Neutral Citation: **[2025] UKUT 00028 (TCC)**

Case Number: UT/2023/000055

UPPER TRIBUNAL
(Tax and Chancery Chamber)

Rolls Building, London

INCOME TAX – Enterprise Investment Scheme – s175A Income Tax Act 2007 – whether FTT erred in law in holding there were disqualifying arrangements - no – Coconut Animated Island Ltd v HMRC [2024] UKUT 75 (TCC) *followed - appeal dismissed*

Heard on: 17 October 2024
Judgment date: 23 January 2025

Before

JUDGE SWAMI RAGHAVAN
JUDGE NICHOLAS ALEKSANDER

Between

HOOPLA ANIMATION LIMITED
(FORMERLY KNOWN AS DAISY BOO AND MONKEY TOO LIMITED)

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Harriet Brown and Rebecca Sheldon, counsel, instructed pro bono

For the Respondents: Ruth Hughes, Tomos Rees, counsel, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

DECISION

INTRODUCTION

1. The appellant ("**Hoopla**") is a company that was incorporated to exploit IP in a pre-school animation project "*Daisy Boo & Monkey Too*" which later became "*Daisy & Ollie*". This appeal concerns whether certain shares issued in 2018 raising £1,323,340 were eligible as Enterprise Investment Scheme ("**EIS"**) shares under Part 5 of the Income Tax Act ("**ITA 2007**"). EIS schemes are one of a number of legislatively backed investment incentive schemes (another example being Seed Enterprise Investment Schemes ("**SEIS**")) schemes which offer tax relief to individual investors buying shares in a company. In order to be eligible for relief the shares must meet various conditions. HMRC considered the relevant shares issued by Hoopla did not meet the relevant conditions for a number of reasons, including, as is relevant to the current appeal, that the arrangements for issuing the shares were "disqualifying arrangements" as defined in s178A ITA 2007 because "Condition A", as referred to in that provision, was not met. Condition A stipulated arrangements were disqualified if :

> "(3) …as a (direct or indirect) result of the money raised by the issue of the relevant shares being spent [as required by section 175], an amount representing the whole or the majority of the amount raised is, in the course of the arrangements, paid **to or for the benefit of** a **relevant person** or relevant persons." (emphasis added)

2. The term "relevant person" is defined in s178A(6) ITA 2007 as "a person who is a **party to** the arrangements or a person connected with such a party." (emphasis added). Section 257(1) ITA 2007 defines "arrangements" as including "any scheme, agreement, understanding, transaction or series of transactions (whether or not legally enforceable)". The FTT's decision in *Hoopla Animation v HMRC* [2023] UKFTT 00024 (TC) (the "**FTT Decision**") held the relevant shares breached Condition A and accordingly dismissed the appeal.

3. With the permission of the FTT, Hoopla appeals to the Upper Tribunal ("**UT**") on two main issues. Hoopla argues the FTT misinterpreted and misapplied s178A: first in relation to the words "party to" in the definition of "relevant person", and second regarding the concept of paying an amount "to or for the benefit of" the relevant person not extending to amounts that were received pursuant to arm's length commercial subcontracting arrangements. Both these issues were considered by the UT earlier this year in *Coconut Animated Island Ltd v HMRC* [2024] UKUT 75 (TCC) ("***Coconut UT***") in relation to the materially similar SEIS provisions. As we will explain we reject Hoopla's arguments that *Coconut UT* was wrongly decided or that it was not on point. The FTT did not have the benefit of *Coconut UT* but our conclusion is the FTT nevertheless applied the correct legal principles to the case before it and that Hoopla's appeal should be dismissed.

4. We were grateful for the submissions of both parties' counsel and in particular to Ms Brown and Ms Sheldon for agreeing to act *pro bono* for the appellant.

