Neutral Citation Number: [2025] UKUT 00338 (TCC)

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

Applicant: Syngenta Holdings Limited	**Tribunal Ref: UT-2025-000029**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL

Oral reconsideration hearing: 3 October 2025

DECISION NOTICE

JUDGE ANNE REDSTON

1. On 26 January 2011, Syngenta Holdings Limited ("SHL") acquired the entire issued share capital of Syngenta Limited ("SL") from its parent company, Syngenta Alpha BV. This reorganised the main UK subsidiaries of the corporate group so that they formed a single subgroup headed by SHL. The consideration provided by SHL consisted of: (i) a payment in cash, which was funded in part by way of a loan of US$950,000,000 (the "Loan") from Syngenta Treasury NV, a related company based in the Netherlands.

2. In the accounting periods ending 31 December 2011 to 31 December 2016, SHL treated the interest on the Loan as giving rise to deductible debits for corporation tax purposes in accordance with Part 5, Corporation Tax Act 2009 ("CTA"). HM Revenue & Customs ("HMRC") issued closure notices and related amendments for those accounting periods, on the basis that SHL's main purpose of being a party to the Loan was an "unallowable purpose" within the meaning of CTA s 442.

3. SHL appealed to the First-tier Tribunal (Tax Chamber) ("FTT"). At the hearing both Mr Johnson, a director of SHL, and Mr Kuntschen, senior group tax manager, gave evidence and were cross-examined.

4. On 1 November 2024, the FTT issued its Decision ("the Decision") refusing the appeal and finding that SHL's sole purpose in entering into the Loan was to secure the interest deduction. On 20 December 2024, SHL made an in-time application to appeal the Decision, which the FTT refused by a decision issued on 21 February 2025.

5. On 20 March 2025, SHL applied to the Upper Tribunal (Tax and Chancery) Chamber ("UT") for permission to appeal against the Decision ("the PTA Application"). I refused

permission to appeal on the papers in a decision dated 3 June 2025. SHL requested that permission to appeal be reconsidered at an oral hearing.

6. I held an oral hearing on 3 October 2025 in Rolls Buildings, London ("the Renewal Hearing"). Mr Julian Ghosh KC and Mr Quinlan Windle of Counsel represented SHL, and Mr Thomas Chacko represented HMRC. Both parties provided skeleton arguments before the Renewal Hearing; that filed and served on behalf of SHL set out grounds of appeal which were different in a number of respects from those attached to the PTA Application. Mr Ghosh confirmed that SHL was seeking to rely on the grounds as formulated in the skeleton and not on those in the PTA Application, and Mr Chacko did not raise any objection.

7. In the course of the Renewal Hearing, Mr Ghosh added further submissions relating to the apportionment provision in CTA s 441(3), which provides:

> "The company may not bring into account for that period for the purposes of this Part so much of any debit in respect of that relationship as on a just and reasonable apportionment is attributable to the unallowable purpose."

8. Mr Chacko did object to those oral amendments, but as the apportionment point could be inferred from that wording in the skeleton, which referred repeatedly to "*a* main purpose" rather than "*the* main purpose", I decided to admit the amendments.

WHEN CAN AN APPEAL BE MADE

9. An appeal to the UT from an FTT decision can only be made on a point of law (Tribunals, Courts and Enforcement Act 2007, s 11). An application for permission to appeal must demonstrate that it is arguable that the FTT made an error of law in reaching its decision, and that the error was material to that decision, see *Degorce v HMRC* [2017] EWCA Civ 1427; [2017] STC 2226 at [95]. "Arguable" means that carries a realistic (as opposed to fanciful) prospect of success.

10. If the UT refuses permission to appeal or gives only limited permission, Rule 22 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the UT Rules") provides that the UT must give reasons for the refusal or part-refusal. Reasons are not required where permission to appeal is granted.

LIMITED PERMISSION TO APPEAL

11. Having heard and considered both parties' submissions, I find that the following Grounds are arguable and give SHL permission to appeal on those Grounds:

(1) Mr Johnson's evidence was that SHL had a main purpose of acquiring a good investment. The FTT rejected his evidence, despite it being unchallenged. That was an error of law which was material to the Decision, particularly in the light of the apportionment provisions.

