[2019] UKFTT 268 (TC)

TC07107

Capital Gains Tax – Entrepreneurs' relief – Whether "personal company" – Whether cumulative preference shares "ordinary share capital" – Whether right to dividend at a fixed rate – Appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2017/08674

BETWEEN

STEPHEN WARSHAW **Appellant**

-and-

THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE JOHN BROOKS

Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1 on 10 April 2019

David Ewart QC and Quinlan Windle, instructed by Handelsbanken Wealth Management, for the Appellant

Sadiya Choudhury, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

1. Mr Stephen Warshaw appeals against an amendment to his 2013-14 self-assessment tax return made by a closure notice issued by HM Revenue and Customs ("HMRC") on 10 August 2017 and upheld, following a review, on 3 November 2017. The amendment to the closure notice increased the tax due from Mr Warshaw by £1,158,915.52 on the basis that his disposal of shares in Cambridge Education Holdings 1 (Jersey) Limited ("the Company") did not qualify for entrepreneurs relief under s 169I(6) and s 169S(3) of the Taxation of Chargeable Gains Act 1992 as the Company was not Mr Warshaw's "personal company".

FACTS

2. The facts are not disputed and are set out in the following 'Statement of Agreed Facts' provided by the parties:

Statement of Agreed Facts

(1) The Appellant Mr Stephen Warshaw, was chairman of a UK-based company known as Cambridge Education Group Limited ("**CEG**") which is the holding company of the Cambridge Education Group ("**the Group**"). Prior to 12 March 2012, he held 44,183 ordinary shares and 396,000 preference shares in CEG.

(2) The majority shareholder in CEG was a private equity firm, Palamon Capital Partners. In March 2012, Palamon Capital Partners undertook a reorganisation of the Group as part of a recapitalisation. As a result of this reorganisation, two new holding companies were inserted into the Group's structures: Cambridge Education Holdings 1 (Jersey) Limited ("**the Company**") and Cambridge Education Holdings 2 (Jersey) Limited ("**Company 2**").

(3) On 12 March 2012, Mr Warshaw exchanged all his ordinary and preference shares in CEG for new shares in Company 2. On 13 March 2012, Mr Warshaw exchanged his ordinary and preference shares in Company 2 for new shares in the Company.

(4) As a result of these changes, Mr Warshaw's shareholding in the Company replicated his original shareholding in CEG. He therefore held 44,183 ordinary shares and 396,000 preference shares in the Company. On 26 March 2012, he subscribed for 24,660 B ordinary shares in the Company. He became a director of the Company on 26 October 2012.

(5) The rights attaching to the various classes of shares in the Company were set out in its Articles of Association. "Participating Shares" were defined as:

> "the Ordinary Shares, the A Ordinary Shares, the B Ordinary Shares and the C Ordinary Shares"

(6) "Preference Shares" were defined as:

> "the 10 per cent cumulative preference shares of £0.01 each in the capital of the Company having the rights and restrictions set out in these articles and "Preference Shares" shall be construed accordingly".

(7) Article 2.3 stated that:

> "… The Preference Shares shall carry no rights to participate in the profits and assets of the Company except as provided in these articles."

(8) Article 2.4(A) defined the "Preference Dividend" as follows:

> "In priority to any other class of shares, each Preference Share shall have the right to a fixed cumulative preferential dividend ("the Preference Dividend") which shall accrue on a daily basis from the dividend commencement date at the rate of 10 per cent per annum on the aggregate of (i) the subscription price of such Preference Share and (ii) the aggregate amount of Preference Dividend that has previously compounded and not yet paid. The Preference Dividend accruing on each Preference Share shall be compounded on each anniversary of its dividend commencement date to the extent not previously paid."

(9) Article 2.4(E) stated:

> "Aside from the Preference Dividend, no other dividends or distributions shall be made, paid or declared with respect to the Preference Shares".

(10) If the Preference shares were "ordinary share capital" (as defined in section 989 Income Tax Act 2007), Mr Warshaw held 5.777% of the "ordinary share capital" of the Company. However, if the preference shares were not "ordinary share capital", he held only 3.5% of the Company's "ordinary share capital".