Background

5. Hoopla was first incorporated with the company name CHF Project 5 Limited on 3 September 2014 changing its name to Daisy Boo and Monkey Too Limited on 15 December 2014 and then to its current name. Its original shareholder was CHF Media Group Limited, parent company of a group of companies (the "**CHF Group**"). The Group operated a fund through which third party investors were invited to subscribe for shares in special purpose investee companies each of which held the IP rights to a particular concept or show identified by a Creative Commercial Committee ("**the Committee**"), made up of employees from CHF Entertainment Limited ("**Entertainment**"), a member of the CHF Group.

6. The Committee considered pitches from creators of animated children's entertainment content including from other Entertainment employees. One such employee was Helen Brown. She worked as a series producer for Entertainment and had worked up a proposal for a pre-school animation ("*Daisy & Ollie*"). Following an initial expression of support from the Committee, she entered into an agreement assigning current and future rights to intellectual property in the programme concept to Hoopla.

7. On 1 November 2016, Hoopla appointed Entertainment as its broadcast representative licensing Entertainment to exploit, in all forms of media and language, 52 episodes, by the entering into (subject to Hoopla's approval) agreements with third parties in return for a percentage commission of the exploitation of rights revenue.

8. The same day Hoopla entered into a production services agreement ("**PSA**") with Entertainment. In return for consideration of the sum set out in the agreed budget, Entertainment was appointed to deliver production services in connection with the production and delivery of 52 episodes. The budget, totalling £3,944,669 included all aspects of production and overheads. The FTT noted (at [86]) Helen Brown's acceptance that this was a comprehensive agreement "which outsourced the whole of the production to Entertainment thereby avoiding the need to take on production employees or contractors…".

9. Between March 2015 and 13 March 2018 Hoopla raised funds which HMRC accepted qualified for SEIS and then EIS. The current appeal relates however to shares issued in the period of 19 March 2018 to 19 October 2018 raising £1,130,907.40.

10. As regards whether the arrangements were disqualifying because Condition A was breached, the FTT noted (at [200]) that Hoopla had never challenged that there were arrangements and noted (at [201]) that it was accepted that the arrangements included the PSA and broadcast representative agreement which agreements Entertainment was a counterparty to. It considered Entertainment was a relevant person (being party to the PSA and therefore a party to the arrangements). It concluded that under the PSA, money raised by the share issue was "paid to or for the benefit" of a relevant person (Entertainment). The FTT accordingly held Condition A was satisfied and the arrangements were disqualifying (it being agreed the other constituent elements of the disqualification condition such as the arrangements having the requisite obtaining of tax relief purpose was satisfied). The FTT therefore dismissed Hoopla's appeal.

GROUNDS OF APPEAL BY HOOPLA

11. Hoopla now advance the following grounds in respect of which it says the FTT erred in law:

(1) That neither Entertainment nor any other member of the CHF Group was "party to the arrangements".

(2) The FTT did not attempt to define what being a "party" to the arrangements meant.

(3) The payments to Entertainment in return for provision of services, as arm's length commercial sub-contracting could not be amounts which "in the course of arrangements, [were] paid to or for the benefit of" Entertainment.

12. While, as identified by HMRC, Hoopla's grounds of appeal raise various points that were not argued before the FTT and as new arguments should only be permitted in our discretion, we note they principally concern points of statutory interpretation. We consider that, despite HMRC's objection, it is in the interests of justice that Hoopla be allowed to raise them before us. We agree however with HMRC that Ground 2 is most conveniently dealt with in conjunction with Ground 1.

Grounds 1 and 2 – interpretation and application of "party to"

13. These grounds centre on the meaning of the words "party to" which operates within the following "disqualifying arrangements" provision, s178A ITA 2007 which provides so far as relevant:

> (1) The relevant shares must not be issued, nor any money raised by the issue employed, in consequence or anticipation of, or otherwise in connection with, disqualifying arrangements.
>
> (2) Arrangements are "disqualifying arrangements" if—
>
> (a) the main purpose, or one of the main purposes, of the arrangements is to secure—
>
> (i) that a qualifying business activity is or will be carried on by the issuing company or a qualifying 90% subsidiary of that company, and
>
> (ii) that one or more persons (whether or not including any party to the arrangements) may obtain relevant tax relief in respect of shares issued by the issuing company which raise money for the purposes of that activity or that such shares may comprise part of the qualifying holdings of a VCT,
>
> (b) that activity is the relevant qualifying business activity, and
>
> (c) one or both of conditions A and B are met.
>
> (3) Condition A is that, as a (direct or indirect) result of the money raised by the issue of the relevant shares being employed as required by section 175, an amount representing the whole or the majority of the amount raised is, in the course of the arrangements, paid to or for the benefit of a relevant person or relevant persons….
>
> …
>
> (6) In this section… "relevant person" means a person who is a party to the arrangements or a person connected with such a party"

14. There is no dispute Hoopla satisfied the purpose test set out in s178A(2)(a).

15. Hoopla's overall argument is that the FTT (and the UT in *Coconut*) failed to understand the words "party to" the arrangements spoke to an *additional* requirement to the presence of "arrangements" and that such requirement should in the light of the scheme not be interpreted too broadly so as to pull in more arrangements and participants into the scope of the disqualifying arrangements. Hoopla accepts that the Upper Tribunal in *Coconut* has considered these provisions, but submits it overlooked the relevant statutory and factual context. To that extent Hoopla argues we should depart from the earlier UT's analysis.

16. *Coconut UT* addressed various points of interpretation in relation to Condition A including the meaning of "party to" in relation to a similar special purpose vehicle that had been set up to exploit IP in a children's show. It is convenient to look at that decision first to understand Hoopla's arguments on statutory interpretation and why it is said we should depart from it. (The FTT did not have benefit of this, but was able to refer to the decision of the FTT[1] ("***Coconut FTT***") which was subsequently upheld on appeal by *Coconut UT*.)

Coconut UT

17. The facts of *Coconut UT* also concerned the CHF Group but a different SPV for a different pre-school animation concept (Coconut Bay). The SPV, Coconut Animated Island Limited, was assigned IP rights in the show by the show's originator and the company entered into a production services

[1] *Coconut Animated Island Ltd v HMRC* [2022] UKFTT 303 (TC)

agreement with Entertainment under which Entertainment agreed to provide production services in return for payments. HMRC refused authorisation of the issue of compliance certificates in relation to certain issues by the SPV of B ordinary shares. The question arose there as to whether Entertainment was a "party to" the arrangements. (While the case concerned SEIS shares both parties accept the relevant legislative provisions were materially the same as for EIS shares.)

18. Many of the arguments made corresponded in large part to the arguments made before us under Grounds 1 and 2, namely that the natural meaning of "party" was analogous to a party to a contract, and that while Entertainment and others in the CHF Group were "involved" in the arrangements they were not "party" to them. It was also argued the FTT erred in not attempting to define what being a "party" to arrangements meant, instead subsuming that question into the broader question of the meaning of "arrangements".

19. The UT identified (at [43]) the two issues for it to resolve as, first the scope of any "arrangements", and second whether Entertainment was a "party" to the arrangements. The UT noted authority from other areas (the settlement provisions) in *Crossland v Hawkins* [1961] Ch 537 regarding the need for the arrangements to have "sufficient unity" but also (from *Jones v Garnett* [2007] UKHL 35 (at [50]) that the scope of arrangements could "…only be answered by reference to the context in which the term [was] used and the facts and circumstances of the particular case". The UT considered the arrangements entailed having a particular purpose describing that as a "plan".

20. Applying that to the facts of the case before it, the UT considered the plan was that as set out in the Information Memorandum to the investors and encompassed the incorporation of the SPV, issue of shares to a nominee company to hold them for the benefit of investors, and the acquisition of the IP rights. The UT went on to reject the appellant's case there that the PSA was not part of that plan noting the FTT's finding in *Coconut FTT* that at the time of the issue of the shares there was an oral agreement which had formed the basis for the PSA (the UT had earlier concluded the arrangement had to exist or be in contemplation at the time the relevant shares were issued).

