[2021] UKFTT 155 (TC)

TC08124

Corporation Tax – (a) was the Appellant a debtor under a loan relationship; (b) had the Appellant made a loan to a participator within s455 CTA 2010

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/5495

BETWEEN

WT BANKS & CO (FARMING) LTD **Appellant**

-and-

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

TRIBUNAL: JUDGE CHARLES HELLIER

The hearing took place on 31 March 2021. With the consent of the parties, the form of the hearing was by the Tribunal video platform. A face to face hearing was not held because of the Covid 19 pandemic.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Richard Chapman QC instructed by Cobhams Ltd for the Appellant

Harry Dixon for the Respondents

DECISION

Introduction

1. WT Banks & Co (Farming) Ltd ("WTB") owns farmland and is engaged in farming in the North of England. Mr Stuart Banks is a director and a major shareholder. Between 2014 and 2016 WTB made a series of payments to or for the benefit of Solar Energy Parks Ltd ("SEL"), a company in which Mr Banks had a 50% shareholding.

2. SEP was struck off the Companies House register in June 2016 for failing to submit accounts. In its tax return for the year ended 30 June 2016 WTB recognised a deduction under the loan relationship provisions from its taxable profits as the result of making a bad debt provision in respect of a loan made to SEP, being the amount of the sums paid to or for the benefit of SEP since 2014.

3. HMRC enquired into that return and concluded that the payments made by WTB were not a loan to SEP but were, in part, monies owed to Mr Banks by WTB and, in part, a loan by WTB to Mr Banks. Accordingly they issued a closure notice in which they denied the deduction (since there was in their view no loan to SEP to provide against) and assessed the company in respect of a loan to a participator (Mr Banks) under the provisions of section 455 CTA 2010.

4. WTB appeals against the closure notice (as amended following a review).

The Legislative Provisions

5. There was no dispute as to the relevant statutory provisions.

(a) the provisions relevant to loan relationships

6. If a company has a loan relationship in which it stands in the position of debtor and in accordance with generally accepted accounting practice makes a provision against that debtor it is, subject to exceptions which are not relevant here, entitled to a deduction in computing its taxable profits of the amount of the provision. Section 302 CTA 2009 provides that a company has a loan relationship if:

> "(a) the company stands in the position of a…debtor in respect of any money debt (whether by reference to a security or otherwise), and
>
> (b) the debt arises from a transaction for the lending of money."

7. Section 303 provides, so far as relevant, that a "money debt" for these purposes is "a debt which

> (a) falls to be settled
>
> > (i) by the payment of money,
> >
> > (ii) by the transfer of a right to settlement under a debt which itself is a money debt, or
> >
> > (iii) by the issue or transfer of any share in the company
>
> (b) has at any time fallen to be so settled, or
>
> (c) may at the option of the debtor or creditor fall to be so settled…"

8. The issue in this appeal in relation to the loan relationship provisions is whether WTB had a loan relationship with SEP. If it did then HMRC agree that it was entitled to a deduction in the period in which the provision against it was made. If it did not (and in particular if it was

a loan to Mr Banks) then the provision cannot have been properly made. In the circumstances of this appeal WTB would have had such a loan relationship if:

(i) it was a debtor in respect of a debt due from SEP

(ii) that debt fell to be settled by the payment of money, and

(iii) that debt arose from a transaction for the lending of money.

(b) The Loans to Participators provisions

9. Section 455(2) CTA 2010 provides that if a close company (it is accepted that WTB is a close company) makes a loan to a participator (it is clear that Mr Banks was a participator for these purposes), then there is due from the company an amount of corporation tax equal to the dividend upper rate applied to the amount of the loan. Section 455(4) provides, so far as is relevant:

> "(4) For the purposes of this section…the cases in which a close company is to be treated as making a loan to a person include a case where-
>
> (a) that person incurs a debt to the close company
>
> …
>
> In such a case the close company is to be treated as making a loan of an amount equal to the debt."

10. It was not disputed that if Mr Banks had incurred a debt to WTB by reason of any of the payments, the tax assessed by HMRC was due under this provision. The only issue was whether he had incurred a debt.

The Parties' Arguments in Outline

11. WTB argues that: (i) in 2013 an agreement was reached between Mr Banks and a Mr Eann Smith (who became a director of, and the other shareholder in, SEP after its formation in 2014), (ii) under this agreement SEP would apply for planning permission to build solar farms on land owned inter alia by WTB, (iii) WTB would lend SEP the money to pursue this objective, (iv) on receipt of planning permission SEP would lease the land from WTB, build the solar farm and sell it on, and (v) in that eventuality it would repay WTB the sums it had advanced with interest.

