UT Neutral citation number: **[2022] UKUT 185 (TCC)**

UT (Tax & Chancery) Case Number: UT/2021/000006

**Upper Tribunal**
**(Tax and Chancery Chamber)**

Hearing dates: 9-10 June 2022
Rolls Building, London

**Judgment given on 12 July 2022**

**Before**

**MRS JUSTICE FALK**
**UPPER TRIBUNAL JUDGE JONATHAN RICHARDS**

**Between**

**ALTRAD SERVICES LIMITED (1)**
**ROBERT WISEMAN AND SONS LTD (2)**

Appellants

**and**

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

Respondents

**<u>Representation</u>:**

For the Appellants: Jonathan Peacock QC and Edward Hellier, Counsel, instructed by KPMG

For the Respondents: David Milne QC and Barbara Belgrano, Counsel, instructed by the General Counsel and Solicitor for Her Majesty's Revenue and Customs

DECISION

## Introduction

1. These are appeals against a decision of the First-tier Tribunal (Tax Chamber) (the "FTT") released on 23 March 2020 (the "Decision"). The first appellant was previously named "Cape Industrial Services Limited" and referred to in the Decision as "CIS", an abbreviation that we will also use. We refer to the second appellant as "Wiseman".

2. By the Decision, the FTT dismissed the appellants' appeals against closure notices that HMRC had issued reducing their entitlement to capital allowances. The closure notice for CIS related to its accounting period ended 31 December 2010 and, by denying capital allowances, made CIS liable to additional corporation tax of £2,977,863. The closure notice for Wiseman related to its accounting period ended 31 March 2011 and resulted in an additional corporation tax liability of £12,623,202.82.

3. The appellants appeal with the permission of the Upper Tribunal and, by their Responses to the appeals, HMRC seek to rely on arguments which were unsuccessful before the FTT.

## Overview of the capital allowances regime so far as relevant to these proceedings

4. These appeals relate to the detailed operation of the capital allowances regime set out in the Capital Allowances Act 2001 ("CAA 2001"). Relevant statutory provisions are set out in the Appendix to this decision, but to put the issues in context we start with a high-level overview of the regime so far as relevant to these appeals.

5. The depreciation in value of plant and machinery and other capital items does not give rise to a deductible expense for tax purposes. CAA 2001 seeks to reduce the impact of this rule by providing for capital allowances to be given, by way of a deduction against taxable profits, in respect of expenditure on, among other things, plant and machinery used for the purposes of a "qualifying activity", which includes a trade. Allowances are generally given on a "pooled" basis, so a taxpayer incurring expenditure to acquire plant and machinery increases the pool of expenditure qualifying for allowances. Allowances are made as a percentage of the balance available in the pool, the pool being reduced by the amount of the allowances given (known as the reducing balance basis). A taxpayer selling plant and machinery that has qualified for allowances in any accounting period is required to bring the sale proceeds into account as a "disposal value". Amounts brought into account as disposal value reduce the expenditure in the pool eligible for allowances in subsequent accounting periods or, if the disposal value exceeds the balance in the pool, create a balancing charge.

6. The general rule, set out in s11 of CAA 2001, is that expenditure on plant and machinery qualifies for capital allowances if: (i) the expenditure is "capital expenditure on the provision of plant and machinery", (ii) it is incurred for the purposes of a qualifying activity, and (iii) the person incurring the expenditure owns the plant and machinery as a result of incurring it. Section 61 deals with "disposal events", with the paradigm example of such an event occurring when a person "ceases to own" plant and machinery (s61(1)(a)). As Mr Peacock QC put it in his oral submissions, s11 and s61 are "book-ends" with s11 providing for capital allowances to begin to accrue when plant and machinery is purchased and s61 providing for future allowances to cease to accrue when that plant and machinery is disposed of (to the extent that disposal value is brought into account), as well as recapturing excessive allowances that have been given.

7. Until 2006, "ownership" of plant and machinery was central to the entitlement to capital allowances. A taxpayer who incurred expenditure on plant and machinery would not (generally) be entitled to allowances unless the taxpayer owned the plant and machinery in question (see s11 of

CAA 2001). Similarly, if the plant and machinery ceased to be owned, a disposal value would be brought into account in the pool, reducing the taxpayer's future entitlement to allowances.

8. One exception to the code's focus on "ownership" was made for hire-purchase and similar contracts. Under such a contract, a taxpayer might be given the use of an item of plant and machinery in return for a stream of recurring payments, but only obtain "ownership" of the item, either automatically or by exercising an option, once all instalments have been paid. Legislation, now found in s67 of CAA 2001, deems a taxpayer in this position to be the owner of the plant and machinery from inception of the hire-purchase contract, even though ownership would not be obtained until the end. In a similar vein to the position where the asset is owned by the taxpayer, s67(4) of CAA 2001 provides for a deemed cessation of ownership if a person ceases to be entitled to the benefit of a hire-purchase contract, so that a disposal value can be brought in under s61.

9. Until 2006, the general position was that a person leasing plant and machinery could not obtain capital allowances. Any allowances would benefit the person who owned the plant and machinery, namely the lessor. However, accounting practice had long recognised that certain leases of plant and machinery ("finance leases"), while taking the legal form of a lease of plant and machinery, were in substance loans in which the lessee had the risks and rewards of ownership of the machinery and raised finance from the lessor, with the machinery serving as the collateral or security for that loan. Consistent with that view of a finance lease, the lessee, and not the lessor, would recognise the machinery as an asset on its balance sheet.

10. In 2006, amendments were made to CAA 2001 which recognised that a lessee of plant and machinery under a "long funding finance lease" (and certain operating leases that also performed a financing function) could obtain capital allowances on that plant and machinery even though the lessee was not the legal owner. A complicated code was needed to determine the amount on which allowances could be obtained, recognising that lessees typically pay a stream of recurring payments under the leases and so the legislation needed to identify a present value of that stream that attracted allowances. Very broadly, at times material to these appeals and before further legislative changes were made in Finance Act 2011, the legislation determined that, for leases such as those relevant in these appeals, allowances would be available by reference to the present value of the "minimum lease payments", defined in s70YE(1) of CAA 2001 as:

> the minimum payments under the lease over the term of the lease (including any initial payment) together with -
>
> (a) in the case of the lessee, so much of any residual amount as is guaranteed by him or a person connected with him…

In broad terms, "residual amount" was that part of the fair value of the plant or machinery that was not expected to be recovered through rental payments.

11. Therefore, a lessee was entitled to allowances by reference to the present value of (i) ordinary payments under the lease and (ii) any residual value of the plant and machinery that was guaranteed by the lessee or a connected person.

12. It was also necessary for the regime to specify the events that would require a lessee to bring into account a disposal value, and the amount of the disposal value to be brought into account. Section 70E of CAA 2001 provided, among other matters, that a termination of a long funding lease was a disposal event and the associated disposal value was:

$$(QE-QA) + R$$

13. In the context of this appeal, QE can be understood as "qualifying expenditure", broadly the amount on which the lessee was entitled to claim allowances. R was, broadly, any amount representing any rebate of rent due on termination of the lease and is not relevant in the circumstances of this appeal. In the context of a long funding finance lease, s70E(2C) defined "QA" as:

> (a) the payments made to the lessor by the person under the lease (including any initial payment), and
>
> (b) the payments made to the lessor by the person under a guarantee of any residual amount (as defined in section 70YE).

**The relevant transactions undertaken by the appellants**

14. Both appellants entered into arrangements that were intended to "step up" their entitlements to capital allowances on plant and machinery. Those arrangements were disclosed to HMRC under the rules applicable to tax avoidance schemes (known as "DOTAS") and were allocated a "scheme reference number". By the time of the hearing before us, all parties were agreed that there was no material difference between the ways in which both appellants implemented their transactions. Therefore, argument before us proceeded on the basis of a simplified example transaction, which focused only on the features relevant in these proceedings and which used hypothetical numbers. We will apply our own analysis to that example transaction. References in the remainder of this decision to numbers in square brackets are to paragraphs of the Decision unless we specify otherwise.

*Overview of the arrangements*

15. Both appellants owned plant and machinery (the "Assets") on which they were entitled to claim capital allowances on the "reducing balance" basis set out in CAA 2001. Like the FTT at [6], we explain the arrangements by assuming that the market value of that plant and machinery was £100 on implementation of the arrangements.

16. Each appellant sold the Assets to a leasing company in the Société Générale banking group ("SGLJ") for their market value of £100 and, as a result, ceased to be the legal or beneficial owner of the Assets.

17. Immediately following the sale:

> (1) SGLJ entered into a short-term finance lease (a "Lease") with each appellant for a duration of three or four weeks. Each appellant was obliged to pay rentals totalling £5 for the use of the Assets during that period.
>
> (2) Each appellant granted SGLJ an option (the "Put Option") entitling SGLJ to sell the Assets back to the appellant on termination of the relevant Lease. The price payable by an appellant on any exercise of the Put Option (the "Option Price") was the predicted market value of the Assets on termination of the Lease (£95).
>
> (3) SGLJ granted another company in each appellant's group an option (the "Call Option") entitling that group company to purchase the Assets from SGLJ. The Call Option was exercisable, very broadly, at the same time as the Put Option and for the same Option Price as was payable on exercise of the Put Option.
>
> (4) The ultimate parent company of each appellant gave SGLJ a "Parent Guarantee" guaranteeing the payment of all sums due to SGLJ under the Lease, Put Option and related documents.

18. Each appellant paid rent and all sums due under the Lease. Each Lease terminated in accordance with its terms a few weeks after it was granted. On that expiry, SGLJ exercised the Put Option, each

appellant paid SGLJ the £95 Option Price and became legal and beneficial owner of the Assets once more.

