TC02800

Appeal numbers: TC/2011/03988, 03994, 07514, 07518 & 07521

PROCEDURE – application for stay pending determination of appeal in Murray Group Holdings – whether determination of that appeal would materially assist determination of these appeals – yes – application allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

PEEL INVESTMENTS (UK) LIMITED
CLYDEPORT OPERATIONS LTD
PEEL LAND AND PROPERTY INVESTMENTS PLC
CLYDEPORT PROPERTIES LIMITED **Appellants**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE TIMOTHY HERRINGTON

Sitting in public at 45 Bedford Square, London WC1 on 15 July 2013

Alun James, Counsel, instructed by Travers Smith LLP for the Appellants

Richard Vallat, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

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DECISION

Introduction

1. The Appellants have made an application for a stay of proceedings in respect of all of the appeals in this case on the following grounds:

> (1) The recent decision of the First-tier Tribunal (Tax Chambers) ("FTT") in favour of the taxpayers in *Murray Group Holdings and others v HMRC* [2012] UKFTT 692 (TC) was concerned, *inter alia*, with certain fundamental legal issues that also arise in the present case, in particular whether the making of a loan to a beneficiary under a sub-trust of an employee benefit trust can constitute (for income tax purposes) an outright payment of emoluments to, or (for National Insurance purposes) earnings of, that beneficiary. *Murray Group Holdings* is the subject of an appeal to the Upper Tribunal and there will therefore in due course be a lead decision which is directly relevant to the present appeals. The Appellants submit that it would be inappropriate in such circumstances for the present proceedings to continue (thereby requiring the parties and the Tribunal to incur significant time and resources) pending the ultimate resolution of the *Murray Group Holdings* case; and
>
> (2) The Court of Appeal decision in *HMRC v Forde & McHugh Ltd* [2012] STC 1872; EWCA Civ 692 is being appealed to the Supreme Court. This case has been cited in the Respondents' amended Statement of Case as being relevant to the incidence of National Insurance on contributions made to an employee benefit trust. In such circumstances, it is again the Appellants' submission that a stay of proceedings should be granted in the present appeals pending the determination of *Forde & McHugh* by the Supreme Court.

HMRC opposes the application.

Background

2. These appeals concern contributions to an employee benefit trust known as the Peel Holdings (Guernsey) Limited Employee Benefit Trust 2007 ("the EBT") in respect of two employees, Messrs Simpson and Green, by companies within the Peel Group, and the subsequent administration of the EBT. The structure of the arrangements in respect of both employees corresponds in all material respects to that appertaining as regards many EBTs (including those considered in *Murray Group Holdings*) in that there was a contribution or contributions in respect of an employee to the EBT, the EBT thereafter established sub-trusts for the benefit of the particular employee and his family on to which the contribution received was appointed, and loans were made out of the sub-trust to the employees and/or investments were made by the trustees.

3. As regards Mr Green, a contribution of £1.25m was made to the EBT by the Fourth Appellant on 29 June 2007 and shortly thereafter on 3 July 2007, following a

recommendation to that effect by the Fourth Appellant, this sum was revocably appointed onto a sub-trust of the EBT for the benefit of the "Green Beneficiaries". On 13 July 2007 an interest-free loan of £250,000 was made to Mr Green.

4. As regards Mr Simpson, contributions of £1,450,000 and £1,720,000 were made in August 2007 and October 2009 respectively and were in the events similarly appointed on to a sub-trust of the EBT for the benefit of the "Simpson Beneficiaries". The 2007 contribution was made following a waiver of a prospective "joining payment" of £1,350,000 by Mr Simpson such waiver taking place in the tax year before he joined the Peel Group, and the 2009 contribution was made following Mr Simpson's departure from the Peel Group. In November 2007 an interest-free loan of £1,600,000 was made to Mr Simpson. It is also part of the Appellants' case that a significant portion of the loan was repaid in December 2010.

