TC04513

Appeal number: TC/2011/00028

Capital gains tax – EIS deferral relief – refusal of HMRC to issue EIS 1 – whether appellant existed wholly for the purpose of carrying on a qualifying trade – whether shares issued in order to raise money for a qualifying business activity – whether share issue proceeds employed wholly for the purpose of the qualifying business activity within the relevant time limits - paragraphs 1(2)(b), (f), (g) & (h) Schedule 5B TCGA – significant amounts expended on improving freehold property used in the business but owned by the shareholder – significant amounts expended on art and antiques to enhance that property – held requirements not satisfied – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

EAST ALLENHEADS ESTATE LIMITED **Appellant**

-and-

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

TRIBUNAL: **JUDGE KEVIN POOLE**
SHAMEEM AKHTAR

Sitting in public in 45 Bedford Square, London on 13 and 14 October 2014 with subsequent written submissions

John Tallon QC, instructed by Hartley Fowler LLP chartered accountants, for the Appellant

Simon Foxwell, presenting officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This appeal relates to HMRC's refusal to authorise the appellant to issue a compliance certificate (known as form EIS 3) to an investor in the appellant company, entitling him to claim EIS deferral relief in respect of an investment of £6,500,000 in shares of the appellant.

2. The appellant's business was the running of the East Allenheads Moor grouse shooting estate with associated high quality accommodation. Much of the £6.5 million was spent on additions and improvements to Allenheads Hall, the property in which accommodation was provided to clients of the business (which was owned by the investor and not the appellant, though he did not live there) and on high value antiques and art for that property (most notably, a Magritte painting bought for nearly £2.9 million).

3. The key disputes between the parties were (i) whether the appellant existed wholly for the purpose of carrying on a qualifying trade, (ii) whether the shares in question were issued in order to raise money for the carrying on of such a trade; and (iii) whether the money raised by the share issue had been employed wholly for the purposes of carrying on the trade within the relevant time limits.

The facts

Introduction

4. We received witness statements and also heard oral testimony from:

(1) Jeremy Herrmann, director and sole shareholder of the appellant;

(2) Natasha Lucas, the appellant's company secretary and manager (largely administrative) of the appellant's estate;

(3) Alan Moore Bowe FRICS, FAAV, who gave expert evidence on the issue of "what value has been added to Allenheads Hall by the renovations carried out on the property" by the appellant; and

(4) Tarquin Millington-Drake, a friend of Mr Herrmann and a travel agent with a specialisation in "sporting travel" for activities such as shooting and fishing. He had shot at the estate and had hosted some shooting parties for Mr Herrmann.

5. We also received a bundle of documents, which included some photographs of Allenheads Hall, its interior and the staff who run it and the associated shooting moor. We find the following facts.

Background

6. Mr Herrmann started working in the City of London in 1992. He worked for two large merchant banks for a total of eight years, then set up his own hedge fund

business in 2000. He has also acquired a number of other business interests. He has a longstanding interest in field sports, having been world fly-fishing champion in 1995 and also appearing in at least one list of "Top 50 shots".

Purchase of East Allenheads Moor and Muggleswick Common

7. Mr Herrmann knew people in the grouse shooting business and had shot grouse himself "a few times". He regarded it as "an interesting business" and decided he would like to participate in it himself. After reaching this decision in about 2001, in about October 2002 he bought a grouse moor called Muggleswick Common, which is in County Durham, to the southwest of Newcastle. About a year later in the autumn of 2003, he bought the nearby East Allenheads grouse moor and in early 2004 he bought Allenheads Hall, a large country property adjacent to the East Allenheads moor.

8. The two moors are approximately 8 miles apart, requiring a 25 minute car journey. They are roughly 13,000 acres each in extent, and cost approximately £10 million (for East Allenheads) and £7 million (for Muggleswick). Allenheads Hall cost approximately £2 million.

9. There was not much evidence before us as to how Mr Herrmann initially ran the two estates after he had bought them. He did say that he had initially bought them "as a toy", but he realised this was an "inappropriate" use of them, so he had decided to turn them into proper businesses by investing in them and applying proper scientific methods to their management. He said that in the early days of his ownership he "didn't really realise what was required" to run them successfully. That was a realisation that slowly dawned over the first few years.

Incorporation of the appellant and its acquisition of East Allenheads Moor

10. Having taken some advice, Mr Herrmann considered it would be appropriate to use a corporate structure to run his grouse shooting operations on a more businesslike basis. He decided therefore to establish two separate companies (one for each estate, though he could not remember if there was any particular reason for dividing matters up in this way beyond the natural geographical split).

11. The appellant was therefore incorporated on 26 January 2005 and it commenced business on 1 February 2005, East Allenheads moor (but not Allenheads Hall) being transferred into it at that time (though, strangely, the 2008 accounts of the appellant included in the bundle showed no freehold or leasehold land in "fixed assets", only freehold improvements, plant & machinery and fixtures & fittings (with a total net book value of £2.6 million at 1 February 2008)).

12. Mr Herrmann was unable to say why Allenheads Hall had not been transferred into the appellant company along with the East Allenheads moor. So far as he was aware, he still owned Allenheads Hall (he explained his uncertainty by saying that he owned "quite a few things"). The Muggleswick moor was transferred into a different company and, beyond observing that a later investment in that company appears to have been accepted by HMRC as qualifying for reinvestment relief, and that the

businesses of the two companies were somewhat interrelated (typically a shooting party would shoot one day on each of the two moors) we consider that company no further.

History of the business

13. We heard little evidence about the performance of the Allenheads Estate business (if indeed it was actually run as a business rather than as a hobby) whilst it was personally owned by Mr Herrmann from Autumn 2003 to February 2005, or about the activities of the appellant from the commencement of its business in February 2005 up to 13 July 2007, when Mr Herrmann invested £6.5 million in its shares. The information before us was limited to a list of the "annual bag" of birds shot at East Allenheads back to 2000 (before Mr Herrmann's purchase) and what could be gleaned from the "prior year" information contained in the appellant's accounts to 1 February 2008 (which were before us in evidence), along with a few comments made by Mr Herrmann himself while giving evidence and one exhibit to Ms Lucas's witness statement.

