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# Capital Gains Tax: Treatment of goodwill in franchised businesses

We have been asked by a number of professional advisers whether our views on the treatment of goodwill in a franchised business have changed following the Special Commissioner's decision in the case of Balloon Promotions Ltd and Others. The following commentary summarises the salient facts and sets out our views on the implications of the decision. As the Commissioner's conclusions were based on findings of fact we do not consider that the decision is of general application to other cases involving the sale of franchised businesses.

## Decision of Special Commissioner (SpC524) 3 March 2006: Balloon Promotions Limited (Appellant 1) and Alonso Vela-Castro, Edward Kidney and Natale Lucibello (Appellant 2) v Wilson and Rodin

### Roll-over relief and goodwill

Briefly, the facts were that the appellants were members of partnerships whose Pizza Express franchised restaurants were acquired by Pizza Express (Restaurants) Ltd for the purpose of operating them in-house. Pizza Express (Restaurants) Ltd entered into contracts with the partnerships for the purchase of the businesses and termination of the Franchise Agreements. The purchase price was allocated mainly to goodwill with only a nominal amount for the termination of the Franchise Agreements. In addition, the directors/shareholders of Balloon Promotions Ltd and Messrs Vela-Castro, Kidney and Lucibello received payments for entering into restrictive covenants that prevented them from operating pizza restaurants for certain periods of time and in certain locations.

The appellants claimed roll-over relief under S152 TCGA 1992 in respect of the chargeable gains arising on the sale of goodwill. HMRC refused the claims on the grounds that the proceeds for the sale of goodwill were, in fact, payments of compensation for the termination of the Franchise Agreements.

The Special Commissioner accepted that HMRC had the legal authority to re-apportion the sale consideration on a just and reasonable basis pursuant to S52 (4) TCGA 1992 if the appellants had erred in law in their apportionment. Furthermore, he concluded that the contention of Messrs Vela-Castro, Kidney and Lucibello that HMRC had no lawful authority to re-apportion the sale consideration after the issue of a S28 TMA 1970 Completion Notice was without foundation. HMRC's apportionment under S52 (4) TCGA 1992 did not affect the amended self-assessments and did not open new lines of enquiry.

The Special Commissioner held that the question of whether a franchisee owns goodwill is determined principally by an examination of facts and not solely by principles of law. He was satisfied on the evidence put before him that the appellants enjoyed considerable discretion in the operation of their restaurants and did not work to a prescribed business format. He found that Pizza Express was not a well-known brand until after 1994 and that each of its franchised restaurants was unique in design rather than part of a chain of outlets based on a set "get up". He concluded that Pizza Express was a "soft" brand and that it was the appellants who had established the reputation of their restaurants by the standards of customer service they provided. The Special Commissioner held that the consideration allocated to goodwill in the sale agreements was correctly described as goodwill within the context of TCGA 1992 and that the goodwill in question was attached to the appellants' businesses rather than to the Pizza Express brand.

The appellants' appeals were allowed in principle.

In reaching his decision the Special Commissioner took account of evidence that came to light during the hearing that the Franchise Agreements for the partnerships between Messrs Vela-Castro, Kidney and Lucibello were subject to termination on six months' notice by either party. In view of that evidence HMRC conceded that the rights associated with the Franchise Agreements were of minimal value.

We do not intend to lodge an appeal in the High Court.

We accept the finding of the Special Commissioner that the question of whether a franchisee owns goodwill is principally a question of fact. Where a franchised business is disposed of as a going concern the question of whether there has been a disposal of goodwill will be determined in the light of the relevant facts. These will include a detailed consideration of the terms of the franchise agreement, the extent of control exercised by the franchisor and the terms and conditions relating to the sale. Therefore, we do not consider that the decision in these appeals is of general application to other cases involving the sale of franchised businesses.