5. The parties are currently in the process of trying to agree a statement of the issues for determination in these appeals and have reach produced their own draft. Whilst attempting to be neutral between the competing drafts and without prejudice to what the parties might ultimately agree, it appears that from a combination of the two drafts the following issues have been identified:

(1) whether the contributions to the EBT were earnings of Mr Simpson and/or Mr Green's employment which they were entitled to receive and the relevant employer companies were obliged to provide, regardless of the existence of the EBT;

(2) whether the contribution made to the EBT in respect of Mr Simpson on termination of his employment was a termination payment within section 401 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA");

(3) aside from issue (1) above, whether (a) the contributions to the EBT, (b) the appointment of funds on to the sub-trust, (c) the making of loans from the sub-trust to Messrs Simpson and Green, or (d) the making of investments by the trustees in respect of each sub-trust, constitute their employment income for income tax purposes or "earnings" for national insurance purposes, and in particular whether the first instance decisions in taxpayers' favour in this context, mostly recently in *Murray Group Holdings*, are correct as a matter of law and whether national insurance "earnings" can arise on the appointment of the sub-trust, even if employment income does not, on the authority of *Forde & McHugh;* and

(4) whether the EBT and/or the sub-trust, although genuine (there being no allegation of sham), were and are nevertheless a bare trust for Mr Simpson or Mr Green (as appropriate) absolutely rather than a discretionary trust.

6. In terms of case management, a statement of agreed facts has been filed. Assuming the statement of issues referred to above is agreed relatively quickly, witness statements would be filed during the early autumn of this year and a substantive hearing could realistically be expected to be held in the summer of next year. Although a case management hearing is being held this month for *Murray Group Holdings* there is no indication when it would be possible to list that case for a

substantive hearing in the Upper Tribunal. Realistically, it is likely to be at least a year before that case can be heard and clearly it will be sometime thereafter before a decision is released, which may be subject to further appeals. With regard to *Forde and McHugh* it is understood that the Supreme Court is due to hear that case in January 2014, so that realistically a decision in that appeal may be expected by April 2014, that is before the earliest date on which the appeals in this case are likely to be heard in this Tribunal.

7. In view of the issues in dispute, further findings of fact beyond those identified in the statement of agreed facts are going to be necessary, in particular how the arrangements recorded in the legal documentation relating to the EBT, the sub-trusts and the loans operated in practice, the extent to which independent discretion was exercised by the Trustees of the EBT and whether it was intended that the loans would ever be repaid. HMRC's contention in this regard is that the steps in the arrangements were all pre-ordained. In addition, findings of fact would be necessary in order to determine issues (1) and (2) set out above.

8. HMRC's case, as set out in the Statements of Case filed in these appeals, can be summarised as follows:

(1) The contributions to the EBT were earnings of Mr Green/Mr Simpson which he was entitled to receive and his employer was obliged to provide. The existence of the EBT simply does not affect how the payments fall to be taxed. In the case of Mr Simpson, the payment on termination of his employment was a termination payment within section 401 of ITEPA.

(2) Further or alternatively, the intention of all relevant parties, as evidenced by their conduct before and after the execution of the EBT deed and/or before and after the execution of the appointments to the relevant sub-trust was that the sums contributed to the EBT and/or the sub-trust should be at the absolute disposal of the employee concerned. In short, what purported to be discretionary trusts for a number of different beneficiaries was in reality intended to be, and operated as, a bare trust for the employee concerned. The result is that the sums transferred into the EBT and/or the sub-trust fall to be treated as earnings of the relevant employee's employment.

(3) Alternatively, the allocation of funds for a particular employee (and his family) within an employee benefit trust is a receipt/payment of earnings for both PAYE and NIC purposes. There was clearly such an allocation in the current case.

(4) Alternatively, there is a receipt/payment of earnings if and when, on the facts, the employer loses, and the employee gains, *de facto* control of the allocated funds. The employee may then exercise this control over "his" funds by taking loans controlling investments, etc. The relevant employee had such control in this case.

(5) Alternatively, the allocation of money to the sub-trust was an "employment-related benefit" within the meaning of ITEPA 2003 section 201.

(6) Alternatively, taking a realistic view of the facts, all amounts advanced to the relevant employee should be treated as outright payments made through the EBT and therefore as earnings for PAYE and NIC purposes; and

(7) In any event the sums allocated to the sub-trust were "earnings" for NIC purposes pursuant to the reasoning of the Court of Appeal in *Forde & McHugh Ltd* in that they were paid for the relevant employee's benefit and constituted a profit.

The authorities

9. The parties were agreed that the proper approach to be adopted as regards an application for a stay in the absence of agreement between the parties in a case in this Tribunal was that set out in *Coast Telecom Limited v HMRC* [2012] UKFTT 307 (TC) where Judge Berner stated at paragraph 5:

> "I start by reminding myself of the proper approach to be adopted in considering whether to grant a stay in the absence of agreement between the parties. Although neither party referred to it, I consider that the correct approach is to be derived from *Revenue and Customs Commissioners v RBS Deutschland Holdings GmbH* [2007] STC 814 where the Court of Session as the Court of Exchequer in Scotland held (at [22]) that a tribunal or court might sist, or stay, proceedings against the wish of a party if it considers that a decision in another court would be of material assistance (not necessarily determinative) in resolving issues before the tribunal or court in question, and that it is expedient to do so."

