TC03152

Appeal number: TC/2012/06837

CAPITAL GAINS TAX – negligible value claim – asset a certificate of deposit denominated in sterling in an overseas bank which accounted in US dollars – the bank went into administration and later liquidation and was the subject of a complaint by the Securities and Exchange Commission alleging fraud – whether asset was a debt denominated in sterling – held it was – whether the appellant's claim in the liquidation in respect of the CD was a separate asset for CGT purposes – held it was not – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

GORDON L WESTON **Appellant**

and

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

TRIBUNAL: JUDGE JOHN WALTERS QC
SONIA GABLE

Sitting in public at Bedford Square, London on 13 June 2013

David Southern, Counsel, for the Appellant

Kim Sukul, Presenting Officer, HM Revenue & Customs, for the Respondents

DECISION

Introductory

1. The appellant, Mr Weston, appeals against closure notices, dated 28 February 2012, issued by the Respondents ("HMRC") in respect of two tax years, 2008/09 and 2009/10. The closure notices include amendments to Mr Weston's self-assessment tax returns for those tax years, adding £79,227 and £33,498 respectively to the self-assessments in those returns. The basis for these amendments is the disallowance by HMRC of relief for capital losses claimed in those tax years, of £440,151 and £186,100 respectively.

2. On filing his self-assessment tax return for the tax year 2008/09, which was effected for him by Stuart Dick & Co Limited ("Stuart Dick") (chartered accountants) on-line, Mr Weston made a negligible value claim (pursuant to section 24[1] Taxation of Chargeable Gains Act 1992 ("TCGA")) to the effect that his claim against Stanford International Bank Limited – in Liquidation ("SIB") had become of negligible value while owned by him. He claimed to utilise some of the loss to which the negligible value claim gave rise against declared capital gains of £540,578 in 2008/09 and £196,200 in 2009/10.

3. Stuart Dick wrote a letter dated 25 November 2009 to HMRC in which it was stated that they had 'recently' submitted Mr Weston's return for the tax year 2008/09 on-line. However the hard copy of the information submitted which was with our papers indicates that the return was in fact submitted on 1 December 2009. It stated, under the heading 'Capital Gains Summary' that total gains in the year, before losses, were £540,578 and that total losses for the year were £1,022,534. This latter figure referred to the loss claimed by virtue of the negligible value claim.

4. Mr Weston's claim against SIB had arisen pursuant to an investment made by him in a non-negotiable Certificate of Deposit issued to him by SIB on 19 June 2006 ("the CD").

5. The CD (a copy of which was with our papers) records that it is 'subject to [SIB's] General Terms and Conditions and applicable Deposit Terms'. It also records that '[u]nless otherwise stated, all amounts specified are in U.S. Dollars or an equivalent amount if deposits are made in currency other than U.S. Dollars'.

6. The CD records that the depositor is Mr Weston and the amount is '1,000,000' and the currency is 'GBP'. It also records that 'This FIXED CD – GBP – 36

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[1] Section 24 TCGA (as in force in 2008/09) was relevantly in the following terms:

'(2) Where the owner of an asset which has become of negligible value makes a claim to that effect:

(a) This Act shall apply as if the claimant had sold, and immediately reacquired, the asset at the time of the claim ... for a consideration of an amount equal to the value specified in the claim.'

MONTHS matures on 19-JUN-2009', that the CD matures on the maturity date (i.e. 19 June 2009) and that interest to the maturity date would accrue at the base rate of 8.454% and that the annual yield would be 9.62%. The CD indicates that it was executed by an authorised signatory of SIB at St John's, Antigua, West Indies.