19. The appellants hoped and intended that the arrangements would be analysed in the following way pursuant to CAA 2001:

> (1) On the sale of the Assets to SGLJ, there would be a disposal event for the purposes of s61(1)(a) of CAA 2001 on the basis that they ceased to own the Assets. They would have to bring a disposal of value of £100 into their general capital allowances pool, ostensibly reducing their entitlement to capital allowances because of a reduction in the pool of expenditure.
>
> (2) However, the Lease was a "long funding finance lease" for the purposes of Chapter 6 of Part 2 of CAA 2001. In its capacity as lessee under a long funding finance lease, each appellant was entitled to capital allowances under s70A of CAA 2001 by reference to qualifying expenditure treated as incurred on the provision of the Assets. The amount of that capital expenditure was, by s70C and s70YE of CAA 2001, the aggregate of:
>
> > (a) £5 – being the present value of the rentals due under the Lease; and
> >
> > (b) £95 – the Option Price, which represented a guarantee of any residual amount for the purposes of s70YE(1)(a).
>
> This is referred to in the legislation as the "commencement PVMLP".
>
> (3) Accordingly, the disposal value of £100 brought into the appellants' general plant and machinery pool was immediately counteracted by an addition of £100 of qualifying expenditure to that pool under the long funding finance lease regime.
>
> (4) On expiry of the Lease, the appellants were required to bring a disposal value into their general plant and machinery pool under s70E of CAA 2001. That disposal value was the difference between:
>
> > (a) "QE" in s70YE, which was the amount of each appellant's qualifying expenditure treated as incurred under the Lease – namely £100; and
> >
> > (b) "QA" in s70YE, defined as the aggregate of "the payments made to the lessor by the person under the lease …" (the £5 rent) and "the payments made to the lessor by the person under a guarantee of any residual amount" (the £95 Option Price) – in total £100.
>
> (5) Since both "QE" and "QA" for the purposes were £100, their difference was nil with the result that neither appellant was required to bring into account any disposal value on expiry of the Lease.
>
> (6) Finally, on exercise of the Put Option each appellant incurred £95 of qualifying expenditure under s11 of CAA 2001 which was "capital expenditure on the provision of plant or machinery" and so qualified for capital allowances.

20. It can be seen that the appellants contend that the overall effect of the arrangements in each case was to "step up" the amount of qualifying expenditure in their general pool that qualified for capital allowances by £95 without any acquisition of new plant and machinery. Moreover, although the appellants entered into these arrangements just once, if their analysis is correct, the transactions could (at least in theory) have been repeated multiple times, leading to a potentially limitless increase in their entitlement to capital allowances.

21. HMRC took issue with much of the taxpayers' analysis set out in paragraph 19. They made the overarching argument, based on the judgment of the House of Lords in *WT Ramsay Ltd v Inland Revenue Commissioners* [1982] AC 300 ("*Ramsay*") and subsequent case law, that the appellants did not "cease to own" the Assets when they sold them to SGLJ for the purposes of s61 of CAA 2001, with the result that neither that transfer of the Assets, nor any of the subsequent transactions with SGLJ, had any actual effect for capital allowances purposes. Instead, on HMRC's analysis, the appellants were left in the same position they would have been in had they not effected any of the transactions, and were entitled simply to continue to claim capital allowances on the Assets on the reducing balance basis prescribed by CAA 2001.

22. HMRC also made the following challenges to the detail of the appellants' analysis of the arrangements:

> (1) They argued that each Lease was not a long funding lease because, taken together, the Lease and the associated Put Option constituted a "hire purchase or similar contract" for the purposes of s67 CAA 2001 and, by s70J(3), such an arrangement is prevented from being a funding lease and so prevented from being a long funding lease. (If s67 CAA 2001 applied on this basis, it was common ground that the appellants' appeals would fail since, even if there was an initial cessation of ownership, each appellant would be treated as incurring a single amount of capital expenditure under the "hire purchase" rules, rather than the two sets of capital expenditure on which the planning relied: the first in connection with the Lease, offsetting the disposal value brought into account at that point, and the second on acquisition of the Assets on exercise of the Put Option.)
>
> (2) They disputed the appellants' analysis set out in paragraph 19(4) above, arguing that the disposal value to be brought into account on termination of each Lease was £95. The essence of HMRC's argument was that "QA" in s70YE was just £5 because it included only the rentals payable and not the Option Price.

23. Subject to those points of disagreement, HMRC accepted the following aspects of the taxpayers' analysis set out in paragraph 19 above:

> (1) They accepted that, but for the fact that the Lease was a hire-purchase agreement falling within s67, all other conditions necessary for the Lease to be a long funding finance lease were satisfied.
>
> (2) They accepted that, if the appellants were entitled to any allowances in respect of their Leases, those allowances were to be computed by reference to capital expenditure of £100. In particular, they accepted that £95 (being the Option Price) fell within s70YE(1)(a) as being a "residual amount … guaranteed by [each appellant] or a person connected with [that appellant]". HMRC did not agree that the Put Option itself was the relevant "guarantee" for the purposes of s70YE(1)(a). However, they accepted that, by the Parent Guarantee, a person connected with each appellant provided a guarantee of the obligation to pay SGLJ the Put Option Price, which price was a "residual amount" for the purposes of s70YE(1)(a).
>
> (3) It follows that, for the purposes of determining any disposal value to be brought into account on termination of the Lease, HMRC accepted that "QE" in s70E was £100, a figure that included the £95 Option Price, although their analysis of how that conclusion followed differed from that of the appellants.

## The decision of the FTT

*Findings of fact*

24. The FTT found that both appellants entered into their transactions on arm's length terms. In particular, the price that they received from SGLJ for the sale of the Assets was within a range of market values estimated by a third-party valuer ("American Appraisal") ([44] and [59]).

25. At [52], [65] and [66], the FTT found that both Leases expired by effluxion of time, and that SGLJ exercised its Put Option, with the result that some three to four weeks after selling the Assets each appellant re-acquired the Assets.

26. At [258] the FTT concluded that, as a matter of law, both appellants gave up legal and beneficial ownership of the Assets when they sold them to SGLJ, and that they re-acquired legal and beneficial ownership on SGLJ's exercise of the Put Option.

27. At [70], the FTT found that (tax saving aside) neither appellant realised any financial benefit from the arrangements. The sums that each received from SGLJ simply provided them with sufficient money to pay the Option Price due when the Put Option was exercised and re-acquire the Assets. While they did have the use of SGLJ's money for the short period while each Lease was in place, taking into account the fees that they had to pay, they were incurring a "very high" annualised funding cost of between 15% and 30%. From that, the FTT inferred, at [75] that:

> the appellants' sole purpose in entering into the various transactions was to obtain allowances on the Option Price without suffering the economic burden of paying that amount.

The FTT made it clear at [265] that this was a finding that none of the transactions had any business or commercial purpose at all:

> Unlike in *BMBF*, *Ensign* and *Tower*, as set out in full above, the appellants had no commercial or business purpose at all in entering into any of these steps other than, through their combined operation as a carefully constructed commercial unity, to generate additional "qualifying expenditure" in respect of the assets without the appellants incurring any further actual financial cost.

28. At [253], the FTT said:

> 253. It is apparent from the very design of the arrangements that the parties intended that each step involved would be carried through in accordance with a pre-set plan with the single goal of generating (a) additional "qualifying expenditure" for the appellants in respect of the assets without the appellants suffering any actual material cost and (b) a fee for SGLJ for its role in facilitating this.

29. At [255], the FTT found that exercise of the Put Option was effectively pre-ordained:

> 255. From the outset, there was no real doubt that the appellants' respective groups would reacquire the assets at the end of the Lease periods given the Put and Call Option mechanism and the on-going need for the assets for use for the relevant group's trading purposes. For the reasons set out below, barring wholly unexpected events, the expectation was that the re-acquisition would take place on SGLJ exercising the Put Options on expiry of the Lease period…

30. At [258], the FTT made the following finding as to the effect of the arrangements as a whole:

> Viewing the transaction as it was intended to operate as a composite whole, at the end of the three or four week period during which the Leases were in place, the appellants ended up in exactly the same position as they had started in, as the legal and beneficial owners of the assets having had the use of the assets in their trades throughout. The appellants gave up ownership of the assets (subject to the leaseback) with the attendant legal and commercial effects that entailed but they only did so to generate the desired allowances and, it appears, for the bare minimum of time considered necessary to achieve that result. In economic terms they had incurred no material costs other than the fees due to SGLJ and other expenses associated with implementing the transactions.

*The FTT's conclusions*

31. The appellants make a number of criticisms of the FTT's conclusions in this regard which we will address later in this decision. We will not, therefore, at this stage set out the entirety of the FTT's reasoning.

32. A flavour of the FTT's reasoning on HMRC's *Ramsay* argument can be found at [260] where the FTT decided that an application of the *Ramsay* line of cases led to the following conclusions:

> (1) On sale of the Assets, there was no "cessation" of ownership for the purposes of s61(1)(a) of CAA 2001, broadly because the appellants had the "certain knowledge" that, barring wholly unforeseen events, they would reacquire ownership within a matter of weeks, and the temporary loss of ownership was the first step in a composite scheme intended to deliver "magical" additional qualifying expenditure that attracted capital allowances.
>
> (2) Therefore, the grant of the Leases and the reacquisition of the Assets had no effect for capital allowances purposes. Accordingly, the appellants did not incur any expenditure on the "provision" of the Assets for the purposes of their trades within the meaning of s70A (and so the relevant provisions of the long funding lease rules including s70C were not engaged). Moreover, when the appellants reacquired the Assets, and paid the Option Price, they did not incur capital expenditure under s11 of CAA 2001 on the provision of the Assets for the purposes of their trades.

