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Case Number: TC08481

FIRST-TIER TRIBUNAL
TAX CHAMBER

London

Appeal reference: TC/2016/02783

Stamp Duty Land Tax (SDLT)—Sub-sales (Section 45 FA 2003)—Group relief—Arrangements of which one of the main purposes is the avoidance of liability to tax (paragraph 2(4A) Schedule 7 FA 2003)—Deemed market value rule (s 53 FA 2003)—Exceptions—Case 3 (group relief claim made within the period of three years immediately preceding the effective date of the transaction) (s 54(4) FA 2003)—Anti-avoidance (s 75A FA 2003)

Heard on: 14, 15 and 16 March 2022
Judgment date: 30 April 2022

Before

TRIBUNAL JUDGE CHRISTOPHER STAKER

Between

THE TOWER ONE ST GEORGE WHARF LIMITED

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Malcolm Gammie QC, instructed by Herbert Smith Freehills, for the Appellant

For the Respondents: Michael Jones QC, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

The Appellant's appeal against the discovery assessment to stamp duty land tax (SDLT) dated 21 May 2015, as upheld in the review decision dated 20 April 2016, is dismissed.

REASONS

SUMMARY

1. The Appellant appeals against a discovery assessment to stamp duty land tax ("SDLT") on its acquisition from another company in the same group of a 999-year lease in respect of a residential property development known as the "Tower".

2. The group had bona fide commercial reasons for transferring the Tower to the Appellant company, a special purpose vehicle ("SPV"), namely to ring-fence risks and potential liabilities associated with the development, and to provide greater financial flexibility by opening up the prospect of securitized borrowing from a wider group of lenders. The group's tax advisers considered that if the Tower was transferred to the Appellant via a particular series of steps, a significant corporation tax advantage could be achieved. Pursuant to this advice, the Tower was transferred to the Appellant by a series of steps which were all executed on the same day. These steps included the grant by the group company that legally owned the Tower ("SGSL") of a 999-year lease to another group company ("B64") at book value which was significantly less than market value, a transfer of ownership of B64 itself from another group company to the Appellant, followed by a transfer of the lease from B64 to the Appellant at book value. The Appellant recognized the intended corporation tax benefit in its company tax return, but following an HMRC enquiry into that return, the Appellant accepted that in fact no such benefit was available. The consequence was that the corporation tax position of the Appellant was ultimately no more advantageous, and possibly less advantageous, than if the Tower had been transferred directly from SGSL to the intended SPV.

3. The land transaction return filed by the Appellant in respect of its acquisition of the lease from B64 included a claim for SDLT group relief under Schedule 7 of the Finance Act 2003 ("FA 2003"), as did the land transaction return filed by B64 in respect of the initial grant of the lease by SGSL to B64. Following a review, HMRC decided that SDLT group relief was not available to the Appellant, and issued an assessment to SDLT based on the market value of the lease at the time of its acquisition by the Appellant. The Appellant appeals against that assessment.

4. In this decision, the Tribunal dismisses the appeal, finding that:

   (1) The grant of the lease by SGSL to B64 followed by the transfer of the lease by B64 to the Appellant was not a sub-sale to which s 45 FA 2003 applies. The transaction on which SDLT is chargeable is therefore the transfer of the lease from B64 to the Appellant.

   (2) By virtue of paragraph 2(4A) Schedule 7 FA 2003, the Appellant is not entitled to group relief, as the transaction for the acquisition of the lease formed part of arrangements of which one of the main purposes was the avoidance of liability to tax.

   (3) By virtue of s 53(1) and (1A) FA 2003, SDLT falls to be assessed on the market value of the lease and not the book value. In particular, the exception to the deemed market value rule in s 54(4) FA 2004 (Case 3) does not apply: B64 had made a group relief claim in respect of the grant of the lease to it by SGSL earlier the same

day, and this was a transaction "within the period of three years immediately preceding the effective date of the transaction".

(4) Section 75A FA 2003 ("Anti-avoidance") does not apply because the SDLT payable by the Appellant is not less than the amount that would have been payable on a notional land transaction effecting the acquisition of the Tower by the Appellant on its disposal by SGSL.

FACTS

General

5. The Appellant company is a member of a group of companies (the "**group**"), the principal member of which is The Berkeley Group Holdings plc ("**Berkeley Holdings**"), a listed company whose shares are traded on the London Stock Exchange. The business of the group is property development with a focus on residential homes.

6. Other companies in the group include the Berkeley Group plc ("**Berkeley Group**"), St George PLC ("**St George**"), St George (South London) Limited ("**SGSL**"), and Berkeley Sixty-Four Limited ("**B64**").

7. Prior to 5 July 2011, St George, B64 and the Appellant were each owned by Berkeley Group, and SGSL was owned by St George.

8. In 1997, SGSL acquired from unconnected third parties the freehold interest in a site in the Nine Elms area of Vauxhall known as St George Wharf ("**St George Wharf**").

9. In 2000, SGSL sold St George Wharf to St George, but the legal interest was not transferred to St George. SGSL thus held the legal title to St George Wharf on bare trust for St George.

10. St George carried out a phased residential development of St George Wharf. The final phase of the development was a 50-storey residential building known as the Tower (the "**Tower**").

11. The residential units in the Tower were offered for sale "off-plan", and agreements for lease were entered into with purchasers of the residential units under which deposits were paid.

The proposal to transfer the Tower

12. In February 2010, Mr Stearn, then group financial controller, had a meeting with the group's tax advisers, PricewaterhouseCoopers ("**PwC**"), at which he commented that there would be commercial advantages to moving certain developments into separate legal entities. About a week later, PwC prepared a discussion document (the "**step plan**") showing that a corporation tax advantage, in the form of a tax-free step-up from book cost to market value in the carrying value of the Tower for corporation tax purposes, could be obtained if certain steps were implemented within the group in relation to the Tower.