(2) The FTT concluded that SHL had the objective of avoiding a bad investment (not of making a good investment). It was an error of law not to put that point to Mr Johnson, and that error was material to the Decision, particularly in the light of the apportionment provisions.

(3) It was an error of law for the FTT to find as a fact that making a good investment was not a main purpose of SHL entering into the Loan, because that finding was not one the FTT was entitled to make on the basis of the evidence.

12. The above Grounds are taken from Ground 1 of Mr Ghosh's and Mr Windle's skeleton argument as amended during the Renewal Hearing.

13. Where the UT gives permission to appeal, the normal position is that the appellant's PTA Application stands as its Notice of Appeal, see Rule 23(2)(b) of the UT Rules. However, in this case, because of the changes to SHL's Grounds between the PTA Application and the conclusion of the Renewal Hearing, neither the PTA Grounds as filed nor the grounds in the skeleton argument are to stand as the grounds for SHL's Notice of Appeal to the UT. Instead, SHL is directed to file at the UT within fourteen days of the date of issue of this decision, a document setting out the Grounds listed at paragraph [11] above.

14. SHL's other Grounds are refused for the reasons explained below. The Grounds fall under two headings, "Legal Entity Simplification" and the role of SHL's directors.

LEGAL ENTITY SIMPLIFICATION

15. In deciding whether SHL had an unallowable purpose in becoming party to the Loan, what matters is its subjective purpose or purposes, see *BlackRock Holdco 5 LLC v HMRC* [2024] EWCA Civ 330. It was part of SHL's case that in taking out the Loan, it had a main purpose of achieving a corporate structure in the UK in which all legal entities were in a single subgroup headed by a UK holding company, see [45] of the Decision. This was referred to as Legal Entity Simplification or "LES".

16. Under cross-examination, Mr Johnson said that the benefits of LES to SHL were "relatively small"; he also agreed that the absence of LES had not "unduly impeded the business of SHL or SL" and that he did not perceive the benefits of LES to be "significant", see [260]-[263] of the Decision. The FTT considered this and other evidence, and went on to decide at [268] that the benefits of LES were "relatively minor" and "minimal", and not a main purpose of taking out the Loan.

17. Mr Ghosh and Mr Windle set out a number of reasons why that was an error of law. The first concerned judicial notice; the second related to evidence given by Mr Kuntschen, and the third rested on the principles established in *Edwards v Bairstow* [1955] 3 All ER 48.

Judicial notice

18. The judicial notice ground related to two findings made by the FTT which took into account the specialist knowledge of the Judge and member.

> (1) Ms Carter, SHL's tax manager, had sent Mr Kuntschen an email about the Transaction under the heading "tax optimisation project". Mr Kuntschen sought to explain this email by saying that when one tax person speaks to another tax person they focus on the tax without "bring[ing] in addition legal or whatsoever consideration". Based on the experience of the Judge and the member about the approach taken by tax professionals who work in-house, the FTT rejected Mr Kuntschen's explanation, saying it was not "plausible" but instead "fanciful", see [72].
>
> (2) The FTT also rejected Mr Kuntschen's explanation of the tax focus of a document sent to the Syngenta Group's CFO on the basis of what the Judge and member considered would have been in that document had LES been a main purpose, see [157].

19. Mr Ghosh submitted that in rejecting Mr Kuntschen's evidence on the basis of its own experience without putting the points to him, the FTT had made an error of law, see *Hammington v Berker Sportcraft Ltd* [1980] ICR 248 and other authorities.

20. I agree that it was an error of law not to put those points to Mr Kuntschen. However, permission to appeal must not be given if the error would have made no difference to the outcome, see *Degorce v RCC* [2017] EWCA Civ 1427. Given the other evidence carefully considered and weighed by the FTT, including in particular Mr Johnson's evidence, this error would not have made any difference to the outcome.