7. The letter to HMRC dated 25 November 2009 from Stuart Dick indicated that the basis for the negligible value claim was e-mail correspondence between Mr Weston and the liquidators of SIB. An email from Nigel Hamilton-Smith, Joint Liquidator of SIB, to Mr Weston dated 13 July 2009 with our papers stated that 'Account No. 148304 1136149.22 (GBP)' was 'Agreed' and also two other accounts, one in '(USD)' and one in '(GBP)' both '0.00' were also 'Agreed', and that the liquidators could not 'at this stage estimate the quantum and timing of any dividend to investors' adding that '[i]t is, however, not anticipated that any distribution will be available before January 2010'.

8. Stuart Dick added, in their letter to HMRC dated 25 November 2009, that 'the latest indications are a 10 pence in the pound distribution to Depositors' and that on this basis Mr Weston had claimed a capital loss in his tax return for 2008/09 of £1,022,534, being 90% of £1,136,419 – the amount of his claim agreed by the liquidators. That amount appears to comprise both the initial deposit of £1,000,000 and outstanding interest due under the CD but unpaid.

9. The issues for our decision are (1) whether Mr Weston's investment represented by the CD constituted a chargeable asset for capital gains tax ("CGT") purposes; and (2) if so, whether that asset became of negligible value for the purposes of section 24, TCGA, at the time when Mr Weston's claim was made in the tax year 2008/09.

10. Besides the documents with our papers, we received a Witness Statement and oral evidence from Alan David Pink, a chartered accountant and tax adviser, on the factual valuation issue of whether the CD had a negligible value in the tax year 2008/09.

11. From the evidence we find the following facts.

Facts

12. As stated above, Mr Weston made his investment in the CD on 19 June 2006. The CD incorporated rights in favour of Mr Weston as against SIB, as described above.

13. On 19 February 2009 the Stanford group, of which SIB was a part, was put into administration, Nigel Hamilton-Smith and Peter Wastell of Vantis plc being appointed receivers and managers of SIB following the issue of a restraining order obtained by the Securities and Exchange Commission in the USA denying SIB access to its bank accounts. On 15 April 2009 SIB was put into liquidation, Nigel Hamilton-Smith and Peter Wastell being appointed Joint Liquidators of SIB.

14. On 22 February 2009, a statement was issued to Mr Weston by SIB. There was no copy of this statement with our papers, but both parties referred to it in their respective Skeleton Arguments. The statement showed a principal balance of £1,000,000, an interest balance of £136,149.22, and an aggregate 'ending balance' of £1,136,149.22 (referring to 'pound sterling' numbered accounts) and a statement of

those balances 'expressed in US Dollars' as follows: principal - $1,425,516.75; interest - $194,082.99; and ending balance - $1,619,599.74. The 'ending balance' so expressed in US Dollars appeared in the Summary box on the statement.

15. There is with our papers a copy of the 'First Amended Complaint' filed on 27 February 2009 in the US District Court for the Northern District of Texas, Dallas Division, by the Securities and Exchange Commission against SIB and other Stanford group companies, as well as R Allen Stanford, James M Davis and Laura Pendergest-Holt. The allegations were, in summary, that for at least a decade R Allen Stanford and James M Davis, through companies they controlled, including SIB, 'executed a massive Ponzi scheme', and that in carrying out the scheme Stanford and Davis misappropriated billions of dollars of investor funds and falsified SIB's financial statements in an effort to conceal their fraudulent conduct.

16. There is with our papers a copy of a letter written apparently to all creditors of SIB by the Joint Liquidators and dated 13 May 2009. Amongst other information it states that 'Fixed CDs' of the type of the CD issued to Mr Weston were fixed term deposits with terms ranging from 3 months to 60 months. The longer the term of the deposit, the higher the interest rate offered. The letter states that '[c]lients could invest in multiple currencies including US Dollars, Euros, Canadian Dollars and Sterling'. Unlike in the case of flexible deposits, it appears that withdrawals were not permitted during the term of a 'Fixed CD'.