(11) On 4 December 2013, Mr Warshaw disposed of his entire shareholding in the Company for cash. He also ceased to be a director of the Company and chairman of CEG as of that date. The proceeds, costs and gains from his sale of his shareholding were:

	Proceeds	**Acquisition Cost**	**Disposal Costs**	**Gains**
Ordinary Shares	£6,429,549	£4,420	£174,021	£6,251,108
Preference Shares	£77,747	£39,600	£2,104	£36,043
B Ord. Shares	£158,036	£2,491	£4,277	£151,268

(12) On 28 January 2015, Mr Warshaw submitted his 2013-14 self-assessment tax return. This return included a capital gains computation for the disposal of the above shares in the Company reporting a total gain of £6,438,419, and a claim for entrepreneurs' relief in respect of the disposal.

(13) On 5 October 2015, HMRC opened an enquiry into that return to look at the capital gains position. The closure notice issued on 10 August 2017 stated that the capital gains arising on the disposal of shares in the Company did not qualify for entrepreneurs' relief because the Company was not Mr Warshaw's "personal company" (as defined in section 169S(3) Taxation of Chargeable Gains Act 1992). Mr Warshaw's return for 2013-14 was amended in line with that decision.

(14) Mr Warshaw appealed the decision on 4 September 2017. The decision was upheld on review on 3 November 2017. Mr Warshaw filed his notice of appeal on 1 December 2017.

RELEVANT LEGISLATION

3. Unless otherwise stated, all subsequent statutory references are to the provisions of the Taxation of Chargeable Gains Act 1992 ("TCGA") in force at the material time.

> **169H Introduction**
>
> (1) This Chapter provides for a lower rate of capital gains tax in respect of qualifying business disposals (to be known as "entrepreneurs' relief").
>
> (2) The following are qualifying business disposals—
>
> (a) a material disposal of business assets: see section 169I,
>
> (b) a disposal of trust business assets: see section 169J, and

(c) a disposal associated with a relevant material disposal: see section 169K.

…

169I Material disposal of business assets

(1) There is a material disposal of business assets where—

(a) an individual makes a disposal of business assets (see subsection (2)), and

(b) the disposal of business assets is a material disposal (see subsections (3) to (7)).

(2) For the purposes of this Chapter a disposal of business assets is—

(a) a disposal of the whole or part of a business,

(b) a disposal of (or of interests in) one or more assets in use, at the time at which a business ceases to be carried on, for the purposes of the business, or

(c) a disposal of one or more assets consisting of (or of interests in) shares in or securities of a company.

…

(5) A disposal within paragraph (c) of subsection (2) is a material disposal if condition A, B, C or D is met.

(6) Condition A is that, throughout the period of 1 year ending with the date of the disposal—

(a) the company is the individual's personal company and is either a trading company or the holding company of a trading group, and

(b) the individual is an officer or employee of the company or (if the company is a member of a trading group) of one or more companies which are members of the trading group.

…

169S Interpretation of Chapter

…

(3) For the purposes of this Chapter a company is a "personal company" in relation to an individual if—

(a) the individual holds at least 5% of the ordinary share capital of the company,

(b) by virtue of that holding, at least 5% of the voting rights in the company are exercisable by the individual, and

…

(5) In this Chapter—

"ordinary share capital" has the same meaning as in the Income Tax Acts (see section 989 of ITA 2007),

4. Section 989 of the Income Tax Act 2007 ("ITA") provided:

The following definitions apply for the purposes of the Income Tax Acts—

> …
>
> "ordinary share capital", in relation to a company, means all the company's issued share capital (however described), other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the company's profits,

DISCUSSION AND CONCLUSION

5. The sole issue between the parties is whether the preference shares held by Mr Warshaw were "ordinary share capital" as defined by s 989 ITA. If so, the Company would have been his "personal company", as defined by s 169S(3) TCGA, and Mr Warshaw entitled to entrepreneurs relief on the disposal of his shares. As it is accepted that the shares gave a right to a dividend and that there were no other rights to share in the profits, it is only necessary to consider whether the preference shares had a right to dividends at a fixed rate.