14. The grouse shooting season runs for approximately four months from 12 August each year, though the (much less significant and valuable) pheasant and partridge shooting season extends to February. East Allenheads had yielded an increasing number of grouse up to 2004. The figures had risen from some 1,500 brace (i.e. 3,000 birds) in 2000 to some 2,500 the following year and some 3,500 in 2002. The figures had only increased slightly in 2003 (the year in which Mr Hermann bought the moor) but rose again to 4,250 brace in 2004 (his first full year of ownership). 2005 had brought disaster, in the form of disease which wiped out most of the grouse in the UK, resulting in just one brace being shot at East Allenheads that year. From 2006 it was necessary to rebuild the population (some 1,200 brace shot) and it was only in 2007 (some 3,600 brace) that the bag recovered to near previous levels. Apart from a further dip in 2010, it has improved fairly steadily until 2013 yielded over 7,750 brace.

15. By 1 February 2007, the appellant showed accumulated losses of £841,000 in its balance sheet (having lost £440,000 in the previous twelve months and presumably therefore having lost some £400,000 in its first year of operation).

16. Mr Herrmann gave evidence that he had reaslised, "over a period of ten years, that the only way to make a business like Allenhead's profitable is to aim at the very high end of the market". He was unclear as to exactly when he started to invest heavily in the business to achieve this objective, but it is clear that significant investment had already started to be made before he subscribed for the shares in the appellant.

17. The 2008 accounts showed that the appellant had effectively been funded up to that time by loans from Mr Herrmann. Those accounts reported the debt to Mr Herrmann as being interest free and having no set repayment terms (though in evidence, Mr Herrmann initially said he thought it might carry a small interest charge,

until he was referred to the note in the accounts). An exhibit to Ms Lucas's witness statement showed that the appellant's debt to Mr Herrmann changed as follows:

Outstanding debt due to Mr Herrmann as at 1 February (£)							
2006	2007	2008	2009	2010	2011	2012	2013
994,892	2,055,442	3,658,772	4,905,215	4,978,578	5,034,868	4,646,438	4,787,143

18. It would clearly have been obvious to Mr Herrmann in 2007 that the appellant was going to require significant further financing if it were to continue to operate as it had up to that time (and much more if he intended to provide a really "premium" shooting experience for the target clientele). However, he understood he had a large capital gain to shelter and was advised that reinvestment relief offered an opportunity to defer the tax on that gain; this influenced his decision to invest a total of £10.5 million by way of share capital in the appellant and Muggleswick.

The issue of shares and expenditure of the proceeds

19. Mr Herrmann invested £6.5 million in cash for ordinary shares in the appellant on 13 July 2007. The precise timing of his investment was clearly influenced by the fact that an announcement had been made that the amount of reinvestment relief available under the statutory provisions would be limited, with effect from 19 July 2007, to £2 million per investee company per year.

20. We were provided with some schedules listing the expenditure of the appellant after Mr Herrmann had made his investment. As will be seen below, it is relevant to the availability of reinvestment relief to establish how much of the £6.5 million was "employed wholly for the purpose of the qualifying business activity" in the first and second year after 13 July 2007, and the schedules provided were broken down with this in mind. It is important to note, however, that (as seen at [17] above), Mr Herrmann also continued to increase his loan to the appellant. Indeed, during the accounting period in which he subscribed £6.5 million for shares, he also advanced a further £1.6 million of loan to the appellant, and in the subsequent year he again increased his loan, by £1.25 million.

21. During the first year after the share issue, the appellant incurred total expenditure of £8,445,559 on a number of projects. In the bundle before us, this expenditure was analysed between six headings, as follows:

(1) Improvements to freehold property (also apparently including some repairs) totalling £1,358,132. The bulk of this expenditure (£1,243,630) related to a major redevelopment of "the Garden House", a separate building (formerly a village hall) in the grounds of Allenheads Hall (then, as now, in the private ownership of Mr Herrmann), which was turned into a small spa or leisure centre, with an indoor pool and jacuzzi. In addition, £84,390 was spent largely on "the Orangery", a large conservatory built on the back of the Hall as an

informal relaxation area and £42,569 on the provision of en suite bathrooms for the bedrooms in the Hall. As Mr Herrmann explained it, the Hall and its associated outbuildings were used as accommodation for shooting parties who wished to use it (not all did) and it was necessary for the facilities available to match up with the expectations of the super-rich whom the appellant was seeking to attract as clients. It made the estate a welcoming venue for whole families, particularly during the school summer holidays at the height of the grouse shooting season (when children could swim in the Garden House, for example).

(2) Purchase of freehold land and buildings, totalling £3,337,964, all incurred in March/April 2008. £2,675,138 was spent on acquiring a further 2,500 acres of moorland and £595,810 on buying a local farm (which was then rented back to the farmer in order to limit the numbers of sheep grazed on it so as to reduce pressure on the grouse population). Finally, £67,016 was spent in purchasing some access land.

(3) Plant and machinery, totalling £141,522. £45,048 of this was spent on shotguns, £5,795 on a fire fogging system for use on the moor and all but about £3,000 of the remainder was spent between July and December 2007 on heating, air conditioning and other works on the Hall.

(4) Fixtures and fittings, totalling £6,734. In view of the small amount, we do not analyse this further, except to say that a significant part clearly relates to expenditure on the Hall or its furnishings.

(5) Motor Vehicles, totalling £43,932.

(6) Art and antiques, totalling £3,557,275. Of this, £2,882,512 relates to the purchase at auction in February 2008 of a surrealist Rene Magritte painting of a bird. A further £343,567 relates to the purchase of a silver George II two-light candelabra. The remaining 27 listed purchases (many being multiple items) were of art, books and furnishings ranging in price roughly from £2,000 to £48,000 and totalling £331,196.

22. As to the timing of this expenditure during the first year after the share issue, we note that a great deal had already been spent on freehold improvements before the share issue:

(1) the accounts for the year to 1 February 2008 show expenditure on improvements to freehold property of £1,154,888 during the year, whereas the list covering the period from 13 July 2007 to 1 February 2008 provided by the appellant to HMRC shows expenditure on such improvements of £783,548 during that period, implying that £371,340 had already been spent on improvements from 2 February to 12 July 2007; and

(2) the actual list of expenditure makes it clear that the Garden House and main Hall developments must have been well under way by 13 July 2007, as payments of well over £100,000 were made in respect of them between 13 and 30 July 2007.

23. The picture that emerges from the evidence is of expenditure on the various works at Allenheads Hall up to November 2007 dwarfing all other expenditure of the appellant in that period, then a major spending programme from November 2007 through to February 2008 on art and antiques and finally the land purchases in March/April 2008.