17. The letter written by the Joint Liquidators, dated 13 May 2009, also stated that as of 19 February 2009 the records of SIB indicated that it had 27,992 active clients and owed a total of US$7.2 billion to its depositors, which included accrued interest. The letter also stated that the Joint Liquidators' investigations had established that, as of close of business on 18 February 2009, SIB's records detailed cash balances held of US$46 million. The Joint Liquidators' investigations had also indicated that SIB held other investment assets and non-investment assets, but no accurate confirmation of their value was given. The Joint Liquidators' 'current estimate' of SIB's assets was less than US$1 billion.

18. Some time before 13 July 2009, Mr Weston made an on-line claim in the liquidation of SIB and, as stated above, received an email on that date from Nigel Hamilton-Smith, Joint Liquidator of SIB, to the effect that his claim in respect of a numbered account in 'GBP' (i.e. pounds sterling) to the value of £1,136,149.22 was 'registered and agreed' by the liquidators.

19. Some time between 13 July 2009 and 25 November 2009, Stuart Dick received what they regarded was an authoritative indication that a dividend of 10 pence in the pound would be paid to investors in SIB.

20. The negligible value claim was made either in the return for the tax year 2008/09 filed on-line on 1 December 2009 or, more likely, in Stuart Dick's letter to HMRC dated 25 November 2009.

21. On 26 November 2010, HMRC opened an enquiry into Mr Weston's return for the tax year 2008/09. As a result of the enquiry the capital loss of £1,022,534 claimed by way of the negligible value claim was disallowed.

22. In December 2010, Mr Weston's return for the tax year 2009/10 was filed on-line. It was completed on the basis that chargeable gains arising to Mr Weston in that year (of £196,200) were covered, in whole or in part, by allowable capital losses carried forward (being unused losses arising in respect of the negligible value claim).

23. On 22 June 2011, HMRC opened an enquiry into Mr Weston's return for the tax year 2009/10. As a result of the enquiry, loss relief claimed to be utilised in 2009/10 referable to the negligible value claim (brought forward losses) was disallowed.

24. In or around May 2011, Nigel Hamilton-Smith and Peter Wastell were removed from office and replaced as Joint Liquidators of SIB by Marcus Wide and Hugh Dickson of Grant Thornton. In October 2011 the liquidation was still ongoing and the quantum of the dividend which would eventually be paid to investors remained uncertain.

25. On 29 May 2012 Mr C W Agg, HM Inspector of Taxes, Local Compliance, Appeals and Reviews wrote to Mr Weston following a review and confirming HMRC's decision to disallow the loss claimed by the negligible value claim. The notice of appeal to this Tribunal was lodged on 28 June 2012.

26. On 1 June 2012 Marcus Wide and Hugh Dickson of Grant Thornton (BVI) wrote to Mr Weston notifying him that the claim made by him against SIB had been 'allowed in the amount of USD $1,339,526.52', though no explanation was given of the difference between this amount and the amount of the 'ending balance' of $1,619,599.74 referred to in the statement dated 22 February 2009 issued to Mr Weston by SIB.

27. Mr Pink's evidence was that in his opinion the expectation of a recovery of 10 pence in the pound would not render the asset concerned of negligible value. However, his view was that the circumstances surrounding the fraud allegations made by the Securities and Exchange Commission in respect of SIB in February 2009 'constituted a major financial shock by any standards, and it is not conceivable that any prudent purchaser would have been willing to lay out good money to acquire an investment in such an organisation' and that Mr Weston's investment (the CD) 'would in all probability have been unsaleable in February 2009 in the open market in a sale by private treaty at arm's length. Its value therefore was, within the sense of that term as used in the statute (as [Mr Pink] understand[s] it), negligible.'

The submissions

28. Mr Southern, for Mr Weston, submitted that the asset held by Mr Weston was a dollar asset, being either foreign currency (US Dollars) within section 21(1)(b) TCGA or a foreign currency (US Dollar) bank account within section 252(1) TCGA. Alternatively, he submits that Mr Weston had a right of action against SIB 'either

acquired for the cost of that asset or derived from that asset'. The right of action was a chargeable asset which became of negligible value in 2008/09.