Our opinion that a franchisee's rights under a franchise agreement are an asset within the meaning of S21 (1) TCGA 1992 and that they are not part of goodwill is unchanged. However, we do accept that a franchisee may be able to generate some goodwill in a franchised business. The values of franchise rights and goodwill will depend upon the precise facts of each individual case and, in particular, the level of control exercised by the franchisor.

HMRC agrees with the Special Commissioner's conclusion that, for the purposes of TCGA 1992, the term "goodwill" must be construed in accordance with the principles established by the legal authorities on goodwill and that the accountancy definition is deficient for the purposes of construing its meaning in that context.

In reaching his conclusions the Special Commissioner questioned the approach adopted by HMRC of restricting roll-over relief to specific categories of goodwill. He indicated that he considered that goodwill should be looked at as a whole to include whatever adds value to a business by reason of situation, name and reputation, connection, introduction to old customers and absence from competition. We do not accept that the term "goodwill" in TCGA 1992 embraces all of the various types of goodwill described in the CG Manual. We will continue to treat inherent and adherent goodwill as part of an asset in the form of a freehold or leasehold interest in land or buildings.

We are hoping to be in a position shortly to publish an updated version of the goodwill guidance in the CG Manual.

## *interpretation*

### **HMRC and the Hastings-Bass Principle**

The purpose of this article is to give an indication of HMRC's current views on some aspects of the so-called "Hastings-Bass" principle. The principle has been applied in the context of trusts where a trustee is given a discretion as to some matter, on which he acts, but where the purported exercise of his discretion has unintended consequences.

Traditionally the courts have been reluctant to interfere in the exercise of a trustee's discretion but there is now a growing line of authority revealing the emergence of a principle whereby a court, in certain circumstances, will or may intervene. It is a principle that has been developed by the courts in England & Wales, and has been applied by the Royal Court in Jersey, although it seems that there is no equivalent principle in Scotland.

The name of the principle comes from the case of Re Hastings-Bass deceased [1975] Ch 25 (“Hastings-Bass”). In that case the Court of Appeal upheld the validity of an exercise by trustees of the statutory power of advancement, save to the extent that it was necessarily void for perpetuity, on the basis that the court should not interfere where a trustee is given a discretion as to some matter in which he acts in good faith, notwithstanding that his action does not have the full effect which he intended, unless it is clear that he would not have acted as he did

- had he not taken into account considerations which he should not have taken into account or
- had he not failed to take into account considerations which he ought to have taken into account.

The second limb of the principle was purportedly reformulated into a more readily understood, positive version by Warner J in Mettoy Pension Trustees Ltd v Evans and others [1990] 1 WLR 1587 (“Mettoy”) at 1621A-H as follows:

***“Where a trustee acts under a discretion given to him under the terms of the trust, the court will interfere with his action if it is clear that he would not have acted as he did had he not failed to take into account considerations which he ought to have taken into account”.***

This reformulation in fact involved a substantial leap from the original formulation of the principle in Hastings-Bass itself, for two reasons. First, the word “will” apparently denotes an obligation on the court to intervene whenever the stated conditions are satisfied. Secondly, the negative proposition that the court should not interfere unless certain conditions are fulfilled is not logically equivalent to the much wider positive proposition that the court should, or even may, interfere if those conditions are fulfilled. Nevertheless, after reviewing a number of authorities Warner J concluded in Mettoy that there was a principle in the positive form stated above which was separate both from the equitable remedy of rectification and from the jurisdiction of the court to set aside a written instrument for mistake.

Over the past few years there has been an increase of interest in and reliance on the principle, which has resulted in a number of decided cases at first instance, including Abacus Trust Company Ltd v NSPCC [2001] STC 1344 (“Abacus v NSPCC”), Breadner v Granville-Grossman [2001] Ch 523, Abacus Trust Company Ltd v Barr [2003] Ch 409 (“Abacus v Barr”), Burrell v Burrell [2005] STC 569 and Sieff v Fox [2005] 1 WLR 3811 (“Sieff v Fox”) which contains a detailed and valuable review of the case law by Lloyd LJ. Apart from case law, the emerging principle has also generated a great deal of discussion and commentary by academics and practitioners alike.

