



**Appeal number: UT/2019/0165**

***STAMP DUTY LAND TAX – whether market value provisions of section 53  
FA 2003 apply where consideration for land transaction an annuity – yes –  
appeal dismissed***

**UPPER TRIBUNAL  
TAX AND CHANCERY CHAMBER**

**M & M BUILDERS (NORFOLK) LTD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: MR JUSTICE TROWER  
JUDGE THOMAS SCOTT**

**Sitting in public by way of video hearing treated as taking place in London on 2  
and 3 February 2021**

**Julian Hickey, instructed by Levy & Levy, for the Appellant**

**Elizabeth Wilson, instructed by the General Counsel and Solicitor to HM  
Revenue and Customs, for the Respondents**

## DECISION

1. With the permission of the First-tier Tribunal (the “FTT”) M&M Builders Limited (“M&M”) appeals against the decision of the FTT reported at [2019] UKFTT 41 (TC) (the “Decision”).
2. The appeal is on a single ground, which is that the FTT erred in its decision regarding the application of sections 52 and 53 Finance Act 2003 (“FA 2003”) to the transaction concerned.
3. At stake in the appeal is the correct amount of Stamp Duty Land Tax (“SDLT”) payable on the land transaction described below.

### **Relevant facts**

4. The FTT’s relevant findings of fact can be summarised as follows:
  - (1) A residential property at 8 Old Railway Yard, Burnham (“ORY”) was purchased by M&M.
  - (2) The vendors were Mr and Mrs Flowerdew, who had control of M&M for the purposes of the legislation discussed below.
  - (3) There was no written contract for the purchase.
  - (4) The Land Registry transfer of title deed (Form TR1) dated 31 March 2016 showed M&M as transferee and Mr and Mrs Flowerdew as transferor.
  - (5) The box in the Form TR1 for “Consideration” showed nil as having been received by the transferor, but other receipts as being “an annuity of £3,000 per annum”.
  - (6) The FTT found that it was more likely than not that the consideration for the acquisition of ORY was an annuity contract between M&M and Mr and Mrs Flowerdew. We deal further below with the FTT’s precise findings in relation to the annuity.
  - (7) M&M delivered a land transaction return declaring that the effective date of the transaction was 31 March 2016. The consideration payable was stated to be £36,000, being 12 annuity payments of £3,000 each. This fell below the minimum value in respect of which SDLT was payable. In response to the question in the return whether the purchaser and vendor were connected the answer given was “No”<sup>1</sup>.
  - (8) The market value of ORY was £1.2 Million: [4] of the Decision.

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<sup>1</sup> A letter dated 25 January 2018 from M&M’s advisers to HMRC stated that an administrative error had been made in the return by the solicitors and that the vendor and purchaser were indeed connected: [9(18)] of the Decision.

(9) HMRC opened an enquiry into the return under paragraph 12 Schedule 10 FA 2003. On completion of that enquiry, on 16 April 2018 they issued a closure notice under paragraph 23 of Schedule 10, amending the return and assessing the land transaction to SDLT in the sum of £180,000. This was the SDLT due by reference to the market value of ORY. The issue of the closure notice was upheld by HMRC following a statutory review.

(10) M&M appealed against the decision to uphold the closure notice to the FTT.

### **The relevant legislation**

5. Unless stated otherwise, references below are to the provisions of FA 2003.

6. Section 42 imposes a charge to SDLT on “land transactions”. A “land transaction” is any acquisition of a “chargeable interest” in land (section 43(1)), which is widely defined in terms which would include any freehold or leasehold interest in land: section 48(1).

7. Section 50 states that provision as to the “chargeable consideration” for a transaction is made in Schedule 4. Paragraph 1 of Schedule 4 provides as follows:

#### **Money or money’s worth**

1(1) The chargeable consideration for a transaction is, except as otherwise expressly provided, any consideration in money or money's worth given for the subject-matter of the transaction, directly or indirectly, by the purchaser or a person connected with him.