The Court of Session in *RBS Deutschland Holdings* had held at paragraph 22 of its judgment as follows:

> "Furthermore, at page 8 of the decision, the Tribunal made a pronouncement to the effect that it would sist proceedings against the wish of one of the parties pending a decision in another court only where that decision would be determinative of the issues before the Tribunal. We do not recognise that proposition as one reflecting normal practice in relation to the exercise of a discretion to sist. As we would see it, a Tribunal or court might sist proceedings against the wish of a party if it considered that a decision in another court would be of material assistance in resolving the issues before the Tribunal or court in question and that it was expedient to do so."

10. The Tribunal in *Coast Telecom* went on to stress that it was not enough that another court's determination might provide answers of relevance and that this put the test in *RBS Deutschland* too low (at paragraph 21):

> "The question is not whether the determination of another court might provide assistance, but whether it will provide material assistance."

11. The Tribunal also considered that different factors can apply to a fact-finding Tribunal as referred to in paragraph 22 of its decision:

> "Where issues of law alone remain in dispute it can be seen that the imminent consideration of the position under EU law could justify a stay of the appeal proceedings. But the same does not hold good where the facts remain to be determined. Many of the questions raised in the references are themselves fact-specific. Accordingly, I do not consider that it would be expedient to order a stay in circumstances where the facts remain to be found by the first instance tribunal."

12. It is important to note that *Coast* was an MTIC case with complex factual issues to determine and witnesses on both sides where it is fair to say that the findings of fact are paramount. This is reflected in paragraph 23 of the decision as follows:

> "Mr Watkinson submitted that it would not be just and equitable to order a stay where a case involved consideration of a complex matrix of fact that concerned events as long ago as 2006. There was a risk of prejudice to witness evidence as memories faded. I agree. I also agree that this is a prejudice that affects both parties; *Coast* requires all HMRC's witnesses to attend for cross-examination, so the memories of HMRC witnesses, in particular those who dealt with Coast at the relevant time, will be a material factor. The memories of *Coast's* own witnesses will also be important. The ascertainment of the facts before recall becomes more difficult will assist both the parties and the Tribunal."

Current cases

13. The Appellants rely on its contentions that the decision of the Upper Tribunal in *Murray Group Holdings* and that of the Supreme Court in *Forde & McHugh* will be of material assistance in resolving the issues in these appeals and that it will be expedient to stay proceedings in these appeals until those decisions are available.

14. I can deal with *Forde & McHugh* briefly. As it was ascertained at the hearing of this application that the Supreme Court is due to hear the case in January 2014 and the judgment can therefore reasonably be expected to be available by April 2014, before, realistically, these appeals would be heard in this Tribunal, I accept Mr Vallat's submission that there would be no practical benefit from staying the present appeals pending the Supreme Court's judgment in *Forde & McHugh.*

15. With regard to *Murray Group Holdings*, there is no question that any decision of the Upper Tribunal is unlikely to be available before the present appeals could realistically be heard in this Tribunal. I therefore need to consider whether the circumstances are such that a decision of the Upper Tribunal (or any higher court) would materially assist in resolving the issues in the present appeals and whether it would be expedient to stay the proceedings in the present appeals until a final decision in that case is available.

16. *Murray Group Holdings* is a lengthy decision of the FTT and concerns EBTs which are structured on a very similar basis to the EBT in the present appeals. *Murray*

Group Holdings established an EBT for the benefit of the group's employees and their families. Subsequently more than 100 sub-trusts were established in the name of individual employees of companies in the group for the benefit of their families individually. A loan facility providing a tax-free sum, repayable out of the employee's estate, was made available to the employee. The employee could also be appointed protector with extended powers resembling trusteeship but without title to the trust assets and not enabling the conferring of any absolute beneficial right on the employee himself. When an employing company decided to propose a sub-trust be constituted in the name of a particular employee, the employee would complete a letter of wishes naming his beneficiaries together with a loan application on his own behalf. These were submitted to the trustee. The employing company would then pay a contribution to the principal trust and a sub-trust in the name of the selected employee would be established. In almost all cases, loans for the full amount advanced for an extended term and on a discounted basis were granted by the trustees to the employee. The employees' general expectation was that the terms of the loans would be renewed. HMRC issued assessments on the basis that the payments into the trust fell to be taxed as emoluments of the employees' employment, with pay as you earn ("PAYE") and national insurance contributions ("NIC") liabilities arising for the employer. They submitted that the trusts and loan arrangements were part of a scheme devised purely for tax avoidance purposes to deliver cash to the employees free of tax and NICs; it was artificial and not legitimate and fell to be disregarded.