12. HMRC argue that the payments were loans to Mr Banks who invested them in SEP – as a loan or otherwise.

The Evidence and some Findings of Fact

13. I heard oral evidence from Mr Banks, Lindsey Basolu, WTB's bookkeeper at the relevant time, Jane Harper of Cobhams Ltd who prepared WTB's formal accounts, and Pat Cobham of Cobhams who gave tax advice to WTB. I also had a witness statement from Mr Adam Austin of HMRC and a bundle of copy documents.

14. In this section my description of the evidence I received does not indicate acceptance of it unless otherwise stated.

(a) The background to the deal with Mr Smith

15. Mr Banks said that in 2013 he had become aware of the amount of money which could be made from solar parks when he was paid a very substantial sum to release WTB's interest in a site on which solar panels were or were to be installed. He did some research and found that the industry norm for land rented out as a solar farm was some £1,500 per acre for 20 to 25 years. 200 acres were normally needed for a solar farm and a guaranteed income of £300k

pa for 25 years was an attractive return when compared to the yield from farming the land which could be judged by the fact that agricultural rentals were no more than some £80 per acre pa.

16. In addition if land were leased for a solar farm the grazing rights would remain with the lessor and at the end of the solar farm lease the land would revert to the lessor. Once planning permission had been given for commercial use as a solar farm, it would be easier to get planning permission for lucrative residential or commercial development at the end of the lease.

17. He said that in 2013 WTB held some pieces of land which he thought would be good sites for solar farms. But planning permission would be required. He had known Mr Smith for many years and knew that he had planning expertise. He had discussions with Mr Smith.

18. I accept this evidence.

(b) the deal with Mr Smith

19. Mr Banks said that the deal with Mr Smith was concluded by a handshake and not in written form; this was the way he was accustomed to deal with friends. Mr Banks could not remember precisely when he had come to this agreement with Mr Smith: "they spoke and then set it up".

20. He said that they had agreed that a company would be formed in which each of them would hold 50% of the shares. Mr Smith would provide his expertise to the company. WTB would provide finance and the company would seek planning permission for solar farms on land identified by Mr Banks and held by WTB. Mr Banks' part was to use his farming contacts in the North of England to bring other landowners to the company who were interested in installing solar farms on their land.

21. It was agreed, he said, that if the company obtained planning permission for land held by WTB, WTB would grant a lease of the land to the company for a 25 year period or so (which I understood to relate to the period of preferential electricity production fees for solar power). The lease would provide annual rental payments to WTB and leave with WTB the grazing rights in and around the solar panels. He said that in due course draft leases were drawn up for execution if planning permission were granted. I was not shown a copy of any lease. He said that the same deal would apply to other land sourced from his contacts.

22. He said that once a solar farm had been constructed it was intended that the company's leasehold interest would be sold to an electricity supplier such as Scottish Power. A significant sum was expected from such a sale.

23. Mr Banks said that there had been some discussion of the funds that the company would need but they had no idea in 2013 of what the expense would be and he had agreed to a completely open ended commitment. There was, I understood, no preparation of cash flow forecasts or any sort of business plan. He accepted that this was a risky venture but he was used to dealing with large financial risks in the management of the farm and the potential rewards if planning permission were granted were in his view sufficient to countenance the risk: WTB was, he said "set to gain a hell of a lot"; "it would have made a fortune".

24. *(c) the nature of the monies advanced to SEP*

25. Mr Banks said it was agreed that the monies paid to the solar company would be repaid with interest from the lease sale proceeds if and when planning consent were given and the solar farm lease was sold to an electricity company. In such circumstances he said that the interest element was a small factor: the big money was in the rental which WTB would receive under the lease and in the reversionary interest in the site which could be worth millions. The loan, he said "would have proved a fantastic investment on planning [permission being given] for the company".

26. Mr Banks said that he discussed the structure for the solar venture with Mrs Cobham "at the start of the [SEP] project", and it was explained to him that if WTB lent the money to him and he invested it in SEP, WTB would incur a tax charge under the loans to participators provisions, and that a direct loan from WTB to SEP would therefore be preferable. Mr Banks was not able to say precisely when this discussion had taken place but he said he would have discussed the project with Mrs Cobham before the first payment to SEP. He would not have sanctioned payment, he said, without having run it through Mrs Cobham first.