8. The amount of SDLT chargeable on a chargeable transaction is found in various sections and schedules of FA 2003. Relevantly to this appeal, the general rule, in section 55, is that for residential property SDLT is charged at the rates set out in Table A of section 55, but for certain higher value dwellings a higher rate applies: section 55(1A) and paragraph 3 Schedule 4A.

9. The issue between the parties arises in relation to two further provisions, section 52 and section 53. M&M say that the chargeable consideration for the ORY transaction is determined by and solely by section 52, whereas HMRC say that because section 53 is engaged, notwithstanding section 52 the chargeable consideration cannot be less than the market value of ORY.

10. Section 52 provides as follows:

#### **Section 52**

(1) This section applies to so much of the chargeable consideration for a land transaction as consists of an annuity payable—

- (a) for life, or
- (b) in perpetuity, or
- (c) for an indefinite period, or

(d) for a definite period exceeding twelve years.

(2) For the purposes of this Part the consideration to be taken into account is limited to twelve years' annual payments.

(3) Where the amount payable varies, or may vary, from year to year, the twelve highest annual payments shall be taken. No account shall be taken for the purposes of this Schedule of any provision for adjustment of the amount payable in line with the retail price index.

(4) References in this section to annual payments are to payments in respect of each successive period of twelve months beginning with the effective date of the transaction.

(5) For the purposes of this section the amount or value of any payment shall be determined (if necessary) in accordance with section 51 (contingent, uncertain or unascertained consideration).

(6) References in this section to an annuity include any consideration (other than rent) that falls to be paid or provided periodically. References to payment shall be read accordingly.

(7) Where this section applies—

(a) section 80 (adjustment where contingency ceases or consideration is ascertained) does not apply, and

(b) no application may be made under section 90 (application to defer payment in case of contingent or uncertain consideration).

11. Where the purchaser is a company and the vendor is connected with that company, section 53 provides as follows:

### **Section 53**

(1) This section applies where the purchaser is a company and—

(a) the vendor is connected with the purchaser, or

(b) some or all of the consideration for the transaction consists of the issue or transfer of shares in a company with which the vendor is connected.

(1A) The chargeable consideration for the transaction shall be taken to be not less than—

(a) the market value of the subject-matter of the transaction as at the effective date of the transaction, and

(b) if the acquisition is the grant of a lease at a rent, that rent.

(2) Section 1122 of the Corporation Tax Act 2010 (connected persons) has effect for the purposes of this section.

(3) In this section—

“company” means any body corporate;

“shares” includes stock and the reference to shares in a company includes a reference to securities issued by a company.

(4) Where this section applies paragraph 1 of Schedule 3 (exemption of transactions for which there is no chargeable consideration) does not apply.

But this section has effect subject to any other provision affording exemption or relief from stamp duty land tax.

(5) This section is subject to the exceptions provided for in section 54.

12. It was common ground that M&M and Mr and Mrs Flowerdew were connected within the meaning of section 53(1)(a).

13. Section 53 is stated by section 53(5) to be subject to the exceptions provided for in section 54. Although not relevant to the facts of this appeal, for completeness section 54 provides as follows:

#### **Section 54**

(1) Section 53 (chargeable consideration: transaction with connected company) does not apply in the following cases.

In the following provisions “the company” means the company that is the purchaser in relation to the transaction in question.

(2) Case 1 is where immediately after the transaction the company holds the property as trustee in the course of a business carried on by it that consists of or includes the management of trusts.

(3) Case 2 is where—

(a) immediately after the transaction the company holds the property as trustee, and

(b) the vendor is connected with the company only because of section 1122(6) of the Corporation Tax Act 2010.

(4) Case 3 is where—

(a) the vendor is a company and the transaction is, or is part of, a distribution of the assets of that company (whether or not in connection with its winding up), and

(b) it is not the case that—

(i) the subject-matter of the transaction, or

(ii) an interest from which that interest is derived,

has, within the period of three years immediately preceding the effective date of the transaction, been the subject of a transaction in respect of which group relief was claimed by the vendor.