13. On 28 February 2010, Mr Stearn sent a memorandum to Mr Simpkin, then group finance director, which stated amongst other matters as follows:

> St George acquired the site [St George Wharf] in 1996/97 and is now beginning the final phase which is a 50 storey tower, comprising some 220 high spec residential units.
>
> Berkeley has never developed above 30 floors before and this was, when the planning permission was granted in 2005, the tallest residential scheme in Europe.
>
> The construction challenge and risk is therefore above anything St George has previously developed, compounded by the relatively small footplate, riverside

> location and proximity [to] utility services and the Vauxhall mainline and underground rail system.
>
> Managing the risks associated with the development is an ongoing process. …
>
> Given the risk profile, it may be that we should consider transferring the tower into a separate SPV which would also present a stand alone banking opportunity.
>
> While the PSI [project specific insurance] helps ring-fence the risk from the rest of Berkeley and St George, this would better be achieved by developing the tower in a special purpose vehicle ("SPV").
>
> An SPV structure would also introduce opportunity and flexibility around raising finance to fund the development and also in the event the development, at any stage, attracts the appetite of a single investor or developer. …
>
> Following discussion and consideration of the above background, PwC has identified a transaction which would see the tower developed out by an SPV in the most economically efficient and advantageous manner for the Berkeley Group.
>
> I attach a step-plan which sets this out. …
>
> The tax analysis is set out in detail in the attached step plan.
>
> In summary, the step up in value from book cost to market value in the cost of the inventory on transfer from StG NewCo to TradeCo is not subject to corporation tax.
>
> SDLT group relief would be claimed for the transfers from StG to StG NewCo and from StG NewCo to TradeCo.

14. PwC prepared further iterations of the step plan in November 2010 and July 2011, which developed and refined the earlier iterations. The final step plan dated July 2011 included the following steps:

(1) Berkeley Group would make a capital contribution of £1,000 to B64.

(2) SGSL would grant a lease of the Tower to B64 (the "**Lease**") for a premium equal to the carrying value of the Tower in the accounts of SGSL. PwC advised that St George would recognise a trading profit as a result of a transfer pricing adjustment and that B64 would be entitled to an equal and opposite corresponding adjustment in the same year.

(3) B64 would enter into a development management agreement with St George and SGSL. Under the agreement B64 would appoint St George and SGSL to carry out certain services relating to the project management and development of the Tower site.

(4) The Appellant would acquire 100% of the entire issued share capital of B64 from Berkeley Group for market value. PwC advised that the shares should be treated as having been transferred at no gain/no loss and then appropriated to trading stock by the Appellant at market value, thus triggering a gain but one which the Appellant would elect to roll over into the carrying cost of the shares.

(5) The Appellant would acquire the Tower from B64 at its carrying value. PwC advised that B64 would recognise a trading profit as a result of a transfer pricing adjustment and that the Appellant should be entitled to an equal and opposite corresponding adjustment in the same year.

(6) PwC advised that for accounting purposes the Appellant would treat the acquisition of B64 and the acquisition of the Tower as a single transaction as a matter of "substance over legal form" (as per Financial Reporting Standard 5 ("FRS-5")). The effect of such treatment would be to allocate the Appellant's cost of acquiring the shares in B64 to: (i) the fair value of the investment in B64 after the hive up of the Tower and (ii) the fair value of the Tower as stock. As a result, the Appellant would carry the Tower at a cost equal to its market value.

15. No alternative arrangements were considered for transferring the Tower to the Appellant.

16. A professional surveyors' valuation of a long leasehold interest in the Tower as at 31 December 2010 concluded that its market value was £200 million. At that date, the foundations of the Tower had been laid, and St George's cost of the Tower was calculated as being £29,900,750.

17. This meant that up to that point there had accrued a latent profit/gain in the Tower of some £170 million, being the difference between the book cost of some £30 million and the then market value of some £200 million. The intended effect of the step plan was that a subsequent disposal of the Tower by the Appellant would only give rise to taxable profits for the Appellant to the extent that the sale proceeds exceeded the £200 million market value of the Lease as at the date of its acquisition. The step plan thus envisaged that the £170 million "step up" of the carrying value of the Tower to its present market value would be tax free.

The transactions on 5 July 2011

18. On 5 July 2011, there was held a series of shareholder and director meetings of the companies involved to execute the various transactions in accordance with the step plan. These included the following.

(1) Berkeley Group and B64 executed a deed of capital contribution in favour of B64 pursuant to which Berkeley Group held the sum of £1,000 on trust for B64. This capital contribution took B64's assets from £1 to £1,001, and gave rise to positive distributable reserves of B64.

(2) SGSL and B64 entered into:

(a) an agreement for lease in respect of the Tower; and

(b) the Lease, the premium for which was left outstanding as an intercompany receivable.

The Lease in respect of the Tower was granted by SGSL to B64 for a term of 999 years and 6 days from 25 December 1999, at a premium of £30,198,814 and at a rent of £1 per year.

(3) The Appellant, B64, SGSL, and St George entered into a development management agreement, under which B64 and the Appellant appointed St George to carry out certain services relating to the project management and development of the Tower.

(4) The Appellant and Berkeley Group executed a share purchase agreement for the purchase by the Appellant of the entire issued share capital of B64.

(5) B64 and the Appellant executed a Form TR1 for the transfer of the Lease by B64 to the Appellant for a consideration of £30,248,814 (the "**Transfer**"), and Berkeley Group, B64 and the Appellant executed agreements for the novation in favour of the Appellant of the agreements for lease entered into with third party purchasers of the residential units in the Tower.

Corporation tax

19. The benefit of the tax-free "step-up" from book cost to market value in the base cost/carrying value of the Tower, as described in the PwC steps plans, was recognised in the accounts and corporation tax return of the Appellant for the year ended 30 April 2012. HMRC enquired into that tax return and disagreed with PwC's tax analysis of the transactions. As a result, by a closure notice issued on 5 February 2016, HMRC adjusted the Appellant's corporation tax return. The Appellant subsequently accepted that no such benefit was available. The consequence was that the corporation tax position of the Appellant was ultimately no more advantageous, and possibly less advantageous, than if the Tower had been transferred directly from SGSL to the intended SPV.

The SDLT return, assessment and appeal

20. As regards stamp duty land tax ("**SDLT**"), the land transaction returns (SDLT1) filed by:

    (1) B64, in respect of the initial entry into the agreement for lease and the grant of the Lease of the Tower by SGSL to B64; and

    (2) the Appellant, in respect of the transfer of the Lease by B64 to the Appellant,

    each included a claim for SDLT group relief under Schedule 7 FA 2003.