An interesting, but perhaps not surprising, feature of the majority of these cases is that the unintended consequence of the mistake by the trustees was a liability to tax. For this reason HMRC have been interested in this area of the law, as it develops and is shaped by the courts. In recent years it has been the usual practice of HMRC to decline invitations to be joined as a party in cases where the court is being asked to set aside a transaction in reliance on the principle. However, in Sieff v Fox Lloyd LJ observed in paragraph 83 that the court’s task might be easier in some cases if HMRC did not always decline the invitation to take part in cases of this kind. In the light of that observation, and our increasing concern (which is shared by many commentators) that the principle as currently formulated is too wide in its scope, HMRC will now give active consideration to participating in future cases where large amounts of tax are at stake and/or where it is felt that we could make a useful contribution to the elucidation and development of the principle. We will be particularly ready to intervene in cases where there would otherwise be no party in whose interest it would be to argue against the application of the principle.

It would be beyond the scope of this article to discuss the issues which arise in any depth, and HMRC must in any event reserve the right to advance whatever arguments appear to us appropriate in the circumstances of any given case. Subject to that caveat, however, we would make the following points in order to give an indication of our present thinking on some of the main questions which arise.

- (1) In the first place, it should be noted that the principle in its present form has little or nothing to do with the type of situation which was considered by the Court of Appeal in Hastings-Bass itself, and that it owes its origin to the logically flawed positive reformulation of the principle in Mettoy. We consider that any positive formulation of the principle should state merely that the court “may” interfere with the trustee’s action, not that it “will” do so.
- (2) Secondly, and allied to point (1) above, we consider that the effect of the principle, if it applies at all, should be to make the relevant decision by the trustee voidable and not void, or at the very least should permit the court to take into account the same sort of equitable considerations that apply when it is deciding whether to grant other forms of equitable relief.
- (3) Thirdly, we would tentatively suggest that the principle, as it develops, should as far as possible be assimilated with the general principles of law by reference to which (a) the exercise of a discretion by trustees may be impugned (as to which see the decision of the Court of Appeal in Edge v Pensions Ombudsman [2000] Ch 602, especially at 627-30 and 633), and (b) the courts will set aside voluntary transactions or written instruments for mistake. It may be the case that, properly understood, there is no room or need for a separate Hastings-Bass principle at all.

- (4) Fourthly, in cases where the trustee acts under a discretion and is not obliged to act, we would agree with the view expressed by Lloyd LJ in Sieff v Fox, that the relevant test is whether the trustee “would” have acted differently if the correct considerations had been taken into account, not whether the trustee “might” have acted differently.
- (5) Fifthly, while accepting that fiscal consequences are generally amongst the matters which a trustee should take into account when deciding how to act, we consider that a distinction needs to be drawn between cases where the trustee fails to take relevant fiscal considerations into account at all, and cases where the trustee takes steps to obtain fiscal advice but that advice turns out (for whatever reason) to be wrong. While there may be scope for the principle to apply in cases of the former type, it is felt that in cases of the latter type (which include Sieff v Fox) the principle should not apply.
- (6) Similarly, in cases where the trustee obtains advice about the tax consequences of a proposed transaction, but then fails to implement the transaction in accordance with that advice (as in Abacus v NSPCC), it is also felt that the principle should not apply. A common feature of cases like Sieff v Fox and Abacus v NSPCC is that the trustee has sought appropriate tax advice, and in reliance on it has deliberately taken certain steps which in trust terms achieve precisely the effect which they were intended to achieve. Why then should the trustee be entitled to have the transaction set aside, in a way that would not be open to an individual taxpayer, merely because the advice which he obtained was incorrect, or because he negligently failed to follow the advice correctly? In such cases, it is suggested, the court should not interfere, tax should be paid on the basis of the transaction actually carried out, and the trust should be left to pursue whatever remedies it may have against the trustee and/or the trustee’s professional advisers.
- (7) Finally, despite what was said by Lightman J in Abacus v Barr, we are inclined to agree with Lloyd LJ in Sieff v Fox that a breach of duty by the trustee or the trustee’s agent or advisers is not in itself a separate requirement that has to be satisfied if the principle is to apply.