#### **The FTT’s decision**

14. In addition to the issue in this appeal, the FTT also considered two alternative arguments raised by HMRC. The first was that the ORY transaction was assessable to SDLT by reference to another transaction pursuant to which M&M transferred a second property to Mr and Mrs Flowerdew, with the result that it represented an “exchange” for SDLT purposes, incurring a liability to SDLT under section 47 FA

2003 on the market value of ORY. The second was that SDLT was due on the market value of ORY under section 75A FA 2003.

15. The FTT found in favour of M&M on both of these arguments, and HMRC did not seek to challenge those findings in its Respondents' Notice. We therefore make no further comment on those issues in this decision.

16. The FTT rejected an application made at the hearing by M&M, and objected to by HMRC, to adjourn the hearing in order for M&M to obtain further evidence relating to the annuity contract. It is notable that the FTT were not provided with a copy of the annuity contract. The background to the application appears to have been the FTT's reluctance to accept the assertion by Counsel for M&M (who were not represented below as they were before us by Mr Hickey) as to the value of the annuity. Counsel had asserted that the annuity in fact represented the market value of ORY ie its value was £1.2 million: [39]-[40]. This is reflected in the following findings, at [11] and [13]:

11. The Tribunal were informed that there was no written contract for the sale of either property, the Land Registry TR1 documents being the only record of transfer. It is asserted that the consideration for the ORY Transaction was by way of an annuity contract providing for the payment of £3,000 in perpetuity; that sum potentially subject to an annual RPI increase and an encashment value of £1,200,000. The Appellant's representative purported to have a draft copy of the annuity contract but had not included it on their list of document. The Tribunal were not therefore provided with a copy of the contract. The Tribunal is unable therefore to find any facts as they relate to the annuity contract nor reach any conclusion as to its legal efficacy.

...

13. There is no evidence that the annuity payments have been paid either by the Appellant or by the Flowerdews.

17. However, the statement that the FTT was unable to find any facts relating to the annuity contract or reach any conclusion as to its legal efficacy must be understood in light of its conclusions later in the decision. In dismissing HMRC's argument that the exchange provisions of section 47 applied, the FTT concluded as follows, at [70]:

... after some considerable deliberation the Tribunal has concluded, on the basis of the Return, the Second Return and the TR1 in respect of the ORY that it is more likely than not that the obligations arising under the ORY Transaction were that the chargeable interest was transferred in consideration for the benefit of the related annuity...

18. The FTT reiterated this conclusion in its decision on the issue in this appeal, contained at [72]-[80], as follows:

**Issue 2 – relationship between sections 52 and 53 FA 2003**

72. The Tribunal considers that the relationship between section 52 and 53 FA 2003 can be readily determined by reference to an approach

which deals firstly with the determination/identification of chargeable consideration and then its valuation.

73. Section 50 FA 2003 requires that the chargeable consideration be determined by reference to Schedule 4 FA 2003. Paragraph 1 Schedule 4 FA 2003 provides “the chargeable consideration for a transaction is, except as otherwise provided, any consideration in money or money’s worth given for the subject matter of the transaction”. Paragraphs 2 – 17 do not apply to the ORY Transaction.

74. The Tribunal has determined, in connection with issue 1 (and in the Appellant’s favour) that the consideration under the ORY Transaction is the annuity contract entered between connected parties.

75. Section 53 applies where the purchaser and the vendor are connected and provides that the chargeable consideration *shall* be taken to be not less than the market value of the subject matter of the transaction.

76. The subject matter of the ORY Transaction is the property and not the money’s worth consideration payable for that property. The market value of the property is agreed as £1,200,000 with the consequence that that sum *shall* be taken as the chargeable consideration. No question of valuation of the annuity therefore arises.

77. In the Tribunal’s view s52 FA 2003 applies to determine the value of an annuity where the annuity represents the basis by reference to which the chargeable consideration is to be valued and applies to so much of the consideration as is represented by the annuity (i.e. where there is other consideration in addition to the annuity). In the present case there is no need to value the annuity because it does not form the basis by reference to which the chargeable consideration is to be valued.