24. During the second year after the share issue (i.e. from July 2008 to July 2009), under the same six headings, the appellant incurred further expenditure of £537,920 as follows:

(1) £325,265 on freehold improvements, of which £174,080 was spent on the Garden House and £110,218 was spent on en-suite bathrooms in the Hall, with a further £34,180 identified as "retention for building works" but with no further detail.

(2) £Nil on purchase of freehold property.

(3) £5,607 on plant and machinery.

(4) £5,048 on "chandelier cleaning and fitting" under the heading "fixtures and fittings".

(5) £16,000 on motor vehicles.

(6) £186,000 on further paintings and furnishings, including £102,297 on a Munnings painting entitled "Pike Fishing" and £72,777.50 on a Thorburn watercolour of birds.

25. Mr Herrmann explained that he had positioned the appellant's business to appeal to the super-rich. He saw that as one of the most successful business models of recent times. Grouse shooting was a very expensive pastime in any event (as he said, "there is no such thing as a poor grouse shooter") and therefore it required something special to make the appellant a premium player in that market. To do so, it had to make Allenheads Hall "feel like home" to the super-rich. They would "expect to walk in and see great art", and the general standard of the accommodation and its furnishing needed to be very high. This explained the need to spend so much on upgrading the bedrooms and associated bathrooms and improving the facilities generally (including the creation of the leisure spa, the Orangery and the conversion of a small pond in the grounds into a large and fully stocked fishing lake). His wife was a director of the appellant and much of the work on the Hall was "her department". Whilst not all clients would use the Hall for accommodation (the appellant charged a flat rate of £5,000 per night, irrespective of the size of party staying), it was still available for use by shooting parties during the day, and in particular it was very common for non-residents to be taken back there after a day's shooting for tea and to enjoy the ambience.

26. He explained the purchase of the Magritte painting and the candelabra by saying that every collection of art or antiques needed one "knockout piece" to complete it. He also pointed out that the strategy was clearly successful because the appellant was now making profits and was (as stated by Ms Lucas) fully booked for a year ahead and in a position to charge premium prices.

27. There was no evidence before us as to which particular source of finance any of the above expenditure was funded from. There was no evidence before us that the share subscription money was kept separate from the appellant's other funds and therefore it could not be said whether any particular item of expenditure had been met out of the share issue proceeds or from Mr Herrmann's loan finance. At first sight, this might present a significant issue for the appeal, due to the requirement for the appellant to show that the share issue proceeds had all been spent in the relevant way within the two year period. This was not identified as an issue in HMRC's statement of case, but they sought to introduce it through their skeleton argument, submitted for the first time shortly before the hearing. The appellant objected to this late introduction of what was effectively a new point and ultimately Mr Foxwell agreed to drop it. In practice, it appears that the relevance of the issue would in any event be marginal because of the size of the amounts spent in what HMRC argued to be non-qualifying ways, even if the appellant's total expenditure were allocated in the most advantageous way for the appellant.

The application for relief

28. The shares having been issued and the appellant having started to spend the money, on 3 March 2008 an application was made to HMRC on its behalf in form EIS 1, seeking HMRC's permission to issue a compliance certificate (known as form EIS 3) authorising Mr Herrmann to claim EIS deferral relief in respect of his £6.5 million share subscription.

29. There followed a lengthy exchange of correspondence between the appellant's advisers and HMRC, during the course of which much information was provided to HMRC and a number of areas of concern were addressed. This culminated in a letter dated 25 November 2008, in which (having received no reply to an earlier letter dated 2 September 2008), HMRC gave formal notice of their decision to refuse authority for the appellant to issue the compliance certificates in form EIS 3. They cited two grounds, implicitly referring back to their earlier letter. The first ground was that the appellant was not carrying on a qualifying trade because of its operation of Allenheads Hall, which in their view amounted to an "excluded activity" (this ground has subsequently been dropped); the second ground was that the money raised by the share issue had not been employed wholly in a qualifying business activity (essentially for the same two reasons as are now being considered in this appeal).

30. Rather than refer the matter to the General or Special Commissioners (as would have been appropriate at the time), the parties continued to correspond. In a letter dated 23 February 2009 from the appellant's representatives to HMRC (specifically in the context of the debate about the nature of the appellant's business and whether the use of Allenheads Hall amounted to an excluded activity), it was stated that "the company has no estate or interest in the Hall, merely informal permission to use the property for the purposes of the shoots". In reply, HMRC confirmed in their letter dated 6 March 2009 that in the light of the further information provided, they now accepted that the appellant was not carrying on an excluded activity.

31. Matters then became slightly complicated by the change to the appeals system on 1 April 2009, as well as the continued correspondence providing further information to HMRC. Ultimately, the appellant's representatives wrote to HMRC on 29 September 2010 requesting a formal review of the original refusal (under the new appeals system) and the review decision was finally issued on 30 November 2010, upholding the refusal. The grounds were two-fold:

> (1) essentially the same arguments as before concerning what HMRC regarded as the failure to employ the £6.5 million wholly for the purposes of the trade within the relevant periods; and
>
> (2) a new argument that Mr Herrmann had received value from the appellant (by reason of the improvements carried out to Allenheads Hall).

32. The appellant notified its formal appeal to the Tribunal on 22 December 2010.

33. After HMRC's statement of case was delivered on 2 March 2011, the appeal was stayed for some time pending the outcome of other litigation. After being re-activated in 2013, it progressed reasonably smoothly up to the hearing.

The appellant's use of Allenheads Hall

34. Because part of the dispute in this appeal revolves around the expenditure of large sums of money on improvements to Allenheads Hall, it is appropriate to consider the basis of the appellant's use of it in some detail.

35. There were no written terms in place regulating the appellant's use of Allenheads Hall for its business until a lease dated 27 November 2013 referred to below.

36. The appellant's position as to the basis of its occupation of the Hall appears to have changed over time. When the appellant's solicitors first wrote to HMRC on 12 June 2007 seeking confirmation that HMRC accepted its status as an EIS company, they referred to the Hall as "a hotel providing accommodation for shooting parties", but sought confirmation that this would not be regarded as disqualifying the appellant as "its revenues from the hotel are about 12% of its total income and it does not own the hotel."