29. Ms Sukul, for HMRC, submitted that the asset held by Mr Weston was not a dollar asset but was a debt denominated in sterling, so that section 252(1) TCGA does not apply to it but, pursuant to section 251(1) TCGA no chargeable gain (or allowable loss) can accrue to the original creditor (Mr Weston) on the disposal of the debt.

30. Section 21(1)(b) TCGA provided relevantly as follows:

> '(1) All forms of property shall be assets for the purposes of this Act, whether situated in the United Kingdom or not, including-
>
> ...
>
> (b) currency, with the exception (subject to express provision to the contrary) of sterling.'

31. Section 251(1) TCGA provided relevantly as follows:

> '(1) Where a person incurs a debt to another, whether in sterling or some other currency, no chargeable gain shall accrue to that (that is the original) creditor or his personal representative or legatee on a disposal of the debt, except in the case of the [*sic*] debt on a security (as defined in section 132).'

32. Section 252(1) TCGA provided relevantly as follows:

> '... section 251(1) shall not apply to a debt owed by a bank which is not in sterling and which is represented by a sum standing to the credit of a person in an account in the bank.'

33. Ms Sukul further submitted that the debt was not a debt on a security (as defined in section 132), but Mr Southern did not pursue a case that the debt, if not a dollar asset but a debt denominated in sterling, was a debt on a security, because, if so, he accepted that it would be a qualifying corporate bond within section 117 TCGA, and a gain on the disposal of it would not be a chargeable gain (section 115(1) TCGA) with the consequence that a loss on the disposal of it would not be an allowable loss for CGT purposes. We do not therefore decide whether or not the CD was a debt on a security.

34. Ms Sukul also submitted that if (contrary to her submission) the asset held by Mr Weston was a dollar asset as submitted by Mr Southern, nevertheless it did not become of negligible value for relevant purposes during the tax year 2008/09. In HMRC's submission the phrase 'of negligible value' means 'next to nothing', and would not cover an expectation of a dividend of 10 pence in the pound, which was, she submitted, according to the evidence, what was anticipated by Stuart Dick in their letter dated 25 November 2009, and no event between that time and 6 April 2010 (the end of the tax year 2009/10) had occurred to change that expectation.

35. Mr Southern expanded his submissions by arguing that the fraudulent nature of the business of SIB should cause the Tribunal to hesitate to take at face value the description which SIB applied to Mr Weston's deposit. In other words, the formal description of the CD as fixed deposit denominated in sterling (£1,000,000) should

not be determinative of the nature of the asset. On the contrary, Mr Southern relied on the evidence that SIB's monetary assets were denominated in US Dollars and that its financial statements were drawn up in that currency, including the complaint of the Securities and Exchange Commission, to submit that the asset held by Mr Weston was a dollar asset, being either foreign currency (US Dollars) or a foreign currency (US Dollar) bank account. He submitted that the acceptance on 1 June 2012 by the Joint Liquidators of SIB of Mr Weston's claim in the amount of $1,339,526.52 showed the reality of the nature of Mr Weston's asset as a dollar asset.

36. Alternatively, Mr Southern submitted that the CD was simply an instrument of fraud and that in reality Mr Weston's asset was the right to sue SIB for the misappropriation of his funds. The base cost of this asset was what he paid for it, namely his deposit of £1,000,000, and the deemed disposal proceeds the 'negligible value' supporting his negligible value claim. Mr Southern urged the Tribunal to recognise for CGT purposes the loss sustained as a matter of reality and the application of normal business principles, citing *Aberdeen Construction Group Ltd. v IRC* 52 TC 281 at 286. He relied on *Zim Properties Ltd v Proctor* 58 TC 371 at 390, where Warner J stated his decision that a right to bring an action to seek to enforce a claim that was not frivolous or vexatious, and which could be turned to account yielding a substantial capital sum, was an 'asset' for CGT purposes.