78. Such an interpretation is entirely consistent with the structure of the provisions of Part 4 and the relevant Schedules of FA 2003 and with the obvious and unambiguous purpose of s53 FA 2003 to eliminate the possible influence of connection as between vendor and purchaser in respect of determining and valuing chargeable consideration.

79. On the basis of the interpretation of the provisions applied by the Tribunal the unsubstantiated assertion by the Appellant that the annuity/bond was market value consideration becomes an irrelevance as the annuity in and of itself is not used as the basis of valuation of the chargeable consideration in a connected party land transaction – the property itself is the sole basis of valuation.

80. As is apparent HMRC’s argument that s53 FA 2003 operates in some way so as to top up the s52 FA 2003 valuation is not accepted by the Tribunal. That construction does not, in the Tribunal’s view, fit with the language or structure of the legislation and, in any event, is unnecessary.

## ***Hannah***

19. On the second day of the hearing of this appeal, the parties provided the Tribunal with a copy of the decision of the Upper Tribunal in *David Hannah and Carla Hodgson v HMRC* [2021] UKUT 22 (TCC), released on 2 February 2021 (“*Hannah*”). Since that case also concerned the SDLT consequences of a land transaction and an annuity, we asked counsel whether they wished to make any submissions in relation to the decision. The decision may not have come as a complete surprise to Ms Wilson and Mr Hickey, since they also represented HMRC and the taxpayers respectively in *Hannah*. In any event, other than referring us helpfully to the passages which described section 52, both counsel agreed that the decision shed no direct light on the issue in this appeal, since it turned on the correct analysis of the particular facts in question, which were materially different from those in this appeal. Nevertheless, we refer to it briefly below.

### **Arguments of the parties**

20. For M&M, Mr Hickey’s central proposition was that where the chargeable consideration for a land transfer is an annuity of the type described in section 52(1), section 52 applies to the exclusion of section 53. It limits the consideration liable to SDLT to the twelve highest annual payments under the annuity contract in all circumstances, including where the purchaser is a company and the vendor is connected with it.

21. Mr Hickey raised the following points in support of his position:

- (1) It is necessary to apply a purposive construction to section 52, and its clear purpose is to impose a defined SDLT charge, with no subsequent adjustment, where an annuity is the consideration. The section is specific and requires a statutory construction which focuses solely on the specific transaction, namely a sale for an annuity.
- (2) The fact that section 52(7) excludes sections 80 and 90 FA 2003 shows that section 52 is intended to be the exclusive determinant of SDLT liability where it applies.
- (3) Section 52 is not expressed to be limited in its operation by section 53.
- (4) Section 53 may be overridden, for instance by section 54, paragraph 1 of Schedule 3 and the specific provisions applying to partnerships.
- (5) Section 52 largely reflected the previous stamp duty rules applicable to annuities for life, and the FTT failed to take this legislative history into account.
- (6) The FTT erred in refusing to admit as evidence of the policy and context of section 52 the Explanatory Notes in relation to the section, and the relevant Parliamentary statements. They showed the purpose of section 52 and supported the taxpayer’s case.
- (7) In reaching its decision the FTT misunderstood the concept and use of an annuity. The FTT “failed to comprehend as a matter of law that an



annuity is not an underpayment or lack of payment but simply a method of payment to which Parliament has determined that the chargeable consideration is fixed at 12 annual amounts”.

(8) The construction of sections 52 and 53 put forward by M&M does not create a charter for abuse. The rule in section 75A deals with abusive avoidance of SDLT. In any event, the well-established *Ramsay* doctrine of statutory construction means that a court could find in a tax avoidance case that the annuity was not an annuity for the purposes of section 52.

22. For HMRC, Ms Wilson submitted that the FTT had reached the right decision, and its reasons, while succinctly expressed, were correct. She also argued that the FTT’s conclusion was consistent with the different functions and purposes of sections 52 and 53. In contrast, the construction put forward by M&M would create a ready means of manipulating SDLT liability and avoiding section 53 simply through the adoption of an annuity as consideration for a land transfer.