33. We emphasise that the FTT's conclusion summarised in paragraph 32(2) was premised on its finding that there was no cessation of ownership for the purposes of s61 of CAA 2001. That was precisely how HMRC had pleaded their *Ramsay* case in their Statement of Case before the FTT. HMRC's case hinged on the proposition that the sale of the Assets did not result in either appellant ceasing to own the Assets for the purposes of s61. If, contrary to HMRC's assertion, the appellants did cease to own the Assets when they sold them to SGLJ, HMRC were not advancing any fall-back argument, based on the *Ramsay* line of cases, that sought to deny the tax treatment for which the appellants argued, although they were making specific technical arguments based on s67 of CAA 2001 and the definition of "QA". Put another way, in order to succeed with their *Ramsay* case before the FTT, HMRC needed to establish that the appellants did not cease to own the Assets, for the purposes of s61, when they sold the Assets to SGLJ.

34. The FTT's conclusion on HMRC's overarching *Ramsay* argument was sufficient to determine the proceedings in HMRC's favour, but the FTT went on to consider the other arguments that had been advanced.

35. In Part E of the Decision, the FTT dealt with HMRC's argument, summarised in paragraph 22(1) above, that the Lease fell outside the "long funding lease" regime because it, together with the associated Put Option, was a hire purchase arrangement falling within s67 of CAA 2001. That invited

a consideration of whether, for the purposes of s67(1)(b), each appellant incurred capital expenditure "under a contract providing that the [relevant appellant] shall or may become owner of the plant and machinery on the performance of the contract". Section 67(6) supplements this by providing for two or more agreements to be treated as a single contract if the effect of doing so would be to satisfy the condition in s67(1)(b).

36. HMRC argued that each Lease and associated Put Option should be treated as a single contract by s67(6) and that (i) that single contract provided that each appellant "shall" become the owner of the Assets, because the exercise of the Put Option was pre-ordained or, at the very least (ii) that single contract provided that each appellant "may" become owner of the Assets because SGLJ was entitled to require each appellant to purchase the Assets by exercising the Put Option. The FTT rejected that argument, reasoning at [292] that:

> (1) Section 67 focuses attention on rights that each appellant had under the contract. Since s67 operates to confer allowances up front on a person having the benefit of a hire-purchase contract, Parliament cannot have intended entitlement to those allowances to depend on "the inherently difficult exercise of assessing whether a person might become the owner depending on actions entirely beyond its control".
>
> (2) Even though exercise of the Put Options was "extremely likely to occur", it remained the case that the appellants had no rights to obtain ownership of the Assets unless and until SGLJ exercised its rights under the Put Options, and the appellants had no control over whether SGLJ chose to exercise the Put Options. Read purposively, the "shall" limb of s67(1)(b) required that the appellants themselves had a right to acquire the Assets under the relevant contract. A high degree of confidence that SGLJ would exercise its rights under the Put Options was not sufficient to confer an entitlement to allowances under the "shall" limb of s67(1)(b).
>
> (3) For similar reasons, the "may" limb of s67(1)(b) required something more than a possibility that a person might become an owner of assets as a consequence of actions entirely beyond its control. It was entirely up to SGLJ whether it exercised its rights under the Put Option, and that was not enough to satisfy the requirement that an appellant "may" become the owner of the Assets, having due regard to the purpose of the provision.

37. In Part F of the Decision, the FTT considered the issue summarised in paragraph 22(2), to which the FTT referred as the "QA issue". The appellants considered that the Option Price paid under the Put Option fell within the definition of "QA" in s70E on the basis that each such payment was made by the relevant appellant "under a guarantee of any residual amount", because payment of the Option Price effectively insulated SGLJ from any risk of the Assets falling to a value below the Option Price. The FTT accepted that argument and rejected HMRC's contrary argument that (i) the only "guarantee" provided as part of the arrangements was the Parent Guarantee and (ii) the Option Price could not be both a payment falling within QA and a payment of capital expenditure attracting allowances under s11 of CAA 2001.

**The grounds of appeal and Respondents' notice**

38. Neither the appellants nor HMRC make any challenge to the FTT's factual findings.

39. We need not set out the appellants' grounds of appeal or HMRC's Respondents' notice in any detail since it was common ground that, in order to dispose of these proceedings, the Upper Tribunal needs to address the following issues:

(1) Issue 1 – Whether the FTT erred in law in concluding that the appellants did not cease to own the Assets for the purposes of s61 of CAA 2001 when they sold the Assets to SGLJ.

(2) Issue 2 – Whether the FTT erred in law in failing to conclude that the sale of the Assets, coupled with the Put Option, caused s67 of CAA 2001 to apply with the result that the Lease was not a long funding lease.

(3) Issue 4 – Whether the FTT erred in law in concluding that the Option Price fell within the definition of "QA" in s70E of CAA 2001.

40. In their Respondents' Notice, HMRC advanced a further strand of argument as "Issue 3". However, by the time of the hearing before us, they had abandoned that argument. We retain the parties' original numbering of the issues so that this decision can easily be read together with the skeleton arguments.

41. Issues 2 and 4 are self-explanatory. Issue 1 is deliberately framed in a limited way. As we have noted, the FTT accepted HMRC's argument, based on the *Ramsay* line of authorities, to the effect that the appellants did not cease to own the Assets for the purposes of s61(1)(a) when they sold them to SGLJ and that <u>therefore</u> the tax analysis for which the appellants argued necessarily did not apply. Consistent with their position before the FTT, which we have summarised in paragraph 33 above, HMRC's Response to the appellants' notice of appeal makes it clear that their *Ramsay* argument is premised on the proposition that the sale of the Assets to SGLJ did not result in the appellants ceasing to own those assets for the purposes of s61(1)(a). For their part, the appellants did not seek, either before us or before the FTT, to challenge the proposition that, if s61(1)(a) was not engaged, the tax treatment they sought was not available. It follows that the sole battleground between the parties on Issue 1 is whether an application of the *Ramsay* approach means that the appellants did not cease to own the Assets when they sold them to SGLJ for the purposes of s61(1)(a) of CAA 2001.

**Issue 4**

42. We start with Issue 4 because that issue brings sharply into focus how the planning was intended to work, which will serve as a useful basis for our later discussion of Issue 1.

43. On the appellants' analysis, the sale of the Assets followed by the grant of the Lease are neutral from a capital allowances perspective. The disposal value of £100 arising on the appellants' analysis when the Assets are sold is matched by qualifying expenditure of £100 when each appellant enters into the Lease. Moreover, it is common ground between the parties that, if the appellants are entitled to any allowances at all when they enter into their Lease, those allowances are to be based on qualifying expenditure of £100.

44. The taxpayers' argument for a step up in their capital allowances is therefore based on the interaction between the provisions that calculate the disposal value when each Lease terminates (s70E and s70YE) and those that determine their entitlement to capital expenditure when they reacquired the Assets following exercise of the Put Option (s11). In essence, the appellants argue that those provisions "misfire" (from HMRC's perspective). They rely on the following chain of reasoning:

(1) "QE" for the purposes of the formula in s70E(2A) is £100, the £5 rent payable under the Lease plus the £95 Option Price. (That outcome is common ground, putting to one side for the time being HMRC's arguments based on *Ramsay* and s67 of CAA 2001, although HMRC do not agree with the appellants' argument as to <u>why</u> the £95 figure is included within QE.)

(2) "QA" for the purposes of the formula is also £100, because it similarly takes into account the £95 Option Price. Therefore, the disposal value on termination of the Lease is nil.

(3) The Option Price does "double duty" as consideration paid for the acquisition of the Assets from SGLJ and so gives rise to qualifying expenditure, and an entitlement to capital allowances, under s11.

45. The additional qualifying expenditure that the FTT described as "magical" at [260(1)] is therefore argued to arise as a consequence of the way that the £95 Option Price enters the calculation at different points:

(1) First, it is said to enter the calculation as part of the qualifying expenditure incurred under the Lease. That is important because, if qualifying expenditure under the Lease was only £5, then the scheme would achieve no benefit as each appellant would suffer a disposal value of £100 on sale of the Assets to SGLJ, but would obtain qualifying expenditure of only £5 under the Lease. There would be a net loss of qualifying expenditure of £95 at this point with the result that, even if there was no subsequent disposal value on termination of the Lease, and even if the payment of the Option Price constituted capital expenditure of £95 under s11, there would have been no overall step up of qualifying expenditure.

(2) Second, it is said to enter the calculation as part of "QA" so as to prevent a disposal value from being brought into account on termination of the Lease. That is important because, if QA excluded the Option Price, and so was just £5, there would be a disposal value of £95 on termination of the Lease, which would also deprive the scheme of any benefit.

(3) Third, it is said to enter the calculation under s11 so as to constitute qualifying expenditure on the acquisition of the Assets. That is important because, without that qualifying expenditure, the scheme would produce no overall benefit and would result simply in a disposal value of £100 on sale of the Assets to SGLJ and qualifying expenditure of £100 on inception of the Lease.

46. In Finance Act 2011, Parliament legislated to correct the potential for anomalies. Both parties were agreed that these subsequent changes cannot inform the proper construction of the legislation as in force for the periods in which the appellants implemented their transactions. We do not, therefore, rely on the Finance Act 2011 changes as an aid to the construction of earlier legislation, but simply note that, in s33 of Finance Act 2011, Parliament legislated to prevent any amount that could reasonably be assumed to constitute qualifying expenditure when paid from being taken into account either (i) in the calculation of "QE", the qualifying expenditure under a long funding finance lease, or (ii) in the calculation of "QA". Therefore, if the appellants had implemented their arrangements when s33 of the Finance Act 2011 was in force, on their analysis the arrangements would have produced no net benefit. This is because there would be a disposal value of £100 when the Assets were sold to SGLJ, allowances of just £5 under the Lease, no disposal value on termination of the Lease and qualifying expenditure of £95 under s11 when the Option Price was paid.