In the remainder of this article, some brief comments will be made on various practical issues which have arisen from time to time.

In some instances HMRC have been asked to consent to a reversal of the tax consequences of a particular trustee decision without an order of the court, on the basis that the principle in Hastings-Bass applies, to save the parties the trouble and expense of going to court.

We have generally maintained that we require an order of the court before we will review the tax consequences of a decision on the basis of the Hastings-Bass principle, and this remains the basic position. The nature and parameters of the Hastings-Bass principle are still unclear in many respects and although this is something that we will consider in the context of each case as it arises, it is felt that we would not generally be entitled to agree to unwind a decision, even if we were minded to do so. Crucially, it remains to be clarified by a higher court whether the effect of an application of the principle is to make a decision void or voidable. If the decision is voidable, the question of whether it should be avoided is one for the court and cannot be resolved by consent between the parties.

At other times we have been asked to determine the tax consequences of obtaining an order, while parties consider whether or not to apply to the court. We have generally declined to do this, on the basis that the court may have a wide discretion as to the terms upon which it makes any order. Facts and circumstances in cases susceptible to consideration under the principle vary considerably and these variations may well affect the approach of the court and, in consequence, the tax treatment.

Finally, in a number of cases we have been invited to join the proceedings themselves. Some parties have complained of hardship where we have insisted on a court order before we will review the tax consequences, particularly where the parties are themselves agreed that the decision should be set aside. However, we do not consider that our insistence on a court order leads necessarily to the conclusion that we ought to be joined as parties to those proceedings, although as we have said above it is now likely that there will be cases in the future where HMRC would wish to be joined or to intervene in order to resist an application of the principle in a particular case, or to seek to influence the development of the principle in a particular direction.

This article sets out HMRC’s current position on the principle in Hastings-Bass and seeks to give an indication of the type of stance we might take should we become involved in a case in the future. We are not, however, limiting ourselves to these arguments. Clearly this is a developing area of the law, certain aspects of which will require clarification by the higher courts in due course. As things evolve we will keep the principle, and our policies, under review but it is hoped that this article will assist taxpayers and practitioners in the meantime.

## Foreign Entities: Classifications for UK Tax Purposes

This Tax Bulletin updates and supersedes Tax Bulletins 39 and 50.

When considering the classification of a foreign entity (i.e. whether it is either opaque or transparent) for UK tax purposes, due regard is given to the approach of the Court of Appeal in the case of *Memec plc v CIR* (70 TC 77) and the line of case law that precedes it. In particular, the following matters should be considered:

- (a) Does the foreign entity have a legal existence separate from that of the persons who have an interest in it?
- (b) Does the entity issue share capital or something else, which serves the same function as share capital?
- (c) Is the business carried on by the entity itself or jointly by the persons who have an interest in it that is separate and distinct from the entity?
- (d) Are the persons who have an interest in the entity entitled to share in its profits as they arise; or does the amount of profits to which they are entitled depend on a decision of the entity or its members, after the period in which the profits have arisen, to make a distribution of its profits.
- (e) Who is responsible for debts incurred as a result of the carrying on of the business: the entity or the persons who have an interest in it?
- (f) Do the assets used for carrying on the business belong beneficially to the entity or to the persons who have an interest in it?

Some of those factors may point in one direction; others may point in another. An overall conclusion is reached from looking at all the factors together, though some have more significance than others. Particular attention is paid to factors c. and d. In considering them we look at the foreign commercial law under which the entity is formed and at the internal constitution of the entity. How the entity is classified for tax purposes in any other country is not relevant. The conclusion that is reached is then used in considering the relevant piece of UK tax law.