21. Following a review of the land transaction returns, HMRC concluded that:

    (1) the group relief claim made by B64 did not need to be considered because sub-sale relief was available; and

    (2) group relief was not available to the Appellant because the transaction formed part of arrangements of which the main purpose, or one of the main purposes, was the avoidance of liability to tax.

22. By a notice of assessment dated 21 May 2015, made under Part 5 of Schedule 10 to the Finance Act 2003 ("**FA 2003**"), HMRC assessed the Appellant to SDLT of £8 million in respect of the Transfer, stated to be tax at 4% on consideration of £200 million. The Appellant appealed against this assessment and, following HMRC's review upholding the assessment, notified its appeal to the Tribunal on 18 May 2016.

23. The hearing of this appeal was held on 14, 15 and 16 March 2022. Oral evidence was given by Mr Stearn, director of the Appellant company and now group finance director.

24. The Appellant submits that:

    (1) the appeal against the assessment to SDLT should be allowed, and the assessment should be set aside in its entirety, on the ground that the Appellant is entitled to group relief; or, alternatively

    (2) the appeal should be allowed in part and the amount of the assessment should be reduced, in that the SDLT should be calculated on the basis of the actual consideration given by the Appellant for the transfer (some £30 million) rather than the market value of the Lease (£200 million).

25. HMRC submit that the appeal should be dismissed in its entirety on the grounds that:

    (1) by virtue of s 45 FA 2003, the "land transaction" is treated as taking place between SGSL and the Appellant, and:

        (a) group relief is not available on that transaction, by virtue of paragraph 2(4A) Schedule 7 FA 2003;

        (b) the deemed market value rule in s 53 FA 2003 applies to that transaction;

or alternatively,

(2) if the "land transaction" is to be treated as taking place between B64 and the Appellant:

(a) group relief is not available on that transaction, by virtue of paragraph 2(4A) Schedule 7 FA 2003;

(b) the deemed market value rule in s 53 FA 2003 applies to that transaction, the exception in s 54(4) FA 2003 being applicable;

and in any event,

(3) by virtue of ss 75A and 75C FA 2003:

(a) the chargeable consideration is the market value of the lease; and

(b) group relief is not available.

LEGISLATION

SDLT generally

26. SDLT is a tax charged on "land transactions" (s 42(1) FA 2003). A "land transaction" is the acquisition of a "chargeable interest" (s 43(1) FA 2003). A "chargeable interest" is (other than an exempt interest) "an estate, interest, right or power in or over land" or "the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power" (s 48(1) FA 2003).

27. SDLT is ordinarily charged by reference to the consideration given for the acquisition (s 50(1) FA 2003). It is charged on the purchaser (s 85(1) FA 2003), who must notify the transaction by way of a land transaction return within (in 2011) 30 days of the effective date of the transaction (s.76(1) FA 2003). The effective date of the transaction except where otherwise provided is the date of completion (s 119(1) FA 2003).

28. References in this decision to provisions of the FA 2003 are to the versions of those provisions as in force at the time of the transactions in issue in this appeal. Although these provisions are for convenience described in this decision in the present tense, some have since been substantially amended.

Sub-sales (ss 44 and 45 FA 2003)

29. Section 44 FA 2003 is entitled "Contract and conveyance". Section 44(1) provides that that section applies where a contract for a land transaction is entered into under which the transaction is to be completed by a conveyance. Section 44(10) defines "contract" to include "any agreement", and defines "conveyance" to include "any instrument".

30. Section 45 FA 2003 is entitled "Contract and conveyance: effect of transfer of rights". Section 45(1) provides that that section applies where (a) a contract for a land transaction ("the original contract") is entered into under which the transaction is to be completed by a conveyance; (b) there is an assignment, sub-sale or other transaction (relating to the whole or part of the subject-matter of the original contract) as a result of which a person other than the original purchaser "becomes entitled to call for a conveyance to him"; and (c) paragraph 12B of Schedule 17A does not apply.

31. By virtue of s 45(3) FA 2003, where that section applies, s 44 applies as if there were a contract for a land transaction (referred to as a "secondary contract") under which the transferee of the assignment, sub-sale or other transaction is the purchaser, and the substantial performance or completion of the original contract at the same time as, and in connection with, the substantial performance or completion of the secondary contract shall be disregarded.

Group relief (Part 1 Schedule 7 FA 2003)

32. Part 1 Schedule 7 FA 2003 provides for a form of relief from SDLT known as "group relief" (s 62(1) and (2) FA 2003). Such relief must be claimed in a land transaction return or an amendment to such a return (s 62(3) FA 2003).

33. Paragraph 1(1) Schedule 7 FA 2003 provides that "A transaction is exempt from charge if the vendor and purchaser are companies that at the effective date of the transaction are members of the same group". Subsequent sub-paragraphs of paragraph 1 Schedule 7 FA 2003 determine when companies will be members of the same group for purposes of this provision.

34. Paragraph 2(4A) Schedule 7 FA 2003 provides that:

> Group relief is not available if the transaction—
>
> (a) is not effected for bona fide commercial reasons, or
>
> (b) forms part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax.
>
> *"Tax"* here means stamp duty, income tax, corporation tax, capital gains tax or tax under this Part.

35. Paragraph 2(5) Schedule 7 FA 2003 provides that:

> In this paragraph—
>
> *"arrangements"* includes any scheme, agreement or understanding, whether or not legally enforceable; …

Deemed market value rule (ss 53 and 54 FA 2003)

36. Section 53 FA 2003 is entitled "Deemed market value where transaction involves connected company". Section 53(1) provides that that section applies where the purchaser is a company and the vendor is connected with the purchaser. Section 53(2) FA 2003 defines "connected" for purposes of the section by reference to s 1122 of the Corporation Tax Act 2010.

37. Where s 53 FA 2003 applies, it has pursuant to s 53(1A) the following effect. The chargeable consideration for the transaction shall be taken to be not less than (a) the market value of the subject-matter of the transaction as at the effective date of the transaction, and (b) if the acquisition is the grant of a lease at a rent, that rent.