27. I find that SEP was incorporated on 12 March 2014, and that the first payment by WTB to SEP was made later in March 2014.

28. Mrs Cobham attested to a meeting with Mr Banks in May 2014 when she explained the benefit of structuring the deal as a loan to SEP rather than a loan to Mr Banks and an onward investment in SEP. Mr Banks could not recall this meeting. Mrs Cobham says that Mr Banks told her that some payment had already been made by WTB to SEP and asked her if this was correct or whether WTB should lend the money to him and he should then lend it to SEP.

(c) The payments and the accounting for them

29. I find that on 26 March 2014 £5,000 was paid by WTB to SEP.

30. I find that in the period to 30 June 2014 three payments had been made to SEP totalling £20,000.

31. I find that in the year to 30 June 2015 WTB paid £345,000 to SEP (in a number of round £thousands payments) and £88,191 at SEP's behest to local authorities in planning or other fees. In the year to 30 June 2016 £110,000 was paid to SEP directly and £22,383 to third parties at its behest.

32. Miss Basolu prepared the accounting records for WTB. She picked up items of expenditure from the bank statements and made postings to the relevant accounts. The payments to SEP were given the reference "STU" (which probably referred to Stuart Banks) on the bank statements. Although she said that she was aware that Mr Banks was involved with SEP she said she was not given an explanation of the payments until June 2015. As her practice was not to post a payment an expense unless she knew what it was for, she posted these payments to Mr Banks' director's account.

33. I find that she made no amendment to these entries until July 2015 when the payments made between March 2014 and June 2015 were transferred to an account described as a loan account to SEP. Miss Basolu said that this was the result of a consultation with Mr Banks when he had said that the sums should be debited to a loan account with SEP.

34. I find that from March 2014 to December 2014 Mr Banks' account with WTB was in credit despite the charging against it of the payment s to SEP. Thus at the end of WTB's accounting period ending period 30 June 2014 the account remained in credit, but began to show an increasing debit after December 2014.

35. Miss Basolu said that she met normally about monthly with Mr Banks to discuss the accounts but that he had not discussed the £20,000 of payments in the year to 30 June 2014. She did not recall any discussion of these amounts in the preparation of the formal accounts for the company for that year. However, there were many more such payments in the year to 30 June 2015 and she recalled discussing these with Mr Banks at the end of that year.

36. Miss Harper was not able to offer any evidence in relation to the year to 30 June 2014 since she had been on maternity leave. But she said that when she received the accounting records for the period to 30 June 2015 she saw that there had been a transfer from Mr Banks' director's account and she had checked with Mrs Cobham that the payments had been correctly treated. Mrs Cobham said yes, she had discussed it with Mr Banks.

37. Mrs Cobham said that her firm had missed the debiting of the payments against Mr Banks' loan account in the year ended 30 June 2014. They had made a mistake. She said that the amending entry for the year to 30 June 2015 when a transfer had been made from Mr Banks' director's account to the SEP loan account was not made simply to avoid a debit balance on Mr Banks' loan account, but reflected the advice she had given to Mr Banks about the treatment of the payments to SEP.

38. Mr Banks said that he did not check the composition of the figures in the final accounts. He trusted the team; he didn't go into detail: he signed the accounts when asked.

(d) the termination of the deal with SEP and Mr Smith and the Ditchfield Letter

39. I find that in May 2015 Mr Smith resigned as a director of SEP and was replaced by his wife Charlotte Ditchfield.

40. Mr Banks said that his relationship with Mr Smith began to break down in late 2015 when he received a particular payment request from SEP. At about the same time it became apparent that planning permission for the solar projects was unlikely to be forthcoming. A planning appeal in 2016 was unsuccessful. SEP was struck off in June 2016.

41. When asked if he had taken steps to recover from SEP the monies paid to it, Mr Banks was unable to say that he did so when, or shortly after, the relationship with Mr Smith broke down, but he said that he had made efforts to recover something a few years later.

