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Burlington in the Court of Appeal: New Guidance on Purpose Tests and Access to Treaty Benefits

Tax Talks on **May 5, 2026**

The Court of Appeal has confirmed in *Burlington Loan Management DAC v HMRC* that "obtaining the benefit of" a tax treaty is not the same as "taking advantage of" it. The treaty anti-abuse rule will only apply where the taxpayer seeks to obtain that benefit in a way that is contrary to the object and purpose of the treaty.

This is a helpful decision for taxpayers and their advisers, particularly in cross-border financing arrangements where treaty relief is an important consideration.

The specific issue before the Court was whether Article 12(1) of the UK–Ireland DTT could apply to exempt an Irish resident's receipt of interest, or whether the anti-abuse provision in Article 12(5) applied to disapply that exemption where one of the main purposes of the relevant arrangements was "to take advantage of" Article 12(1).

An Irish-resident company (BLM) was assigned by a Cayman-resident company (SICL) a debt receivable payable by a UK resident company. The principal had already been repaid, so BLM acquired only the right to future interest payments, which would ordinarily have been subject to UK withholding tax. BLM expected to obtain treaty relief and priced the transaction accordingly.

HMRC argued that Article 12(5) should apply because the transaction was only commercially viable as a result of the anticipated treaty benefit, such that obtaining that benefit must have been at least one of BLM's main purposes.

The Court held that "to take advantage of" a provision such as Article 12(1) cannot simply mean obtaining its benefit. To interpret it in that way would undermine the purpose of the treaty. Rather, it requires obtaining that benefit in a manner that conflicts with the treaty's object and purpose.

The Court found that BLM's reliance on Article 12(1) was consistent with the treaty's aims, including the elimination of double taxation and the facilitation of cross-border investment. Article 12(1) reflects the UK's agreement that interest beneficially owned by an Irish resident should be taxed only in Ireland, and BLM was entitled to structure its affairs on that basis.

A key aspect of the judgment is the distinction between motive and purpose. The Court explained that motive concerns the broader reasons why a transaction is attractive (including tax outcomes), whereas purpose concerns the objective the taxpayer seeks to achieve. Identifying a "main purpose" therefore requires examining the taxpayer's intentions, not simply the economic drivers of the transaction.

The Court found that although SICL was motivated by the disadvantage of irrecoverable withholding tax, it did not have the specific purpose of taking advantage of Article 12(1). Tax formed part of the commercial background, but there was no treaty-focused purpose.

As for BLM, the Court accepted that the expected availability of treaty relief was economically important and may have formed part of its purpose. However, Article 12(5) would only apply where that purpose involved obtaining the benefit in a way that is contrary to the treaty's object and purpose. The Court therefore distinguished between a purpose of obtaining a benefit that the treaty is intended to confer, and a purpose of exploiting the treaty in a way that is inconsistent with its aims.

Why this matters

The decision provides useful clarification on the scope of treaty anti-abuse rules:

- Taxpayers may take treaty benefits into account when structuring transactions without this, in itself, triggering anti-abuse provisions.
- A transaction does not become abusive simply because it is commercially viable only as a result of the expected tax treatment.
- The key question is whether the arrangement is consistent with the object and purpose of the treaty, not whether tax was an important factor.

The Court did also confirm that anti-abuse rules are not limited to artificial arrangements, and in that context careful analysis of purpose remains important.

In summary, *Burlington* confirms that a taxpayer may be motivated by, and even intend to obtain, a treaty benefit. However, the anti-abuse rule will only apply where one of the main purposes is to obtain that benefit in a way that is contrary to the treaty's object and purpose.