38. Section 53(4) FA 2003 provides that s 53 is subject to the exceptions provided for in s 54.

39. Section 54(1) and (4) provide that one of the cases in which s 53 shall not apply is the following:

> (4) Case 3 is where—
>
> (a) the vendor is a company and the transaction is, or is part of, a distribution of the assets of that company (whether or not in connection with its winding up), and
>
> (b) it is not the case that—
>
> (i) the subject-matter of the transaction, or
>
> (ii) an interest from which that interest is derived,
>
> has, within the period of three years immediately preceding the effective date of the transaction, been the subject of a transaction in respect of which group relief was claimed by the vendor.

Anti-avoidance (s 75A FA 2003)

40. Section 75A FA 2003 is entitled "Anti-avoidance". Section 75A(1) provides:

> (1) This section applies where–
>
> (a) one person (V) disposes of a chargeable interest and another person (P) acquires either it or a chargeable interest deriving from it,
>
> (b) a number of transactions (including the disposal and acquisition) are involved in connection with the disposal and acquisition ("the scheme transactions"), and
>
> (c) the sum of the amounts of stamp duty land tax payable in respect of the scheme transactions is less than the amount that would be payable on a notional land transaction effecting the acquisition of V's chargeable interest by P on its disposal by V.

FINDINGS OF DISPUTED FACTS

41. The Tribunal finds that at all material times the group of companies wanted to transfer the Tower to the Appellant in order to ring-fence risks and potential liabilities associated with the development, and to provide greater financial flexibility by opening up the prospect of securitized borrowing from a wider group of lenders. These were bona fide commercial reasons, that provided a commercial benefit.

42. The Tribunal is satisfied on the evidence that the group, when it first discussed with PwC the possibility of transferring the Tower to an SPV, was contemplating doing so for the reasons identified in the previous paragraph. The evidence of Mr Stearn is that he contacted PwC, the group's principal tax advisers at the time, as the group was "seeking to ensure that transferring the development to an SPV would not give rise to adverse tax consequences". The Tribunal is satisfied that the process that led to the series of transactions on 5 July 2011 was not originally initiated out of a motive to avoid tax. The Tribunal is satisfied that if the group had never been made aware by PwC of the possible corporation tax advantage that could be obtained via the step plan, the group would likely have transferred the Tower directly from SGSL to the Appellant or another SPV in order to achieve its original purposes.

43. The Tribunal is satisfied that once the group received the advice about the corporation tax advantage that could be obtained, it attached considerable importance to ensuring that this advice was correctly followed, and that the expected significant tax benefit was obtained.

44. The PwC step plan went through several iterations. Mr Stearn could not recall exactly how much PwC was paid for their advice, but suspected that it was in the tens of thousands of pounds. Execution of the step plan required a considerable number of transactions, the documentation for which had to be carefully prepared in advance (see paragraph 83(2) below).

45. The Tribunal finds that if the transactions entered into on 5 July 2011 had been effective to produce the expected corporation tax advantages, the group would have saved somewhere in the region of £44 million in corporation tax (being the tax on the £170 million tax free "step up" from book value to market value), albeit this benefit might have taken several years to be realised. This was on any view a very significant amount.

46. Even if the Appellant had had no other reason for wanting to transfer the Tower to the Appellant, the mere possibility of realising a tax advantage of this magnitude might in and of itself have arguably provided a financial incentive for the Appellant to do so. However, the Tribunal proceeds on the basis that the group would not have transferred the Tower to the Appellant solely for the corporation tax advantage if there had been no other commercial reason

for doing so. The evidence of Mr Stearn is that the group would not have done so, and there is no evidence positively indicating the contrary.

47. HMRC suggest that the group must have considered the original reasons for transferring the Tower to the Appellant to be less important than the expected tax advantages, given that the risk of a catastrophic event affecting the Tower was extremely small, that the ring-fencing would not completely insulate the rest of the group from damage caused by any such catastrophic event (for instance, through reputational damage), given that funding for the development might still be found even if it was not transferred to an SPV, given that the development could always have been moved to an SPV at a later time if this had proved genuinely necessary, and given the magnitude of the expected tax saving. However, the evidence before the Tribunal is not sufficient to allow the Tribunal to make any assessment of its own of the commercial significance of these matters, and to weigh them against the significance of the tax benefits. The Tribunal is unable to conclude that the tax benefits ever became more important to the Appellant than the original commercial considerations.

APPLICATION OF LAW

Sub-sales (ss 44 and 45 FA 2003)

48. For s 45 FA 2003 to apply, the "assignment, sub-sale or other transaction" referred to in s 45(1)(b) must *entered into* before the land transaction referred to in s 45(1)(a) has been completed. If a land transaction by which B acquires a chargeable interest from A has already been completed, s 45 will not apply to any contract or other transaction entered into by B only after such completion by which the same interest is subsequently sold or transferred to C.

49. For s 45 FA 2003 to apply, it is necessary that, as a result of the "assignment, sub-sale or other transaction" referred to in s 45(1)(b), a person other than the original purchaser has acquired a *legal right* to call for a conveyance. The Tribunal considers that this follows from the use of the word "entitled" in this provision. The word "entitled" connotes a legal right or title. Although no clear authority for or against this conclusion was cited in argument, the Appellant submitted that this conclusion was supported by *Vardy Properties v Revenue & Customs* [2012] UKFTT 564 (TC).

Group relief (Part 1 Schedule 7 FA 2003)

Meaning of "arrangements" (paragraph 2(4A)(b) Schedule 7 FA 2003)

50. The effect of paragraph 2(4A) Schedule 7 FA 2003, read together with paragraph 2(5) Schedule 7 FA 2003, is to disallow group relief if (1) the transaction on which SDLT would (but for any group relief) be chargeable is part of a scheme, agreement or understanding, whether or not legally enforceable, and (2) a main purpose of *that scheme, agreement or understanding* is avoiding liability to tax.

51. In other words, the application of paragraph 2(4A) Schedule 7 FA 2003 is not confined to circumstances where the specific transaction on which SDLT would be chargeable *itself* has the effect of avoiding liability to tax. If that specific transaction is part of a broader scheme, agreement or understanding, it is enough that *other* transactions within the scheme, agreement or understanding have the effect of avoiding tax, if a main purpose of the scheme, agreement or understanding as a whole is the avoidance of tax. Whether or not such a purpose exists must therefore be determined by examining the scheme, agreement or understanding as a whole. This cannot be determined by considering in isolation the specific transaction on which SDLT is said to be chargeable.