A list of foreign entities where we have been asked our view on the question of transparency/opacity is set out below. A separate list of foreign entities, which have been considered for Stamp Duty purposes, appears in the Stamp Taxes Manual available on the HMRC website.

It should be noted that the list only gives our general view as to the treatment of the specified foreign entity. In a particular case regard may also need to be had to:

- The specific terms of the UK taxation provision under which the matter requires to be considered:
- The provisions of any legislation, articles of association, by-laws, agreement or other document governing the entity's creation, continued existence and management, and;
- The terms of any relevant Double Taxation Agreement.

It should also be borne in mind that in relation to the classifications set out on the list:

- In some instances HMRC's view was given many years ago, and there may have been significant changes in the relevant foreign law which may mean that a different conclusion as to the status of that entity might now be reached. Changes in foreign law after the publication of this article may be significant for the same reason.
- Entities are described as either fiscally "transparent" or "opaque" solely for the purposes of deciding how a member is to be taxed on the income they derive from their interest in the entity. In the case of a "transparent" entity the member is regarded as being entitled to a share in the underlying income of the entity as it arises and is charged to tax in the UK on their share of the profits on that basis. But, in the case of an "opaque" entity the member generally is taxed only on the distributions made by the entity.
- It should be noted that the expressions "transparent" and "opaque" are not interchangeable with "partnership" and "company" or "body corporate". For example, a fiscally transparent entity is not necessarily a partnership. Likewise an UK company is a "body corporate" and is opaque for the purposes of UK tax on income, but a fiscally opaque entity is not necessarily a "body corporate" or a "company" for UK tax purposes.

Where clarification is sought in relation to a foreign entity we will attempt to give a view in particular cases in line with Code of Practice 10. The following are the contact points:

1. In all cases (except in relation to whether an entity may be a collective investment scheme)

David Price  
 HM Revenue & Customs  
 CT & VAT Products & Processes  
 International CT  
 3rd Floor  
 100 Parliament Street  
 London SW1A 2BQ  
  
 Tele: 020 7147 2645  
 Fax: 020 7147 2649  
 e-mail: david.e.price@hmrc.gsi.gov.uk

2. The list does not indicate whether the particular entities constitute collective investment schemes. Where clarification is needed on this point you should contact:

David Moran  
 HM Revenue & Customs  
 CT & VAT Products & Processes  
 Financial & Insurance Team  
 3rd Floor  
 100 Parliament Street  
 London SW1A 2BQ  
  
 Tele: 020 7147 2612  
 Fax: 020 7147 2640  
 e-mail: david.moran@hmrc.gsi.gov.uk

## List of Foreign Entities

<b>ANGUILLA</b>	Partnership	Transparent		Oct-91
<b>ARGENTINA</b>	Sociedad de responsabilidad limitada			Opaque Jun-58
<b>AUSTRIA</b>	KG	Kommanditgesellschaft		Transparent Aug-71
	KEG	Kommand Erwerbsgesellschaft		Transparent Nov-03
	GmbH & Co KG			Transparent May-02
	GmbH	Gesellschaft mit Beschränkter Haftung		Opaque Nov-05
	AG	Aktiengesellschaft		Opaque Nov-05
<b>BELGIUM</b>	SPRL	Societe de privee a responsabilite limitee		Opaque Aug-94
	SNC	Societe en nom collectif		Transparent May-92
	SA	Societe Anonyme		Opaque Nov-05
	NV	Naamloze Vennootschap		Opaque Nov-05
	SCA	Societe en commanditaire par actions		Opaque Nov-05
	CVA	Commanditaire venootschap op aandelen		Opaque Nov-05
<b>BRAZIL</b>	Srl	Sociedad por quotas de responsabilidade limitada		Opaque Jan-77
<b>CANADA</b>		Partnership and limited partnership		Transparent Nov-05
<b>CAYMAN ISLANDS</b>		Limited partnership		Transparent Nov-93
<b>CHILE</b>	SRL	Sociedad de responsabilidad limitada		Transparent Sep-03
<b>CHINA</b>	WFOE	Wholly Foreign Owned Entity		Opaque Oct-05
<b>CZECH REPUBLIC</b>	as	Akciova spolecnost		Opaque Nov-05
	sro	Spolecnost s rucenim omezenym		Opaque Nov-05
<b>EUROPEAN UNION</b>	SE	Societas Europeas		Opaque Jul-05
<b>FINLAND</b>	Ky	Kommandiittiyhtio		Transparent May-91
	Oy	Osakeyhtio		Opaque Nov-05
	Ab	Aktiebolag		Opaque Nov-05