6. Section 989 ITA was considered by the Upper Tribunal (Rose J (as she then was) and Judge Berner) in *McQuillan v HMRC* [2017] STC 2192 which said, at [34]:

> "In our judgment, the purpose of s 989 ITA is readily apparent from the statutory language itself. It is a provision of definition which is intended to describe a clear, and readily understandable, description of the shares to which it applies. It is imported into s 169S(3) TCGA to establish a bright dividing line between those shares which will be reckoned with in assessing the extent of an individual's interest in a company for the applicable period prior to the disposal of shares or securities in a company, and shares which are not. A dividing line will have the necessary, and inevitable, consequence that some cases which are similar in economic terms will fall on one side of the line and others will fall on the other side. That, as the Upper Tribunal (Asplin J and Judge Berner) said in *Trigg v Revenue and Customs Comrs* [2016] UKUT 165 (TCC), [2016] STC 1310, at [57], is nothing more than a normal incident of the drafting of statutory conditions defining a particular statutory concept (in this case that of 'ordinary share capital'). As the Upper Tribunal in *Trigg* went on to say:
>
> > 'It is not for the tribunal to fill any perceived gap, or to seek to equate cases on one side of the dividing line with similar cases falling on the other side by reason of similarity in effect or economic equivalence. Purposive construction cannot go so far. To construe such legislative conditions in that way would risk undermining rather than applying the distinction determined upon by Parliament according to the plain words of the legislation.'

7. Both Mr David Ewart QC, appearing with Mr Quinlan Windale for Mr Warshaw, and Ms Sadiya Choudhury, for HMRC, rely on the "clear and readily understandable" description of the shares to which s 989 ITA applies in support of their contrary arguments. Ms Choudhury that the dividend on the preference shares was at a fixed rate and Mr Ewart that it was not.

8. However, while they cannot both be right, there is agreement as to the effect of Article 2.4(A) of the Company's Articles of Association. Because the preference shares were cumulative, if there were insufficient reserves to pay the dividends in respect of those shares in a particular year, payment was deferred to a subsequent year. Therefore, (as illustrated in the appendix) the rate at which the dividend would be paid, 10%, would be calculated on an increased amount (ie the aggregate of (i) the subscription price and (ii) the aggregate unpaid dividends).

9. In essence, Ms Choudhury contends that as the rate at which the dividend was paid remained fixed at 10%, there was a right to a dividend at a fixed rate even if the base in respect of which it was paid, the compounded element, varied. Mr Ewart, however, says that because the rate of dividend is calculated by reference to any previous unpaid dividends, the preference shares did not have a right to a dividend at a fixed rate.

10. To illustrate a difference between preference and ordinary shares Ms Choudhury cites *The Waverley Hydropathic Company Limited v David Barrowman and Daniel Lamond* (1895) 23 R 136 in which the Lord Justice Clerk said, at 140:

> "The second parties in this case bought some years ago from the Hydropathic Company certain shares on the footing that they were preference shares, and subject to various conditions. These conditions are peculiar. The fourth of these conditions is that the company has a right, in the event of a transfer, to purchase the shares at par, and at any time after ten years they have right to redeem any of such shares at par. That is a privilege given to the company which is quite inconsistent with the idea that these shares are ordinary shares. Then again under the sixth condition the holders of these shares are not to be entitled to vote or be present at the meetings of the company, or to take part in the management of the company's affairs, or to participate in any of the rights or privileges of the ordinary shareholders. Now this is a restriction of the rights of the purchasers of the preference shares which puts them outside of the ordinary category of shareholders altogether. **There is a further provision applicable to these preference shares, and to no others, viz., that they are to receive a certain fixed rate of dividend, and if the profits are not sufficient in any year to pay the dividend, the deficiency is to be made good out of the profits of subsequent years. This again places these shares in a position as unlike that of ordinary shares as possible**."

The emphasis is added by Ms Choudhury who points out that this is the same condition as that attaching to the preference shares in the present case.

11. Ms Choudhury also refers to *Bielckus & Others v HMRC* [2016] UKFTT 271 (TC) in which the Tribunal (Judge Redston and Mrs Howell) accepted that shares in which respect of a dividend was payable cumulatively at 7.5% per annum were payable at a fixed rate. However, the issue in that case primarily concerned the "special terms" attached to those shares and whether the holders of such shares were given any additional right to share in the profits of the company.