37. On 27 November 2008, the appellant's accountants referred to the arrangements as follows:

> "The EIS money was raised to provide the necessary facilities at the Hall, the provision of which is an integral part of the company's qualifying trade. Clearly, however the arrangement was structured, there would be a cost to the company in providing those facilities. The company could have rented the facilities from the freeholder but it did not, and instead the arrangement has been for the company to pay for its use of the facilities in the form of its expenditure on them."

38. On 23 February 2009, the same advisers wrote to HMRC (as mentioned at [30] above) stating that:

> "the company has no estate or interest in the Hall, merely informal permission to use the property for the purposes of the shoots…
>
> As regards the money spent on the Hall, even if that expenditure might have some reversionary benefit to its owner, that was not the purpose of the expenditure."

39. On 29 September 2010, however, the same advisers wrote to HMRC stating that:

> "By making a contribution to the cost of the property, and occupying the property for its own purposes, the company has doubtless established an equitable interest (ie in favour of itself) in the Hall and other buildings to the extent of the money it has spent on them."

40. On 27 October 2010, the same advisers wrote to HMRC stating that:

> "In earlier correspondence, Ms Young had put forward the view that because the company had spent money on property owned by the controlling shareholder, Mr Herrmann, Mr Herrmann and received value from the company, thereby precluding EIS relief. Just to recap, we have made three counter-points to this argument, namely:-
>
> i) the property in question is basically the Hall and Garden House, which are used by, and provided for, the company's clients, and are not used by Mr Herrmann (or his family) for private purposes; Mr Herrmann has substantial private accommodation elsewhere which is used for his family's personal purposes;
>
> ii) the money spent by the company on these properties is, in effect, in lieu of paying Mr Herrmann rent; and
>
> iii) we had suggested that the company, by spending the money it has on the Hall and Garden House, is likely to have created an equitable interest in those assets in favour of itself, equivalent to the amount of money spent. At 2(b) of her 22 October 2010 letter, Ms Young suggests that even if an equitable interest has been created, then the director (Mr Herrmann) is still getting at least part of the benefit of the expenditure through his ownership of the freehold. We wonder whether Ms Young has perhaps misunderstood the concept of equitable interest. Where an equitable interest is established, our understanding, based on our working experience in other cases, is that in simple terms, where a person acquires an equitable interest, that person effectively obtains a beneficial ownership in all or part of the property concerned. On that analysis, it seems to us that Mr Herrmann cannot have received any value in this respect."

In doing so, it seems to us, that they appeared to be putting forward two mutually inconsistent explanations of the arrangements; if the appellant's expenditure on the

Hall were treated as rent, it could not give rise to an equitable interest (and vice versa). What can be said with certainty, however, is that there was clearly no specifically agreed legal basis for the appellant's use of Allenheads Hall up to that time.

41. On 27 November 2013 (when this appeal was already at an advanced stage), a lease was executed between Mr Herrmann and the appellant in respect of Allenheads Hall. The lease (which was contracted out of the Landlord & Tenant Act 1954) was for a ten year term commencing 23 October 2013, at a peppercorn rent. The permitted use of the property was restricted to ancillary use as accommodation to the grouse shooting activities and the appellant was subject to a full repairing and insuring obligation.

42. By virtue of a side letter also dated 27 November 2013 from Mr Herrmann to the appellant, it was agreed that Mr Herrmann would compensate the appellant at the end of the lease for the improvements carried out to the property since 2 February 2005 as listed in a schedule attached to the letter (plus any further improvements thereafter), depreciated at 5% per annum. The schedule listed improvements totalling £2,679,910, of which approximately £2 million appear to relate to freehold improvements from July 2007 to July 2009 summarised above; Mr Herrmann would be entitled to deduct from the compensation so payable (a) a notional open market rent of the unimproved property, and (b) the amount of any payments made to the appellant for accommodation for shooting parties at the property from February 2005 up to the end of the lease (the amount up to October 2013 being calculated as £651,000).

43. By virtue of a further side letter dated 21 February 2014, it was agreed that the only amount to be deducted from the compensation would be £50,000 in respect of the notional rent. This figure (whether intended to be an annual figure or a total figure for the ten year term of the lease) sits a little uneasily with the expert evidence of Mr Bowe, who expressed the view that the rental value in December 2013 of the property in its previous unrenovated state would be in the range £11,000 to £22,000 per annum.

44. Mr Herrmann had no comment to make on the formal basis from time to time of the arrangement with the appellant for its use of Allenheads Hall. He simply said that he acted "under advice". In particular, Ms Lucas had dealt with the arrangements surrounding the lease of the Hall and associated side letters. As the lease and subsequent events arose many years after the original issue of shares and refusal of relief by HMRC, we do not consider their detail to be relevant for present purposes.

45. As to the value of Allenheads Hall (and the effect on that value of the improvement works that have been done), we accept the unchallenged evidence of Mr Bowe that the annual rental value in its current state would be between £30,000 and £50,000 per year, and that the freehold value of the Hall would only have been increased by about one half of the money spent on its improvement (resulting in a current value of between £2 million and £3 million).

The law

Introduction

46. The decision under appeal is HMRC's refusal to authorise the appellant to issue a compliance certificate to Mr Herrmann pursuant to section 204(3) Income Tax Act 2007 ("ITA"). Pursuant to section 206 ITA, such refusal is, "for the purpose of the provisions of TMA 1970 relating to appeals… taken to be a decision disallowing a claim by the issuing company".

47. In deciding whether HMRC were justified in refusing authorisation, it seems to us (and the parties proceeded on the assumption that) it is appropriate for the Tribunal to reach its own view on whether the various requirements of Schedule 5B (in respect of the availability, rather than the withdrawal, of relief), insofar as they are in dispute between the parties, were satisfied or not at the time of HMRC's refusal. If we decide that they were satisfied, then it would follow that HMRC's refusal was inappropriate and the appeal should be allowed; if we decide that they were not satisfied, then HMRC's refusal was justified and the appeal should be dismissed. We are, for the purposes of this appeal, concerned with HMRC's final confirmation of their refusal as communicated to the appellant in their statutory review letter issued on 30 November 2010. Our concern is therefore with the facts and circumstances up to that time, though evidence from a later period may also cast light on those earlier facts and circumstances. We would add that we would have reached the same conclusions even if we had been concerned with the facts and circumstances up to 25 November 2008 (when HMRC issued their formal refusal letter).