52. Where it is other transactions within the scheme, agreement or understanding that have the effect of avoiding tax, it is immaterial whether those other transactions are effected before, simultaneously with, or after the specific transaction on which SDLT would be chargeable. All

that is material is that all of the transactions are part of a single scheme, agreement or understanding, which as a whole has as a main purpose the avoidance of tax.

53. This all follows from the plain wording of paragraph 2(4A) and (5) Schedule 7 FA 2003.

54. The mere fact that the specific transaction on which SDLT is said to be chargeable occurs at a later point in time than any transaction(s) having the effect of avoiding tax will therefore not preclude denial of group relief pursuant to paragraph 2(4A) Schedule 7 FA 2003, if all of those transactions form part of the same arrangements for purposes of that provision. It may well be true that in such a case, the transaction on which SDLT is said to be chargeable itself plays no role in the avoidance of tax, given that the avoidance of tax will by then have already been fully effected. However, it is clear from the wording of paragraph 2(4A) Schedule 7 FA 2003 that "arrangements" for purposes of that provision may have more than one main purpose. Main purposes of the "arrangements" (that is, the broader scheme, agreement or understanding) may include both the avoidance of tax and another purpose. It may well be that the earlier transactions gave effect to the main purpose of avoiding tax, while the specific transaction on which SDLT is chargeable gives effect to another main purpose. Nevertheless, in such a situation the specific transaction on which SDLT is chargeable may still form part of the same scheme, agreement or understanding, one of the main purposes of which was the avoidance of tax.

55. Whether several transactions form part of the same "arrangements" will depend on the circumstances of the individual case. Paragraph 2(5) Schedule 7 FA 2003 makes clear that "arrangements" might consist merely of an "understanding" that is not legally binding. Thus, different transactions could form part of the same "arrangements" even though they involve different participants and occur at different points in time, and even though the participants in each of the transactions are under no legal obligation to enter into any of the transactions prior to the point in time at which they actually do so. For several transactions to be part of the same "arrangements", it would suffice that, prior to the entry into any of the transactions, each of the participants in each of the transactions has an understanding that the transaction that that participant is about to enter into forms part of a scheme, agreement or understanding, and knows the main purposes thereof.

56. The Tribunal considers that transactions entered into by different parties at different points in time will in practice almost inevitably be part of the same "arrangements" if they are effected pursuant to a single plan formulated before they are effected, and if the parties to each of the transactions are aware of that plan and are acting with the intention of giving effect to it.

Meaning of "avoidance of liability to tax" (paragraph 2(4A) Schedule 7 FA 2003)

57. The expression "avoidance of liability to tax" is not defined for purposes of paragraph 2(4A) Schedule 7 FA 2003, apart from the fact that the provision makes clear that it refers to avoidance of liability to stamp duty, income tax, corporation tax, capital gains tax and/or SDLT.

58. It is unnecessary in this appeal to define in a comprehensive way in the abstract the concept of tax avoidance, which, as the Appellant says, "has been the subject of debate for decades in a large number of cases and in vast amounts of academic and professional literature, both in the United Kingdom and in other Commonwealth countries, especially those that have chosen to implement a general anti-avoidance rule".

59. In general, it may be said that it is not tax avoidance to accept an offer of freedom from tax which Parliament has deliberately made, but that it is tax avoidance to adopt a course of action designed to conflict with or defeat the evident intention of Parliament by taking advantage of a fiscally attractive option afforded by the tax legislation without incurring the

economic consequences that Parliament intended to be suffered by any taxpayer qualifying for such reduction in tax liability (*Inland Revenue Commissioners v Willoughby* [1997] 1 WLR 1071 ("***Willoughby***"), 1079B-G, 1081B-D).

60. It may also be said that where there are two ways for a taxpayer to carry out a genuine commercial transaction, it is natural for the taxpayer to choose the way that will involve paying the least amount of tax, and that the taxpayer by making that choice cannot for that reason alone be said to be acting with a main purpose of avoiding tax (*Commissioners of Inland Revenue v Brebner* (1967) 43 TC 705, 718H-I). However, it follows from the previous paragraph above that a taxpayer in this situation may well be acting with a main purpose of avoiding tax if the chosen way conflicts with or defeats the evident intention of Parliament. The mere fact that the taxpayer is carrying out a genuine commercial transaction does not mean that no means adopted for effecting that transaction can ever be tax avoidance.

Meaning of "purpose" (paragraph 2(4A) Schedule 7 FA 2003)

61. "Purpose" means the intended effect of the arrangements, not the motive of the taxpayer for wanting to achieve the intended effects. A determination of "purpose" therefore does not necessarily require a determination of the subjective state of mind of the taxpayer, but may be ascertainable from the terms of the arrangements themselves. Where there is a complicated series of transactions that were the result of a concerted plan, and where a consideration of the whole of the transactions shows that there was concerted action to achieve an end of the avoidance of tax, then one of the ends sought to be achieved was the avoidance of liability to tax (*Newton v Commissioner of Taxation* [1958] AC 450, 465-467).

62. The terms of paragraph 2(4A) Schedule 7 FA 2003 refer to the purpose of *the arrangements*, not the purpose of *the taxpayer* in entering into the arrangements. Where arrangements are complex and/or have been devised by specialists other than the taxpayer, regard may therefore also be had to wider considerations such as why the arrangements took the form that they did, how those who devised them hoped that they would work, and the way that those who devised them presented them to the taxpayer(s). (Compare *Seven Individuals v Revenue and Customs Commissioners* [2017] UKUT 132 (TCC) at [97]-[104]).

63. There is a distinction between the purpose of arrangements, and the question whether the arrangements are effective in achieving that purpose. The fact that arrangements ultimately fail to achieve their purpose (for instance, because they ultimately fail to satisfy the necessary legal criteria to produce the intended legal effect) will not retrospectively negate the fact that they had that purpose. Purpose does not mean "end result in fact", as opposed to the end result that the arrangements were designed to achieve. Arrangements may be intended to achieve a purpose, even if they ultimately fail to achieve it due to an inherent flaw in the design of the arrangements themselves. Thus, arrangements can have the *purpose* of avoidance of liability to tax, even if ultimately no liability to tax is avoided.

(1) This follows from the wording of paragraph 2(4A) Schedule 7 FA 2003, which speaks of the avoidance of liability to tax being the *purpose* of the arrangements, rather than of it being the *end result* or *effect* of the arrangements.