47. Before us, as before the FTT, HMRC argue for a different outcome. They accept that £95 is to be included within the calculation of "QE", though they do not agree with the appellants' analysis of why that is the case. However, they argue that the £95 should be excluded from the definition of QA for either or both of the following reasons:

(1) The payment of the Option Price by each appellant was not made "under a guarantee of any residual amount" for the purposes of s70E(2C)(b) of CAA 2001. As confirmed by Halsbury's, a "guarantee" is an accessory contract by which a promisor undertakes to be answerable for the debt of another person. Its function, therefore, is to provide "security" for the obligations of another. The appellants' obligation to pay the Option Price was their own liability to pay consideration for the acquisition of the Assets and so did not answer to the statutory concept of "guarantee".

(2) The payment of the Option Price could not be both qualifying expenditure falling within s11 and a payment falling within QA given the anomalies that would be produced by such an interpretation, not least the "step up" in qualifying expenditure which the appellants sought to achieve by their transactions.

48. We do not accept HMRC's first argument, summarised in paragraph 47(1) above. While we acknowledge that the word "guarantee" can refer to the tripartite arrangement described in that paragraph, and indeed may generally do so when used in a legal sense, that is not the sense in which the word is used in s70E(2C)(b). That section asks whether the lessee itself has made a payment under a "guarantee". The "person" referred to is clearly the lessee: see s70E(1)(a), which refers to a person who is the lessee, as well as s70E(2C)(a), which refers to payments by the person under the lease. The reference to the lessee demonstrates that Parliament cannot have had in mind a tripartite situation. A lessee could not guarantee its own obligations in the sense put forward by HMRC. That in turn demonstrates that the word "guarantee" is used in a different sense, as meaning an "assurance", as the FTT held at [303].

49. We would observe that if HMRC's argument were correct then the effect would be that whether any residual amount would be taken into account as part of the capital expenditure at inception of the lease under s70C would depend entirely on the happenstance of whether or not any residual value commitment was guaranteed by a connected person. This is because HMRC say that the reason that the £95 could count as part of the qualifying expenditure at inception of the lease, and as part of QE on termination, is that it was guaranteed by a connected person, within s70YE(1)(a) (read with s70C(4)). It would follow from this that, if HMRC were correct, then where there was a connected party guarantee allowances would be available under the long funding lease rules in respect of the present value of residual amounts, but allowances would not be so available if there was no such guarantee. Apart from lacking logic (as discussed further below), HMRC's interpretation also ignores the reference to the lessee in the definition in s70YE(1)(a) ("guaranteed by him", that is the lessee).

50. HMRC's interpretation would have the effect that allowances in respect of residual value commitments would not be available in an entirely straightforward situation, namely where a lessee – whose creditworthiness may be such that no other entity is required to underwrite it – agrees to compensate the lessor at the end of a lease for any shortfall in value as compared to the amounts received by the lessor under the lease. Further, any payment actually made pursuant to that obligation would not be taken into account in determining disposal value.

51. HMRC's second argument, summarised in paragraph 47(2) is, on close inspection, simply an assertion about anomalies that can arise if the Option Price does "double duty" both as a component of QA and as qualifying expenditure under s11. We accept that those anomalies could arise and Parliament evidently felt sufficiently concerned about the potential for such anomalies to enact the Finance Act 2011 provisions to which we have referred in paragraph 46 above. However, simply referring to the potential for anomalies does not demonstrate that Parliament intended QA to exclude any payment that could be treated as qualifying expenditure under s11 in circumstances where the legislation does not hint at such a qualification.

52. There are a number of real-world scenarios, not related at all to tax avoidance, where a person might transition from claiming allowances under the rules applicable to long funding finance leases to claiming allowances on the basis of being the outright owner of plant and machinery. At its simplest, a lessee of plant and machinery might purchase the equipment from its lessor for commercial reasons, either terminating the lease early or on expiry of the lease. In such circumstances, the scheme of the legislation suggests that there needs to be a "closing" figure under the long funding finance lease rules that helps to determine any disposal value under that regime, and an "opening" figure under the general rules applicable to outright owners of plant and machinery that enables allowances to be determined going forward. A fundamental difficulty with HMRC's analysis is that, until the Finance Act 2011 changes to which we have referred, Parliament did not prescribe any link between these "closing" and "opening" values. HMRC's submission that "QA" could not include items taken into account under s11 is a rationalisation based no doubt on what they consider to be the unwelcome effects of transactions of the kind effected by the appellants, but which has no obvious basis in the statutory language that Parliament has used.

53. In the scenario set out in paragraph 52, if the purchase was made pursuant to a self-standing offer made during the currency of or on expiry of a long funding finance lease, rather than pursuant to a commitment previously entered into, then the expenditure incurred would count only towards the "opening" value under s11, because it would not be a payment under a guarantee of any residual amount. There is no question of the treatment of this sum as qualifying expenditure under s11 giving rise to any step up in total allowances since no amount in respect of that sum would have been brought into account as qualifying expenditure under the long funding lease rules at the inception of the lease either (because it would not form part of commencement PVMLP), and it would also not be reflected in the calculation of disposal value because it would form part of neither QE nor QA in the "(QE – QA) + R" formula in s70C. Therefore, in a straightforward situation where a lessee purchases equipment leased under a long funding finance lease from its lessor, there is nothing objectionable about the purchase price being treated as qualifying expenditure under s11.

54. Alternatively, if – again in an entirely commercial situation – a put option had been granted by the lessee as part of the terms on which the lease was entered into, as a means of ensuring that the lessor would be able to ensure that it would be able to make its expected return, then in a similar way the price paid on exercise of that option would in principle qualify as expenditure under s11. As in the previous scenario, it is capital expenditure on the provision of plant and machinery for the purposes of the trade, and ownership is acquired as a result of incurring it.

55. However, on HMRC's case (and prior to the enactment of Finance Act 2011), in this scenario the potential commitment to incur the expenditure would also have counted as part of the qualifying expenditure at inception of the lease, and therefore as part of QE, if it happened to be the subject of a guarantee from another entity. Therefore, on HMRC's case, a special approach to QA, which involves excluding from it sums that count as capital expenditure under s11 even where they have contributed to the definition of QE, is to be applied in the case of the purchase of equipment by a lessee from a lessor under a long funding finance lease on exercise of a put option, where the put option in question has been guaranteed by a person connected with the lessee.

56. Quite apart from the fact that the legislation does not contain any provisions applying such a special approach to QA, there are two reasons why that approach is illogical and goes against the grain of the legislation:

> (1) As we explain in paragraphs 58 to 60 below, there is no principled reason why, if the exercise price payable under the put option did count as part of QE (as HMRC accept it would if the lessee's obligations under that put option were guaranteed by a connected

person), that price should not also have fallen, when paid, within the statutory concept of QA.

(2) As already indicated, if HMRC were correct then there would be a sharp distinction between cases where there was a third party guarantee of a residual amount, where allowances would be available at the inception of the lease but (on HMRC's case) would always be withdrawn on termination of the lease because the relevant amount would count in QE but not in QA, and a case where there was no guarantee, where on HMRC's case no allowances would be available in respect of any residual amount in the first place. That, it seems to us, would be wholly irrational distinction which Parliament cannot be taken to have intended to draw. The specific inclusion of residual amounts in commencement PVMLP indicates that Parliament did intend to confer a right to allowances in respect of them, and we can see no justification for concluding that it only intended to do so where a guarantee from another entity was in place.

57. We also agree with the appellants that the question posed by s70E(2C)(a) is simply whether the payment is made "under a guarantee of a residual amount". Other than insofar as it incorporates the concept of residual amount (a concept which focuses on the financial effect of the transaction for the lessor rather than the lessee) that question is not otherwise concerned with the purpose of the payment. Prior to the enactment of Finance Act 2011, there was nothing in the statutory formula that excluded amounts that would otherwise qualify for relief either from QA or QE.

58. In addition, the effect of s70C of CAA 2001 is that the amount of qualifying expenditure under a long funding finance lease is determined on inception of the lease by reference to the discounted values of payments to be made under that lease. That is a forward-looking exercise that raises the possibility of a taxpayer being credited with too much qualifying expenditure if payments actually made under the lease are lower than those taken into account in the determination of qualifying expenditure. For example, a lease might terminate early before all scheduled payments due under the lease have actually been made. A lessee might not actually make all payments due under the lease. The "(QE – QA) + R" formula in s70C is a "truing up" provision that recognises that the disposal value arising on termination of the lease should claw back the benefit of capital allowances on <u>anticipated</u> payments which are taken into account in the determination of qualifying expenditure (QE) to the extent that those payments are not <u>actually made</u> so as to fall within the definition of QA.

59. The FTT thought that it was an "oddity" that the definition of QE included payments under residual value guarantees anticipated to be made by persons connected with the lessee, whereas QA embraces only payments made by the lessee itself (see [305]). We respectfully see no such oddity. Parliament is content, in the first instance, to give allowances by reference to expenditure that may fall to be incurred by a person connected with the lessee. However, if such a payment is not actually made <u>by the</u> lessee <u>itself</u>, the payment does not fall within QA, with the result that the truing up mechanism we have outlined results in the allowances given up front being clawed back. In our judgment, that is entirely consistent with the scheme of the capital allowances code generally, which typically provides for a taxpayer to obtain allowances by reference only to sums ultimately paid by the taxpayer itself.

60. We therefore see no justification for HMRC's argument that, although the £95 anticipated payment falls within QE, it is not part of QA despite the fact that it was in practice actually paid. In our judgment, that interpretation is at odds with clear purpose of the "(QE – QA) + R" formula being to serve as the kind of "truing up" provision that we have explained in paragraph 58 above.

