



Courts and Tribunals Judiciary

SUMMARY

NOTE: This summary is provided to help in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.judiciary.uk and <http://caselaw.nationalarchives.gov.uk/>

11 April 2024

BlackRock HoldCo 5, LLC v HMRC [2024] EWCA Civ 330

Background

The appeal relates to a structure put in place by the BlackRock group in 2009 to acquire the business of Barclays Global Investors (“BGI”) from the Barclays group. The US part of the BGI business was acquired through a corporate structure that included a UK tax resident entity, “LLC5”, funded by US\$4bn. of loans from another group entity based in the US.

LLC5 claimed tax relief for interest costs arising on the loans and sought to surrender the resulting tax losses to other members of the BlackRock group to set against the profits of their UK operations, so reducing their UK tax bills.

The issues

HMRC denied tax deductions for the interest costs on two grounds:

- (1) HMRC claimed that no loans would have been made between parties acting at arm's length, so that relief should be denied under the transfer pricing rules in Part 4 of the Taxation (International and Other Provisions) Act 2010.
- (2) HMRC also maintained that relief should be denied under the unallowable purpose rule in section 441 of the Corporation Tax Act 2009, on the basis that securing a tax advantage was the only purpose of the relevant loans.

The First-tier Tribunal (“FTT”) allowed LLC5's appeal against HMRC's decision to deny relief, but its decision was reversed by the Upper Tribunal on both the transfer pricing and unallowable purpose issues. LLC5 appealed to the Court of Appeal.

Decision

The Court of Appeal's decision disagrees with the Upper Tribunal on issue (1) but reaches the same ultimate result on issue (2). The result is that tax deductions for the interest on the loans are disallowed under the unallowable purpose rule.

Reasoning

The Court disagreed with the Upper Tribunal's conclusion that the transfer pricing rules applied to deny relief, and therefore allowed LLC5's appeal on that issue. The FTT had found as a fact, with the benefit of expert evidence, that the loans would have been made if the lender and borrower had been acting at arm's length, provided that certain covenants were given by other group entities. The Court concluded that it was correct to take account of those covenants rather than to disregard them as the Upper Tribunal had decided. This was essentially because the legislation, and the OECD principles required to be applied in construing it, permit regard to be had to covenants which do no more than ensure that the risks assumed by the parties in the hypothetical arm's length transaction correspond to the risks assumed in the actual transaction.

However, the Court concluded that the unallowable purpose rule applied to deny relief. It decided that, in becoming a party to the loans, LLC5 had a main purpose of obtaining a tax advantage. Although the statutory test requires consideration of the relevant entity's purpose in entering into the loans, it was impossible on the particular facts to divorce this from the purpose for which LLC5 was formed and included in the acquisition structure. The relevant factors included that there was no other reason to include a UK based entity in the structure and its lack of commercial function.

LLC5 also had a commercial purpose, because it was anticipated to make a significant profit from its investment and its board had had regard to that in concluding that it was in LLC5's commercial interest to enter into the loans. However, the just and reasonable apportionment that the legislation requires between "unallowable" and other purposes resulted, on the facts, in all of the interest being attributed to the unallowable purpose.