### **Discussion**

23. The appeal raises a single question of statutory construction. Where, as here, the facts relating to a land transfer fall within section 53(1), is section 53 prevented from applying because the consideration for the transfer was an annuity within section 52(1) and the chargeable consideration must therefore be limited to twelve annual payments?

24. There is no specific provision in the relevant legislation which answers this question<sup>2</sup>.

25. Mr Hickey referred to the approach taken by the Court of Appeal in construing two SDLT provisions which produced different outcomes and were both in principle capable of applying in *HMRC v DV3 RS Limited Partnership* [2013] EWCA Civ 907. Lewison LJ stated as follows, at [16]:

The taxpayer argues that the special provisions of Schedule 15 override the general provisions of sections 44 and 45. I do not consider that this correctly characterises the nature of the provisions in question. Although it may be said that Schedule 15 does deal with special situations, namely dealings involving partnerships, so also does section 45. The special situation with which that section deals is sub-sales and similar transactions. So both relevant provisions deal with special situations, and there is no reason to prefer one over the other. I agree with the Upper Tribunal's conclusion at [44] that:

"... schedule 15 should be read, construed and applied in the context of the SDLT legislation as a whole, and should not be treated as if it formed some sort of legislative island all by itself."

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<sup>2</sup> As discussed below, before the FTT it was accepted by the taxpayer that s52 is not a “provision affording exemption or relief” from SDLT within s53(4) and Mr Hickey did not seek to resile from that position.

26. The Court of Appeal in *DV3* endorsed the observations of the Court of Appeal in *The Pollen Estate Trustee Company Ltd v HMRC* [2013] EWCA Civ 753, emphasising that in addressing the necessary question of construction where two applicable provisions produce conflicting results, the legislation should be construed purposively. As is well established, this means that in seeking the purpose of a statutory provision, one is not confined to a literal interpretation of the words, but must have regard to the context and scheme of the relevant Act as a whole: *Barclays Mercantile Business Finance Ltd v Mawson* [2005] 1 AC 684, at [29].

27. We therefore begin by considering at a conceptual level the purpose and function of each of sections 52 and 53.

28. Where the consideration for a land transfer consists, in whole or in part, of an annuity, without specific provisions it would be necessary to calculate the money or money's worth liable to SDLT, taking into account various rules such as those applying to contingencies and uncertain consideration (sections 51, 80 and 90). The longer the period or potential period of the annuity the more administratively cumbersome and unwieldy that would be.

29. Section 52 is designed to alleviate these practical problems by laying down specific computational rules. Those rules apply to life annuities, annuities in perpetuity or for an indefinite period and annuities for a definite period exceeding twelve years. As regards so much of the chargeable consideration for a land transfer as consists of such an annuity, the consideration to be taken into account is limited to twelve years' annual payments<sup>3</sup>. Section 80, which permits a subsequent adjustment where a contingency in relation to consideration ceases, is disapplied, as is the right under section 90 to defer SDLT payments in respect of contingent or uncertain consideration.

30. The purpose of the section is therefore to provide a simple, workable formula for computing as at the time of transfer the chargeable consideration for SDLT purposes in relation to the long-term annuity element of any consideration for a land transfer. It is a *computational* provision.

31. Section 53 applies where the purchaser of the land is a company and the vendor is connected with the company<sup>4</sup> or the consideration includes shares in the company. It provides that in such a situation the chargeable consideration shall be taken to be not less than the market value of the property<sup>5</sup>.

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<sup>3</sup> If the annuity payment may vary the twelve highest annual payments are taken: s52(3).

<sup>4</sup> As defined by s1122 Corporation Tax Act 2010: s53(2).

<sup>5</sup> In this decision we refer for ease to the market value of the property. In fact, s53(1A) provides a separate rule for the grant of a lease at a rent.

32. We agree with the FTT’s assessment that “the obvious and unambiguous purpose of [section 53 is] to eliminate the possible influence of connection as between vendor and purchaser in respect of determining and valuing chargeable consideration”<sup>6</sup>.