37. On the question of whether the CD was of negligible value, Mr Southern submitted that 'negligible value' for the purposes of section 24 TCGA is an absolute (as opposed to a relative) concept and means 'virtually worthless' or 'having no market value'. He cited the decision of the First-tier Tribunal is *Barker v R & C Comrs* [2012] SFTD 244. He accepted that a valuation based on a dividend of 10 pence in the pound in respect of the CD would not produce a negligible value, but relied on the evidence of Mr Pink in making the submission that as a matter of fact it would not have been reasonable in February 2009 to expect any recovery from the deposit made on the issue of the CD. He submitted that Stuart Dick's suggestion in correspondence with HMRC that a dividend of 10 pence in the pound might be expected was purely speculative and should be disregarded as being of no or insufficient evidential value to rebut Mr Pink's opinion.

38. Ms Sukul referred us to section 21 TCGA, which, as indicated above, provides that all forms of property are assets for CGT purposes including options, debts and incorporeal property generally, and currency with the exception (subject to express provision to the contrary) of sterling. She also referred us to section 251 TCGA which, again as indicated above, provides generally for gains on the disposal of a debt (other than a debt on a security) by the original creditor not to be chargeable gains – with the consequence that losses on such a disposal are not allowable losses for CGT purposes. She acknowledged that section 252 TCGA limits the application of section 251 so that it does not apply to foreign currency bank accounts which, accordingly, are debts on the disposal of which chargeable gains and allowable losses can arise.

39. On the facts, she submitted that the CD was plainly a debt denominated in sterling (and not in US Dollars) and the fact that SIB may have converted the £1,000,000

deposited by Mr Weston into US Dollars and the fact that SIB used US Dollars for its internal accounting purposes are both irrelevant to the issue before the Tribunal. She submitted that the amount Mr Weston was entitled to expect on redemption of the CD was at all times £1,000,000 plus accrued interest rather than the sterling equivalent of an amount expressed in US Dollars.

40. On the negligible value issue, Ms Sukul submitted, in effect, that the best evidence of the value of the CD at the time when Mr Weston made his negligible value claim was Stuart Dick's estimate of a dividend of 10 pence in the pound which would value the CD at £113,615, clearly an amount far in excess of anything that could be considered of negligible value. She submitted that Mr Weston had not been able to prove that the CD was really of negligible value at any time prior to 6 April 2010.

41. Ms Sukul responded to Mr Southern's submission that Mr Weston had acquired a right to sue SIB for the misappropriation of his funds at a base cost of £1,000,000 by submitting that while she accepted that Mr Weston did (or was likely to) have a chargeable asset in the form of his right to sue SIB, the base cost of that asset would be nil because it would not have been acquired in consideration for the sum of £1,000,000 given for the CD, but by way of accretion – being a consequence of his having acquired the CD and of SIB's presumed misappropriation of his funds.

Discussion and Decision

42. First of all, we address the nature of the asset acquired by Mr Weston when he made his investment in the CD, which was issued to him by SIB on 19 June 2006 and in respect of the acquisition of which he paid to SIB a consideration of £1,000,000 in sterling.

43. We consider that the obvious and correct analysis of the nature of that asset is that it was a sterling deposit with SIB. The evidence of the language of the CD confirms this. Mr Southern suggested to us that the CD was not to be taken at its face value, because of the fraudulent nature of the business of SIB. He submitted that we should find that the true nature of the asset was that it was denominated in US dollars, not sterling, and was more akin to an investment in SIB than a straightforward deposit.