21. As for its analysis of the words "party to", the UT took a similar contextual approach to that that it had taken in respect of "arrangements" noting (at [53]) that:

> "…whether a person should be regarded as a 'party' to the arrangements should be determined by reference to the context in which the term is used and the facts and circumstances of the case, which include the arrangements in the form that we have described above."

22. Responding to the appellant's submission that a person had to be more than just involved and that the person needed to have some control the UT said (at [54]):

> "We can understand that, in an appropriate case, a distinction might need to be made between a person who was directly involved in the making of the arrangements – that is, in formulating the plan – and a person who was more peripherally involved – such as a person who becomes involved in a transaction that is contemplated by the arrangements, but played no part in devising them.
>
> For example, if arrangements involved the possibility that, at some stage in the future, an asset might be sold to a third party or an agreement might be reached with a third-party for the provision of services, the third-party purchaser or supplier, who is unaware of the purpose of the arrangements, might not be regarded as a party to arrangements at the time that they are planned and first implemented. However, that is not the case here. We do not need to decide whether a person in such circumstances would be a party or not and we do not do so."

23. The UT continued (at [55]):

> "We think, however, that Ms Brown's approach [*Ms Brown also appeared for the taxpayer in Coconut UT*] is too narrow. The question as to who should be regarded as a 'party' to the arrangements has to be determined by reference to the context. In the context of section 257CF, as we have described, the relevant arrangements must possess two features: they have to exist or to be in contemplation at the time at which the shares are issued or when the proceeds of the share issue are spent; and they have to have a particular purpose. In our view, a person can be regarded as a 'party' to arrangements that fall within section 257CF if, at the relevant time, **they have sufficient involvement in the arrangements that it is appropriate to treat them as participating in that purpose. The relevant degree of involvement depends on the circumstances,** but may be wider than being directly involved in devising the arrangements." (emphasis added)

PARTIES' SUBMISSIONS IN OUTLINE

24. Ms Brown does not disagree with the UT's approach of interpreting the words "party to" in their statutory and factual context but argues that for a number of reasons that the UT's analysis on that context was wrong. Her overall submission, made by reference to the wider statutory context and the explanatory notes for the Finance Bill which brought in the relevant ITA 2007 provisions, together with the ordinary meaning of the words "party to", is that the words should be construed narrowly. HMRC's case, as submitted by Miss Hughes, is simply that *Coconut UT* is directly on point, correct and should be followed and applied to dismiss the appeal.

DISCUSSION

25. There is no dispute between the parties on the principle that where an earlier UT has, as is the case here, decided the interpretation of materially similar legislative provisions, a later UT should in accordance with judicial comity follow that decision unless convinced the earlier decision is wrong. Hoopla makes a number of challenges to the UT's analysis in *Coconut* which we now turn to. As we explain below none convince us we should not follow *Coconut UT*.

26. A number of the preliminary criticisms Ms Brown makes of the UT's analysis in *Coconut* can be rejected at the outset. First, it is argued that the UT did not separately analyse the statutory context for the words "party to" to appreciate that it required something more than the existence of "arrangements". However it is clear from the UT's structured discussion, which considered the meaning of "arrangements" and "party to" in discrete sections that it had the need to consider the words "party to" separately and additionally well in mind. Ms Brown also asked us to note that the legislation relevant to the case-law the UT cited (*Crossland* and *Jones v Garnett*) regarding arrangements did not include the same "party to" wording. But apart from the high level contextual approach it took from *Jones v Garnett* (which Hoopla agrees is correct) the UT did not rely on those cases as being relevant to interpretation of the words "party to".