61. Conceptually, HMRC could have put their case on Issue 4 in a different way, arguing that the up-front arrangement for the appellants to purchase the Assets on expiry of the Lease was not an

assurance (or "guarantee") of a residual amount and so fell within neither QE nor QA. Such an argument would have been to foreshadow the outcome of the Finance Act 2011 challenges. We express no view on the strength or otherwise of such an argument, which was deployed neither before the FTT nor before us. For the reasons we have given, the FTT made no error of law in rejecting the arguments that HMRC did deploy, which we have summarised in paragraph 47 above. We accordingly determine Issue 4 in the appellants' favour.

**Issue 1**

*Authorities and principles*

62. There is sometimes a tendency to refer to a *Ramsay* "principle" as if it were a judge-made principle applicable only in cases of tax avoidance. As the House of Lords noted at paragraph [34] of its judgment in *Barclays Mercantile Business Finance Ltd v Mawson* [2005] STC 1 ("*Barclays Mercantile*"):

> … the novelty for tax lawyers of this exposure to ordinary principles of statutory construction produced a tendency to regard *Ramsay* as establishing a new jurisprudence governed by special rules of its own.

63. However, since *Barclays Mercantile* the highest courts have repeatedly stressed that the approach simply involves the application of orthodox principles of statutory interpretation. In paragraph [32] of *Barclays Mercantile* itself, the House of Lords summarised the principle as follows:

> The essence of the new approach was to give the statutory provision a purposive construction in order to determine the nature of the transaction to which it was intended to apply and then to decide whether the actual transaction (which might involve considering the overall effect of a number of elements intended to operate together) answered to the statutory description … As Lord Nicholls of Birkenhead said in *MacNiven (Inspector of Taxes) v Westmoreland Investments Ltd* [2001] UKHL 6 at [8], [2001] STC 237 at [8], [2003] 1 AC 311: "The paramount question always is one of interpretation of the particular statutory provision and its application to the facts of the case".

64. The two-stage nature of the approach as involving both the proper construction of the statutory provision and the proper evaluation of the facts is brought out in the observation of Ribeiro PJ at [35] of *Collector of Stamp Revenue v Arrowtown Assets Ltd* [2003] HKCFA 46 ("*Arrowtown*"):

> The ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically.

65. At paragraph [9] of *Rossendale Borough Council v Hurstwood Properties (A) Ltd and others* [2021] UK SC 16 ("*Rossendale*"), the Supreme Court emphasised that the approach is not particular to tax and is instead based on the "modern purposive approach to the interpretation of all legislation". That said, the approach has a particular application in cases of tax avoidance. Not infrequently, tax avoidance schemes may seek to bring a transaction without any business or commercial purpose within the scope of a statutory provision intended to apply to a commercial transaction. Tax avoidance schemes may include transactions, or elements of composite transactions, which have no purpose other than tax avoidance. Where that is the case, the transactions in question will frequently be disregarded for tax purposes. However, any such disregard does not take place simply because the taxpayer's purpose in effecting them is regarded as objectionable. As explained in paragraph [11] of *Rossendale*:

> The result of applying the purposive approach to fiscal legislation has often been to disregard transactions or elements of transactions which have no business purpose and

> have as their sole aim the avoidance of tax. This is not because of any principle that a transaction otherwise effective to achieve a tax advantage should be treated as ineffective to do so if it is undertaken for the purpose of tax avoidance. It is because it is not generally to be expected that Parliament intends to exempt from tax a transaction which has no purpose other than tax avoidance.

66. That statement in turn derived from decisions such as that of Lord Reed in *UBS AG v Revenue & Customs Commissioners* [2016] UKSC 13, where he said at [64]:

> … as Carnwath LJ said in the Court of Appeal in *Barclays Mercantile* [2002] EWCA Civ 1853, [2003] STC 66, 76 TC 446 (at [66]), taxing statutes generally 'draw their life-blood from real world transactions with real world economic effects'. Where an enactment is of that character, and a transaction, or an element of a composite transaction, has no purpose other than tax avoidance, it can usually be said, as Carnwath LJ stated, that 'to allow tax treatment to be governed by transactions which have no real world purpose of any kind is inconsistent with that fundamental characteristic'.

67. Therefore, transactions without a business purpose will be disregarded where that is consistent with a proper construction of the statute, or a proper ascertainment of the facts. However, the disregard of such transactions is not invariable. As Ribeiro PJ commented at [35] of *Arrowtown*:

> Where schemes involve intermediate transactions having no commercial purpose inserted for the sole purpose of tax avoidance, it is quite likely that a purposive interpretation will result in such steps being disregarded for fiscal purposes. But not always. [*MacNiven (Inspector of Taxes) v Westmoreland Investments Ltd* [2001] STC 237] is a good example of a case where a purposive interpretation of the statute and its application to the facts did not dictate excluding the taxpayer's payment of interest from the statutory provision treating such payments as deductible charges on income. On the true construction of the statute (for the reasons stated by Lord Nicholls at paras [14]-[17]), it mattered not that there had been a circular movement of money between the debtor and the tax exempt creditor to fund the relevant interest payment having no commercial purpose other than to avail themselves of an allowable tax loss.

68. There are a number of decisions of high authority that approach the issue by considering how composite transactions involving a number of individual steps should be taxed. Such an approach remains entirely permissible, though recent authorities explain it as an aspect of the two-stage approach we have already explained, rather than as a free-standing principle. For example, in paragraph [12] of *Rossendale*, the Supreme Court said:

> Another aspect of the *Ramsay* approach is that, where a scheme aimed at avoiding tax involves a series of steps planned in advance, it is both permissible and necessary not just to consider the particular steps individually but to consider the scheme as a whole. Again, this is no more than an application of general principle… In some of the cases following *Ramsay* [1982] AC 300, reference was made to a series of transactions which are "pre-ordained"… As a matter of principle, however, it is not necessary in order to justify taking account of later events to show that they were bound to happen - only that they were planned to happen at the time when the first transaction in the sequence took place and that they did in fact happen: see *Inland Revenue Comrs v Scottish Provident Institution* [2004] 1WLR 3172, para 23, where the House of Lords held that a risk that a scheme might not work as planned did not prevent it from being viewed as a whole, as it was intended to operate.

69. Two such authorities relied on by HMRC in this case are *Carreras Group Ltd v Stamp Commissioner* [2004] STC 1377 ("*Carreras*") and *Scottish Provident v Inland Revenue Commissioners* [2005] STC 15 ("*Scottish Provident*").

70. *Carreras* concerned Jamaican transfer tax. The transfer tax was normally chargeable on "disposals" of shares but, by the terms of legislation that was based on the "reorganisation" provisions used for the purposes of UK capital gains tax, an exchange of shares for "debentures" was treated as involving no "disposal". The taxpayer sold shares in return for a short-dated debenture, redeemable just a few days after issue, and claimed to have avoided the Jamaican transfer tax successfully because there was no "disposal" on which the charge could bite. The Privy Council disagreed. It concluded that the relevant transaction for the purposes of the Jamaican legislation was a combination, comprising both the issue of the debenture and its redemption. Once that was appreciated, there was no exchange of shares for debentures (viewed in isolation) and so the planning failed. In reaching that conclusion, the Privy Council noted at [13] that:

> A restricted interpretation of the transaction contemplated by [the legislation] would produce the result that exemption from tax could be obtained by a formal step inserted in the transaction for no purpose other than the avoidance of tax. This would not be a rational system of taxation and their Lordships do not accept that it was intended by the legislature.

71. At [15] and [16], the Privy Council tested its conclusions by asking what precisely it was that led to the debenture and its redemption being treated as a single transaction. It answered that question as follows:

> One answer is that it is plain from the terms of the debenture and the timetable that the redemption was not merely contemplated (the redemption of any debenture may be said to be contemplated) but intended by the parties as an integral part of the transaction, separated from the exchange by as short a time as was thought to be decent in the circumstances.

72. HMRC rely on this statement as applicable to the analysis of the combination of the Lease and the Put Option, submitting that the Lease also had as short a maturity "as was thought to be decent in the circumstances" and that the FTT found that the Put Option was pre-ordained to be exercised. That, HMRC submitted, supported their case that when each appellant sold their Assets to SGLJ, they did not "cease to own" those Assets for the purposes of s61(1)(a) of CAA 2001. We will address that argument in the sections that follow but, for the time being, simply note that *Carreras* does not give any guidance on what it means to "cease to own" assets for the purposes of s61(1)(a) or indeed on the meaning of "ownership" more generally.

73. *Scottish Provident* concerned a specific tax avoidance scheme that was intended to take advantage of a perceived shortcoming in new legislation relating to the taxation of options over debt instruments. As part of that scheme, the taxpayer granted a call option over particular gilts to a counterparty, Citibank, entitling Citibank to call for delivery of gilts at any time between 30 August 1995 and 1 April 1996. Citibank granted the taxpayer a call option entitling the taxpayer to call for delivery of the same gilts also at any time between 30 August 1995 and 1 April 1996. The transaction depended for its success on the proposition that Citibank had an "entitlement" to gilts under the call option that it held.

74. The Special Commissioners had found as a fact that differentials in the way the two options were priced meant that there was an outside, but commercially real, possibility that the two options would not be exercised so as to cancel each other out. The House of Lords declined to interfere with that finding of fact. However, they concluded that the outside chance that the Special Commissioners had

identified was an "anti-*Ramsay*" device included only to avoid what would otherwise have been an inevitable conclusion that the two options would both be exercised so as to leave Citibank with no "entitlement" to gilts. That "commercially irrelevant contingency" could be disregarded and the composite transaction analysed in the same way as if it were not present.

75. HMRC rely on *Scottish Provident* in a similar way to that in which they rely on *Carreras*. They argue that the theoretical possibility that the Put Option might not be exercised was a "commercially irrelevant contingency" that should be disregarded. On that basis, they submit that all that happened was that the appellants sold the Assets on terms that they would reacquire them a few weeks later following a temporary and entirely tax-motivated transition in the appellants' status from owner of the Assets, to lessee and back again.