44. In our judgment there is no basis for any such finding. The transaction effected between Mr Weston and SIB was one whereby Mr Weston deposited £1,000,000 with SIB on generous terms as to interest and subject to conditions as to permitted withdrawals and negotiability. This transaction set up a relationship of debtor (SIB) and creditor (Mr Weston) between the parties, it did not confer on Mr Weston any form of ownership interest in SIB itself. The fraudulent intent and activities of SIB and persons behind SIB do not, in our judgment, affect the nature of the transaction or of the asset acquired by Mr Weston. They do, of course, give rise to rights of action as between Mr Weston and SIB (and maybe others).

45. The fact that SIB may have converted Mr Weston's deposit into US dollars and invested it in dollar assets, and that the replacement Joint Liquidators of SIB have notified Mr Weston that his claim against SIB has been allowed in a US dollar amount does not affect the above analysis. Mr Weston's claim, based on the CD, was

and is a sterling claim against SIB, which, of course, could be satisfied by an equivalent payment in US dollars.

46. We decide, therefore, that the asset acquired by Mr Weston was not currency other than sterling (reference section 21(1)(b) TCGA), and was a debt in relation to which Mr Weston was (and is) the original creditor and SIB the debtor (reference section 251(1) TCGA). Furthermore the debt, although owed by SIB, which we find was a bank, was (and is) in sterling and not in any other currency (reference section 252(1) TCGA). Neither side argued that the CD was a debt on a security, and we assume (without deciding) that it was not.

47. In consequence of what is said above, we hold that no chargeable gain or allowable loss can arise on a disposal of the CD which, in effect, means that it is not a chargeable asset.

48. We consider next whether Mr Weston is entitled to the benefit of the loss relief which he has claimed by reason of his holding an asset not constituted by the CD itself, but by a right of action against SIB in relation to non-performance (or impaired performance) by SIB of its obligations under the CD.

49. Warner J's decision in *Zim Properties Ltd v Procter* forms the basis of Mr Southern's submission. That case concerned a right of action by a client, Zim Properties Ltd. ("Zim"), against its solicitors, for damages in negligence arising from advice (or lack thereof) in relation to a sale of certain properties by Zim which fell through. A capital sum was derived by Zim in compromise of the action and the question for decision was whether that capital sum was derived from the right of action itself or the properties, the sale of which gave rise to the right of action. Warner J decided that the capital sum was derived from the right of action which was an 'asset' for CGT purposes because it could be turned to account (being a right of action in respect of a claim that was not frivolous or vexatious). This had the consequence that the capital sum was treated as a gain for CGT purposes without any deduction in respect of acquisition expenditure, but Warner J did not regard this result as 'contrary to business sense' because, as he noted, after receipt of the capital sum, Zim still owned the properties, unaffected and unimpaired by the fate of the contract which had fallen through (see: *ibid.* at 58 TC 391H). Warner J said that 'the reality of the matter is still that the [capital sum] was derived by Zim from its right to sue [the solicitors] rather than from the properties' (*ibid.* at 58 TC 394D/E).

50. Warner J also noted his view that not every right to a payment is an 'asset' for CGT purposes and gave 'perhaps the most obvious example' as being the right of a seller of property to the payment of its price. There, he noted, the relevant asset was the property itself (*ibid.* at 58 TC 392F/G).

51. In the light of *Zim Properties*, our decision is that although Mr Weston indeed had a right of action against SIB, acquired when the investment in the CD was made by him on 19 June 2006 or at some later time, that right is not a separate 'asset' for CGT purposes, because it is merely one of the rights which he holds by virtue of holding the CD itself. It is analogous to the right of a seller of property to the payment of its

price. It would be very difficult or impossible to apportion the consideration of £1,000,000 paid by Mr Weston for the CD among the rights which go to make up his beneficial ownership of the CD, of which the right of action against SIB in the events which have happened is one. We consider that such an apportionment is not called for. The full consideration must be regarded as consideration given for the CD.

52. As we have decided that the only relevant 'asset' for CGT purposes was the CD and that the CD was a debt in sterling held by Mr Weston as original creditor as against SIB, and as it was not argued that the CD was a debt on a security, the appeal must be dismissed because it falls foul of section 251(1) TCGA.