LES would have happened at some point

21. Mr Kuntschen's unchallenged evidence was that LES would have happened "at a later point in time". The FTT rejected that evidence, see [266] of the Decision. Mr Ghosh submitted that this was an error of law which vitiated the FTT's conclusion that LES was not a main purpose because:

(1) As Mr Kuntschen's evidence was unchallenged, it should have been accepted, and the FTT's failure to do so breached the principles set out by the Supreme Court in *Griffiths v TUI (UK) Ltd* [2023] UKSC 48 ("*TUI*"), following *Browne v Dunn* (1893) 6 R 67 and related case law; and

(2) had Mr Kuntschen's evidence been accepted, the only reasonable inference would be that LES was a main purpose of taking out the Loan.

22. I refuse that Ground as not arguable for the following reasons:

(1) The issue before the FTT was whether SHL had an unallowable purpose when it took out the Loan used to fund the Transaction. Mr Kuntschen's evidence was about what would have happened had the Transaction not proceeded. It was not evidence about the purpose of the Loan.

(2) The purpose of the rule in *Browne v Dunn* is "to make sure that the trial is fair". It is not a "rigid or inflexible" rule, and as the criterion is the overall fairness of the trial, its application "depends upon the circumstances of the case", see *TUI* at [70(ii) and (vii)].

(3) In any event, I do not need to decide whether the FTT breached that rule, because Mr Kuntschen's view as to what would have happened had the Transaction not proceeded would have made no difference to the outcome, given the other evidence considered by the FTT, including in particular that of Mr Johnson.

Edwards v Bairstow

23. Finally, it was also submitted that the FTT made an error of law when it considered and assessed the evidence about the LES because:

(1) it placed little or no weight on certain contemporaneous documents on the basis that the references therein to LES were "being used as a 'cover' to minimise any perception that the Transaction was entered into for tax purposes", see [267] of the Decision and the preceding sections; and/or

(2) it concluded that there was "relatively minimal mention" of LES in the contemporaneous documents, despite the fact that "every one" of the documents contained a reference to LES.

24. These are submissions that the FTT's finding was against the weight of the evidence. However, in *Megtian v HMRC* [2010] STC 840 at [11], Briggs J (as he then was) said:

> "The question is not whether the finding was right or wrong, whether it was against the weight of the evidence, or whether the appeal court would itself have come to a different view. An error of law may be disclosed by a finding based upon no evidence at all, a finding which, on the evidence, is not capable of being rationally or reasonably justified, a finding which is contradicted by all the evidence, or an inference which is not capable of being reasonably drawn from the findings of primary fact."

25. In *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 ("*Fage*") at [114] Lewison LJ said that "in making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping"; that was one reason why appellate courts should not interfere with factual findings made at first-instance

"unless compelled to do so", and that "this applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them".

26. The FTT's finding of fact that the LES was not a main purpose of taking out the Loan was based on a careful evaluation of the evidence and plainly was capable of "being rationally or reasonably justified". There was no error of law and permission to appeal is refused on this Ground.

THE ROLE OF SHL'S DIRECTORS

27. In *JTI v HMRC* [2024] EWCA Civ 652 at [51], Newey LJ drew a distinction between situations where (i) the directors of the company play their part in a group plan where they know, and effectively adopt, what they believe to be the group's purposes and (ii) the directors decide to go along with a plan whatever the group's purposes may be. Mr Ghosh described the latter situation as the subsidiary acting as a "blind puppet" of its parent.

28. Mr Ghosh and Mr Windle's skeleton argument said that the distinction made in *JTI* was significant where the directors of the subsidiary "are not involved in the high-level planning of a transaction and do not know the group's purposes", and that was the position here. However, as Mr Ghosh accepted in the course of the Renewal Hearing, the directors of SHL *did* know the group's purposes, and were intending to play their part in the Transaction in the light of their knowledge. Mr Chacko described this Ground as "hopeless" and I agree.

CONCLUSION

29. I have given permission to appeal for the Grounds set out at paragraph [11] above. Permission to appeal is refused on the other Grounds advanced on behalf of SHL.

Signed: Anne Redston **Judge of the Upper Tribunal**	**Date: 9 October 2025**
Issued to the parties on: 10 October 2025	