42. On 20 June 2016 Mrs Ditchfield of SEP wrote to Mrs Cobham. I shall call this the "Ditchfield Letter". Mr Banks said that the letter was rubbish. In the letter Mrs Ditchfield said:

> "We are compiling documents in order for the company to make a true statement within the accounts for Solar Energy Park Limited and completing due diligence for the anticipated sale or further fund-raising that may be required in order to complete the projects of which [sic] Stuart is directly involved within [sic]. We have an agreed format of statement with Stuart a copy of which is attached and we have been relying upon. We contact you directly as you will have all of Stuart's information on file. This will expedite matters in order to complete the accounts.
>
> "You will be able to confirm to the best of your knowledge no third party loans or third party investors are involved that may influence or ultimately control Stuart's decisions. Any future buyer or lender will need to know the company is clean and ready to use as security or indeed sell, the director and shareholders want further comfort in this regard too.
>
> "In order to submit the accounts we would like to have copies of the following documents, which will make up the due diligence bundle for exit
>
> "Please confirm, from your involvement and preparation of WT Banks Farming Limited accounts that you believe the following to be correct.
>
> 1. Confirmation that the investment made into Solar Energy Park Limited has come from WT Bank Farming Limited and or Stuart Banks. Please confirm this investment is not from a third party lender or investor, we can then make a true and accurate statement on behalf of the company.
>
> 2. A copy of the bank statements where the funds have originated WT Bank Farming Limited or Stuart Banks personal account – from March 2014 to October 2015, this will show the relevant transfer dates and amounts for the total investment made by him to date.
>
> 3. The bank statements for the additional payments made by Stuart Banks/WT Banks Farming for the cheques he issued for various costs he paid directly. We have emailed

him several times to confirm the exact amounts but he has not been able to confirm, as maybe you have the details, can you itemise the list, payment dates and the payee. I assume this has come from the same account as above, if different please advise and submit proofs.

4. The investment is made on a non interest bearing basis, the loan is unsecured and without recourse.

The Statement of Truth included the following:

"I Stuart Banks confirm I have personally invested my own funds or funds from my business WTB Farming UK Limited into Solar Energy Park Limited. I confirm as part of money laundering regulations and procedures that I have not accepted monies from any third party or borrowed monies to make this investment.

"The monies invested by me are in order to promote various planning applications on land owned by my family and land owned by the other shareholders. I understand this money is placed at risk and accept if no planning applications are approved the money may not be recovered."

43. The Ditchfield Letter was, as Mr Chapman suggested, odd and appears in part to be angling for answers Mrs Ditchfield wants to hear. It appeared to be written in contemplation of a sale of the shares in SEP, or an issue of shares to new investors. I noted the following:

(1) It acknowledges that the "investment" may have been made either from Mr Banks or WTB (and in places apparently equates the two). Mrs Ditchfield's lack of certainty as to who was the investor casts doubt as to whether she (for SEP) had a clear understanding of the nature of investment;

(2) It speaks of the investment being a loan made on a non interest bearing basis. That indicates that she understood there to be an obligation on SEP to repay;

(3) The Statement of Truth speaks of the funds as an investment "to promote planning applications on land owned "by my family and land owned by other shareholders" That suggests that the benefit of the "investment" is not its repayment but an investment in planning consents for the benefit of the land;

(4) It speaks of the Statement of Truth as being "agreed" which suggests that Mrs Ditchfield thought that Mr Banks had agreed to it. Yet there was nothing to suggest he had signed it and his description of the letter as "rubbish" suggests that he had not agreed to it.

44. Overall I found the letter of limited evidential weight: I was not able to ask Mrs Ditchfield how or from whom she had formed the views she seemed to have held or to assess her reliability or that of those from whom she had gathered her information. My strongest impression being that it indicated that there was lack of clear agreement between SEP and Mr Banks or WTB in relation to the payments.

(e) Evidence in relation to whether it was agreed that a loan to SEP should bear interest

45. Mr Banks said that he had agreed with Mr Smith that when SEP started to earn WTB would be paid rent for the land and interest at 10% per annum on the finance it had provided.

46. In a letter to HMRC of 15 December 2017 Cobhams say that the agreement between Mr Banks and Mr Smith was that once the solar parks were up and running the "loan [would be] repaid with 10% interest". The interest is not stated to be annual.

47. Notes of a meeting in February 2018 with HMRC record Mrs Cobham in Mr Banks' presence referring to 10% interest without saying that it was annual,

48. In notes of a meeting on 23 January 2019 with HMRC Mr Banks is recorded as giving a comparison with a deal some people might have with estate agents where they had lent to build a property and got a one off 10% payment on their investment once the property was sold.

49. In a report prepared for WTB by Grant Thornton in 2019 they state that a "bullet" interest payment of 10% would be payable on the repayment of the loan.

50. In the Ditchfield Letter Mrs Ditchfields asks for confirmation that the investment made in SEP was on a non interest bearing basis.

(f) The benefits of the deal

51. Mr Banks described the benefits which could accrue as a result of the venture with Mr Smith as being the rental payments under the leases to SEP and the benefits of the reversion of the land to the company at the end of the lease. He said that the money paid to SEP would have been a "fantastic investment for the company [ie WTB]" if planning permission had been granted.