Explanatory notes to Finance Bill 2012

27. Ms Brown also argues it is significant the UT overlooked Explanatory Notes she says are relevant to the legislative provisions. The explanatory notes relied on were to Clause 39 Schedule 7 the Finance Bill 2012[2] which, when enacted, inserted the relevant provisions on disqualifying arrangements in s178A in ITA 2007. These stated:

> "Amendment [x] removes reference to the purpose of any person who is party to the arrangements in question, and replaces it with reference to the purpose of the arrangements. This is to prevent the legislation catching "innocent" arrangements

[2] While neither party was able to provide us with the text for the Bill prior to amendment or of the amendment the essence of the change and the reliance Ms Brown sought to place on it was clear enough from the face of the explanatory note.

> merely by virtue of the fact that an investor in EIS shares will almost always have the purpose of ensuring that tax relief is available and that the company can carry on its business. The re-wording is to make it clear that the intention is to disqualify investment in companies which would be unlikely to exist in the first place, or would be unlikely to carry on the proposed activities, were it not for the disqualifying purpose which is the subject of the test."

28. Ms Brown submits this shows the clear intention of the legislation was to reduce the scope of exclusion from the relief by seeking to prevent innocent arrangements from being caught.

29. We reject that argument. The clear purpose of the change elaborated on in the explanatory notes was to stop the situation where arrangements would be breached because an *investor* in the shares had the requisite purpose. The explanation for the change assumes the purpose of arrangements might include the investor's purpose in securing tax relief; it does not say anything one way or the other on who is to be regarded as "party to" the arrangements. It does not follow that just because this change was made to a Bill provision with the stated aim that innocent arrangements were not caught (because of a risk of breach by the investor's purpose) that would then mean the words of the enacted provision should be construed narrowly. These explanatory notes, or the fact they were not mentioned in the UT's judgment in *Coconut* in no way undermine the UT's analysis there.

30. A further factor in favour of a narrow approach to construction arose, Ms Brown argued, from the feature of the EIS and SEIS regimes whereby it was the company issuing the shares (in respect of which authorisation for compliance certificates was sought) who had appeal rights in relation to fulfilment of the scheme conditions rather than the investors seeking tax relief. Ms Brown suggested that meant there was a higher risk disputes over the applicability of the scheme conditions went un-litigated and argued there was a consequent lack of "checks and balances" to HMRC's operation of the share scheme provisions. That, in her submission, as well as the "draconian" nature of the conditions pointed against construing the relevant anti-avoidance provision more broadly. We reject this submission which was no more than assertion. There was no indication the situation of appeal rights with the issuing company constituted a lack of checks and balances, still less that Parliament had acknowledged that and had thereby intended for that (or else the operation of the effect of any of the other conditions) to be compensated for when interpreting s178A.

Ordinary meaning / OED definition

31. Hoopla's case that the FTT erred in its interpretation also relied on the ordinary meaning of the words "party to". By reference to the Oxford English Dictionary Hoopla submits "party to" connoted "something more than mere involvement, but rather to have a concern in, be a participant in or to be an accessory to those arrangements". (The OED definition defines a "party" as "[a]n individual concerned in a proceeding". It then goes on to state that it is "Any of the groups of people constituting a side in a formal proceeding, such as the litigants in a legal action, those who enter into a contract, etc.". The definition also explains: "With to (formerly also in): a person who is concerned in an action or affair; a participant; an accessory".) Ms Brown submitted that supported the need for there to be some "formality" before someone could be viewed as a party.

32. In agreement with Miss Hughes, we do not see how anything in the OED definitions relied on makes good that that there is a requirement for formality before someone is considered a party. Moreover on the facts here there is no issue with formality as Entertainment was in any event a contractual party to the PSA which was accepted to be part of the arrangements. There is also nothing in Hoopla's points which persuades we should not follow *Coconut UT* and depart from or elaborate on the "sufficient involvement test." *Coconut UT* proposed at [55] of its decision (set out at [23] above).

Distinction between being "Party to" part of arrangements vs "party to" all of arrangements ?

33. Hoopla further submitted that the FTT erred in looking at only part of the arrangements. Ms Brown argues the relevant person needed to be party to *all* arrangements (and that it was therefore incumbent on FTT to set out all the arrangements because without doing that it was impossible to say whether party to the arrangements as opposed to merely a party to some or other part of them).

