensible or desirable policy to also make SSE available to stand-alone trading companies that operate

outside of a group it was plainly not the intention of Parliament to do so when it enacted paragraph 15A.

75. Aside from the extreme and position set out in *Inco* and *Pollen Estates*, an interpretation to cure an injustice or absurdity is only admissible if "the language admits" (Lord Donovan in *Mangin*). Here the appellant's suggestion does violence to the wording, removes the minimum shareholding for SSE and is inconsistent with the purpose as seen in the language of the legislation and the extra-statutory material.

DISCUSSION

76. This appeal concerns a narrow but important point of construction, whether paragraph 15A(3) permits SSE to be available to a company where it sells a substantial shareholding in another company when the shares have been owned for less than 12 months and where there has not been a group of companies in existence for the 12 months prior to the share sale. Typically, as here, this will be the creation of a subsidiary by a stand-alone company, hive down of the trade and sale of the new subsidiary, but there will be other circumstances where the point arises.

The ordinary meaning

77. HMRC relies upon what they regard as a natural reading of paragraph 15A, that the period to be added for the purposes of paragraph 7 is such period as complies with paragraph 15A(2)(d), that is the period during which the assets were held and used for the purposes of a trade by a company that was at the time of such use a member of the group.

78. The appellant sought to construe the legislation as only importing into paragraph 15A(3) the "use aspect" not the "temporal aspect" of paragraph 15A(2)(d). Specifically, the appellant argues it is possible to read the requirement that "at any time….when the asset was used as mentioned in subparagraph (2)(d)…" to be just a reference to the type of use described in subparagraph (2)(d), that is to say "used…for the purposes of a trade…".

79. In my view, the purpose of paragraph 15A, based on the wording of the legislation, is to extend SSE to the sale of shares in group companies that hold assets previously used by the group, even if those shares have not been owned by the group for the requisite period in paragraph 7. However, I am unable to determine from the wording of the legislation any purpose which points either way on the issue in this appeal as to whether the purpose of the legislation extends to include providing relief for stand-alone trading companies acquiring and selling subsidiaries within 12 months. The purpose of the legislation as determined by the legislation itself does not therefore in my view assist.

80. In my view, the natural or ordinary meaning of paragraph 15A(3) is the one put forward by HMRC. Paragraph 15A(3) restricts the period to be treated for the purposes of paragraph 7 as periods of ownership in the shares in the target company to such period as complies from time to time with paragraph 15A(2)(d), that is the period during which the assets were held and used for the purposes of a trade by a company that was at the time of such use a member of the group.

81. I do not accept Mr Vallat’s interpretation is a natural meaning of the legislation, that only the “use” aspect of paragraph 15A(2)(d) is imported into paragraph 15A(3). Mr Vallat did not on this basis press the point with any conviction but I must consider it. This is not a natural reading of the provisions and is not supported by any discernable purpose in the legislation.

82. On the contrary, Mr Vallat’s interpretation risks expanding paragraph 15A(3) to apply where the trade is carried on by a third party company which joins the group at a later date. Mr Vallat accepted paragraph 15A(2)(d) was intended to stop such a result in the normal circumstances of a pre-existing group. However, any interpretation must be capable of general

application and in my view limiting the conditions in paragraph 15A(2)(d) to the "use" condition, as Mr Vallat suggests, risks crediting the selling company with the period during which the use of the assets was by a third party company. That would represent a significant widening of the legislation and points against Mr Vallat's interpretation.

83. Nevertheless, in my view HMRC's construction produces what might be described as at the very least as the oddity or arbitrariness of SSE applying or not depending on whether there has been a separate, possibly dormant, subsidiary or other group company owned for the previous 12 months. I agree with Mr Vallatt that there does not seem to be any obvious justification for this distinction.

The extra statutory materials

84. Mr Brinksmead-Stockham argued the extension to SSE proposed by Mr Vallat was significant and not supported by any extra-statutory materials in that it would effectively remove the need for a group to carry on the trade for 12 months. Mr Vallat suggested that the appellant's interpretation was more limited as it simply dealt with the inconsistency of treatment between a trading company in the circumstances of the appellant with no pre-existing subsidiaries and a company in identical circumstances but that qualifies as a group because of a dormant subsidiary. From that perspective the extension is not as significant as HMRC suggested.