*The error of the FTT*

76. As we have noted in paragraph 41 above, HMRC put their *Ramsay* argument in a specific and limited way both before the FTT and before us. That argument hinges on the proposition that the appellants did not cease to own the Assets for the purposes of s61(1)(a) when they sold them to SGLJ. We agree with the appellants that this argument can only be investigated by considering the meaning and purpose of s61(1)(a). Relevant facts must then be ascertained in order to decide whether the sale of the Assets fell within s61(1)(a) as purposively construed. That is not to say that the process of construing s61(1)(a) must take place in complete isolation from an appreciation of the facts, or vice versa. However, the FTT's purely factual findings of the kind that we have summarised in paragraphs 27 to 30 above cannot <u>on their own</u> demonstrate the accuracy of HMRC's *Ramsay* argument because they are not directed at the proper construction of s61(1)(a).

77. The FTT performed a lengthy and detailed analysis of a number of authorities relating to HMRC's *Ramsay* argument, running to over 30 pages from [32] to [229]. Neither party made any criticism of this analysis. However, in our judgment, the length of the analysis suggests that the FTT may have viewed its task as being more difficult than it actually was. As we have explained, dealing with HMRC's *Ramsay* argument involved simply deciding what s61(1)(a) meant, construed purposively, and then deciding whether in the light of all relevant facts, the appellants had ceased to own the Assets when they were sold to SGLJ.

78. There were clear signs in [236] to [244] that the FTT recognised the centrality of the exercise in statutory construction. At [240], it said that "The question is *always* one of what the statutory provision requires" (the emphasis being that of the FTT). At [242], the FTT directed itself that "There is simply no substitute for a close analysis of what the particular provision requires".

79. However, in our judgment, the FTT lost sight of the fact that the "particular provision" it needed to construe, given the way that HMRC put their *Ramsay* argument, was s61(1)(a). While it did consider issues relevant to a purposive construction of s61 at [246] to [248] and in doing so made some pertinent observations, its overall conclusion at [249] that s61 was concerned with "real" disposal values did not answer the question. In particular, it did not address the appellants' core submission, which they supported by reference to the judgment of the House of Lords in *Melluish v BMI (No. 3) Ltd and related appeals* [1995] STC 964 ("*Melluish*"), to the effect that any cessation of legal and beneficial ownership, whether temporary or not, was sufficient to cause the Assets to cease to be owned in the requisite sense. Indeed, there are indications that the FTT misunderstood the argument that the appellants were putting forward based on *Melluish*. Although *Melluish* was referred to at [90] and [97] in summarising the appellants' submissions, the Decision contains no analysis of what, if any, light *Melluish* sheds on the interpretation of s61(1)(a).

80. Moreover, at [261], the FTT recorded its view that the appellants' arguments required the FTT to apply a "formalistic step by step analysis in assessing the tax effects of the transaction" and to "focus narrowly solely on the legal effects of the sale of ownership rights in respect of the assets and, correspondingly, the re-acquisition of those rights". However, the appellants were not arguing for any such "formalistic" approach to the analysis of the facts. Their point was that, properly construed, s61(1)(a) provided for the appellants to "cease to own" the Assets once legal and beneficial ownership was lost. The FTT concluded at [264] to [266] that HMRC's *Ramsay* argument succeeded because of (i) the absence of any commercial purpose to the transactions, (ii) the fact that the appellants lost ownership of the Assets for just a few weeks, (iii) the fact that the appellants immediately on selling the Assets retained the right to use them under the Lease and (iv) the fact that exercise of the Put Option was effectively pre-ordained. There can be no objection to the FTT's factual findings on points (i) to (iv). However, without an appropriate grounding in a conclusion as to the true construction of s61(1)(a), those factual findings are insufficient to support the FTT's determination that HMRC's *Ramsay* argument succeeded and the Decision contains an error of law in that regard.

*The correct interpretation of s61(1)(a) read purposively*

81. We must, therefore, reach our own conclusions as to the proper interpretation of s61 (1)(a). Before doing so, we note something of an oddity in HMRC's approach to their *Ramsay* argument. As we have noted in our high-level summary of the capital allowances code in paragraph 5 above, where a taxpayer brings into account a "disposal value" that operates to the detriment of the taxpayer in the sense that the taxpayer's entitlement to capital allowances is reduced and it may even become subject to a balancing charge. Where the disposal value arises because plant and machinery is sold to another person, it is true that the other person may be entitled to claim allowances on the basis that the purchase price paid constitutes capital expenditure under s11. However, that will not invariably be the case: the purchaser might not have sufficient profits to be able to use the allowances fully or may even be resident outside the UK. There is, therefore, something somewhat unusual about HMRC premising their *Ramsay* argument on a proposition that the concept of ceasing to own plant and machinery for the purposes of s61(1)(a) is narrower than it might otherwise appear to be. In his oral submissions on behalf of the appellants, Mr Peacock QC gave relatively little prominence to this point no doubt because he accepted that all statutory provisions, whether they benefit taxpayers or HMRC, are to be construed purposively. However, the oddity to which we refer does perhaps suggest that HMRC's *Ramsay* challenge is not most naturally brought by reference to s61(1)(a).

82. In our judgment, the following features of s61 and the statutory code of which it forms part are relevant to the construction of the phrase "ceases to own" for the purposes of s61(1)(a):

> (1) Section 61(1)(a) is to be applied by reference to a snapshot in time, not over a period of time. If a person "ceases to own" an asset at any particular point in time, that is a trigger for a disposal event and a disposal value. If another person "owns" the asset as a consequence of incurring capital expenditure on it, the purchaser is entitled to allowances by virtue of s11. Therefore, s61(1)(a) refers to events that can mark the end of one person's "ownership" of an asset and the beginning of another person's ownership.
>
> (2) Section 61(1)(a) does not expressly invite any analysis of why a person ceases to own an asset.
>
> (3) Section 61(1)(a) does not invite any analysis of whether it is possible, likely or pre-ordained that a person will become an owner of the asset again in the future. This is by contrast with ss61(1)(b), (c) and (d) which defines different disposal events by reference to concepts of permanence. Thus, to count as a disposal event under s61(1)(b), it must be reasonable to assume that any loss of plant and machinery is "permanent". The concept of

abandonment of plant and machinery that appears in s61(1)(c) is similarly redolent of permanence, as is the concept of plant and machinery ceasing to exist for the purposes of s61(1)(d).

83. The feature to which we refer in paragraph 82(1) above was considered in *Melluish*. *Melluish* concerned predecessor legislation contained in s44(1) of Finance Act 1971 which conferred entitlement to allowances where plant and machinery "belongs" to a person, rather than, as is the case under CAA 2001, where a person "owns" the plant and machinery. HMRC suggested that the fact that *Melluish* was concerned with a different statutory provision and the difference in terminology as between "belongs" and "owns" of itself prevented *Melluish* from being of relevance to the issue of construction raised in this appeal. We disagree. The concept of "belonging" in s44(1) of Finance Act 1971 was carried through into the Capital Allowances Act 1990. The change in terminology from "belonging" to "ownership" came in Capital Allowances Act 2001, one of whose purposes was, in our judgment, to re-write tax legislation to make it clearer and easier to use. We do not detect any intention for this change in wording to effect a substantive change in law.

84. HMRC also submitted that *Melluish* was concerned with whether plant and machinery belonged to a taxpayer whereas their *Ramsay* argument is concerned with the direct converse, namely when a person ceases to own plant and machinery. We reject that submission as in our judgment a consideration of what it means for assets to be owned by a person, or to belong to a person, will shed some light on the circumstances in which assets can be said to have ceased to be owned.

85. *Melluish* concerned a situation where a taxpayer (BMI) acquired plant and machinery and leased it to local authorities. The plant and machinery was affixed to land owned by the local authorities so that, as a matter of law, the local authorities owned the plant and machinery legally and beneficially. BMI argued that the plant and machinery nevertheless "belonged" to it for capital allowances purposes. It argued that it had paid for the plant and machinery, received rent from the local authorities for its use and that the leases with the local authorities gave it the right to require the plant and machinery to be returned on determination of the leases. Lord Browne-Wilkinson (with whom all of their Lordships agreed) rejected that argument noting (at 973g) that:

> [BMI's] only property right is a contingent right to become the owner at a future date. In the meantime the property is owned and enjoyed exclusively by the local authority.

86. Lord Browne-Wilkinson also made the following points about the "belonging" condition at 973j to 974a:

> It is important to bear in mind that the question whether the equipment 'belongs' to the taxpayer company does not fall to be answered once and for all at one particular date. The question has to be answered in relation to each chargeable period; moreover, in calculating the disposal value which has to be brought into account for the purpose of the balancing charge, it is necessary to determine whether and when the equipment has ceased 'to belong to' the taxpayer (see s 44(5)(c)). Therefore in construing the word 'belongs' as used in s 44 one would expect, first, that the question whether equipment belongs or has ceased to belong to the taxpayer would be capable of a ready answer and, second, that the taxpayer could control, or at least be aware of, circumstances which caused the property to cease to belong to him. Yet if the taxpayer companies' submission is correct, equipment which belongs to them could at any time 'cease to belong', thereby a giving rise to a balancing charge, without the taxpayer companies knowing anything about it.

87. Lord Browne-Wilkinson went on to conclude at 974d, fortified by the earlier decision of the Court of Appeal in *Stokes v Costain Property Investments Ltd* [1984] STC 204:

> that for the purposes of s 44 property belongs to a person if he is, in law or in equity, the absolute owner of it.