17. HMRC's submissions on these arrangements were that, a detailed analysis of the evidence demonstrated that the arrangements constituted an orchestrated scheme delivering cash to the employees free of tax and NIC and devised purely for tax avoidance purposes. It was, in their view, artificial and not legitimate.

18. These submissions were based on the following views HMRC had on the evidence. (See paragraphs 147, 156 and 167 of the Decision).

(1) The employees' expectations were that one way or another the "trust" benefits would be paid to them and trust and payroll payments were in effect interchangeable;

(2) The trust was a cipher and a travesty of a discretionary trust. It was complicit with the employer and not independent. It was a "well oiled" machine, operating in a pre-ordained manner; with a pre-determined result, viz the employee receiving the cash unconditionally and free of tax. Sub-trusts were opened automatically on the employee submitting a loan request. That was the signal to the trustee that funds would be transmitted. There was no evidence of the exercise on the trustee's discretion in establishing the sub-trusts.

(3) The trust was not genuine; it had a nominee function. In reality the protector (employee) was the settlor and his letter of wishes was in fact his instructions. The trustees in "blind obedience" created the sub-trusts. The loans, although not shams, were not commercial, were deeply discounted and not secured.

19. HMRC therefore invited the FTT to find that on the principles enunciated in *Ramsay (WT) Ltd v IRC* [1982] AC 300 the trusts and the loans should be disregarded and the assessment should stand.

20. The appeal in *Murray Group Holdings* was, by a majority, determined in favour of the appellant. What emerges from the majority's decision is that its findings of fact (set out in paragraph 103 of its decision) focused on the administrative arrangements for establishing the trust, the sub-trusts and the loans, the terms of the relevant documents, and the mechanics for the payments that flowed from the employer into the trust, thence to the sub-trusts that were established and thence to the employee concerned by way of a loan. The majority stated, in paragraph 232 of its decision, that they were unable to make further findings of fact in support of there being an orchestrated scheme extending to the payment in effect of wages or salary absolutely and unreservedly to the employees involved.

21. In essence, the majority proceeded on the basis that the trust structure and loans were genuine legal events with real legal effects which should not be characterised in the way suggested by HMRC. The majority's reasoning was set out in paragraphs 224, 225 and 231 of its decision as follows:

> "224. In applying the charging provisions anent *earnings* to the moneys advanced here we have followed strictly the requirements for *payment* following on *Garforth* [1979] STC 129, [1979] 1 WLR 409 and AAM [2012] STC 650. We consider that the employees benefiting did not obtain an absolute legal entitlement to the moneys. Having regard to the legal effect of the trust and loan structure, the employees' entitlement or, rather, expectation is to no more than a loan. Further, we do not consider that that was altered by the employee's status and powers as protector of his sub-trust: the fundamental structure could not be revised by the employee qua protector to confer absolute rights.
>
> 225. While we accept that there was a degree of orchestration in the arrangements made with employees, we are satisfied that these fall short of enabling an absolute transfer of funds to the employee…
>
> 231. The trust/loan scheme is essentially straightforward. It does not include a complicated sequence of stages. The extent of the employer's obligation is to make a payment into trust. The trust structure and loans bear to be of legal effect. Loans were discretionary although in fact they were (almost) invariably granted. But that was the extent of the employee's benefit. Whether the arrangement is viewed commercially or legalistically, the inexorable conclusion, in our view, is that the payments into trust became a loan and no more. They were not paid over absolutely and so do not become *earnings* or *emoluments*. We do not regard the liability to make repayment as a remote contingency which might in the context of a purposive construction fall to be disregarded as too remote for practical purposes …"

22. In essence, the majority saw the issue between the parties, as it stated in paragraph 189 of its decision, as being whether the anti-avoidance principles set out in *Ramsay* could be invoked to extend the charges on earnings to loans, and the majority

declined to do so on the basis of the legal characterisation they gave to the underlying documentation. This led them to conclude that there was no putting of the monies advanced unreservedly at the employee's disposal.