<b>FRANCE</b>	GIE	Groupement d'Interet economique	Transparent	May-88	
	SNC	Societe en nom collectif	Transparent	Aug-00	
	SCI	Societe civile immobiliere	Opaque	Nov-05	
	SCA	Societe civile agricole	Opaque	Feb-98	
	SCS	Societe en commandite simple	Transparent	Sep-97	
	SP	Societe en participation	Transparent	Jun-92	
	SARL	Societe a responsabilite limitee	Opaque		
	FCPR	Fonds Commun de Placement a risques	Transparent	Jan-97	
	SAS	Societe par Actions Simplifiee	Opaque	Apr-04	
	SA	Societe Anonyme	Opaque	Apr-04	
	GFA	Groupement Foncier d'Agricole	Opaque	May-01	
	SC	Societe Civile	Opaque	Nov-05	
	<b>GERMANY</b>		Stille Gesellschaft	Opaque	Jun-98
		KG	Kommandit Gesellschaft	Transparent	Feb-97
OHG		Offene Handelsgesellschaft	Transparent	Sep-96	
GmbH		Gesellschaft mit Beschränkter Haftung	Opaque	Feb-97	
GmbH & Co. KG			Transparent	Feb-97	
GBR		Gesellschaft des Bürgerlichen Rechts	Transparent	Apr-94	
AG		Aktiengesellschaft	Opaque	Nov-05	
<b>GUERNSEY</b>	LP	Limited Partnership	Transparent	Jan-05	
	PCC	Protected Cell Company	Opaque	Nov-04	
		Open Ended Investment Company with Limited Liability	Opaque	Nov-04	
<b>HUNGARY</b>	Kft	Korlatolt felelossegu tarsasag	Opaque	Nov-05	
	Rt.	Reszvenytarsasag	Opaque	Nov-05	
<b>ICELAND</b>		Hlutafelag	Opaque	Nov-05	
<b>IRELAND</b>		Limited Partnership	Transparent		
		Irish Investment Limited Partnership	Transparent		
	CCF	Common Contractual Fund	Transparent	Jan-04	
<b>ITALY</b>	SpA	Societa per Azioni	Opaque	Nov-05	
<b>JAPAN</b>		Goshi-Kaisha	Transparent	Feb-97	
		Gomei Kaisha	Transparent		
	TK	Tokumei Kumiai	Transparent	Nov-05	
		Kabushikikaisha	Opaque	Nov-05	
		Yugen-kaisha	Opaque	Nov-05	
<b>JERSEY</b>	LLP	Limited Liability Partnership	Opaque	Feb-01	
<b>KAZAKHSTAN</b>	LLC	Limited Liability Company	Opaque	Sep-05	
<b>LIECHTENSTEIN</b>		Anstalt	Opaque	Mar-04	
<b>LUXEMBOURG</b>	SCA	Societe en commandite par-actions	Opaque	Jul-92	
	FCP	Fonds commun de placement	Transparent	May-05	
	SA	Societe anonyme	Opaque	Nov-05	
	SARL	Societe a responsabilite limitee	Opaque	Nov-05	
	SJCAV	Societe d'investment a capitale variable	Opaque	Mar-06	