33. Parliament has not chosen to impose a minimum chargeable consideration of the land’s market value in every situation where such influence could arise by virtue of vendor and purchaser being connected persons. It has chosen to target a specific situation, being one which could arise, for example, where an attempt was made to minimise or avoid SDLT on a future transfer of the land by “enveloping” the land in a company controlled by the vendor for a minimal or no consideration<sup>7</sup>.

34. Section 53 is therefore an *anti-avoidance* provision.

35. In determining whether section 53 applies where the consideration is an annuity within section 52, we will deal first with three contextual points raised by Mr Hickey.

36. First, Mr Hickey argued that the FTT should have considered an extract from *Hansard* “which identifies the intention of Parliament that s52 is to apply for all purposes in the calculation of chargeable consideration”. However, even if the statement relied on were admissible under the rule in *Pepper v Hart*<sup>8</sup>, which would require us to conclude that the sections were ambiguous or obscure or led to an absurdity, the relevant passages in our view do no more than confirm the legislative purpose of section 52 as we have described it. They do not touch on whether section 53 can apply where the consideration is an annuity within section 52. In response to a question on clause 52, the Chief Secretary made the following statements:

The hon. Gentleman asks why we have chosen to treat annuities in such a way. Payments will continue for a very long period, or even forever. It is impractical for payments to be made by instalment, or for provisions to be made for an adjustment that could come many years after the original transaction. The SDLT treatment will be similar to that already familiar to Committee members in existing stamp duty but it is, if anything, more generous...

The rules provide a simple way to determine how much SDLT to pay at the outset. Our understanding is that the main users of the provision will be large life assurance companies. They appreciate such a simple, fixed rule, which can be administered efficiently for high volumes of transactions...

37. We were also referred to the Explanatory Notes in relation to sections 52 and 53. These may be taken into account as an aid to construction as described in *Christianuyi*

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<sup>6</sup> Decision [78].

<sup>7</sup> Since the enactment of section 53 many provisions, including those in Schedule 4A FA 2003, have been introduced to deal with the tax issues arising from enveloping.

<sup>8</sup> [1992] UKHL 3.

*Ltd v HMRC* [2018] UKUT 10 (TCC)<sup>9</sup>, but again they said nothing relevant to the interaction of sections 52 and 53.

38. Second, it was asserted that the FTT had failed to appreciate the contextual background to the use of annuities, namely that section 52 was carried over from the previous rules applying to stamp duty<sup>10</sup>. We agree that the previous stamp duty rules applied a concept similar to elements of section 52. However, there is nothing in those previous rules, or the law applicable to stamp duty, which sheds any light on the issue in this appeal, which is the applicability of section 53 where the consideration is an annuity.

39. Third, Mr Hickey submitted that it was evident from the FTT judgment that the FTT did not understand the concept and use of annuities. In particular, his skeleton argument stated that:

...the Tribunal failed to comprehend as a matter of law that an annuity is not an underpayment or lack of payment but simply a method of payment to which Parliament has determined that the chargeable consideration is fixed at 12 annual amounts.

40. We find no indication in the Decision that the FTT failed to understand the concept or use of annuities. Insofar as the assertion implies that consideration in the form of an annuity cannot, as a matter of law, be an underpayment, that assumes too much. We consider that the FTT was correct to conclude that for SDLT purposes the market value of the annuity in this case was in itself irrelevant. However, there is nothing inherent in paying consideration wholly or partly in the form of an annuity which means that that consideration cannot be less, and even materially less, than the market value of the transferred land.

41. We turn now to the question of statutory construction in this appeal, looking in detail at the wording of sections 52 and 53.

42. Mr Hickey made the following points as to the language of the provisions:

- (1) There is nothing in the wording of section 52 to state that its application is excluded or limited where the factual situation in section 53 exists. Section 52(2) applies “for the purposes” of Part 4 FA 2003.
- (2) By contrast, section 53 is expressly limited in its application.
- (3) The disapplication by section 52(7) of the provisions in sections 80 and 90 supports the proposition that section 52 is a free-standing rule which excludes other provisions regarding consideration.
- (4) Section 53 is not stated to override section 52.