12. In addition Ms Choudhury seeks support for her argument that the preference shares in the present case are not ordinary share capital for the purposes of s 989 ITA by reference to other legislative provisions. She cites the following examples:

(1) Paragraph 8 of Schedule 2 to TCGA which applies to certain disposals of assets held at 6 April 1965 defines "preference shares" as:

> (1) … any share the holder whereof has a right to a dividend at a fixed rate, but has no
>
> other right to share in the profits of the company.
>
> (2) If and so far as the question whether at any particular time a share was a preference share depends on the rate of dividends payable on or before 5th April 1973, the reference in the definition of "preference share" in sub-paragraph (1) above to a dividend at a fixed rate includes a dividend at a rate fluctuating in accordance with the standard rate of income tax.

(2) Section 528 of the Corporation Taxes Act 2010 ("CTA") which sets out the conditions for a company to become a UK REIT differentiates between the shares forming part of a company's ordinary share capital and "non-voting restricted preference shares" which are defined in s 528(7) as:

> (a) "restricted preference share" means a share which is a restricted preference share (within the meaning of section 160) or would be but for the fact that it carries a right of conversion into shares or securities in the company, and
>
> (b) a share is "non-voting" if it carries no right to vote at a general meeting of the company or if it carries a right to vote which is contingent on the non-payment of a dividend and which has not become exercisable.

(3) Section 160 CTA which sets out various conditions for a share to be a "restricted preference share", including that it carry no right to a dividend or a restricted right to a dividend as defined by s 161 CTA which states:

> (1) … a right to dividends carried by shares in a company is a "restricted right to dividends" if—
>
> > (a) the dividends represent no more than a reasonable commercial return on the new consideration received by the company in respect of the shares, and
> >
> > (b) subsection (2), (3) or (4) applies.
>
> (2) This subsection applies if—
>
> > (a) the dividends are of a fixed amount or are at a fixed percentage rate of the nominal value of the shares, and
> >
> > (b) the company is not entitled, by virtue of any term subject to which the shares are issued or held, to reduce the amount of, or not to pay, any of the dividends.
>
> (3) This subsection applies if—
>
> > (a) the dividends are of a fluctuating percentage rate of the nominal value of the shares, and
> >
> > (b) the company is not entitled, by virtue of any term subject to which the shares are issued or held, to reduce the amount of, or not to pay, any of the dividends.
>
> (4) …

13. While Ms Choudhury accepts that these provisions are not directly relevant to the interpretation of s 989 ITA, she contends that they do illustrate that HMRC's construction of it is consistent with other provisions which differentiate between preference shares with a right to a dividend at a fixed rate and ordinary share capital. In relation to the appellant's argument that it is necessary to consider both the percentage element and the compounded amount to which it is applied to determine whether there is a right to a dividend at a fixed rate Ms Choudhury says that s 989 ITA is not concerned with the timing of the payment of the dividend but whether the right to payment of a dividend is at a fixed or varying rate. If it were otherwise, she argues, it would not be possible to ascertain whether shares constituted ordinary share capital by reference to the terms and conditions attached under the Articles of Association when issued but only when dividends were paid.

14. Mr Ewart accepts that the issue of whether there is right to a dividend at a fixed rate is not to be determined on the basis of what dividends actually accrue to those shares or what

actually happened but depends on the rights accorded to those shares in the Articles of Association. He says that the relevant question is whether it was possible that dividends would accrue other than at a fixed rate and that in the present case it is. Relying on 'compounding' arising from limb (ii) of the dividend calculation in Article 2.4(A) of the Company's Articles of Association and the example in the appendix, Mr Ewart contends that, because the rate of dividend is identified by looking at the entire dividend as a proportion of the share capital, ie both the percentage element and the compounded amount to which it is applied, the rate is not fixed. It is not enough, he argues, just to look at the percentage element of the calculation applied to determine the dividend.

15. In support of his argument Mr Ewart cites *Tilcon Limited v Holland (Inspector of Taxes)* [1981] STC 365 in which Vinelott J who, when considering the expression "ordinary share capital" as defined in s 526 of the Income and Corporation Taxes Act 1970[1] in relation to the group provisions and consortium relief provisions of the Finance Act 1973, recognised that for there to be a right to a dividend at a fixed rate "in the natural and ordinary sense of those words" it was necessary to have regard to both elements, the percentage rate which is fixed and the varying amount to which it is applied.

