Proskauer

UK Tax Round Up

October 2025

Welcome to October's edition of our UK Tax Round Up. In the UK, the First-tier Tribunal ruled in *Dialog Semiconductor Ltd v HMRC* that a $137 million break fee was not a chargeable gain, providing useful guidance on the tax treatment of termination payments. The Upper Tribunal also granted limited permission to appeal in *Syngenta Holdings Ltd v HMRC*, reopening important questions around the commercial purpose test and apportionment of interest deductions. At the EU level, the Council of the European Union announced its latest revisions to the list of non-cooperative tax jurisdictions, with Vietnam's removal from Annex II and new commitments made by five jurisdictions to enhance tax transparency.

UK Case Law Developments

FTT rules that Dialog Semiconductor's $137m break fee was not "in return for surrender or forbearance" and therefore not a chargeable gain under s.22(1)(c) Taxation of Chargeable Gains Act 1992 (TCGA)

In *Dialog Semiconductor Ltd v HMRC*, the First-tier Tribunal (FTT) held that a termination fee, paid to the taxpayer (Dialog) when a proposed Delaware-law merger was abandoned, was not taxable as a capital gain under section 22(1)(c) of the TCGA. The case highlights how a termination or "break" fee paid when a deal falls through is not automatically taxable as a capital gain and acts as useful guidance when structuring deal protection mechanisms, such as break fees. It suggests that where the fee arises simply because a counterparty walks away under a contractual right, rather than because the taxpayer gives up or waives something, the payment may well fall outside the charge to capital gains tax.

Dialog had agreed to merge with a U.S. company. The other party accepted a higher offer and ended the deal lawfully under a “fiduciary-out” clause. Under the merger agreement, they paid Dialog a $137.5 million termination fee. HMRC argued this payment should be taxed as a capital gain under section 22(1)(c) TCGA, which covers sums received “in return for forfeiting, surrendering, or refraining from exercising rights”. Dialog disagreed.

The FTT’s reasoning not to apply section 22(1)(c) turned on the ordinary meaning of the language in subsection (c). In short, the tribunal found that there was no forfeiture (loss of a right), surrender (giving up a right), or refraining from exercising a right. In other words, 22(1)(c) would only apply where the taxpayer has given something up. Upon consideration of the above, the FTT decided that subjection (c) did not fit the facts, HMRC’s assessment therefore failed, and the appeal was allowed.

The facts here can be contrasted with *BA v Hargreaves* (1993). In Hargreaves, British Airways received payments for agreeing to vary or release restrictive contractual rights – in effect, it gave something up. The courts held that such payments did fall within s.22(1)(c), because the taxpayer had surrendered or refrained from exercising its rights in return for the consideration received.

By contrast, in Dialog, the company did not give anything up. Its rights terminated automatically when the counterparty exercised its contractual termination right. The payment arose because of that termination, not in exchange for Dialog’s waiver or forbearance. So, while Hargreaves sits firmly inside s.22(1)(c) (payment for surrender/refraining), Dialog sits outside of it (payment following the counterparty’s own act).

It is important to reiterate that in Dialog, the Tribunal ruled on the application of subsection (c) only. It did not consider the point as to whether the fee could be taxable under the more general opening limb of s22(1) related to capital sums “derived from” an asset, other paragraphs of s22(1) or indeed other charging provisions of TCGA. The Tribunal did signal that a different formulation by HMRC may have had a different outcome, thus we may see HMRC testing other routes in future cases on similar facts. We await to see whether the tribunal will shed more light on the appropriate charging provisions for the fee when the case is heard at the UT.

The case is helpful in that it highlights the aim of subjection (c), to bring payments for giving up or agreeing not to use rights within the charge to capital gains tax. The Tribunal was drawing a line in deciding that a break fee paid under a contract when the other side pulls out is not within scope, it is a contractual consequence of their termination, not consideration for the taxpayer surrendering or abstaining from their rights.

In practice, this case raises a number of interesting points, (1) break fees are not automatically taxable as capital gains, especially when the payment arises because another party terminates under a contractual right, (2) careful drafting matters, parties should ensure any break fee is clearly framed as a contractual consequence of termination, not as consideration for giving up or waiving rights, (3) the door has been left ajar for HMRC to test whether similar payments could be taxed under other parts of section 22(1) - (4) deal context is key, even in cross-border or U.S. style deals, UK tax treatment depends on the specific UK statutory language and the contractual mechanics. The case now moves to the Upper Tribunal.