85. HMRC argued that its construction is supported by the relevant Explanatory Notes and Consultation Document. These documents showed that paragraph 15A was introduced to assist groups of companies and so does not assist stand-alone companies. It may be that there are policy reasons why stand-alone companies should be afforded SSE in the appellant's circumstances but Parliament has not done so and it is not for this Tribunal to expand the legislation.

86. I do not take anything from the articles produced by the appellant and have not taken them into account in this decision.

87. I do not accept that the Consultation Document and Explanatory Notes set out a clear policy either way on the specific issue in this appeal. I agree that the Consultation Document and Explanatory Notes confirm in general terms that the relief is aimed at corporate groups. However, the issue in this appeal is more specific than the general themes covered in these materials. Thus the appellant at the time of the sale of the shares in MCS was in a group albeit one that had only recently been formed. I have not been directed to anything in the Consultation Document or Explanatory Notes which clearly shows the reforms were intended to apply only to longstanding groups and exclude groups established for less than a year.

88. In general terms HMRC's interpretation is consistent – or not inconsistent - with the intention to be obtained from the legislation, the Consultation Document and Explanatory Notes, in particular paragraphs 4.7 and 4.18 of the Consultation Document. However, as with the legislation itself, the passages in the Consultation Document and Explanatory Notes I have been taken to do not assist HMRC in countering this specific point raised in this appeal because they do not consider it. However, they do not assist the appellant either.

Injustice or absurdity

89. As I have already observed, in my view in the absence of any justification HMRC's construction produces the odd or apparently arbitrary result of SSE applying or not depending on whether there has been a separate, possibly dormant, subsidiary or other group company owned for the previous 12 months.

90. The third principle set out by Lord Donovan in *Mangin* is relevant here;

> "Thirdly, the object of the construction of a statute being to ascertain the will of the legislature it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted."

91. The observations of Lord Reid in *Luke* are also relevant;

> 'To apply the words literally is to defeat the obvious intention of the legislation and to produce a wholly unreasonable result. To achieve the obvious intention and produce a reasonable result we must do some violence to the words. This is not a new problem, though our standard of drafting is such that it rarely emerges. The general principle is well settled. It is only where the words are absolutely incapable of a construction which will accord with the apparent intention of the provision and will avoid a wholly unreasonable result, that the words of the enactment must prevail.'

92. The denial of SSE in the circumstances of this appeal appears odd in my view. HMRC's "bright line" argument has some merit but cannot always be an answer as the same could have been said of being a charity being a sole purchaser in *Pollen Estates*.

93. However, being odd or arbitrary is not enough. As I have already set out, it is not possible here to determine with confidence "the obvious intention of the legislation" on this specific issue, whether from the legislation or the extra statutory materials. Accordingly, without knowing that intention, it is not possible to say HMRC's interpretation produces "a wholly unreasonable result" justifying departing from the natural meaning of the legislation and applying a strained interpretation. The outcome may be odd in the abstract but as the purpose of the legislation on the specific point in this appeal is opaque it is difficult to say with confidence such an interpretation would "defeat the obvious intention of the legislation" (Lord Reid in *Luke*). Put simply it is not obvious that Parliament intended stand alone companies with newly acquired subsidiaries to benefit from SSE. That is in my opinion sufficient to dispose of the argument but I shall proceed on the assumption that there is an injustice or absurdity that requires correcting.

94. On Lord Donovan's third principle, if there is an injustice or absurdity it is only possible to correct it to the extent "the language admits".

95. Mr Vallat in submissions accepted that HMRC's interpretation was perhaps the more natural reading of the legislation but, in light of the absurdity in distinguishing between stand-alone companies that have pre-existing dormant subsidiaries and those that do not, the legislation should be read in such a way as to eliminate the absurdity. Thus, as described above, the requirement that "at any time….when the asset was used as mentioned in subparagraph (2)(d)…" should be read to be a reference to the type of use described in subparagraph (2)(d), that is to say "used…for the purposes of a trade…".