88. Those statements were not made in the context of the kind of transaction with which we are concerned. However, in our judgment, they provide a clear indication that, when determining whether the appellants ceased to own the Assets when they sold them to SGLJ, s61(1)(a) focuses on whether the appellants lost legal and beneficial ownership at that point. Moreover, the statement that the "belonging" condition should be "capable of a ready answer" points against HMRC's argument that the existence or otherwise of a future "pre-ordained" plan for the appellants to re-acquire ownership of the Assets prevented them from ceasing to own them. On that interpretation, a taxpayer facing a disposal event under s61(1)(a) could assert to HMRC that, in fact, no such disposal value should be brought into account because, even though legal and beneficial ownership had been lost, there was a pre-ordained plan for the taxpayer to reacquire ownership. If that were right, the focus of the enquiry would become whether the arrangement truly was pre-ordained, with further difficult and uncertain questions arising if the intention of one party or another to participate in the pre-ordained plan changed.

89. HMRC, submitted, by way of analogy with the judgment of Megarry J in *Sargaison v Roberts* 45 TC 12 and the judgment of the Supreme Court in *Balhousie Holdings Ltd v HMRC* [2021] UKSC 11, that Parliament cannot have intended a transaction where "for a fleeting moment, a person's technical status changes from owner to lessee before reverting to owning the asset" to fall within s61(1)(a). Like the FTT, we derive little assistance from *Sargaison v Roberts*, which was concerned with a very different statutory regime from CAA 2001. For similar reasons we derive little assistance from *Balhousie*.

90. HMRC argue that the point made in paragraph 82(2) is of no significance. They argue that, whether express reference is made to a person's purpose or not, s61(1)(a) is concerned only with "real world" transactions and that in *Melluish* itself, the House of Lords based its reasoning on a need to avoid "anomalous results" (see 974d). While we accept that the point in paragraph 82(2) provides a more slender indication of the correct purposive construction, we do not accept HMRC's submission that it is devoid of weight. We are prepared to accept HMRC's argument that s61(1)(a) can, at a high degree of generality, be said to be concerned with "real world" transactions. However, HMRC have not explained why precisely Parliament provided in s61(1)(a) for the sale of the Assets not to be "real world" in the requisite sense. We quite understand that HMRC object to the tax analysis that is said to arise as a consequence of the Lease, the Put Option and its subsequent exercise. However, that does not, in itself, explain why, as a matter of construction, s61(1)(a) invites a consideration of the consequences of those transactions when deciding whether the appellants ceased to own the Assets when they sold them to SGLJ, in circumstances where those other transactions did not in fact prevent a cessation of legal and beneficial ownership.

91. Moreover, the "anomalies" to which HMRC refer arise as a consequence of the enactment of the regime conferring capital allowances on lessees under long funding finance leases many years after s61(1)(a) was enacted. We do not consider that these anomalies are a permissible aid to the construction of s61(1)(a). As Lord Neuberger said at [23] of *Boss Holdings Ltd v Grosvenor West End Properties Ltd* [2008] 1 WLR 289:

> In my opinion, the legislature cannot have intended the meaning of a subsection to change as a result of amendments to other provisions of the same statute, when no amendments were made to that subsection, unless, of course, the effect of one of the amendments was, for instance, to change the definition of an expression used in the subsection.

92. The indication we have summarised in paragraph 82(3) is perhaps of the least weight. However, it is consistent with other indications that we have drawn as to the purpose of s61(1)(a). The combination of the indications to which we have referred leads us to the conclusion that, construed purposively, s61(1)(a) provides for plant and machinery to cease to belong to a person where that person loses legal and beneficial ownership of the plant and machinery.

*The ascertainment of the facts in the light of the purposive interpretation of s61(1)(a) and conclusion on HMRC's* Ramsay *argument*

93. In the light of the conclusion we have just expressed, the relevant question for the FTT, given the way in which HMRC chose to put their *Ramsay* argument, was whether the appellants lost legal and beneficial ownership of the Assets when they sold them to SGLJ. The FTT answered that question in the appellants' favour at [258]. In the light of that finding, it should have concluded that the requirement of s61(1)(a) was satisfied. The FTT wrongly considered that its findings as to the composite nature of subsequent transactions, and the appellants' purpose in effecting those transactions, led to a different result. The problem with the FTT's conclusion was not that its factual findings in this regard were wrong. Rather, they were not relevant to the enquiry that s61(1)(a), construed purposively, required.

94. HMRC support the FTT's approach by reference to the judgments in *Carreras* and *Scottish Provident*. We accept that there are some analogies between the facts of those cases and the facts of the case before us. In *Carreras*, a particular tax result was said to flow from the interposition of a "debenture" with a short maturity. In our case, the short-term Lease is said to produce a result the FTT described as "magical". In *Scottish Provident*, the House of Lords disregarded the "commercially irrelevant contingency" that an option over gilts would not be exercised. In this case, HMRC argue that the small chance of the Put Option not being exercised should similarly be ignored.

95. However, we do not consider that these cases justify the outcome for which HMRC argue. First, they were concerned with different statutory provisions. In *Carreras*, the Privy Council reached its conclusion by reference to the purpose of the relevant Jamaican statute imposing transfer tax. That gave rise to very different purposive considerations from those arising under s61(1)(a). In *Scottish Provident*, the House of Lords was considering the interpretation of the word "entitlement" whereas in this case we are concerned with the question of whether a person "ceases to own" plant and machinery in circumstances where other parties may be affected by the answer to that question, with a corresponding need for it to be "capable of a ready answer" as Lord Browne-Wilkinson put it in *Melluish*. In any event, the nature of the analysis in *Scottish Provident* was very different. In that case, the two cross options were both exercisable at the same points of time. Any gilts that Citibank sought to acquire on exercise of its option could immediately be taken away from it by the exercise of Scottish Provident's option. The House of Lords held that, once commercially irrelevant contingencies were ignored, there was no point in time at which Citibank had an "entitlement" to the gilts. Our case is different. For a period of three or four weeks, the appellants did not have legal or beneficial ownership of the Assets, but SGLJ did. HMRC's argument is that the sale of the Assets should not be treated as falling within s61(1)(a) because a later sale back of those Assets on exercise of the Put Option was pre-ordained. We see no reason why the very different analysis in *Scottish Provident* should apply in our case given the different statutory provisions with which we are concerned.

96. It follows that we determine Issue 1 in the appellants' favour. We understand that some readers of this decision may find it surprising that an artificial series of transactions which, on the unchallenged findings of the FTT, were devoid of business purpose and effected only to achieve a "magical" increase in qualifying expenditure should survive a challenge based on the *Ramsay* line of

cases. We stress that we have reached our conclusion based on the *Ramsay* argument that HMRC chose to put forward. Just as with Issue 4, it is not for us to comment on other ways in which the *Ramsay* argument could have been advanced, or the conclusions we might have reached if different arguments had been put forward.

**Issue 2**

97. Issue 2 raises a short point of statutory construction. Under each Lease, the appellants incurred capital expenditure on the provision of plant and machinery. The question is whether, for the purposes of s67(1)(b), that expenditure was incurred:

> under a contract providing that the person shall or may become the owner of the plant or machinery on the performance of the contract.

98. That is supplemented by s67(6). Since the appellants were both also party to a Put Option, it is necessary to consider whether, if the Put Option and the Lease were a single contract, the above requirement would be met. If it would, the Put Option and the Lease are to be regarded as a single contract. In effect, s67(1) and s67(6) requires an analysis of two questions, all to be performed by treating the Put Option and the Lease as a notional single contract:

(1) Did the appellants incur capital expenditure under the notional single contract?

(2) Did the notional single contract provide that the Appellants "shall or may" become the owner of the Assets on the performance of that contract?

99. For completeness, we note that both parties were agreed that the presence of the Call Option was not material to the analysis since neither appellant itself had rights under the Call Option. Instead, each Call Option was granted in favour of a company other than an appellant, albeit in that appellant's group. It was common ground that s67 does not concern itself with rights that companies connected with the appellants had to acquire the Assets or with the likelihood of such connected companies acquiring the Assets in practice.

100.By the time of the appeal before us, there was no dispute about the answer to the question in paragraph 98(1).

101.Therefore, our focus must be on the question in paragraph 98(2). Importantly, the question asked is not about the general likelihood, or even certainty, of the appellants becoming the owner of the Assets. The FTT was right to emphasise, at [292(1)] that the question is about what the <u>notional single contract provides</u> and whether it provides that the appellants "shall or may" become the owner of the Assets.

102. HMRC argue that, once the FTT found as a factual matter at [255] that "barring wholly unexpected events" the Put Option would be exercised and the appellants would reacquire the Assets, it necessarily followed that the "shall" limb of the test was satisfied. We reject that submission since the notional single contract did not "provide" that the appellants would necessarily re-acquire the Assets. Rather, it gave SGLJ an option to sell the Assets back to each appellant. The practical certainty that SGLJ would exercise that option came not from the notional single contract but was a product of SGLJ's own intentions and motivations, as the FTT found at [257].

103.HMRC also make the point that, if and when the appellants re-acquired the Assets, they would do so on "performance" of the Put Option and so on "performance" of the notional single contract. We agree, but that does not dispose of the issue. The "shall" limb of the test is not concerned with whether the reacquisition is on performance of the notional single contract. The test is whether that

contract provides that the appellants "shall" become owners of the Assets. For the reasons we have given, it did not.

104.HMRC next submit that, at the very least, each notional single contract provided that each appellant "may" become the owner of Assets because each such contract contained a Put Option which, if exercised, would have had that result. That submission has more force since, as a matter of ordinary English, the word "may" can mean "might" and no stretch of language is involved in saying that the notional single contract "might" result in each appellant becoming owner of the Assets. However, we consider that this is not the sense in which the word "may" is used in s67.

105.That is clear from the scheme of s67 read as a whole. The purpose of s67 is to treat a person who is using plant and machinery and has incurred capital expenditure on its provision as an owner where the relevant contract provides either (i) that the user will become owner or (ii) gives the user an option to become owner. That is how typical hire-purchase contracts operate and the heading to Chapter 6 of CAA 2001 refers expressly to "hire-purchase and similar contracts".