Discussion

52. I accept that there was mutual understanding between Mr Banks and Mr Smith that::

(1) there was money to be made from solar parks;

(2) WTB had land on which solar parks could potentially be built;

(3) Mr Banks had control over that land;

(4) planning permission was needed and Mr Smith had the expertise to go about applying for it; and

(5) there were other sites on which solar parks could be built on land controlled by contacts of Mr Banks.

53. I accept that in pursuance of these understandings it was agreed:

(1) to set up a company in which each would hold 50%;

(2) for the company to apply for the relevant planning permissions;

(3) that Mr Banks would arrange finance for the company;

(4) that, if planning permission were granted, the sites would be leased to the company; and

(5) in some way there would be a sharing of profit to reflect (a) the land used, (b)Mr Smith's expertise and work and (c) Mr Banks' use of his contacts.

54. However, I do not find it proved that there was any agreement: -

(1) as to whether it was Mr Banks or WTB who should provide the finance (given in particular Mr Banks understandable elision of himself and WTB – see below); or

(2) as to the precise method of the division of the profits and income from of the venture.

A Loan by WTB to SEP

55. Mr Chapman says that Mr Banks' evidence was credible and clear. He had agreed with Mr Smith that WTB would lend to a joint venture company the money to pursue the project. That money was repayable with interest if planning permission was granted from the proceeds of the sale of the leaseholds by the company.

56. I am unable to conclude that it was more likely than not that as a result of Mr Banks' discussions with Mr Smith SEP became liable to repay the sums paid to it or for its benefit to WTB or to pay such sums to Mr Banks. That is for the following reasons.

57. First, 2013 was a long time ago. Mr Banks' recall of the time he and Mr Smith had reached their agreement was vague. It was not unlikely that his recollection of what was agreed was not wholly reliable.

58. Second, I accept Mrs Cobham's evidence that her first discussion of the arrangement with Mr Banks was in May 2014 after the first payment had been made. Although Mr Banks thought that there had been an earlier discussion, I though it likely that his memory was faulty. His need to talk to Mrs Cobham indicated that he had not settled the structure of the venture in his own mind or in detail with Mr Smith

59. Any crystalisation in Mr Banks' mind after the meeting with Mrs Cobham as to the characterisation of the sums being paid to SEP could have affected their nature only if SEP assented to the characterisation. There was no evidence that it had, save, perhaps, some in the Ditchfield Letter which I thought of little evidential weight.

60. Third, the discrepancies in the evidence in relation to whether the loan (if there was one) bore annual interest also indicate that the detail of the deal as regards the return on or of the financing was not agreed between Mr Banks and Mr Smith.

61. Fourth, the absence of any – even back of the envelope - business plan or budget suggests to me a vague agreement between friends in which the detail was to be left for later.

62. Fifth it was clear that Mr Banks' principal interest in the deal was the "fantastic" benefit which would accrue to WTB if planning permission were granted. This benefit was huge and far outweighed the benefit of the return of the sums invested in the venture – with or without interest. The commercial reason for the payments was to obtain that permission.

63. I accept that it was intended to draw other landowners into the scheme but it seemed to me that the benefit Mr Banks might obtain through his shareholding in SEP was remote and uncertain, and when compared to the benefit to WTB through its land, insignificant. It also seemed to me that any other landowner introduced to SEP by Mr Banks would expect a substantial rental on the land and either a capital sum representing some of the proceeds of the sale of the lease to an electricity provider or a higher rental. Thus the return to SEP on other landowners' participation might not be vast, and a significant return on the shares in SEP could not be anticipated.

64. Sixth, there was no evidence of agreement in those discussions of the terms on which the lease would be granted (and no written agreement for lease).

65. It seemed to me that any capital sum which SEP could expect on the sale of a leasehold interest to a company such as Scottish Power would be dependent on the terms of the lease and in particular the rental payments to WTB under the lease. The greater those payments, the lesser the capital sum. Mr Banks did not advance any evidence as to whether the terms of the leases had been agreed in his initial discussion with Mr Smith. It thus seemed to me that the division

of incoming funds and profits between SEP and WTB, or SEP and WTB and Mr Banks, had not been formally agreed and was left in some way to be agreed at a later date.