(2) Any other conclusion would lead to anomalous results. Paragraph 2(4A) Schedule 7 FA 2003 does not itself prohibit arrangements that have the avoidance of liability to tax as a main purpose, nor does it seek to undo the effects of the avoidance of the liability to tax. The only effect of paragraph 2(4A) is to deny the availability of group relief from SDLT where a transaction is part of such arrangements.

(3) Thus, where such arrangements would lead to avoidance of liability to tax in a sum that is greater than the SDLT payable, it would still be to the taxpayer's financial

advantage to engage in those arrangements, since the taxpayer would have the benefit of the difference between the amount of SDLT and the amount of tax avoided. The practical effect of paragraph 2(4A) itself is thus simply to disincentivize tax avoidance arrangements that will result in a tax saving that is less than the amount of SDLT payable.

(4) The consequence of this is as follows. If a taxpayer enters into arrangements with the sole purpose of avoiding tax, in the mistaken belief that the arrangements will lead to a tax saving that is significantly greater than the SDLT payable, but in fact the arrangements result in the avoidance of only a minimal amount of tax that is less than the SDLT payable, the taxpayer will lose the benefit of group relief and will be required to pay the SDLT. This will be because the purpose of the arrangements is the avoidance of liability to tax, even if the taxpayer is mistaken about the quantum of tax that will be avoided.

(5) There is no reason in principle for treating differently a case where a taxpayer has a mistaken belief that the arrangements will lead to a tax saving that is significantly greater than the SDLT payable, but in fact the arrangements do not result in the avoidance of any tax at all. The purpose of the taxpayer in both cases is the same. The difference in the amount of tax avoided in each case (a minimal amount in one case, none in the other) is not such as to justify a difference in treatment between the two cases.

64. The Tribunal does not accept the Appellant's argument that there is necessarily a distinction between the purpose of arrangements, and the reason for choosing particular means for giving effect to that purpose. The Appellant gives the hypothetical example of a businessperson who travels from A to B to attend a business meeting, and who decides to travel by rail by a particular circuitous route in the belief that a discount will be offered on all future rail travel for 12 months if the trip is undertaken by that specific route. The Appellant suggests that in this example, the sole purpose of the journey is to attend the business meeting, and obtaining a discount on future travel is merely the reason for choosing a particular means for achieving this purpose. The Tribunal does not consider this to be a valid analysis for purposes of paragraph 2(4A) Schedule 7 FA 2003.

65. In this example, the overall arrangement is not for *a trip from A to B*, but rather for *a trip from A to B via the particular route chosen*. The overall arrangement as a whole has two purposes, namely (1) to attend a business meeting in B, and (2) to obtain a discount on future travel. Even if, at the outset, the businessperson is unaware of the possibility of the discount, and is only proposing to travel from A to B by the quickest route, once that person becomes aware of the possibility of the discount and deliberately decides to travel specifically by the more circuitous route in order to obtain this benefit, the specific route becomes part of the overall arrangement, and obtaining the discount becomes one of the purposes of the trip.

66. Where there are two ways for a taxpayer to carry out a bona fide commercial transaction, one of which involves tax avoidance and one of which does not, and where the taxpayer chooses the way that involves tax avoidance, then tax avoidance will be at least one of the purposes of adopting that course, whether or not the taxpayer has a subjective motive of avoiding tax (*Willoughby* at 1079C-D, 1081B-D).

Meaning of "main" (paragraph 2(4A) Schedule 7 FA 2003)

67. Paragraph 2(4A) Schedule 7 FA 2003 denies group relief only where the arrangements have the avoidance of liability to tax as a "*main*" purpose.

68. It is clear from this wording that arrangements can have more than one main purpose.

69. A purpose will be a "main" purpose if its achievement is one of the primary aims of the arrangements. A purpose can be a "main" purpose, even if it is not as significant a consideration as another main purpose. Thus, if arrangements are driven by two particularly significant aims, A and B, as well as other subsidiary aims, both A and B may both be "main" purposes even if the taxpayer considers A to be more important than B.

70. Indeed, purpose B could be a main purpose of the arrangements, even if the arrangements would not have been entered into at all but for the need to achieve purpose A. Even if purpose A is the sole reason for entering into arrangements in the first place, once the decision to enter into the arrangements has been taken, an additional purpose can become an additional main purpose of the arrangements. Whether this is the case will be a question of fact, depending on the individual case. The question is whether a purpose is one of the main purposes, not whether it is the most important purpose, and not whether the arrangements would be proceeded with in the absence of any of the other purposes.

Deemed market value rule: exception in Case 3 (s 54(4) FA 2003)

71. If an interest in land is subject to two separate transactions on a single day (for instance, if it is sold by A to B, then subsequently sold the same day by B to C in a separate transaction), then the first of the transactions will have occurred "within the period of three years immediately preceding the effective date of the transaction" of the second transaction, for purposes of s 54(4)(b) FA 2003. This will be so, even if the first transaction precedes the second by only minutes, or even seconds. Although the legislation speaks of an "effective *date* of the transaction" rather than of an "effective *time* of the transaction", all transactions in fact take place at a specific point in time.

72. Statutory provisions may lead to exceptions to or modifications of this general principle in specific situations.

73. By virtue of s 51(4)(b) FA 2003, the Case 3 exception to the deemed market value rule will not apply if a group relief claim was in fact *made* in respect of a relevant prior transaction (see s 62(3) FA 2003), whether or not the company making that claim was *entitled* to the group relief claimed.

74. This follows from the wording of the provision. Section 54(4) FA 2003 refers to a prior transaction "in respect of which group relief was claimed by the vendor". It refers to group relief having been *claimed* by the vendor. It does not refer to group relief having been *validly* claimed by the vendor, a qualification that could easily have been added to the wording of the legislation if this had been intended.

75. At the time that a land transaction return is filed, it will be a relatively simple matter to determine whether a group relief claim was *made* in respect of a relevant prior transaction in the previous three years. In practice, that can be expected to be a workable criterion to be applied by a person subsequently seeking to rely on the Case 3 exception, at the time that they are required to complete and file their land transaction return.