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<sup>9</sup> Paragraph [25] of that decision.

<sup>10</sup> Stamp Act 1891 s56. The stamp duty limitation was expressed by reference to a period of 20 years rather than 12.

(5) Section 53 is not universally applicable. It is overridden by the exclusions set out in section 54, by the provisions listed in paragraph 1 of Schedule 3 FA 2003 and by the rules applicable where partnerships incorporate a business.

43. In contrast, the following points as to the language of the sections can be argued to support HMRC's construction:

(1) There is nothing in either section which states or has the effect that section 53 does not apply where the consideration is an annuity within section 52.

(2) The two sections use contrasting language to delineate their scope, and the language used in respect of section 53 is broader. Section 53 applies "where" the factual situation in section 53(1) arises, and states that the chargeable consideration "shall be taken to be not less than" the market value of the land. Section 52 only applies to "so much of" the chargeable consideration as consists of an annuity, and states that the consideration "to be taken into account" is limited to twelve annual payments.

(3) Section 53(5) states explicitly which exceptions section 53 is subject to, and section 52 is not one of them.

(4) It is stated explicitly in section 53(4) that section 53 is subject to "any other provision affording exemption or relief" from SDLT, but this does not extend to section 52.

44. We consider that the FTT was correct to conclude that section 53 can apply where the consideration is or includes an annuity falling within section 52. We would reach this conclusion purely on the basis of the wording of the two provisions. However, the position becomes even clearer when a purposive construction is applied.

45. Mr Hickey effectively asks us to approach the question through the lens of section 52. He says that section 52 applies regardless of any other SDLT provisions, and that a contrary construction would "drive a coach and horses through section 52". However, as the passage from *DV3* referred to by Mr Hickey makes clear, that is the wrong approach. Both sections, and the relationship between them, must be considered and construed in the context of the SDLT code as a whole, and section 52 is not to be treated as what the Upper Tribunal in *DV3* described as "some sort of legislative island all by itself".

46. The issue in this appeal turns on the way in which the two sections fit together. Where the consideration is an annuity such that section 52 is engaged, can section 53 nevertheless apply? A purposive construction requires us to take into account that section 52 is a computational provision and section 53 is an anti-avoidance provision.

47. In relation to the wording of the two sections, we are not persuaded by the arguments of Mr Hickey. We do not agree that section 53 is limited while section 52 is not; each section applies in the factual situations described within it. The disapplication in section 52 of sections 80 and 90 does not carry any implication that section 52 applies to the exclusion of all other SDLT rules. It is simply a logical

consequence of the purpose of the section, which is to simplify the SDLT calculation and avoid subsequent adjustments.

48. We agree that section 53 does not apply in every situation. It is subject by section 53(5) to the exclusions in section 54, and HMRC accept that the provisions of paragraph 18 Schedule 15 FA 2003 take precedence over section 53. Paragraph 18, to which we were taken by Mr Hickey, lays down a specific formula which applies to calculate the chargeable consideration where (broadly) land is transferred from a partnership to a partner or a company connected with a partner. HMRC accept that because it is a more tailored rule than section 53, where both could apply paragraph 18 takes precedence. We do not consider that this, or the exclusions in section 54, informs the issue before us.

49. Section 52 applies to “so much of the chargeable consideration” as consists of an annuity of the stated type. Where it applies it limits the consideration “to be taken into account” to twelve annual payments. Turning then to section 53, it is critical to note that where it applies it does not operate simply by substituting the market value of the transferred property for the actual consideration given. Rather, it provides that the chargeable consideration “shall be taken to be not less than” the market value of the property.

50. So, section 53 requires a comparison of two calculations. The first is the chargeable consideration calculated under all the applicable provisions of the SDLT code, ignoring section 53. The second is the market value of the property. The effect of section 53(1A) is that the chargeable consideration is taken to be the greater of those two figures.