16. Vinelott J said, at 372-373:

> "Counsel for the taxpayer company, submitted that the inevitable consequence of para 18 of Sch 23 to the 1972 Act as construed in the *Sime Darby* case is that preference shares ceased to be shares 'the holders whereof had a right to a dividend at a fixed rate' and became shares the holders whereof had a right to a dividend which falls to be ascertained by a formula, one element of which is fixed annually and is intended to be fixed in such a way as to ensure that the rate of advance corporation tax (which, unlike mainstream corporation tax, is fixed at the commencement of each financial year) will correspond to the standard rate of income tax for that year. The dividend must therefore fluctuate annually if and when the rate of advance corporation tax is altered. He pointed out that the definition in s 526 as originally enacted specifically excluded shares the holders of which were entitled to a dividend at 'a rate fluctuating in accordance with the standard rate of income tax' from the definition of 'ordinary share capital'. He submitted that those words must have been intended to exclude from the definition of 'ordinary share capital' preference shares carrying a right to a dividend expressed as a gross sum which after deduction of income tax at the standard rate for the time being in force would yield a dividend of a fixed amount, and said that if it had been intended to exclude from the definition of ordinary share capital a preference dividend which in consequence of para 18 would fluctuate in accordance with the rate of advance corporation tax for the time being in force, the draftsman, instead of deleting the words 'or a rate fluctuating in accordance with the standard rate of income tax', would have substituted 'advance corporation tax' for 'income tax'.
>
> I accept that the holder of a share entitled to a preference dividend of an amount which falls to be ascertained by reference to the rate of advance corporation tax for the year in which it is paid cannot be said to have a 'right to a dividend at a fixed rate' in the natural and ordinary sense of those words. But this construction leads to results which are so patently absurd as to raise, at the very least, a doubt whether they could have been contemplated by the draftsman or the legislature as following from it. The definition of 'ordinary share capital' in s 526 governs the definitions of '51 per cent subsidiary', '75

[1] Section 526 of the Income and Corporation Taxes Act 1970 was subsequently transposed, with minor changes, into s 832 of the Income and Corporation Taxes Act 1988 on which s 989 ITA was based

per cent subsidiary' and '90 per cent subsidiary' in s 532(1), and those definitions in turn govern the provisions of ss 252 and 253, which relate to reconstructions; of ss 256 and 257, which relate to group income; of ss 272 to 278, which relate to grouping for the purposes of capital gains tax; of s 284(4) and (5), which deals with close companies; and of ss 483 and 484, which relate to the disallowance of trading losses. It is impossible to suppose that the draftsman intended to make a bonfire of these elaborate and important parts of the tax system.

Further, the application of the provisions of s 28 of the Finance Act 1973 restricting group and consortium relief, themselves depend on definitions of 'ordinary shares' and 'fixed rate preference shares', which, while they differ in language from s 526, embody the same concept. A fixed rate preference share is one which 'does not carry any right to dividends other than dividends which (i) are of a fixed amount or at a fixed rate per cent of the nominal value of the share'. If counsel's argument for the taxpayer company is well founded, the definition of a 'fixed rate preference share' would exclude any preference share in issue immediately before 6 April 1973, which is the date on which the provisions of the 1973 Act to which I have referred themselves come into effect. Indeed, it is doubtful whether these provisions could apply to any preference share, even to one created after 6 April 1973, because, while the dividend might be expressed at a fixed rate or as one of a fixed amount, the holder would be entitled to a dividend plus a tax credit of a fluctuating amount.

Counsel for the taxpayer company accepted that these consequences follow from the construction of the definition of 'ordinary share capital' in s 526 for which he contends and that they cannot be supposed to have been intended by the draftsman or by the legislature. But he submitted that the words are clear and unambiguous, and that if the draftsman failed to perceive the consequences that would follow from the alteration of the rights of preference shareholders effected by para 18, the error can only be corrected by the legislature. The question I have to decide is whether s 526 is capable of being construed in a way which avoids this absurdity.