34. As HMRC identify, this point was not argued in Hoopla's grounds of appeal before the UT but we are content nevertheless to address it given its obvious lack of merit. If the PSA contract was part of the arrangements (here there was no dispute it was), then we cannot see how someone who was party to that would not also then be party to the arrangements. They would by definition be so. It is also inconsistent with the analysis in *Coconut UT* (at [56]). In that case it was disputed that the PSA was part of the arrangements. However, the UT having found the PSA (in the form of oral agreement foreshadowing the documentary one) was part of the arrangements, a central component of its view that Entertainment was party to the arrangements was that Entertainment was party to the PSA.

35. There could be no error of law on the part of the FTT and also no consequent error of approach by it in not identifying the scope of the arrangements. The position before the FTT was that it was clear the contract was part of the arrangements. It was thus not necessary to set out in full what those arrangements were and for the reasons we have explained it would not make any difference to the conclusion that Entertainment was by definition (through its status as a counterparty to a contract which was part of the arrangements) a party to the arrangements. **(**Hoopla's further written arguments that submit various individual agreements such as the broadcast representation agreement could not amount to arrangements – and therefore that Entertainment or others could not be party to them - similarly do not assist; the existence of the arrangements was not disputed and no-one was suggesting such agreements looked at in isolation constituted "arrangements".)

36. As mentioned the arguments Hoopla now makes on the meaning of "party to" were not raised before the FTT and the FTT did not accordingly address them. We have explained why Hoopla's arguments that *Coconut UT* wrongly interpreted the legislation must be rejected. The UT expressed the words as requiring the person to "…have sufficient involvement in the arrangements that it is appropriate to treat them as participating in that purpose"**.** Although the FTT did not have the benefit of that reasoning there is nothing in the FTT analysis which is at odds with the UT's statutory interpretation.

37. We turn then to Hoopla's case that the FTT's *misapplied* the correct interpretation of "party to" in view of the particular facts of the case. These arguments must be rejected too. The FTT's application of the test to reach the same result the UT in *Coconut* did (that Entertainment was a party in circumstances where Entertainment was a counterparty to a contract that was found to be part of the arrangements) was entirely consistent with the analysis in *Coconut UT*.

38. In view of the areas that were not in dispute, and the relevant facts that were before the FTT, there can be no doubt the FTT was correct to identify Entertainment as a party to the arrangements. As HMRC's submissions correctly emphasise, Entertainment was clearly part of the plan to produce *Daisy & Ollie* and for the investors in Hoopla to receive EIS relief. A key part of the arrangements was that Hoopla was entirely dependent on Entertainment to produce and develop *Daisy & Ollie* pursuant to the PSA. As a result, Entertainment was plainly a party to the arrangements as it was a counterparty to the PSA.

39. In arguing why the FTT was wrong to consider Entertainment as a person who was a "party to" the arrangements Hoopla rely on the observations in *Coconut UT* at [54] which posited circumstances where a third party purchaser or supplier unaware of the purpose of the arrangements "might not be regarded as a party to arrangements" (see extract above at [22]).

40. On the back of that, Hoopla submits that if someone is a party to an agreement which forms part of the arrangements that is aware of them but in relation to which it has no greater control they self-evidently are not a party to the arrangements. Hoopla's written arguments also made a number of points regarding Entertainment's lack of control over the way Hoopla "moved its business forward" and to no member of the CHF Group having sufficient "control, involvement or right" under the arrangements.