51. In considering the relationship between sections 52 and 53, this mechanism means, as Ms Wilson put it, that section 53 needs section 52. That is because it is necessary to compare the market value of the property and the chargeable consideration, taking into account that as regards so much of the consideration as consists of an annuity, the computational provisions of section 52 will apply to limit the consideration to twelve annual payments.

52. Under this construction, the computational purpose of section 52 is not frustrated because section 52 applies to calculate the amount “to be taken into account” in the comparison required by section 53. The anti-avoidance purpose of section 53 is not frustrated because it applies a market value minimum in the factual situation intended and its application is not excluded by the choice of a particular form of consideration. The result is that both provisions apply, with the result found by the FTT.

53. In terms of the drafting of section 53, it is apparent that where the draftsman intends the application of the section to be limited, this is achieved in one of two ways. The relevant exclusions may be set out specifically, as in section 54 as applied by section 53(5). Alternatively, the relevant exclusions may be described generically: section 53(4) provides that section 53 has effect “subject to any other provision affording exemption or relief from stamp duty land tax”.

54. A limitation to section 53 arising by reference to section 52 falls within neither category. Before the FTT, it was accepted by both parties that section 52 is not a provision “affording exemption or relief” from SDLT: see [50] and [60] of the Decision. In *Hannah*, the Upper Tribunal did not have to decide this question, but commented in relation to section 75A that “we doubt if s52 could be considered to be a “relief” for the purposes of s75C”<sup>11</sup>.

55. Mr Hickey confirmed that he did not seek to resile from the position taken before the FTT that section 52 is not an “exemption or relief”. We consider that he was right to do so. Exemptions and reliefs in the SDLT code are framed very differently from section 52, and, moreover, the “twelve annual payments” calculation could, depending on the facts, result in more SDLT being paid than a calculation under normal SDLT principles<sup>12</sup>.

56. We consider that the construction proposed by M&M would frustrate the clear purpose of section 53. There is no good reason why the choice of a particular form of consideration which has its own computational rule should produce this result—bearing in mind, as we have noted, that section 52 is not to be construed as some sort of legislative island all by itself.

57. Mr Hickey sought to counter this concern by arguing that if an annuity was used in any case in an abusive fashion, then that could be counteracted either under section 75A or by the application of the *Ramsay* doctrine. We do not accept that this is an answer to the concern. Section 75A may or may not apply to a particular land transfer depending on the detailed facts. Indeed, in this appeal the FTT determined that section 75A was not applicable, and HMRC have not sought by Respondents’ Notice or cross-appeal to challenge that finding. As to the application of *Ramsay*, Mr Hickey suggested that if an annuity was deliberately used to avoid or minimise SDLT, the court could simply determine that it was not an “annuity” at all under normal principles of statutory construction. That is in our opinion a material misreading of the *Ramsay* principle. It effectively harks back to the discredited view succinctly described by Lord Hoffman in *MacNiven v Westmoreland Investments Ltd* [2001] UKHL 6 as follows (at [49]):

In the first flush of victory after the *Ramsay*, *Burmah* and *Furniss* cases, there was a tendency on the part of the Inland Revenue to treat Lord Brightman's words [in *Furniss v Dawson*] as if they were a broad spectrum antibiotic which killed off all tax avoidance schemes, whatever the tax and whatever the relevant statutory provisions.

58. It is also of relevance that the application of section 53 is not in any event restricted to situations where an anti-avoidance motive is present.

59. In conclusion, we consider that the FTT reached the right decision as to the application of section 53.

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<sup>11</sup> At [92] of *Hannah*.

<sup>12</sup> One example would be an annuity for life where the individual over whom the annuity was written dies soon after the land transfer but section 52(7) precludes any subsequent adjustment.

**Disposition**

60. The appeal is dismissed.

Signed on Original

**MR JUSTICE TROWER  
JUDGE THOMAS SCOTT**

**RELEASE DATE: 5 May 2021**