Share Buyback Qualified for Capital Treatment Where Undertaken for Genuine Trade Benefit

Tax Talks on **January 29, 2026**

In *Boulting v HMRC*, the First-tier Tribunal (FTT) delivered a welcome decision for taxpayers on the tax treatment of a company purchase of its own shares.

The general rule is that when a UK-resident company purchases its own shares from a UK-resident shareholder, the shareholder is subject to dividend tax on the amount by which the purchase price exceeds the paid up capital (par and premium) on the shares (i.e. the true original subscription price). However, a repurchase may instead be taxed at preferential capital gains tax rates where shares in an unlisted trading company are bought back and where certain conditions are met, including that the buyback is carried out wholly or mainly for the benefit of the company's trade. That condition was central to the dispute in *Boulting*.

Mr Boulting founded PSC Training and Development Group Ltd and remained the majority shareholder some twenty years later. Over time, governance tensions emerged between him and his sons, who were both shareholders and senior managers. Disagreements over investment strategy raised concerns about the company's long-term prospects. Against that backdrop, an exit plan for Mr Boulting was agreed. He retired, gifting most of his shares to his son Mark, and the company agreed to purchase a portion of his remaining shares for £4.8 million to facilitate a clean handover of control. A number of the shares were retained by Mr Boulting to gift to his grandchildren.

A statutory clearance application was approved by HMRC in October 2014 and the buyback took place in January 2015. HMRC subsequently challenged the capital treatment of the buyback.

HMRC argued that the buyback failed the trade benefit test because it was, in substance, a mechanism for extracting value rather than benefiting the business. It contended that the company was already profitable, that the price paid was materially higher than market value and was therefore excessive, and that a partial repurchase – rather than a buyback of Mr Boulting's entire holding – was unlikely to meet the statutory requirement. HMRC also relied on its published guidance suggesting that partial buybacks will not normally satisfy the trade benefit test.

Mr Boulting argued that the price was broadly supported by professional advice and, more importantly, that the buyback was wholly or mainly for the benefit of the trade because it was part of a plan that removed a shareholder who had been blocking necessary investment.

The FTT agreed. It emphasised that the statutory test focuses on purpose rather than effect, and that valuation arguments could not override the underlying commercial rationale. The Tribunal accepted that short-term profitability did not equate to long-term sustainability, and that delaying or impeding necessary investment constituted a real detriment to the trade. While Mr Boulting may have hoped to achieve a favourable price, the company's purpose in agreeing the buyback was to enable his exit and remove an obstacle to future investment and it was this purpose that was relevant to determining whether the trade benefit condition was satisfied.

The FTT also rejected HMRC's argument that the buyback needed to achieve the trade benefit as a standalone transaction. The buyback of the shares formed part of a wider series of steps – including gifts of other shares – that were collectively necessary to achieve Mr Boulting's exit and the commercial benefit to the business. Viewed in that wider context, the statutory requirement was satisfied.

This decision suggests that where a share repurchase forms an integral part of enabling a shareholder's exit in order to address genuine governance or operational difficulties, the Tribunal will give weight to commercial reality and evidence of purpose from the perspective of the company. It also indicates that the trade benefit test is not narrowly construed and that pricing arguments alone are unlikely to defeat capital treatment where a credible commercial rationale is established.

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