41. However the above third party scenario envisaged by the UT is plainly not on point. The "third party" referred to by the UT is not yet even a party to any agreement that would become part of the arrangements. The tentative and uncertain situation referred to by the UT's example where there is only be "the possibility…at some stage in the future…[a services provision or asset sale agreement] might be reached.." is a world away from the situation here where Entertainment's provision of production and development were key to the arrangements. The UT was careful to state it did not need to and therefore was not expressing a view on whether such a third party was a party. The UT also did not say anything on whether once the third party became party to the agreement whether they would then be regarded as a "party". Moreover, when the UT came to apply the relevant principles to the facts (at [56]) it is significant that the UT put Entertainment's role in that case (a party to the production services contract whose involvement was designed into the arrangements from the outset) *in contrast* with "an unwitting third party who become involved and had no knowledge of disqualifying purpose".

42. In our view Hoopla's arguments that Entertainment could not ensure Entertainment's services were issued or that it did not have creative control over the production of the programming or merchandise in no way detract from it plainly being open to the FTT to conclude Entertainment had "sufficient involvement" such that it was appropriate to treat it as constituting a "party to" the arrangements (in line with the approach the UT in *Coconut UT* set out).

43. There was no error in the FTT's interpretation and application of the words "party to". We therefore dismiss **Ground 1**.

44. We also dismiss **Ground 2** (that the FTT did not attempt to define what being a "party" to the arrangement means) as well. The FTT was not asked to consider the definition of the "party to" in the detail we were and therefore did not consider the issue. Its conclusion, that a counterparty to a contract (accepted to part of the arrangements) meant the counterparty was a "party to" such arrangements, did not in the circumstances require any definition to be drawn up of what "party to" meant. The words were not in dispute and were susceptible to their ordinary interpretation.

Ground 3 – payments to Entertainment in return for provision of services, as arm's length commercial sub-contracting could not be amounts which "in the course of arrangements, [were] paid to or for the benefit of" Entertainment

45. In essence, Hoopla's argument is the legislative words in s178A, which capture amounts paid "in the course of arrangements…to or for the benefit of" a relevant person, are not meant to capture arm's length subcontracting commercial payments.

46. Regarding whether arm's length subcontracting could form part of an arrangement a similar point was argued before the FTT (at [202]) that "no amount raised had been "paid to or for the benefit of" Entertainment because the Appellant had received full value in exchange". The FTT found at [207] that Hoopla was "only able to meet the majority of its obligation to Entertainment in respect of the PSA from the sums raised by the relevant share issues" and at [209] that "pursuant to the PSA sums raised through the share issues [were] paid to and for the benefit of Entertainment (who the FTT correctly found was a "relevant person"."

47. In her oral submissions Ms Brown pointed out the FTT had wrongly relied (at [203]) on the reasoning in *Coconut FTT* thinking it addressed a similar point when in fact it was on different issue. The point in the extract from *Coconut FTT* the FTT referred to concerned whether the commercial nature of the agreement was the cause of the payment so it could not then be said the payment was "in the course of" the arrangement whereas the focus of Ms Brown's submission was on the words ".. the benefit of" (a payment received in return for provision of service was not for "the benefit").

48. We do not see that this point assists Hoopla. A similar argument to the one Ms Brown now makes regarding a commercial contract in return for services not constituting "benefit" was also made by the appellant in *Coconut UT* but rejected (at [51]):

> "We also reject Ms Brown's submission that the PSA (and the oral agreement based on the draft PSA) cannot be part of the arrangements because it is a commercial contract entered into on arm's length terms. There is nothing in the context of section 257CF [*the equivalent provision to s178A*] to suggest that the arrangements as a whole, or an element of the arrangements, has to include some element of bounty if they are to fall within the scope of the provision. Condition A simply refers to the proceeds of the share issue being 'paid to or for the benefit of ' a relevant person. In our view, those words can extend to a payment made under a contract whether or not it is on commercial arm's length terms. The words 'for the benefit of ' do not impose any requirement for gratuitous intent. They simply ensure that the provision extends not only to cases where the direct recipient of the payment from the issuer company is a relevant person but also to cases where a payment is made to another person who holds those funds for or on behalf of a relevant person."

49. In the light of the UT's reasoning above, the FTT's conclusion that the payments under the PSA were in the course of arrangements paid to or for the benefit of Entertainment (despite the PSA being an arm's length commercial agreement) was clearly correct.

