



T.P. Alfa Services

HMRC v BLACKROCK HOLDCO LLC 5
[2022] UKUT 00199 (TCC)

2022

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A. THE FACTS OF THE CASE

In December 2009 the BlackRock Group proceeded with the acquisition of North American investment management business of Barclays Global Investors (“BGI US”) from Barclays Bank for a total consideration of USD 13,5 billion.

The acquisition was fund by:

- Issuing USD 6.9 billion worth of shares and;
- A cash paint of USD 6.6 billion.

With reference to the cash payment, this was made by a group company, Blackrock HoldCo 5 LLC (“LLC 5”) tax resident in the UK. In order to accommodate the funding, LLC 5 received an intragroup loan note from its parent company (“LLC 4”) amounting to USD 4 billion.

LLC 5 treated the interest expense as tax allowable deduction. However, this deduction was disallowed by HMRC as it considered that independent entities would not have entered into the loan agreement and that the main purpose was to obtain a tax advantage.

BlackRock Group proceeded with an appeal to the First Tier Tribunal (“FTT”).

FTT considered the facts and circumstances of the case and concluded for the two areas of dispute that:

Transfer Pricing issue- an independent entity would have provided the USD 4 billion loan to LLC 5 in the same terms as LLC 4 did.

Unallowable Purpose Issue- the transaction has both commercial and tax advantage purposes, however it would be just to consider that all the interest expense incurred for commercial purposes and therefore should be allowed for tax deduction.

B. THE DECISION BY UPPER TRIBUNAL

After FTT’s decision, HMRC appealed to the Upper Tribunal (UT).

The Upper Tribunal reviewed the case and concluded that FTT had made a mistake.

In this respect it disregarded the FTT’s ruling and allowed HMRC’ appeal on both the Unallowable Purpose and the Transfer Pricing Issue and agreed with the tax adjustments imposed by HMRC on LLC 5 tax returns.

Specifically, for the Transfer Pricing issue UT concluded that independent entities would not have entered in the loan agreement that LLC 4 and LLC5 entered and therefore “HMRC’s amendments to the relevant returns should be upheld and confirmed.”

As to the Unallowable Purpose issue UT concluded that although FTT correctly recognised the existence of both commercial and tax benefits from the loan transaction, it was wrong to state that it would be just to consider that all the interest expense incurred for commercial purposes and therefore should be allowed for tax deduction.

Also, it concluded that “for the tax advantage purpose there would have been no commercial purpose to the loans and all the relevant facts and circumstances lead



inexorably to the conclusion that the loan relationship debits should be wholly attributed to the unallowable tax purpose and so disallowed.”

For the complete court decision and arguments click the [link](#).

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