53. It is therefore not necessary for us to decide the issue of whether the CD became of negligible value in the tax year 2008/09.

54. However, in view of the argument and evidence on that point which we have heard, and in case the appeal should go further, we will state briefly our conclusions.

55. We agree in broad terms with the First-tier Tribunal in *Barker and others v Revenue and Customs Commissioners* [2011] UKFTT 645 (TC) that for purposes relevant to the construction of section 24 TCGA there is no – or, at any rate, no significant – distinction to be made between negligible value and nil value. Their conclusion as to the construction of the statutory phrase 'negligible value' in that section was as follows (*ibid.* [48]):

> 'The test of eligibility for a claim under s24(2) is therefore: does this asset have a market value? If the answer is no, a claim may in principle be made; if the answer is yes, no claim under this provision if appropriate. The draftsman had accordingly no need to specify whether the word 'value' in the phrase 'negligible value' meant 'market value' – or some other type of value – because the reference is to a situation in which there is no objective value. It was rightly accepted by both parties that 'negligible value' meant 'worth next to nothing': and although it is at first sight odd for a claim for 'negligible' value to be set at nil, it is quite consistent with an approach which accepts that nil and negligible are so close as to make no difference'.

56. We point out that the draftsman of section 24 TCGA clearly considered that a negligible value could equate to a consideration of a positive amount and so, although we agree that a negligible value claim can specify a nil value, it need not do so – but a positive amount ranking as a negligible value would, we agree, be "next to nothing".

57. The evidence before us as to the value of the CD was as follows. The Stanford group, of which SIB was a part was put into administration on 19 February 2009. The Securities and Exchange Commission filed its 'First Amended Complaint' against SIB and others on 27 February 2009, alleging the misappropriation of billions of dollars of investor funds and falsification of SIB's financial statements. On 13 July 2009, Nigel Hamilton-Smith, Joint Liquidator of SIB had emailed Mr Weston (and doubtless many other claimants) stating that the liquidators could not at that stage estimate the quantum and timing of payment of any dividend to investors but that it was not anticipated that any distribution would be available before January 2010. Some time between 13 July 2009 and 25 November 2009, Stuart Dick received what they regarded as an authoritative indication (from whom, is not clear) that a dividend of 10 pence in the pound would be paid to investors in SIB. Mr Pink's opinion was

that such announcements as were on public record in February 2009 (in particular the 'First Amended Complaint' referred to above) constituted a major financial shock by any standards, and that it was not conceivable that any prudent purchaser would have been willing to lay out good money to acquire the CD.

58. It is for us to find as a fact on the basis of the evidence which we have summarised whether the value of the CD at a time in the tax year 2008/09 was nil (or negligible). We accept Mr Pink's opinion and decide that it is more likely than not that after 27 February 2009 the CD's value was negligible, or nil, and give little weight to the information provided by Stuart Dick on 25 November 2009 that 'the latest indications are a 10 pence in the pound distribution to Depositors'. We find that it would have been impossible for Mr Weston to realise anything more than a negligible consideration if he had disposed of the CD in the open market to a willing purchaser between 27 February and 6 April 2009.

59. Therefore, while accepting (as was common ground between the parties) that a value of 10% of par would not be 'negligible' for the purposes of section 24 TCGA, we find that the CD had a negligible value for those purposes in the tax year 2008/09.

60. However, for the reasons given in paragraph 52 above, the appeal is dismissed. Although we recognise that Mr Weston has suffered a financial loss in reality by reason of his investment in the CD becoming of negligible value, we consider that Parliament has framed the CGT legislation on the basis that no loss on an asset of the nature of the CD should rank as an allowable loss.

Further appeal

61. 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.

JOHN WALTERS QC
TRIBUNAL JUDGE

RELEASE DATE: 16 December 2013