

Dear [\[Tax Manager name\]](#)

Court of Appeal decisions in unallowable purpose cases

Since this enquiry was opened, the Court of Appeal has handed down its decisions in HMRC's favour in three unallowable purpose cases:

- *BlackRock Holdco 5 LLC v HMRC [2024] EWCA Civ 330*
- *Kwik-Fit Group Ltd and other companies v HMRC [2024] EWCA Civ 434*
- *JTI Acquisitions Company (2011) Ltd v HMRC [2024] EWCA Civ 652*.

You can find more details about these decisions below.

What we'd like you to do

We appreciate that the unallowable purpose legislation applies on a case by case basis according to the particular facts. However, we consider the principles derived from these cases have broad application and are relevant to this enquiry.

Following the Court's findings, we would like to work with you to see if we can agree how to resolve our enquiry. We invite you to consider your position in the light of the Court's findings, and to discuss this matter with us to explore whether we can reach an agreement to resolve our [\[enquiry/ies\]](#). These discussions could be conducted on a without prejudice basis.

If you would like to take up this offer, please contact me by [\[add date\]](#).

The Courts' decisions

All three cases show the importance of testing the asserted purposes against the evidence, especially the contemporaneous documentary evidence (examples of which can be found in CFM38200).

The starting point, expressed in both *BlackRock* and *JTI*, which each involved an external acquisition, can be summarised as asking "Why did the taxpayer enter into this loan relationship, and was the main purpose to obtain a tax advantage?"

In his decision in *JTI*, Newey LJ followed the reasoning in *BlackRock* in stating a set of principles to assess:

- whose purposes are relevant, and
- to what extent the wider context is relevant and shows the company's purpose.

These can be found at paragraph 51 of the decision in *JTI*, where Newey LJ said:

"i) Even where a company entering into a loan relationship was brought into being to further a wider scheme, the company's purposes in becoming a party to the

relationship are not necessarily those for which it was created or those of the wider scheme;

ii) On the other hand, the context, and in particular the purposes of the wider scheme which the company was intended to advance, may, depending on the facts, bear on the company's purposes in entering into the loan relationship;

iii) The company will have a "tax avoidance purpose" within the meaning of section 442 of CTA 2009 if it is seeking to play its part in a scheme which, to the knowledge of the relevant decision-makers, was designed to secure a tax advantage;

iv) If it can be said that the company wishes to go along with such a scheme whatever its purposes might be, it may well be that the company has an unallowable purpose regardless of whether it appreciates that the scheme was designed to secure a tax advantage. It may suffice that those promoting the scheme have that intention;

v) The fact that the decision-makers consider that entering into the loan relationship is in the company's interests for other reasons does not preclude them from having a "tax advantage purpose"; and

vi) A Tribunal determining whether a company had a "tax avoidance purpose" is not required to adopt a "tunnel-visioned" approach looking simply at how the company was proposing to use the money it was borrowing."

On 1 November 2024, the First-tier Tribunal applied these principles to a wholly internal group transaction in *Syngenta Holdings Limited v HMRC [2024] UKFTT 988 (TC)*. The tribunal made its decision in HMRC's favour.

Following *Gestmin SGPS SA V Credit Suisse (UK) Ltd and Anor [2013] EWHC 3560 (Comm)*, the courts have consistently highlighted the fallibility of human memory, and the relative importance of contemporaneous evidence, in determining a company's purposes.

In their decisions in the above cases, the courts considered all the evidence to reach a realistic view of the purposes of the company entering into a loan relationship. We take the same approach in our enquiries.

More information

We have updated our published guidance in the Corporate Finance manual to reflect the final Court of Appeal decisions. This can be found at [CFM38100 - Loan relationships: tax avoidance: unallowable purpose: contents - HMRC internal manual - GOV.UK](#).

We will continue to investigate and challenge cases if we believe the facts, circumstances and evidence shows:

- one of the company's main purposes for entering into a loan relationship was to avoid paying tax
- all or some of the debits should be attributed on a just and reasonable apportionment to that main tax avoidance purpose.

We have sent a copy of this letter to your professional adviser.

Yours sincerely

[CCM's name]