The relief for "qualifying investments"

48. The basic structure of the relief set out in Schedule 5B TCGA is that reinvestment relief is available for "qualifying investments" in eligible shares (see paragraph 1(1)(c) Schedule 5B). What constitutes a "qualifying investment" is set out in paragraph 1(2) of Schedule 5B TCGA, which contains a list of requirements in relation to the shares and the company in question. The key requirements in this appeal are:

> "(b) the company is a qualifying company in relation to the shares,
>
> (c), (d), (e) …
>
> (f) the shares (other than any of them which are bonus shares) are issued in order to raise money for the purpose of a qualifying business activity,
>
> (g) at least 80 per cent of the money raised by the issue of –
>
> (i) the shares, and
>
> (ii) all other eligible shares (if any) in the company of the same class which are issued on the same day,

> is employed wholly for the purpose of that activity not later than the time mentioned in section 289(3) of the Taxes Act or section 175(3) of ITA 2007[1], and
>
> (h) all of the money so raised is employed wholly for that purpose not later than 12 months after that time,
>
> and for the purposes of this Schedule, conditions in paragraphs (g) and (h) above do not fail to be satisfied by reason only of the fact that an amount of money which is not significant is employed for another purpose."

49. In addition to the provisions set out above, there are various other requirements (which HMRC accept are satisfied in this case) as to the timing of the investment in shares, the issue of the shares, the commercial purposes of the investment and the carrying on by the investee company of the relevant activities.

What is a "qualifying company" (paragraph 1(2)(b) Schedule 5B TCGA)?

50. The question of whether a company is a "qualifying company" for the purposes of paragraph 1(2)(b) of Schedule 5B TCGA (see [48] above) is determined (by virtue of paragraph 19 of Schedule 5B) by reference to the definition of that phrase in Part 5 of ITA 2007 (subject to one small amendment which is not relevant in the present case).

51. Section 180 (in Part 5) of ITA 2007 lists the requirements for being a qualifying company. It is common ground that the appellant satisfies all the requirements listed in that section, except one.

52. The disputed requirement in the present case is "the trading requirement" which is set out in full in section 181(2) ITA 2007. For a singleton company such as the appellant, this requires that, throughout the relevant period (13 July 2007 to 12 July 2010 in the present case)[2]:

> "(a) the company, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades…"

(see section 181(2)(a) ITA 2007).

53. This definition, whilst reasonably clear when viewed in isolation, gives rise to some difficulties when attempting to apply it in determining whether, at the date of issue (13 July 2007 in this case), the investee company satisfies "the trading requirement". On its face, it only allows the conditions for relief for a share issue on that date to be satisfied by reference to the purpose of the company's existence over the three year period commencing on that date – thus leaving the availability of relief uncertain until that three year period has ended. We are however satisfied that this

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[1] The time in question was, in this case, "the end of the period of 12 months beginning with the issue of the shares", i.e.12 July 2008.

[2] See sections 159(3) and 256(1)(a) ITA 2007

was not Parliament's intention, as paragraph 1A(1) of Schedule 5B specifically provides that if the investee company ceases to comply with the "qualifying company" requirement (of which the "trading requirement" is a key component) "in consequence of an event occurring after the issue of eligible shares", then the relief is effectively withdrawn from the date of that event. We are satisfied, therefore, that if the appellant, ignoring any incidental purposes, existed as at 13 July 2007 for the purpose of carrying on a qualifying trade, that is sufficient to satisfy "the trading requirement" for the purposes of establishing the appellant's initial eligibility for relief.

54. Section 189 ITA 2007 defines what is a "qualifying trade" for the purposes of "the trading requirement". There are two limbs to the definition. The first requires that the trade be "conducted on a commercial basis and with a view to the realisation of profits" (section 189(1)(a) ITA 2007). The second excludes any trade which consists "wholly or as to a substantial part in the carrying on of excluded activities" (section 189(1)(b) ITA 2007).

55. HMRC do not argue that the appellant existed at any time for the purposes of carrying on any "excluded activities" (the so-called "black list" set out in section 192 ITA 2007, which includes "operating or managing hotels or comparable establishments") and therefore the only question, in relation to compliance with paragraph 1(2)(b) of Schedule 5B is, in effect, this: Did the appellant, ignoring any incidental purposes, exist at 13 July 2007 wholly for the purpose of carrying on its trade on a commercial basis and with a view to the realisation of profits?

56. In considering this question, for the purposes of section 181(2)(a) ITA 2007 (see [52] above), "incidental purposes" is defined in section 181(8) ITA 2007 as meaning:

> "purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question".

What is a "qualifying business activity" (paragraph 1(2)(f) Schedule 5B TCGA)?

57. For the purposes of paragraph 1(2)(f) of Schedule 5B TCGA (see [48] above), "qualifying business activity" (by virtue of paragraph 19 of the same Schedule), is defined by section 179 ITA 2007. That section caters for a number of different scenarios (in particular, groups of companies, research & development companies and companies preparing to carry on a trade), but in the present case (of a singleton company with an existing trade in the UK), "qualifying business activity" simply means "the carrying on of a qualifying trade" (see [54] above).

58. The question for determination in relation to paragraph 1(2)(f) of Schedule 5B therefore effectively becomes this: Were the shares which were issued on 13 July 2007 issued in order to raise money for the purpose of carrying on the appellant's trade on a commercial basis and with a view to the realisation of profits?

Paragraphs 1(2)(g) & (h) Schedule 5B TCGA

59. Finally, as the requirements of paragraphs 1(2)(g) and (h) of Schedule 5B relate to the employment of the money raised wholly for the purpose of "that activity" (i.e. the qualifying business activity referred to in paragraph 1(2)(f)), the questions for determination under those two paragraphs effectively become this:

> (1) Was at least £5.2 million [i.e. 80% of the £6.5 million] raised by the share issue employed by 12 July 2008 wholly for the purpose of carrying on the appellant's qualifying trade (as defined at [54] above)?
>
> (2) Was the remainder of the £6.5 million raised by the share issue employed by 12 July 2009 wholly for the same purpose?

General comments

60. It can readily be seen that the requirement of paragraph 1(2)(b) of Schedule 5B TCGA focuses on the purposes for which the company in question exists (see [55] above), whereas the requirements of paragraphs 1(2)(f), (g) and (h) focus on the purpose for which the money is raised and its actual employment in pursuance of that purpose (see [58] and [59] above). This important distinction must be kept in mind.