66. Even supposing that WTB was not aware that without a written agreement SEP would have had some difficulty compelling the granting of a lease to it (s2 Law of Property (Miscellaneous Provisions) Act 1989), WTB would have the upper hand in any negotiations after planning permission had been granted and could take the benefit of the sale proceeds of the lease as part of the terms of the lease (eg by increased rental, premium on grant, or later payment for consent to assignment). There was thus no commercial need on the part of WTB or Mr Banks for any agreement as to the repayment of the sums advanced or for interest thereon: if planning permission was not forthcoming there would be nothing to collect; if it was forthcoming it the cash could be collected through the leases.

67. Given the commercial importance of the terms of the leases, the fact that they had not been fully agreed makes it unlikely that there was agreement on the matter of far lesser importance of whether there should be repayment of monies put into the venture or the terms of that repayment.

68. Seventh, SEP could not have been bound by the terms of any agreement made between Mr Banks and Mr Smith before it existed and to which it could not have been a party. There was no evidence (save in the Ditchfield letter) that SEP, once formed, had adopted the terms of any agreement between Mr Banks and Mr Smith in such a way as to be bound to repay monies paid by WTB.

69. Thus whilst I accept that there was some sort of informal agreement between Mr Smith and Mr Banks that if planning permission were obtained on WTB's land WTB would get a proper return from the land and the monies put into the venture I am unable to conclude that there was any form of legal obligation or contract under which SEP was bound to repay those monies to WTB with or without interest.

A Loan by WTB to Mr Banks

70. Mr Dixon says that the following facts point to a loan made by WTB to Mr Banks:

(1) The reference to "STU" on the bank statements

(2) The initial debiting of the payments to Mr Banks' director's account;

(3) The reversal of those entries when Mr Banks' account moved into the red indicated that the payments had been considered to have been for the benefit of Mr Banks until the tax consequences of a loan to him were realised: the reversal did not affect the nature of what had passed or, without SEP's agreement, the future payments. The nature of what had passed was that the payments were properly recognised as for the benefit of Mr Banks;

(4) That it was unlikely that the bookkeeper really was acting on her own account when she debited the payments to Mr Banks' account

(5) The investment in SEP benefitted Mr Banks through his 50% shareholding

71. I do not come to the same conclusion. That is for the following reasons:

(1) There were a number of occasions in his oral evidence where Mr Banks elided his own interests with that of WTB: in describing the substantial sum received in 2013 for relinquishing WTB's interest in a solar site he said "I was paid £2m"; he described the risks taken in growing potatoes as risks "hI" took; when asked if he differentiated

between himself and WTB he gave no real answer and when describing the difference between the rental yield of a solar park and that of agricultural land he said "I pay £80 an acre" to rent agricultural land.

The reference to STU", clearly short for Stuart, indicates to the recipient that the payment has been made at Mr Banks' direction. Given his identification with WTB this does not seem to me to indicate that they derived from him personally;

(2) I accept Miss Basolu's evidence that, when she did not know what a payment was for, she posted it to Mr Banks' account, and that she did not understand the nature of the payments until 2015;

(3) I also accept Miss Basolu's evidence that she removed the amount of the payments from Mr Banks' account and posted them to an SEP loan account as the result of a discussion with Mr Banks close to the 2015 year end. That indicates that Mr Banks was seeking to implement the advice he had received from Cobhams. But that desire did not necessarily reflect what he had agreed with Mr Smith, or what SEP had agreed, nor did it indicate that the treatment Miss Basolu had thitherto adopted reflected such agreement.

(4) Whilst Mr Banks could potentially benefit from his shareholding in SEP from the profits that the payments might allow that company to make, by far the greater benefit was that which would accrue to WTB in connection with its land if planning permission were obtained.

72. It seems that the last of these considerations is the most telling. Mr Banks saw a prospect of great profit form the land for WTB. These payments were to secure that profit. In my judgement they were expenses of the company incurred in the hope that they would yield a substantial return to the company in relation to its land, and not a loan.

Conclusion

73. I find that WTB was not a creditor under a debt due from SEP which fell to be settled by the payment of money. As a result I find that it did not qualify for a loan relationship deduction for the year ended 30 June 2016. I therefore dismiss that part of the Appellant's appeal.

74. I find that WTB did not make loans to Mr Banks of the amounts paid to or for the benefit of SEP and that Mr Banks did not become indebted to WTB for those amounts. As a result no loan to a participator was made by reference to those payments. I therefore allow the company's appeal against the charge under section 455 CTA 2010.

Rights of Appeal

75. 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.

CHARLES HELLIER
TRIBUNAL JUDGE

RELEASE DATE: 15 MAY 2021