<b>NETHERLANDS</b>	VOF	Vennootschap Onder Firma	Transparent	Feb-95
	CV	Commanditaire Vennootschap (both "open" and "closed")	Transparent	Aug-00
	NV	Naamloze Vennootschap	Opaque	Oct-81
	BV	Besloten Vennootschap Met Beperkte Aansprakelijkheid	Opaque	Oct-81
		Maatschap	Transparent	Oct-93
	Stichting	Transparent	Jul-05	
Co-op	Cooperatie	Transparent	Jul-04	
<b>NEW CALEDONIA</b>	SNC	Societe en nom collectif	Transparent	Jul-05
<b>NORWAY</b>	AS	Alkjeselskap	Opaque	
	KS	Kommandittselkap	Transparent	Jan-81
<b>POLAND</b>	SP.zo.o	Spolkaz ograniczonaodpowiedzialnoscia	Opaque	Mar-96
<b>PORTUGAL</b>	Lda	Sociedade por quotas	Opaque	Apr-93
	SA	Sociedade Anonima	Opaque	Apr-93
<b>RUSSIA</b>		Joint Venture under "Decree No.49"	Opaque	Jan-93
	LLC	Limited Liability Company	Opaque	Nov-03
<b>SLOVAK REPUBLIC</b>	sro	Spolocnost's rucenim obmedzenim	Opaque	Nov-05
<b>SPAIN</b>	SC	Sociedad Civila	Opaque	Dec-80
	SA	Sociedad Anonima	Opaque	Nov-05
		Comunidad de bienes	Transparent	Jun-01
	Srl	Sociedad de Responsabilidad Limitada	Opaque	Nov-05
<b>SWEDEN</b>	AB	Aktiebolag	Opaque	Nov-05
	KB	Kommanditbolag	Transparent	Oct-05
<b>SWITZERLAND</b>	SS	Societe Simple	Transparent	Dec-90
	GmbH	Gesellschaft mit beschränkter Haftung	Opaque	Nov-05
<b>TURKEY</b>	AP	Attorney Partnership	Transparent	Apr-04
	AS	Anonim Sirket	Opaque	Nov-05
	Ltd/S	Limited Sirket	Opaque	Nov-05
<b>USA</b>		Partnership set up under the Uniform Partnership Act	Transparent	Sep-83
		Limited Partnership set up under the Uniform Limited Partnership Act	Transparent	Aug-00
	LLC	Limited Liability Company	Opaque	Jun-97
	LLP	Limited Liability Partnership	Transparent	Dec-99
	MBT	Massachusetts Business Trust	Transparent	Feb-80
	S. Corp	S. Corporation	Opaque	Jul-05

## **Statement of Practice 14/1993**

SP 14 was introduced in 1993 to address certain perceived difficulties with the application of the non-arm's length market value rules in certain circumstances.

Where a producing company sold all of its own production of an oil on a non-arm's length basis to an affiliate it was argued that the way the market values rules were calculated (on a monthly basis) would disadvantage these companies, particularly in a volatile oil market.

Under SP14 such companies could agree a different market value to apply to their non-arm's length sales than provided for under the legislation, provided the methodology was applied consistently and the Board were satisfied that values derived gave a reasonable arm's length price.

The new oil pricing rules and other consequential changes being introduced by FB 2006 mean that:

- the market value of oil used for tax purposes is more reflective of actual arm's length price of that oil at delivery,
- and only genuinely non-arm's length transaction will be caught by the legislation.

Once these rules are introduced SP 14 effectively becomes obsolete.

The revised legislation takes effect from 1 July 2006, SP14 will therefore cease to have effect for non-arm's length deliveries on or after 01/07/06.