61. It is also relevant to note that Schedule 5B contains provisions under which any relief already obtained can fall away (with the resultant crystallisation and falling into charge of the re-invested gain) if certain events subsequently occur. So, for example, if the investee company stops trading within 3 years of the share issue, or if the money raised is not appropriately employed within the time limits, or if the investor receives value from the investee company within three years of the share issue, the reinvested gain falls back into charge (in some cases retrospectively).

62. Thus if HMRC do authorise the issue of a compliance certificate, that does not represent final confirmation of the unconditional and lasting availability of deferral relief; it merely represents an important step along the path of obtaining and keeping such relief.

63. Against that background, HMRC will of course have issued their original refusal in this case (on 25 November 2008) on the basis of the facts known to them at that time; they confirmed their refusal in a "statutory review" letter dated 30 November 2010 (on the basis of the facts known to them at that time); accordingly, it might be arguable that any appeal against HMRC's refusal should be decided on the basis of the circumstances prevailing at 25 November 2008 or 30 November 2010 (any subsequent events only being relevant to a later withdrawal of relief). This argument was not specifically addressed by either party, both of them instead proceeding on the tacit assumption that the Tribunal should consider all currently known circumstances in deciding whether HMRC's refusal to authorise the issue of the compliance certificate should be upheld. Our view on this point is set out at [47] above.

64. Finally, to avoid any suggestion that he was asking the Tribunal to decide this appeal by reference to the provisions for withdrawing relief after it has initially been

given, Mr Foxwell confirmed that "it forms no part of HMRC's case that a return of value could justify a refusal to issue form EIS 1."

Summary of submissions

For HMRC

65. Mr Foxwell referred generally to the "qualifying business activity" and "trading" requirements of sections 179 and 181 and paragraph 1(1) of Schedule 5B TCGA. He did not specifically link his individual submissions to specific provisions, but his argument was that the appellant did not employ the £6.5 million wholly for the purposes of its qualifying business activity for two main reasons:

(1) a large part of the money (especially the £3.2 million spent on the Magritte painting and the candelabra) was spent on items which were, effectively, investments and not really business assets at all;

(2) another large part of the money (especially the £1.75 million spent on the Garden House leisure complex) was spent on improvements to Mr Herrmann's privately-owned property at Allenheads Hall.

66. He claimed that Mr Herrmann's investment was "far from a typical EIS investment", being "340 times larger than average", and that it was "no coincidence" that it was made just days before a new £2 million investment limit was introduced on 19 July 2007.

67. Overall, Mr Foxwell characterised the whole undertaking at Allenheads as "a rich man's indulgence" which Mr Herrmann had used "at least partly to enhance his own image and reputation as a City financier".

68. He questioned whether the expenditure on art, antiques and improvements to Allenheads Hall was "necessary to attract the correct clients", pointing out that only half of the customers chose to stay there. He also pointed to Mr Herrmann's personal interest in fishing, shooting, wine and art and the fact that he was the appellant's largest customer.

69. In conclusion, he submitted that the expenditure was in reality largely concerned either with the making of investments or enhancing Mr Herrmann's personal property or indulging his personal hobbies and tastes and the share issue should not therefore qualify for relief.

For the appellant

70. As Mr Tallon put it, there were two issues for the Tribunal:

(1) whether the appellant, ignoring any incidental purposes, exists (we believe he intended to say "existed", referring to the position on 13 July 2007) wholly for the purpose of carrying on one or more qualifying trades (or whether, in contrast, it existed also for the purpose of carrying on an activity or business of investment which was more than incidental to its qualifying trade); and

(2) whether the shares were issued to raise money for the purpose of a qualifying activity and were wholly employed for that purpose (as to at least 80% within twelve months and as to the remainder within two years). As there appeared to be no dispute that the money had been spent within the requisite time limits, the issue therefore appeared to be whether the money had been raised and wholly employed for the purpose of the carrying on of the appellant's trade and, in particular, whether an amount of money which was "significant" had been employed for some other purpose (i.e. a private purpose of Mr Herrmann or an investment purpose).

71. He submitted that when determining any "purpose" of the appellant, that was a subjective matter and a stated subjective purpose of the appellant's directors could only be displaced "if, on an objective cross-check, it can be said that the subjective purpose of the Directors must have included a purpose which was not a trading purpose." Here, he referred in passing to both *Copeman v Flood* [1940] 24 TC p.53 and *Mallalieu v Drummond* [1983] STC 665, arguing that "purpose" should not be confused with "effect"; we took him as arguing that if it was established that the purpose of the expenditure on art, antiques and property improvements was to benefit the trade of the appellant, then the fact that there might have been a collateral effect (of acquiring assets that could be expected to increase in value or providing some collateral benefit to Mr Herrmann in his private capacity) should properly be ignored.

72. In doing so, we take him to be referring (for example) to the following statements of Lord Brightman in *Mallalieu* at page 668:

> "To ascertain whether the money was expended to serve the purposes of the taxpayer's business it is necessary to discover the taxpayer's 'object' in making the expenditure: see Morgan v Tate & Lyle Ltd [1955] AC 21 at 37 and 47. As the taxpayer's 'object' in making the expenditure has to be found, it inevitably follows that (save in obvious cases which speak for themselves) the commissioners need to look into the taxpayer's mind at the moment when the expenditure is made. After events are irrelevant to the application of s 130 except as a reflection of the taxpayer's state of mind at the time of the expenditure.
>
> …
>
> The object of the taxpayer in making the expenditure must be distinguished from the effect of the expenditure. An expenditure may be made exclusively to serve the purposes of the business, but it may have a private advantage. The existence of that private advantage does not necessarily preclude the exclusivity of the business purposes."

73. In Mr Tallon's submission, the evidence was clear. The appellant's business was based on a particular model, of attracting the very richest customers. The money was raised by the appellant and spent by it wholly in furtherance of that model, creating an overall "ambience" that went far beyond the quality of the shooting itself (which was, in any event, of the highest standard). The facilities at Allenheads Hall and its décor and furnishings all needed to be of the very highest standard if the target customers were to be persuaded to choose it above rival businesses. The success of

the appellant's strategy could be seen from the fact that it was fully booked for a year ahead and had "the longest waiting list in the business", as well as being able to charge prices that were above the normal market rate. HMRC's assertion that expensive art and antiques were not "needed" in order to attract the relevant customers were entirely irrelevant – the statutory test contained no reference to "need". In the circumstances, therefore, he submitted, it was obviously open to us to find that that:

> (1) the appellant existed as at 13 July 2007 (and, indeed, at all times thereafter) wholly for the purpose of carrying on a qualifying trade, any investment element or personal benefit being entirely incidental;
>
> (2) the shares were issued by the appellant on 13 July 2007 in order to raise money for the qualifying trade;
>
> (3) at least 80% of the money raised by the share issue was employed wholly for the purpose of the qualifying trade within 12 months of the issue; and
>
> (4) the whole of the money so raised was employed wholly for that purpose within two years of the issue.