Syngenta Holdings Ltd v HMRC

Upper Tribunal (UT) grants limited permission to appeal in Syngenta case, reopening questions on commercial purpose and just and reasonable apportionment under s.441(3) Corporation Tax Act 2009 (CTA)

In *Syngenta Holdings Ltd v HMRC*, the UT focusses on how the tribunal should approach their apportionment of allowable/disallowable interest deductions when considering a company’s purpose for a loan – finding that under s431(3) CTA the law requires appropriate apportionment where both a tax motive and a genuine business motive are found.

At the First-tier Tribunal it was found that interest deductions on an inter-group loan had an “unallowable purpose” under sections 441-442 of the Corporation Tax Act 2009 (CTA) and should therefore be disallowed in their entirety. The UT found the case worthy of appeal on the basis that if a taxpayer can show any genuine business purpose, section 441(3) CTA requires an apportionment of that interest, not to treat the interest deduction as disallowable in its entirety – as the FTT had done.

For a full discussion of the FTT decision please see our November 2024 UK Tax Round Up.

As a brief reminder of the background, Syngenta Holdings Ltd (SHL) borrowed US$950 million from another company in its group to buy a UK affiliate as part of a broader corporate restructuring. HMRC refused to allow SHL to deduct the interest payments, arguing that the loan's only purpose was to obtain a tax advantage.

SHL claimed the loan supported a "Legal Entity Simplification" (LES) project aimed at streamlining the group's structure. However, internal documents described the deal as a "tax optimisation project", and senior executives admitted that any commercial benefits were "relatively small" or "not significant". On this basis, the FTT ruled that the loan had an "unallowable purpose" under sections 441-442 CTA – in other words, it existed mainly to reduce tax. The tribunal also refused to divide the loan between commercial and tax motives (an "apportionment") because it found the only motive was tax. As a result, HMRC's decision to block all interest deductions for 2011-2016 was upheld.

At the UT, Judge Anne Redston gave permission for SHL to argue three specific legal points. Each of these points questions the FTT's handling of evidence about SHL's possible commercial motives, (1) investment purpose, did the FTT wrongly dismiss unchallenged evidence from a senior executive that SHL had aimed to make a good investment, (2) the tribunal's reasoning, did the FTT improperly replace SHL's stated aim ("to make a good investment") with its own view ("to avoid a bad investment") without asking witnesses about this interpretation, and (3) the evidence assessment, based on the evidence, was the FTT entitled to decide that making a good investment was not one of SHL's main purposes?

The UT stated that if, in examining these issues, it can be shown that SHL had both a tax motive and a genuine business motive, the law (section 441(3) CTA 2009) would require the tribunal to decide what part of the interest should be disallowed – not simply to deny it all.

Under section 441(3), if a loan has some genuine business purpose, only the interest linked to the tax-avoidance motive should be disallowed. The FTT skipped this step because it found tax was the only purpose. Judge Redston's ruling reopens that question – if SHL proves it had even a small legitimate commercial goal (such as improving how its UK companies were structured or making a sound investment), then part of the interest deduction might be allowed.

This case is linked with recent decisions such as *BlackRock Holdco 5 LLC v HMRC* (discussed in our [April 2024 UK Tax Round Up]) and *JTI v HMRC* (discussed in our [June 2024 UK Tax Round Up]), which clarify how courts decide what a company's "purpose" really was. BlackRock confirmed that purpose is judged at the level of the company taking the loan, not the wider group. JTI explored how directors' understanding of group goals can influence that assessment.

The Syngenta appeal could reshape how future tax cases handle "mixed motives". Instead of treating loans as entirely tax-driven or entirely commercial, tribunals may have to measure and apportion between the two.

Other EU Tax Developments

Updates to the Annex II of the EU list of non-cooperative jurisdictions

The Council of the European Union has announced an update to the EU list of non-cooperative jurisdictions for tax purposes.

Annex I identifies jurisdictions deemed non-cooperative in tax matters. No new jurisdictions were added in this update, and the list continues to comprise 11 jurisdictions: American Samoa, Anguilla, Fiji, Guam, Palau, Panama, the Russian Federation, Samoa, Trinidad and Tobago, the U.S. Virgin Islands, and Vanuatu.

Annex II sets out jurisdictions that are cooperating with the EU to address identified tax governance deficiencies. Vietnam has been removed from Annex II following its successful implementation of the OECD's Base Erosion and Profit Shifting (BEPS) minimum standard on Country-by-Country Reporting.

In addition, five jurisdictions have made new formal commitments to enhance tax transparency and rectify shortcomings in their Country-by-Country Reporting frameworks. As a result, Annex II now includes 11 jurisdictions: Antigua and Barbuda, Belize, the British Virgin Islands, Brunei Darussalam, Eswatini, Greenland, Jordan, Montenegro, Morocco, Seychelles, and Turkey.

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