106.This point is brought out not just in the headings to Chapter 6 but also in the operative provisions. By s67(2) and s67(4) a user is treated as owner for so long as it has the "benefit of the contract". That demonstrates that the focus is on rights held by the user of the asset. Such a focus also makes sense in policy terms. The clear intention is to permit owners of assets, and those who have the ability to secure ownership, to claim allowances on capital expenditure they incur for that purpose. Moreover, it is consistent with the need for the legislation to define clearly who is, or is not, to be treated as an owner of an asset and entitled to claim capital allowances on it. On HMRC's approach to the word "may", it might be necessary on each day during the life of a hire purchase agreement to assess the prospects or possibility of a put option being exercised to check whether it can still be said that the put option "may" result in the user becoming an owner. If the user and the person hiring the asset have different perspectives on this issue, the provision could be unworkable with both the user and the hirer of the asset asserting that they are "owners". Alternatively, it might mean that allowances could be claimed by an entity that has no real ability to secure ownership, rather like the taxpayer in *Melluish*. By contrast, a focus on rights conferred on the user gives rise to no such difficulties: for so long as the user itself has a contractual right to acquire the asset, or itself has the option to purchase the asset, there is no difficulty in determining who is to be treated as owner.

107.For these reasons, which are in no material respect different from the FTT's analysis set out at [292(1)-(3)], we determine Issue 2 in favour of the appellants.

**Disposition**

108.For the reasons that we have given, the appellants have succeeded on Issue 1. The FTT erred in law in accepting HMRC's *Ramsay* argument in the particular way that HMRC chose to formulate that argument. It should have rejected the *Ramsay* argument that HMRC put forward. The FTT made no error of law of the kinds that HMRC allege in respect of Issue 2 and Issue 4.

109.It follows, therefore, that we set the Decision aside. We remake it so as to lead to the result that the appellants' appeals against HMRC's closure notices are allowed.

**Signed on Original**

**MRS JUSTICE FALK**
**JUDGE JONATHAN RICHARDS**

**RELEASE DATE: 12 July 2022**

## APPENDIX – RELEVANT STATUTORY PROVISIONS

1. In this appendix, we reproduce relevant provisions of CAA 2001 as in force in periods material to these appeals.

2. Section 11 of CAA 2001 provides the primary entitlement to plant and machinery allowances as follows:

> **11 General conditions as to availability of plant and machinery allowances**
>
> (1) Allowances are available under this Part if a person carries on a qualifying activity and incurs qualifying expenditure.
>
> (2) "Qualifying activity" has the meaning given by Chapter 2.
>
> (3) Allowances under this Part must be calculated separately for each qualifying activity which a person carries on.
>
> (4) The general rule is that expenditure is qualifying expenditure if-
>
> (a) it is capital expenditure on the provision of plant or machinery wholly or partly for the purposes of the qualifying activity carried on by the person incurring the expenditure, and
>
> (b) the person incurring the expenditure owns the plant or machinery as a result of incurring it.

3. Section 61 of CAA 2001 deals with disposal events as follows:

> **61 Disposal events and disposal values**
>
> (1) A person who has incurred qualifying expenditure is required to bring the disposal value of the plant or machinery into account for the chargeable period in which-
>
> (a) the person ceases to own the plant or machinery;
>
> (b) the person loses possession of the plant or machinery in circumstances where it is reasonable to assume that the loss is permanent;
>
> (c) the plant or machinery has been in use for mineral exploration and access and the person abandons it at the site where it was in use for that purpose;
>
> (d) the plant or machinery ceases to exist as such (as a result of destruction, dismantling or otherwise);
>
> (e) the plant or machinery begins to be used wholly or partly for purposes other than those of the qualifying activity; …

4. Section 67 of CAA 2001 deals with hire-purchase arrangements as follows:

> **67 Plant or machinery treated as owned by person entitled to benefit of contract, etc.**
>
> (1) This section applies if-
>
> (a) a person carrying on a qualifying activity… incurs capital expenditure on the provision of plant or machinery for the purposes of the qualifying activity …, and

(b) the expenditure is incurred under a contract providing that the person shall or may become the owner of the plant or machinery on the performance of the contract.

(2) The plant or machinery is to be treated for the purposes of this Part as owned by the person (and not by any other person) at any time when he is entitled to the benefit of the contract so far as it relates to the plant or machinery…

(4) If a person-

(a) is treated under subsection (2) as owning plant or machinery,

(b) ceases to be entitled to the benefit of the contract in question so far as it relates to that plant or machinery, and

(c) does not then in fact become the owner of the plant or machinery,

the person is to be treated as ceasing to own the plant or machinery at the time when he ceases to be entitled to the benefit of the contract

…

(6) If-

(a) a person enters into two or more agreements, and

(b) those agreements are such that, if they together constituted a single contract, the condition in subsection (1)(b) would be met in relation to that person and that contract,

the agreements are to be treated for the purposes of this section as parts of a single contract.

5. Section 70A deals with the entitlement to capital allowances on long funding leases as follows:

**70A Entitlement to capital allowances**

(1) This section applies if a person carrying on a qualifying activity incurs expenditure (whether or not of a capital nature) on the provision of plant or machinery for the purposes of the qualifying activity under a long funding lease.

(2) In the application of this Part in the case of that person, the plant or machinery is to be treated as owned by him at any time when he is the lessee under the long funding lease.

That is so whether or not the lease also falls to be regarded as a long funding lease in the application of this Part in the case of the lessor.

(3) The person is to be treated for the purposes of this Part as having incurred capital expenditure on the provision of the plant or machinery as follows.

(4) The capital expenditure is to be treated as incurred at the commencement of the term of the long funding lease.

(5) The amount of the capital expenditure varies, according to whether the long funding lease is-

…

(b) a long funding finance lease (subsection (7)).

…

(7) If the long funding lease is a long funding finance lease, the amount of the capital expenditure is to be found in accordance with section 70C.

6. It was common ground that, to the extent that the appellants were entitled to capital allowances for expenditure under a Lease, the rules applicable to long funding finance leases, set out in s70C were applicable. Section 70C provides, so far as material, as follows:

> **70C Long funding finance lease: amount of capital expenditure**
>
> (1) This section has effect by virtue of section 70A(7) for the purpose of determining the amount of the capital expenditure in the case of a long funding finance lease.
>
> (2) If the lease is one which, under generally accepted accounting practice, falls (or would fall) to be treated as a loan, this section applies as if the lease were one which, under generally accepted accounting practice, fell to be treated as a finance lease.
>
> (3) The amount of the capital expenditure is the total of-
>
> (a) commencement PVMLP (see subsection (4)), and
>
> …
>
> (4) Commencement PVMLP is the amount that would fall to be recognised as the present value, at the appropriate date, of the minimum lease payments (see section 70YE) if appropriate accounts were prepared by the person.
>
> (5) For the purposes of subsection (4)-
>
> "appropriate accounts" are accounts prepared in accordance with generally accepted accounting practice on the date on which that amount is first recognised in the books or other financial records of the person;
>
> "the appropriate date" is the later of -
>
> (a) the commencement of the term of the lease:
>
> (b) the date on which the plant or machinery is first brought into use for the purposes of the qualifying activity.

7. Section 70E provides for a disposal event to take place on termination of a long funding lease. It determines the amount of disposal value to be brought into account as follows:

> **70E Disposal events and disposal values**
>
> (1) This section applies where-
>
> (a) a person is the lessee of plant or machinery under a long funding lease,
>
> (b) as a result of section 70A, the person falls to be regarded as having incurred qualifying expenditure on the provision of the plant or machinery, and
>
> (c) a relevant event occurs.
>
> (1A) A relevant event occurs if-
>
> (a) the lease terminates,
>
> (b) the plant or machinery begins to be used wholly or partly for purposes other than those of the qualifying activity, or
>
> (c) the qualifying activity is permanently discontinued.
>
> (2) In the case of that person-
>
> (a) the relevant event is a disposal event, and
>
> (b) the person is required to bring into account a disposal value for the chargeable period in which that disposal event occurs.

(2A) The amount of the disposal value is-

(QE – QA) + R

where-

QE is the person's qualifying expenditure on the provision of the plant or machinery;

QA is the qualifying amount (see subsections (2B) to (2E));

R is any relevant rebate (see subsections (2F) and (2G)).

…

(2C) In the case of a long funding finance lease, "the qualifying amount" means the aggregate of-

(a) the payments made to the lessor by the person under the lease (including any initial payment), and

(b) the payments made to the lessor by the person under a guarantee of any residual amount (as defined in section 70YE)…

8. Section 70J(3) provides for leases forming part of hire purchase and similar arrangements to be excluded from the definition of "funding lease" which, in turn, means that such leases cannot constitute long funding finance leases, as follows:

(3) A plant or machinery lease is not a funding lease if-

(a) section 67 applies (plant or machinery treated as owned by person entitled to benefit of contract, etc), and

(b) the lease is the contract mentioned in that section.

9. Section 70YE supplies a definition of concepts that are used both for the purposes of computing the amount of capital expenditure under s70C and for the purposes of computing "QA" in s70E as follows:

**70YE "Minimum lease payments"**

(1) In the case of any lease, the minimum lease payments are the minimum payments under the lease over the term of the lease (including any initial payment) together with-

(a) in the case of the lessee, so much of any residual amount as is guaranteed by him or a person connected with him,

…

(3) In this section –

…

"*residual amount*" means so much of the fair value of the plant or machinery subject to the lease as cannot reasonably be expected to be recovered by the lessor from the payments under the lease.

(4) In the definition of "residual amount" in subsection (3), "fair value" means-

(a) the market value of the leased plant or machinery, less

(b) any grants receivable towards the purchase or use of that plant or machinery.

…