74. He also submitted that it was entirely irrelevant (indeed, outside the jurisdiction of the Tribunal in this appeal) whether Mr Herrmann derived some benefit or received value as a result of the appellant's expenditure – such issues forming no part of the Tribunal's consideration of the issue under appeal, namely whether HMRC should have authorised the appellant to issue the relevant certificate to Mr Herrmann under section 204(1) ITA 2007. Receipt of value by the investor, he pointed out, may potentially result in charges arising under paragraph 13 of Schedule 5B TCGA but that is an entirely separate issue from whether relief ought initially to have been granted.

Discussion and decision

Preliminary matters

75. We disregard as entirely irrelevant the fact that Mr Herrmann made his investment into the appellant a few days before an annual limit of £2 million was brought into force. Similarly, we consider it entirely irrelevant that the size of the investment was out of line with EIS investments generally, or that the business of the appellant was one in which Mr Herrmann had a great personal interest.

76. In considering the statements in *Mallalieu* referred to at [72] above, it is also important to bear in mind that, as Lord Brightman said at p.671:

> "I reject the notion that the object of a taxpayer is inevitably limited to the particular conscious motive in mind at the moment of expenditure. Of course the motive of which the taxpayer is conscious is of vital significance, but it is not inevitably the only object which the commissioners are entitled to find to exist."

77. Thus, even if we were to accept that Mr & Mrs Herrmann's sole conscious motive (as the only directors of the appellant) was that the appellant should make the various payments for the purposes of its trade, we would still be entitled to find (if the facts and circumstances warranted such a finding) that there must have been another unconscious motive of providing a personal benefit to Mr Herrmann or of carrying on an investment (rather than trading) activity by the appellant.

78. In saying this, we do not accept Mr Tallon's submission that:

> "the legal test… of 'purpose' is subjective purpose which can only be displaced if, on an objective cross-check, it can be said that the subjective purpose of the Directors must have included a purpose which was not a trading purpose."

As put, this submission seems to us to overstate the position. As is clear from *Mallalieu*, a search for the "purpose" of any act requires an enquiry into the taxpayer's "object" in carrying out that act, which is necessarily an enquiry into the taxpayer's subjective state of mind. Thus far, we believe we and Mr Tallon are in agreement. But that is not the same as accepting (as Mr Tallon might be intending to suggest) that a taxpayer's evidence as to his "object" must be accepted at face value unless some "objective cross-check" can be found to displace it. First, in such cases, a Tribunal will be alert to the fact that witnesses may simply be untruthful (which, we hasten to add, is not suggested in this case), or may have their memory of events unintentionally coloured by subsequent events or in response to the arguments that are put forward. Second, as Lord Brightman said in *Mallalieu*, it may be "inescapable" that some other object, albeit an unconscious motive, lies behind the expressed conscious object.

79. In the light of these preliminary observations, we now consider in turn the specific areas of dispute between the parties.

Paragraph 1(2)(b) Schedule 5B

80. As stated at [55] above, the question to be decided under this heading can be posed as follows: Did the appellant, ignoring any incidental purposes, exist at 13 July 2007 wholly for the purpose of carrying on its trade on a commercial basis and with a view to the realisation of profits? In answering this question, it is to be remembered that "incidental purposes" has a special meaning, namely:

> "purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question".

81. As submitted by HMRC, the appellant had other purposes at the relevant time, namely (i) a purpose of conferring personal benefits on Mr Herrmann through the improvements to his property at Allenheads Hall (and perhaps through allowing him to indulge his hobbies of enjoying expensive art and of shooting on a luxury basis on preferential terms) and (ii) a purpose of making investments in valuable art and

antiques beyond any level that might be considered commercial for the purposes of the appellant's trade.

82. It is important to bear in mind in relation to "other purposes", however, that any such other purpose which "has no significant effect (other than in relation to incidental matters) on the extent of the activities of the company" is to be ignored for the purposes of testing compliance with the requirement of paragraph 1(2)(b) of Schedule 5B.

83. HMRC have not argued that the appellant was (or existed for the purpose of) trading at any time otherwise than "with a view to the realisation of profits", in spite of the fact that the evidence before us showed it made losses in the years to 1 February 2007, 2008 and 2009 of £440,088, £195,122 and £628,947 respectively (having brought forward an accumulated loss of £401,015 as at 2 February 2007 from its first year of operation). We saw no evidence of its profitability in subsequent years, but we heard that it was "now" making profits of around £300,000 to £350,000 per year, though it had accumulated losses "in excess of £1 million". As HMRC have not argued the point, however, we consider it no further.

84. Nonetheless, HMRC did argue that paragraph 1(2)(b) of Schedule 5B was not satisfied and this can only be because they did not accept that the appellant existed on 13 July 2007 wholly for the purpose of carrying on its trade on a commercial basis; and in the light of Mr Foxwell's submissions, this in turn can only be because they consider it existed also for one or both of the purposes referred to at [81] above and that such purposes should not properly be regarded as (i) an integral part of "carrying on its trade on a commercial basis", or (ii) "incidental purposes" within the meaning of that phrase set out at [80] above.

85. The issue before us can therefore be analysed as follows:

(1) Did the purposes for which the appellant existed on 13 July 2007 include either or both of the purposes set out at [81] above?

(2) If so, was/were any such purpose(s) merely an integral part of a wider purpose of carrying on the appellant's trade on a commercial basis?

(3) If the answer to (2) is yes, then the requirements of paragraph 1(2)(b) Schedule 5B are satisfied.

(4) If the answer to (2) is no, then did the purpose(s) in question have a "significant effect (other than in relation to incidental matters) on the extent" of the appellant's activities?

(5) If the answer to (4) is no, then the requirements of paragraph 1(2)(b) Schedule 5B are satisfied; if it is yes, then they are not.