76. On the other hand, at the time that such a person is required to complete and file their land transaction return, it may be difficult or impossible for them to determine whether any earlier group relief claim was *validly* made. That person may not know the full circumstances of the earlier transaction in respect of which the group relief claim was made. Indeed, there may be a pending *dispute* about whether the earlier group relief claim was validly made, if for instance an HMRC enquiry into that claim is still open, or if an appeal against an HMRC decision following such an enquiry is still in progress.

77. Reading the word "validly" into the final words of s 54(4) FA 2003 thus has the potential to render the operation of the Case 3 exception impracticable.

78. If the final words of s 54(4) FA 2003 are read as referring to both valid and invalid group relief claims, the effect in practice is as follows. If a company acquiring a chargeable interest makes a group relief claim that it is not entitled to make, and then transfers that interest to another by way of a distribution of the company's assets, the latter will not be entitled to rely on the Case 3 exception to the deemed market value rule, irrespective of whether or not the company knew at the time that it made the group relief claim that it was not entitled to do so, and whether or not it ultimately took the benefit of the claimed group relief (for instance, because the group relief claim was ultimately disallowed following an HMRC enquiry). Precluding reliance on the Case 3 exception in all such circumstances is not so inherently inequitable as to require a conclusion that Parliament could not possibly have intended this.

79. This interpretation would also would mean that where there was a valid entitlement to group relief in respect of a relevant prior transaction, but no group relief claim was in fact made, s 54(4)(b) FA 2003 will not operate to prevent reliance on the Case 3 exception. This again is because this provision operates solely according to whether or not a group relief claim was in fact *made*, not whether a group relief claim was *entitled to be made*.

80. The above interpretation is consistent with the plain wording of s 54(4)(b) FA 2003. The Tribunal is satisfied that nothing in the wording of this provision requires a different conclusion.

REASONS FOR DECISION

There was no sub-sale

81. Section 45 FA 2003 does not apply to the circumstances of the grant of the Lease by SGSL to B64, followed by the transfer of the Lease from B64 to the Appellant.

82. As to s 45(1)(a) FA 2003, the circumstance described in this provision did exist. The agreement for lease entered into by SGSL with B64 on 5 June 2011 was a "contract" as defined in s 44(10) FA 2003, and the Lease in respect of the Tower granted by SGSL to B64 the same day was an "instrument" as defined in the same provision. This agreement for lease entered into by SGSL and B64 was a contract for a land transaction, and this land transaction was completed by the grant of the Lease by SGSL to B64.

83. However, as to s 45(1)(b) FA 2003, the circumstance described in this provision did not exist.

(1) The Form TR1 transferring the Lease in respect of the Tower from B64 to the Appellant cannot be an "assignment, sub-sale or other transaction" for purposes of this provision, as it was executed only later on 5 July 2011, after the acquisition of the Lease by B64 from SGSL had already been completed (see paragraph 48 above).

(2) Prior to the transactions that took place on 5 July 2011, there was an agreement by those entering into the transactions that they would do so.

   (a) The various transactions entered into on 5 July 2011 were carefully planned, and the documentation for those transactions was drawn up and agreed in advance.

   (b) A Berkley Group memorandum dated 29 June 2011, signed by Mr Stearn (then group financial controller), was sent to Mr Simpkin (then group finance director), and copied to Mr Luck (finance director of St George) and Ms Pritchard (head of legal services). That memorandum attaches what is described as a "paper that sets out the implementation of the transfer of St George Wharf Tower to a new company which is proposed to occur early

next week", and states that "the necessary legal agreements have been negotiated and agreed". The memorandum concludes by stating that "I await your [Mr Simpkin's] confirmation of the underlying transaction and the optimisation identified by in the context of our recent HMRC discussions".

(c) In a Berkley Group memorandum dated 30 June 2011, Mr Simpkin responded to Mr Stearn, stating that "I am happy with you to proceed with the transactions as set out for the reasons identified in your note".

(d) In his witness statement, Mr Stearn confirms that "Final approval to proceed with the Transactions was given by the group's Finance Director on 30 June 2011, in response to an internal memorandum from me dated 29 June 2011", and that "To the best of my recollection, the Transactions took place on 5 July 2011 in a carefully planned sequence, in accordance with the steps plan prepared by PwC and the advice provided by our professional advisors, and as described in the relevant board minutes".

(e) The Tribunal is thus satisfied that the transactions that took place on 5 July 2011 had in advance been administratively agreed, approved and prepared for, within the group.

(3) However, this prior agreement was not an "assignment, sub-sale or other transaction" for purposes of s 45(1)(b) FA 2003, as this prior agreement did not confer on the Appellant a *legal right* to call for a conveyance (see paragraph 49 above).

(a) Administrative agreements, approvals and preparations between members of a group of companies for transactions proposed to be undertaken between them do not of themselves necessarily establish any legal rights or obligations for any of these companies vis-à-vis any of the others prior to the point in time at which the transactions are in fact undertaken.

(b) The evidence does not establish that there existed, prior to the point in time on 5 July 2011 that the Lease was actually transferred from B64 to the Appellant, any *legal* obligation on B64 to transfer the Lease to the Appellant, or any legal right on the part of the Appellant to require B64 to transfer the Lease to it.

(c) There were three different firms of solicitors representing the various companies involved in the transactions that took place on 5 July 2011 (albeit the same firm acted for B64 and the Appellant, while different firms acted for St George). Had it been intended to create prior legal obligations for B64 to transfer the Lease to the Appellant, this obviously could have been done.

(d) The witness statement of Mr Stearn notes that "… PwC's steps plan envisaged that the transfer of the Tower from B64 to [the Appellant] might be by way of a sub-sale for SDLT purposes", and implies that it was ultimately decided not to follow this course, noting that instead "our lawyers made two group relief claims …, as we believed to be appropriate to the transactions". Although not conclusive, it is relevant to note that the parties were aware of s 45, and were not seeking to effect a sub-sale to which s 45 applies.

84. As s 45 FA 2003 does not apply, the transaction on which SDLT is potentially chargeable is the transfer of the Lease from B64 to the Appellant.

There was no entitlement to group relief

85. Paragraph 2(4A) Schedule 7 FA 2003 prevents the Appellant from claiming group relief on its acquisition of the Lease from B64.

