

Test Claimants in the Franked Investment Income Group Litigation & Others (Respondents) v Commissioners of Inland Revenue (Appellant) (1)

Case ID: UKSC 2016/0228

Case summary

Issue(s)

This is the lead case under the Franked Investment Income Group Litigation Order. It concerns the compatibility of a UK corporate taxation regime with principles of EU law and HMRC's liability to a taxpayer who has overpaid tax on the basis of incompatible UK legislation. The issues for the Supreme Court are:

1. If the provisions of Case V of Schedule D infringe article 56 (now article 63 TFEU) in principle, are they permitted by virtue of the "standstill" provisions of article 57(1) (now article 64(1)), in light of the Eligible Unrelieved Foreign Tax rules?
2. To what extent does EU law require a remedy in respect of the set off of group relief and management expenses? Is a restitutionary remedy available for set off of group relief and management expenses?
3. When and to what extent should unlawfully charged advance corporation tax ("ACT") be regarded as surrendered?
4. Does it make any difference that the UK group had a non-resident parent which received double taxation treaty credits?
5. Taking into account the interaction of ACT with shareholder tax credits, was HMRC enriched as a matter of English law and, if so, to what extent? Is HMRC's argument that it was not enriched by reason of the interaction between ACT and shareholder tax credits precluded by EU law?
6. Should interest be simple or compound? In particular, on what basis can the Test Claimants recover for the periods of prematurity?

Facts

The respondents are the Test Claimants in this litigation. Their claims concern corporation tax paid by UK resident parent companies on dividends received from their foreign subsidiaries, and ACT typically paid by the group's ultimate parent on dividends distributed to their shareholders, under the regime in force until 5 April 1999. The Test Claimants contend that the relevant UK tax provisions were contrary to Article 43 EC (now Article 49 TFEU) on freedom of establishment and/or Article 56 EC (now Article 63 TFEU) on free movement of capital. In consequence, they claim restitution and damages from HMRC.

The litigation has a long procedural history. To date, the issues raised have been decided in favour of the Test Claimants. HMRC now appeals against the judgments of the Court of Appeal in FII (CA) 1 [2010] EWCA Civ 103 and FII (CA) 2 [2016] EWCA Civ 1180, as regards their determinations in respect of the compatibility of the tax regime with EU law and the appropriate remedy.

Following the Supreme Court decision in *Prudential Assurance Company Ltd v HMRC* [2018] UKSC 39, the parties submitted additional documents to address the issues which were resolved in

that case and to identify what issues remain. The issues for the Supreme Court in this hearing are issues 3, 11 and 13 in FII CA (1) and issues 10, 11, 15, 17, 18 and 26(a) in FII CA (2), as set out above.

Judgment appealed

[\[2010\] EWCA Civ 1480](#)

Parties

Appellant(s)

Commissioners of Inland Revenue

Respondent(s)

Test Claimants in the Franked Investment Income Group Litigation & Others

Appeal

Justices

Lord Reed, Lord Carnwath, Lord Hodge

Hearing start date

27 Jun 2019

Hearing finish date

27 Jun 2019

Further hearing

Justices

Lord Reed, Lord Hodge, Lord Carnwath, Lord Lloyd-Jones, Lord Briggs, Lord Sales, Lord Hamblen

Hearing start date

18 Feb 2020

Hearing finish date

20 Feb 2020

Additonal hearing

Justices

Lord Reed, Lord Hodge, Lord Briggs, Lord Sales, Lord Hamblen

Hearing start date

07 Dec 2020

Hearing finish date

10 Dec 2020

Watch hearing

27 Jun 2019 [Morning session](#)

Watch further hearing

18 Feb 2020 [Morning session](#) [Afternoon session](#)

19 Feb 2020 [Morning session](#) [Afternoon session](#)

20 Feb 2020 [Morning session](#) [Afternoon session](#)