86. As to the question at [85(1)] above, in considering the purpose or purposes for which the appellant existed at the relevant date, there was no specific evidence before us (in the form of a business plan drawn up at the time or some other contemporaneous document), which is hardly surprising for a company entirely under the control of (and dependent for funding only on) Mr Herrmann. Mr Herrmann's

evidence was effectively that the appellant's purpose was simply to position itself at the very top of what is in any event a luxury market. However, we consider that an examination of the actual activities of the appellant during the period following 13 July 2007 gives a much more complete, reliable and objective view of what its purpose(s) must have been at that date.

87. Given the facts as we have found them, we have no hesitation in finding that the appellant did, as at 13 July 2007, exist in part for the purpose of conferring a personal benefit on Mr Herrmann (in the form of the improvements being made to his property at Allenheads Hall). The scale of the spending on those improvements when there was obviously no clear (or indeed even vague) agreement or understanding in place at the time as to the basis on which they were being carried out (see [35] to [40] above) permits no other conclusion.

88. We also consider the appellant must have existed at 13 July 2007 partly for an investment purpose. It is apparent there had been some purchases of antiques and art before 13 July 2007 - £71,600 in value up to 1 February 2007 and a further £75,918 from 2 February to 12 July 2007. The expenditure after that date accelerated sharply - £512,516 spent from 13 July 2007 to 1 February 2008 (£343,567 and £47,517 – over 75% - being spent on a candelabra and a chandelier) – and £2,882,512 being spent on the Magritte painting in February 2008, followed by further paintings, books and furniture totalling £162,247 during May and June 2009. We fully accept that part of the appellant's purpose in purchasing these items was to enhance the ambience at Allenheads Hall as part of its trading activities. However, we find it "inescapable" that there must also have been an underlying investment purpose in those purchases, and that they must have been in contemplation (in general terms) as at 13 July 2007, to the point where the appellant existed, at that date, at least in part for the purpose of making investments in art and antiques.

89. We therefore find that the purposes for which the appellant existed on 13 July 2007 did include both of the purposes set out at [81] above.

90. As to the question set out at [85(2)] above, we consider that the appellant's purpose of conferring a personal benefit on Mr Herrmann (by the improvements to Allenheads Hall on the scale in which they were intended to be, and were, carried out) could not properly be regarded as an integral part of a wider purpose of carrying on its trade on a commercial basis. For that reason, the answer to the question at [85(2)] must be "no". Having reached that conclusion, it is not necessary for us to express a view on whether the purpose of buying art and antiques partially for investment purposes could properly be so regarded. We do not consider that question to be so straightforward, as many companies buy assets which are intended to be used in their trade whilst also representing something of an investment. We consider it to be a question of fact and degree as to whether, in any particular case, the investment element of a transaction or an intended course of action is so significant that it goes beyond the conduct of a trade on a commercial basis and becomes an investment activity in its own right. We would observe however (without reaching any conclusion on the point) that in a situation where a company with a turnover of £760,000 (as the appellant did in the year to 1 February 2008) spends over £3.5

million in a year on art and antiques, there is a distinct impression that the investment activity may be more significant than the trade.

91. Proceeding then to the question at [85(4)] above, given that the expenditure on Allenheads Hall dwarfed all other expenditure of the appellant for the next four months, and formed a significant and ongoing part of its expenditure up to at least July 2009, we have no doubt that the appellant's purpose of conferring a personal benefit on Mr Herrmann had a significant impact on the extent of the appellant's activities.

92. It follows that the appellant fails to meet the requirements of paragraph 1(2)(b) Schedule 5B and therefore its appeal must fail.

93. In case we are wrong in that conclusion, however, we go on to consider the other arguments raised by HMRC.

Paragraph 1(2)(f) Schedule 5B

94. As stated at [58] above, the question to be decided under this heading can be posed as follows: Were the shares which were issued on 13 July 2007 issued in order to raise money for the purpose of carrying on the appellant's trade on a commercial basis and with a view to the realisation of profits?

95. Having found that the appellant did not exist wholly for the purpose of carrying on a trade on a commercial basis for the reasons set out above, we are drawn inexorably to the conclusion that the shares cannot therefore have been issued in order to raise money for the purpose of carrying on a trade on such a basis.

96. In saying this we have considered, but rejected, the possibility that the existence of a dual purpose in raising the money (i.e. partly to carry on a trade and partly to confer personal benefits on Mr Herrmann or to invest in art or antiques) might be sufficient. The legislation contains no requirement that the shares be issued "wholly" or "mainly" to raise money and the possibility of an element of permissible duality of purpose should not therefore be immediately dismissed out of hand. However, we consider the better view to be that if the appellant had as its purpose the carrying on of a trade partly otherwise than "on a commercial basis", then the raising of money for that overall trading activity cannot satisfy the requirements of paragraph 1(2)(f) of Schedule 5B.

Paragraphs 1(2)(g) & (h) Schedule 5B

97. As stated at [59] above, the questions for determination under this heading can be stated as follows:

(1) Was at least £5.2 million [i.e. 80% of the £6.5 million] raised by the share issue employed by 12 July 2008 wholly for the purpose of carrying on the appellant's qualifying trade (as defined at [54] above)?

(2) Was the remainder of the £6.5 million raised by the share issue employed by 12 July 2009 for the same purpose?

98. For essentially the same reasons as apply in relation to paragraph 1(2)(f) Schedule 5B, we consider the requirements of these paragraphs cannot be met. By the time of HMRC's final refusal (November 2010), the two year period had expired and the money had been employed in part in the appellant's qualifying trade, but also (in large part) on providing personal benefits to Mr Herrmann (in the form of the improvements to Allenheads Hall, which we consider cannot form part of a qualifying trade) and on an investment activity (in the form of purchase of very large amounts of art and antiques, which strongly doubt, in the circumstances of this case, could form part of a qualifying trade. Even if we were to consider the state of affairs as at 25 November 2008 (the date of HMRC's refusal letter), the picture was essentially the same. Nor, given the amounts involved, do we consider the tailpiece of paragraph 1(2) (saving for insignificant amounts employed for other purposes) can assist the appellant.

Summary and conclusion

99. We find that the requirements of paragraph 1(2)(b) of Schedule 5B are not met and therefore the appeal must fail (see [92] above).

100. If we are wrong in this, we find that the requirements of paragraphs 1(2)(f), (g) and (h) are also not met (see [95] and [98] above).

101. The appeal is therefore dismissed.

102. 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.

KEVIN POOLE
TRIBUNAL JUDGE

RELEASE DATE: 30 June 2015