## **Prosecutions**

HMRC has a policy of selective prosecution involving the most serious cases across the whole range of the tax system. The Board sees this as an important part of its strategy to deter fraud and evasion. As part of the wider publicity for this strategy, details of prosecutions are occasionally published in Tax Bulletin.

### **Gregory Huggett**

A 39 year old Accountant and father of 3, Gregory Huggett has begun a 5-year prison sentence after pleading guilty to 6 offences on 30 March 2006.

Huggett pleaded guilty to charges of cheating H M Revenue and Customs (HMRC), obtaining money transfer by deception in regard to an investment fraud and Conspiracy to Defraud.

He was previously in partnership with his mother and father at offices in Upminster Road South, Rainham, and Essex, trading as Huggett Gregg & Co.

Huggett requested that some of his clients pay their tax liabilities to the accountancy firm so that he could keep track of the amounts paid. He agreed to forward the tax on to the Inland Revenue (HMRC) on their behalf. Over a 4-year period, from 1999 to 2003 Huggett stole over £790,000 of his client's money to fund an extravagant lifestyle.

In sentencing Huggett at Middlesex Guildhall Crown Court Judge Mathieson said:

"Your clients have suffered a great deal because of what you have done. You have caused many of them serious problems. Some have suffered stress, lost their businesses, some who had retired have had to return back to work."

Huggett then hid the fraud by submitting false tax returns to HMRC, understating the clients' liabilities without the clients' knowledge. The loss to HMRC was over £485,000.

He also defrauded clients and friends of over £580,000 through a bogus investment scheme in 2002 and 2003. The case was a joint investigation between HMRC, and the Metropolitan Police Money Laundering Investigation Team.

The monies were spent on expensive cars, including 2 Ferraris and an Aston Martin, lavish holidays and the purchase and refurbishment of a large detached house in Hall Lane, Upminster, Essex. Mr Huggett was made bankrupt in 2004 owing over £4.5 million.

HMRC Investigator Rob Mortlock said:

"HM Revenue & Customs expects professionals such as accountants who act on behalf of taxpayers to be entirely professional and honest. Gregory Huggett has abused the trust of his clients and his failed in his legal and professional responsibilities to HMRC. He has cheated family, his friends, clients and all honest taxpayers."



Inland Revenue Statements of Practice and Extra-Statutory Concessions issued between 1/3/06 to 30/4/06.

**Extra Statutory Concessions**

There have been no Extra Statutory Concessions for this period

**Statements of Practice**

There have been no Statements of Practice for this period

*You can get the latest copies of SPs and ESCs by telephoning Chandra Chandramohan, on 020 7147 2363.*

## CONTENT

The content of Tax Bulletin gives the views of our technical specialists on particular issues. The information published is reported because it may be of interest to tax practitioners. Publication will be six times a year, and include a cumulative index issued on an annual basis.

- You can expect that interpretations of the law contained in the Bulletin will normally be applied in relevant cases, but this is subject to a number of qualifications.
- Particular cases may turn on their own facts, or context, and because every possible situation cannot be covered, there may be circumstances in which the interpretation given here will not apply.
- There may also be circumstances in which the Board would find it necessary to argue for a different interpretation in appeal proceedings.
- The Bulletin does not replace formal Statements of Practice.
- The Board's view of the law may change in the future. Readers will be notified of any changes in future editions.
- All the names used in examples and illustrations are imaginary and have no relation to real persons, living or dead, except by coincidence

Nothing in this Bulletin affects a taxpayer's right of appeal on any point.

Letters on any article appearing in Tax Bulletin should be sent to the Editor, Mrs Jayne Harler, Room 2c/06, 100 Parliament Street, London, SW1A 2BQ. Telephone 020 7147 2317. Fax 020 7147 0222. E-mail [jayne.harler@hmrc.gsi.gov.uk](mailto:jayne.harler@hmrc.gsi.gov.uk). We are sorry though that neither he nor our contributors will normally be able to enter into correspondence about Tax Bulletin or its contents.

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