50. Ms Brown also argues the FTT wrongly interpreted this phrase to mean "paid to (whether or not for the benefit of) or for the benefit of" a relevant person. She submits the first part simply means paid to the person (legally and beneficially), while the second part captures situations where the amount is paid to someone else but it is intended to be for the benefit of the relevant person. She also referred us to [205] and [206] of the FTT Decision in support of her submission that the FTT had so erred and also suggested the FTT had misstated the test in its references to payment "and" benefit rather than payment "or" benefit. Those paragraphs were as follows:

> "[205] …I consider paid must mean at least the payment of a debt but in the context of section 178A(3) it is more simply the transfer of money which pursuant to that section may be direct or indirect and to or for the benefit of a relevant party.
>
> [206]. [*Helen Brown*] accepted that on a monthly basis the amount Entertainment spent against the budget was determined and the Appellant made payment (i.e. transferred sums to Entertainment's bank account) or otherwise paid the invoices of subcontractors, including Dock 10, who were contractually owed sums by Entertainment and therefore sums were paid both to and for the benefit of Entertainment."

51. None of these points take Hoopla's case further in showing an error of law. As Miss Hughes pointed out the FTT plainly considered both elements of the provision (that there was a payment to Entertainment and that there was a payment for the benefit of Entertainment) were satisfied. It was not misinterpreting the legislative words as imposing a cumulative requirement. It also clearly regarded the payments to Entertainment as being legally and beneficially to Entertainment (thus satisfying in any event the test Hoopla advances).

52. Hoopla further argue that the application of s178A in this way is wrong as it will pull in payments that are made in the course of commercial arrangements, such as subcontracting, that are commonly entered into by exactly the sort of companies that are the target of EIS. However there is nothing in Condition A per se which stands in the way of such subcontracting. It is only where the counterparty to subcontracting which is found to be part of the arrangements is a "relevant person" as defined (in other words they are someone who is a party to the arrangements having the requisite purpose) that Condition A is triggered.

53. Hoopla's point that the FTT has erred in misunderstanding the expression "to or for the benefit of" because it did not take into account the fact that s178A was intended to narrow, not broaden, the exclusion of relief must also be rejected for the reasons we have already discussed under Ground 1.

54. The FTT Decision neither misinterpreted nor misapplied the legislation as suggested under the ground. Its conclusion that there were payments to or for the benefit of Entertainment was entirely consistent with the reasoning in *Coconut UT*. We therefore dismiss Ground 3.

CONCLUSION

55. In conclusion there was no error in the FTT holding that the PSA contract conferred benefit on Entertainment and that Entertainment was a relevant person being a person who was "party to" the arrangements which included the PSA contract. Given the facts before it and the matters that were not in dispute before the FTT, and in the light of *Coconut UT*, which we see no reason not to follow, Hoopla's case fell squarely within Condition A of s178A and the arrangements were therefore "disqualifying arrangements". The FTT was right to dismiss the appeal.

56. The above is sufficient to determine the appeal and uphold the two HMRC refusal of authorisation decisions (the first in respect of shares issued between 19 March 2018 and 28 August 2019, the second in respect of shares issued between 5 September 2018 and 19 October 2018) in HMRC's favour. In their Response HMRC argue that the FTT was incorrect in finding in Hoopla's favour on various other EIS conditions (Condition B in s178A(4A) ITA 2007, the trading requirement in s189 ITA 2007 and the Risk to Capital Condition (s157A ITA)). Those arguments are only relevant to disposal of the appeal before us in the event Hoopla's appeal on Condition A was successful, which we have held it is not. We consider it preferable for the Upper Tribunal to hold off making pronouncements of the law in respect of those conditions to a case where such conditions are relevant to the outcome of the appeal.

DISPOSITION

57. Hoopla's appeal is dismissed.

JUDGE SWAMI RAGHAVAN
JUDGE NICHOLAS ALEKSANDER

Release date: 23 January 2025