86. As to paragraph 2(4A)(a) Schedule 7 FA 2003, the Tribunal has found that the transfer of the Lease to the Appellant was effected for bona fide commercial reasons, and this was not disputed by HMRC.

87. However, as to paragraph 2(4A)(b) Schedule 7 FA 2003, the transfer of the Lease from B64 to the Appellant formed part of arrangements of which one of the main purposes was avoidance of liability to tax.

(1) The series of transactions that took place on 5 July 2011 were, collectively, "arrangements" within the meaning of paragraph 2(4A)(b). All of these transactions had been pre-planned as coordinated elements of a single overall scheme, which had been set out in advance in the PwC step plan (paragraphs 50-56, 83(2) above).

(2) The transfer of the Lease from B64 to the Appellant was one of the steps envisaged in the step plan, and thus formed part of these arrangements for purposes of paragraph 2(4A)(b) Schedule 7 FA 2003.

(3) One of the purposes of the arrangements, viewed as a whole, was to achieve the envisaged corporation tax advantage. Even if the achievement of this tax advantage may not have been in contemplation at the time that idea of transferring the Tower into an SPV was first raised, once the group became aware of the possibility of achieving this tax advantage it became a major consideration in the arrangements. Given the magnitude of the expected corporation tax advantage, the Tribunal is satisfied that it would have been very important to the Appellant to ensure that the arrangements were implemented correctly to ensure that the tax advantage was in fact realised.

(4) Detailed planning to this end was undertaken. The PwC step plan went through several iterations, and significant professional fees were incurred for this purpose. In advance of the transactions implementing the arrangements, the necessary legal agreements were negotiated and agreed (paragraph 83(2) above), and the transactions were executed in a carefully planned sequence, in accordance with the step plan prepared by PwC.

(5) The Tribunal is satisfied that obtaining the tax advantage became one of the main purposes of the arrangements (paragraphs 61-70 above).

(6) This purpose amounted to avoidance of liability to tax for purposes of paragraph 2(4A)(b) Schedule 7 FA 2003.

(7) This was not a case where there were two obvious or standard ways of transferring the Tower from SGSL to the Appellant, and where the Appellant simply chose the way that was least costly in terms of tax.

(8) Rather, the PwC step plan was a bespoke plan, devised by professional advisers, for an arrangement that would not only reduce or eliminate the tax costs of transferring the Tower from SGSL to the Appellant, but would in fact confer a very substantial positive financial gain on the Appellant. It involved a complicated series of transactions that were the result of a concerted plan. A consideration of the whole of the transactions shows that there was concerted action to an end of the avoidance of tax (paragraph 61 above). Moving the Tower to an SPV, the other

main purpose, could have been achieved by far less complicated means. The complicated series of transactions can only have been intended to place the relevant group members outside liability to tax that would otherwise have attached to the group, whether or not the Tower had been transferred from SGSL to another group company. The step plan itself indicated that the intended effect of this series of transactions was to obtain this tax advantage.

(9) The step plan did not involve taking advantage of any offer of freedom from tax which Parliament has deliberately made (paragraph 59 above).

(10) Rather, the step plan involved a course of action designed to conflict with or defeat the evident intention of Parliament, by removing from tax liability some £170 million of latent profit that would otherwise have been taxable.

(11) The fact that ultimately no tax was avoided does not mean that the arrangements cannot have had the purpose of avoiding liability to tax (see paragraph 63 above). The Tribunal does not accept the Appellant's contention that this conclusion means that merely *thinking* about tax avoidance, without actually avoiding tax, will constitute tax avoidance. The Appellant in this case did not merely think about tax avoidance. The Appellant took professional advice on steps that could be taken to achieve a significant corporation tax advantage, and then entered into a series of legal transactions to implement that advice in practice. It then submitted a corporation tax return reflecting the tax advantage to which it believed that it was entitled. It might well be that the Appellant would ultimately have enjoyed that tax advantage in practice if HMRC had not enquired into the return.

The deemed market value rule applied

88. By virtue of s 53(1A) FA 2003, the chargeable consideration for the acquisition of the Lease by the Appellant is to be taken to be not less than the market value of the Lease as at 5 July 2011, the effective date of the transaction.

89. Section 53 FA 2003 applies in this case. It is undisputed that the purchaser, the Appellant, is a company, and that the vendor, B64, is "connected" to the Appellant for purposes of s 53(1)(a) and (2) FA 2003.

90. None of the exceptions in s 54 FA 2003 apply.

(1) The only potentially applicable exception identified by the parties is Case 3 in s 54(4) FA 2003.

(2) However, pursuant to s 54(4)(b), the exception in Case 3 will not apply if the subject matter of the transaction (that is, the Lease) had, within the period of three years immediately preceding the effective date of the transaction, been the subject of a transaction in respect of which group relief was claimed by the vendor (that is, by B64).

(3) Earlier in the day on 5 July 2011, before the Lease was transferred by B64 to the Appellant, the Lease had been granted by SGSL to B64. In respect of this transaction, B64 submitted a land transaction return in which it made a group relief claim. Thus, at the time of the transfer of the Lease from B64 to the Appellant, the Lease had been subject to an earlier transaction in which a group relief claim had been made. The fact that the earlier transaction occurred on the same day is immaterial (see paragraph 71 above).

(4) It is immaterial that HMRC concluded that the group relief claim made by B64 did not need to be considered because sub-sale relief was available. The operation of

s 54(4)(b) depends on whether or not B64 *made* a group relief claim in respect of the earlier transaction, not whether B64 was *entitled* to group relief, and not whether HMRC *considered* that B64 was entitled to group relief (paragraphs 73-81 above).

91. In view of this conclusion, there is no need to determine whether the sale of the Lease by B64 to the Appellant at book value (that is to say, at an under-value) was a "distribution of the assets of that company" for purposes of s 54(4)(a) FA 2003.

Section 75A FA 2003 does not apply

92. Section 75A FA 2003 does not apply, because the requirement in s 75A(1)(c) is not satisfied.

93. It follows from the findings above that the Appellant is chargeable to SDLT on its acquisition of the Lease from B64, based on the market value of the Lease on the effective date of the transaction. No greater amount of SDLT would have been payable on a notional transfer of the Lease directly from SGSL to the Appellant.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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.

DR CHRISTOPHER STAKER
TRIBUNAL JUDGE

Release date: 03 MAY 2022