23. This contrasts with the approach taken by the minority. Dr Poon, the dissenting member, made further findings of fact which led her to conclude that the arrangements were implemented for the purpose of avoiding PAYE and NIC. She found in effect that the trustees did not exercise an independent discretion and the loans were not made on commercial terms. She in effect drew further inferences from the findings on which the majority based its decision: see paragraph 166 of her decision. She criticises the majority for having based their decision on whether the trust structure and the loans were genuine legal events: see paragraph 180 of her decision.

24. Dr Poon, adopting what she describes as a *Ramsay* approach (see paragraph 187 of her decision) construes the phrase "unreservedly at the disposal" by focusing on the end result for an analysis of a composite transaction, and emphasises the need to regard the concept of "payment" as a practical commercial concept: see paragraph 189 of her decision.

25. In following through that process, Dr Poon rejects the majority's juristic categorisation of the loan agreements for the purpose of interpreting the statutory concepts of payments as earnings. She states in paragraph 200 of her decision:

> "The contrast here is with a commercial meaning of these concepts: the loans are real for juristic purposes, but not real for commercial purpose."

She follows through this reasoning in paragraphs 203, 206 and 207 of her decision as follows:

> "203. With reference to the commercial context, the loans stand to be disregarded in the construction of the concept of 'payment' for the purpose of the income tax legislation, which is intended to operate 'in the real world'. It is granted that the loans are not shams; they are real for juristic purposes. In all the instances where the employees terminated their sub-trusts, the 'further and necessary steps' (as Mr Struder submits) required to be taken were taken for the sub-trusts to be terminated. The ultimate reason for taking these further and necessary legal steps was to align the juristic purpose with the commercial purpose of the funds – by releasing the loans and render the funds absolute property to the employees …
>
> 206. I am persuaded by Mr Thomson's submissions that the facts should be viewed realistically to give effect to the overall intention of the employers, the expectations of the employees, and the nature of the money advanced. In this regard, the steps encompassing the scheme are viewed as a composite transaction, whereby payments made through the trust mechanism achieved the end result of placing the funds 'unreservedly at the disposal' of the protector/employees …

> 207. To give a purposive construction of the legislation for 'emoluments' is to construe the concept of payment as a commercial concept. To view the loan as a concept of payment is to view the fact accorded to the loan structure realistically in a commercial context. When the relevant statutory provisions are purposively construed and applied to the transaction, viewed realistically, I have arrived at a different conclusion from my colleagues …"

26. Consequently, she concludes in paragraph 231 of her decision that the trust payments are to be construed as "emoluments" for the purposes of the tax legislation.

27. I observe the following from the decision in *Murray Holdings*:

(1) The arguments which HMRC used (as summarised in paragraph 18 above) and which found favour with the minority but not the majority are very similar in substance to those relied on in their Statements of Case in the current appeals, as summarised in paragraph 8 above;

(2) The structure of the arrangements was very similar in the present appeals to that put in place in *Murray Holdings*;

(3) The fact finding exercise to be carried out was essentially one of drawing inferences from the conduct of those operating and participating in the arrangements. The majority in *Murray Holdings* placed little emphasis on the facts beyond the terms of the documentation, whereas the minority relied heavily on the inferences that could be drawn from the manner in which the arrangements were operated in practice; and

(4) Both the majority and minority decisions were founded fundamentally on a point of principle, although clearly the factual situation is relevant, and the majority and minority took clearly fundamentally different positions on the extent to which the *Ramsay* principles were applicable. Whichever side of the opposing positions was taken, the application of that principle was the determining factor in the respective decisions.

Discussion

28. Mr Vallat submits that the threshold for a stay is not met in the present appeals because a decision of the Upper Tribunal in *Murray Group Holdings* will not provide material assistance. He does so for the following reasons:

(1) The FTT in *Murray Group Holdings Ltd* did not consider the full range of arguments put forward in the present case, particularly those summarised in paragraphs 8(1) to (4) above which are HMRC's primary arguments in these appeals;

(2) *Murray Group Holdings* does not represent any particular development of the law but it is merely one decision on an EBT tax planning case out of many; and

(3) *Murray Group Holdings* depends to a large extent on its own facts; one of the key issues in the present appeals is whether the EBT was a

discretionary trust or a bare trust and the issue was not explored in those terms in *Murray Group Holdings*. That is a determination that will depend on its own facts.