I think that it is. The definition of 'ordinary share capital' excludes capital 'the holders whereof have a right to a dividend at a fixed rate'. The rights to which the definition relates must I think be those created by the contract governing the issue of the shares in question; normally, of course, the articles of association, as modified from time to time by agreement or by alteration to the articles. Paragraph 18 similarly deals with the 'rights' of preference shareholders—that is, a 'right expressed by reference to a dividend at a gross rate or of a gross amount'—and again the reference must be to the rights created by the contract governing the issue of the shares in question as modified by agreement or by alteration to the articles prior to 6 April 1973. Paragraph 18 then alters the way in which the preference shareholders' contractual right is to be given effect, and does so in a way which requires the sum actually paid to be reduced and replaced (so long as the rate of advance corporation tax and of income tax correspond) by an equivalent tax credit. In my judgment, therefore, this appeal fails on this ground."

17. Although initially attracted by the argument advanced by Ms Choudhury, on balance and for the reasons below, I prefer that of Mr Ewart.

18. Notwithstanding the similarities between the final "further provision" in *The Waverley Hydropathic Company* case and the condition attaching to the preference shares in the present case, I am unable to derive any assistance from the observations of the Lord Justice Clerk. Not only were these in relation to different factual circumstances but they were made at a time when

the principles of company law were still at a formative stage, pre-dating the seminal decision of *Salomon v Salomon & Co Ltd* [1897] AC 22. Neither am I assisted by the decision of the Tribunal in *Bielckus* in which, unlike the present case and as is clear from [53] of the decision, it was not disputed that the shares carried a "right to a dividend at a fixed rate". Also, as Ms Choudhury accepts, the other statutory provisions to which she referred are not directly relevant to the construction of s 989 ITA.

19. However, I agree with Mr Ewart that the decision of Vinelott J in *Tilcon v Holland* does offer some support for the need to take into account both the percentage element and the amount to which it is applied to identify the rate of the dividend. Accordingly, if, as in the present case, at the time the preference shares are issued the Articles of Association provide that only one of these, the percentage element, is fixed and the amount to which that percentage is to be applied may vary, those shares cannot be regarded as having a right to a dividend at a fixed rate and are therefore ordinary share capital as defined by s 989 ITA.

20. Moreover, if the approach advocated by HMRC was correct and it was enough for only the percentage element to be fixed (and not that to which it is to be applied) when calculating a dividend, shares that pay a dividend at a rate of 0.01% of the taxable profits of a company or preference shares that pay a dividend at a rate of 50% of the dividend on the company's A ordinary shares would not be ordinary share capital within s 989 ITA. In my judgment this cannot be right.

21. Therefore, having concluded that the preference shares held by Mr Warshaw were "ordinary share capital" it follows that the Company was Mr Warshaw's "personal company" and that, as such, he is entitled to entrepreneurs relief on the disposal of those shares

22. Accordingly, for the reasons above, the appeal is allowed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

23. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JOHN BROOKS
TRIBUNAL JUDGE

RELEASE DATE: 24 APRIL 2019

APPENDIX

Illustration of Effect of 'Compounding' Arising from Limb (ii) of Dividend Calculation in Article 2.4(A) of the Company's Articles of Association on basis of an individual owning preference shares with total subscription price of £10,000 showing the dividends that would accrue if no dividend was paid for five years

(1) In year 1, Article 2.4A provides for the accrual of a dividend of 10% x (*subscription price* (£10,000) + *aggregate unpaid dividends* (£0) = £1,000

This is 10% of the subscription price (nominal share capital of the shares)

(2) In year 2, Article 2.4A provides for the accrual of a dividend of 10% x (*subscription price* (£10,000) + *aggregate unpaid dividends* (£1,000) = £1,100

This is 11% of the subscription price (nominal share capital of the shares)

(3) In year 3, Article 2.4A provides for the accrual of a dividend of 10% x (*subscription price* (£10,000) + *aggregate unpaid dividends* (£2,100) = £1,210

This is 12.1% of the subscription price (nominal share capital of the shares)

(4) In year 4, Article 2.4A provides for the accrual of a dividend of 10% x (*subscription price* (£10,000) + *aggregate unpaid dividends* (£3,310) = £1,331

This is 13.3% of the subscription price (nominal share capital of the shares)

(5) In year 5, Article 2.4A provides for the accrual of a dividend of 10% x (*subscription price* (£10,000) + *aggregate unpaid dividends* (£4,641) = £1,464.10

This is 14.6% of the subscription price (nominal share capital of the shares)