96. I have considered Mr Vallat's interpretation above and in my view it is not possible even on a strained basis to construe the legislation in the way Mr Vallat suggests. Further, whilst it is not possible positively to discern Parliament's intention on the point in this appeal, I am satisfied that widening the application of SSE in the way proposed by the appellant's construction of paragraph 15A(3) would allow relief in circumstances contrary to the purpose of the legislation.

97. Further, other alternative strained constructions do not in my view achieve the desired result. The use in paragraph 15A(2)(d) of the term "the group" might be read as identifying members of the group referred to in paragraph 15A(2)(c), being the group as at the time of the transfer of the asset. However, that imports another artificiality, for example excluding a group

company that owned the assets in the last 12 months but transferred them to the transferor company and was then itself sold before the paragraph 15A(2)(c) transfer date.

98. I therefore find that given Parliament's intention on the point in this appeal is unclear, HMRC's interpretation of paragraph 15A(3) cannot amount to a wholly unreasonable result sufficient to justify a strained interpretation. Even if it did, on which I am not persuaded, there is no permissible even if strained interpretation of the legislation which would address the issue.

Correcting drafting mistakes

99. For completeness, whilst it was not part of Mr Vallat's case, it is relevant to consider whether it would be appropriate to read wording into the legislation. In *Inco Europe* Lord Nicholls said at 592:

> "It has long been established that the role of the courts in construing legislation is not confined to resolving ambiguities in statutory language. The court must be able to correct obvious drafting errors. In suitable cases, in discharging its interpretative function the court will add words, or omit words or substitute words….This power is confined to plain cases of drafting mistakes. The courts are ever mindful that their constitutional role in this field is interpretative. They must abstain from any course which might have the appearance of judicial legislation. A statute is expressed in language approved and enacted by the legislature. So the courts exercise considerable caution before adding or omitting or substituting words. Before interpreting a statute in this way the court must be abundantly sure of three matters: (1) the intended purpose of the statute or provision in question; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed. The third of these conditions is of crucial importance. Otherwise any attempt to determine the meaning of the enactment would cross the boundary between construction and legislation."

100. On the facts of *Inco* the court felt able to read in wording. There had been a drafting error in a schedule to the Arbitration Act 1996 had removed a right to appeal and the Court felt able to make an amendment to cure the error.

101. However in this appeal, for the reasons set out above, the intended purpose of the legislation on the issue in this appeal is not clear. Accordingly any attempt to read in wording must fail on the first of Lord Nicholls' three matters on which the court to be "abundantly sure". Further, whilst it is tempting to adopt the role of parliamentary counsel, I am conscious of Lord Nicholl's warning as to the appearance of judicial legislation and the need to limit the exercise of this power to "plain cases of drafting mistakes". I am not persuaded this is such a case.

102. Accordingly, whether wording could be devised to cover the "gist or substance of the alteration", it is in my view inappropriate for me to do so in this appeal.

DECISION

103. For the reasons set out in full in this decision, I find that on the ordinary meaning of schedule 7AC, SSE is not available to the appellant. I agree with HMRC that paragraph 15A only extends the period of ownership for the purposes of paragraph 7 during such time as the relevant asset is used by another company, the appellant in this case, whilst it is a member of the same group.

104. Whilst I accept the outcome in the present circumstances is odd and arbitrary, it cannot be treated as unjust or absurd within the principles summarised by Lord Donovan in *Mangin* because the purpose of paragraph 15A in this context is not sufficiently clear, whether from the

legislation, the Explanatory Notes or the Consultation Document. Accordingly, there is no justification to depart from the ordinary purposive meaning of the legislation. In any event there is no strained interpretation that could achieve the result sought by the appellant.

105. Finally, whilst it is possible in appropriate circumstances to read additional wording into legislation, I again do not find the intended purpose of the legislation sufficiently clear to do so.

106. For the reasons set out above, I therefore dismiss this appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

107. This document contains full findings of fact and reasons for the decision. Any party 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. 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.

IAN HYDE
TRIBUNAL JUDGE

RELEASE DATE: 12 MARCH 2021