29. Whilst I accept that the key issue in the present appeals is whether the purpose of these arrangements can be characterised as a process to render the funds contributed to the EBT absolutely in the hands of the employees and that in ascertaining the purpose a fact finding exercise is necessary, in my view the further appeal proceedings in *Murray Group Holdings* will be of material assistance to the FTT in the present appeals. The reason for this is because that appeal will give rise to a binding decision on the FTT as to which of the two approaches articulated in the *Murray Group's* majority and minority decisions is the correct legal approach. The principle derived from consideration of those issues will be fundamental to the way in which the FTT will need to approach the facts of these appeals.

30. It is clear to me, as submitted by Mr James, that if the majority's approach is upheld as being correct this will be of considerable and material relevance to the present appeals. The same will be true if HMRC are successful, because as a consequence it will then be apparent which of the primary facts are relevant; if HMRC are successful facts which go to the question as to whether funds have been allocated or the manner in which the trust and the sub-trusts and the loan agreements operate in practice will be much more relevant than if they are not.

31. There is a clear distinction between the fact finding exercise to be carried out in the present appeals and that which was to be carried out in *Coast*. In the latter case there were witnesses of fact on both sides and the issues raised in the present appeals are much less fact specific than those that arise in an MTIC. I accept Mr James's submission to the effect that the findings of fact to be made in the present appeals are largely a matter of drawing inferences from the primary facts and that will be a much more profitable exercise when carried out against the settled legal principles.

32. In relation to the nature of the legal issues to be determined, unlike in *Coast* there is no other relevant higher authority; in *Coast* the FTT was able to find that a decision of the Upper Tribunal would not be of material assistance because the Upper Tribunal was bound by a prior Court of Appeal Decision: see paragraph 16 of the Decision in *Coast.*

33. I do not accept that the arguments being advanced in these appeals are substantially different to those advanced in *Murray Group Holdings*. Whilst the majority in that case did not consider whether the trusts concerned, although genuine, did not operate as discretionary trusts it is clear that the minority considered that issue and I have no doubt that it would be open to HMRC to bring the arguments summarised in paragraphs 8(2) to (7) above in support of its case before the Upper Tribunal. I accept that the argument summarised in paragraph 8(1) above is specific to the present appeals but I do not consider that materially affects the overall position.

34. Whilst the majority decision in *Murray Group Holdings* did not in itself mark a significant development in the law as the majority followed a number of existing FTT decisions, it revealed a fundamental difference of approach to that of the strongly

argued minority position as a result of which guidance from the Upper Tribunal will be of material assistance to the FTT in the present appeals. It cannot be characterised, as Mr Vallat seeks to, as just another fact specific EBT decision because it clearly exposes two fundamentally opposed approaches to the issues concerned. Any decision of the FTT before the Upper Tribunal determines *Murray Group Holdings* would in these circumstances most likely be subject to an appeal, whichever way it was determined.

35. I therefore conclude that the decision of the Upper Tribunal or a higher court in *Murray Group Holdings* will be of material assistance in determining the present appeals. I turn now to consider the question whether it is expedient to grant a stay. If a stay is directed at this point, the Appellants will not incur the costs of preparing witness statements until the issues in *Murray Group Holdings* are determined. As Mr Vallat submitted, I need to balance against that the fact that if the proceedings are stayed it is likely that it will be a lengthy period before the stay can be lifted. The Upper Tribunal hearing in *Murray Group Holdings* will be at least a year away and further appeals cannot be ruled out, leaving a stay in place possibly for two years or more. Consequently, the witness evidence will become stale.

36. Mr Vallat also submits that the decision in *Murray Group Holdings* will significantly narrow the legal and factual issues between the parties, with the result that there will be no significant ultimate saving in terms of time or costs.

37. I accept that ultimately the effect of a stay will be to lengthen the overall time taken to determine the present appeals, costs will not necessarily be reduced and that in the process the evidence will become more stale. Nevertheless, the witness evidence concerned is all on the Appellants' side and I understand that witness evidence is unlikely to be extensive. As Mr James submits, in my view these disadvantages of a stay are strongly outweighed by the benefits of having a much better informed decision which will be the consequence of awaiting the *Murray Group Holdings* decision. I also take into account the limited nature of the factual evidence to be adduced, as discussed above. On balance it is therefore expedient in my view to permit a stay.

38. I therefore allow the Appellants' application and stay all further proceedings in these appeals until 56 days after the release of the Upper Tribunal's decision on the appeal in *Murray Group Holdings.*

39. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

TIMOTHY HERRINGTON
TRIBUNAL JUDGE

RELEASE DATE: 25 July 2013