A HIGH COURT OF JUSTICE (CHANCERY DIVISION)—14 FEBRUARY AND 2 MARCH 1989

B COURT OF APPEAL—5 AND 6 DECEMBER 1990 AND 13 FEBRUARY 1991

HOUSE OF LORDS—28 AND 29 OCTOBER AND 28 NOVEMBER 1991

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Gallic Leasing Ltd. *v.* Coburn (H.M. Inspector of Taxes)(1)

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Corporation tax—Group relief—What constitutes valid claim to group relief and whether such claim had been made within two-year time-limit—Claim made in notice of appeal and accounts without identifying surrendering companies—Income and Corporation Taxes Act 1970, *ss* 258, 264(1)(c), *Taxes Management Act* 1970, *ss* 42(5), 114.

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GL, which carried on the trade of equipment leasing, was a member of a group of companies, to which s 258(1) of the Income and Corporation Taxes Act 1970 applied. On 31 October 1982 GL's accountants, in appealing against an estimated assessment to corporation tax for the period ended 31 March 1982, applied for postponement of payment of the tax on the grounds that the profits would be covered by group relief. The Inspector granted the postponement on 15 November 1982. On 30 June 1983 the accountants submitted to the Inspector GL's accounts for the said period and corporation tax computations in support of the appeal; the profit computation stated "subject to group relief", and the notes in the accounts showed an amount of group relief equivalent to the corporation tax payable. The Inspector requested further particulars of group relief, but had not received them on 31 March 1984, when the period within which a claim for group relief had to be made under s 264(1)(c) of the 1970 Act elapsed. On 4 December 1986 the Inspector refused GL's claim for group relief on the grounds that a valid claim had not been made within the statutory time-limit.

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GL, appealing to the General Commissioners against the assessment and the Inspector's decision to refuse group relief, contended that there was no prescribed form for making such a claim, the Revenue not having exercised its powers under s 42(5) of the Taxes Management Act, that such a claim should not be deemed void or voidable for want of form under s 114 of that Act, and that an appeal against a corporation tax assessment stating "profits covered by group relief" constituted a valid, timeous claim to group relief. The Inspector contended that a valid claim to group relief must specify, among other things, each surrendering company and the amount to be surrendered by each company. The Commissioners upheld the Inspector's refusal

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(1) Reported (ChD) [1989] STC 354; (CA) [1991] STC 151; (HL) [1991] 1 WLR 1399; [1992] 1 All ER 336; [1991] STC 699.

to grant group relief and determined GL's appeal against the assessment accordingly: they held that the statements in the notice of appeal and the accounts indicated an intention to make a claim for group relief but did not themselves constitute a claim. GL appealed.

The Chancery Division, allowing GL's appeal, but without deciding either whether a claim for group relief was a proceeding to which s 114 applied, or what the formal requirements for making such a claim were, held, that a valid claim to group relief had been timeously made by GL in the notice of appeal and notes to the accounts and computation, it being unnecessary for the claim to identify the surrendering companies which was a matter to be considered between the making of the claim and the decision to allow or disallow it. The Crown appealed.

The Court of Appeal held, allowing the Crown's appeal, that a claim to group relief must be in such a form that the Inspector is able to accept it or reject it, wholly or partially, within the provisions of the legislation, and a claim which does not identify each surrendering company and the amount surrendered by that company is therefore not a valid claim. While a sufficiently defined quantification of the sums to be surrendered is a necessary requirement of a claim, that does not mean that it must be immediately quantifiable—it may have to await figures and calculations not yet available. A claim which did not identify the surrendering company and the amount of losses to be surrendered could not be said to be in conformity with or to accord with the intent and meaning of s 258 Income and Corporation Taxes Act 1970 so as to be validated by s 114 Taxes Management Act 1970. GL appealed.

Held, in the House of Lords, allowing GL's appeal, that while it might be derived from the Income and Corporation Taxes Act 1970 that a claim, to have any meaning at all, must at least be a claim by an identified claimant to relief against identified or identifiable profits for an identified accounting period, there could not be deduced either from the words which the legislature had used or from the scheme of s 264 the requirement that a claim must specify the company within the group by which the reliefs are being or are to be surrendered or the other rigid requirements for which the Crown contended.

CASE

Stated under s 56 of the Taxes Management Act 1970 by the Commissioners for the General Purposes of the Income Tax for the City of London Division, for the opinion of the High Court of Justice.

1. At a meeting of the said Commissioners on 10 June 1987, Gallic Leasing Ltd. (hereinafter referred to as "the company") appealed against an assessment to corporation tax made on the company for the accounting period 12 months ended 31 March 1982, ("the accounting period") and against the decision of the Inspector to refuse group relief for that period claimed under s 258 Income and Corporation Taxes Act 1970.

2. The point at issue in these appeals was whether a valid claim to group relief was made by the company within the time-limit of two years from the end of the accounting period of each surrendering company to which the claim relates as required by s 264(1)(c) of the Act, i.e., within two years from 31 March 1982, the latest date being 31 March 1984.

3. The facts found by the Commissioners, their decision and the reasons for that decision are set out in para 9 of this Case.

4. The documentary evidence before us consisted of the following:—

(1) A statement of agreed facts.

(2) Notice of assessment of 1 October 1982 on the company to corporation tax for the accounting period.

(3) Notice of appeal by Clark Whitehill, chartered accountants, of 31 October 1982 against assessment within (2).

(4) Notice of postponement application agreement by H.M. Inspector of Taxes of 16 November 1982.

(5) (a) Letter from Clark Whitehill of 30 June 1983 to H.M. Inspector of Taxes enclosing (b) and (c).

(b) Report and financial statement for the company for the year ended 31 March, 1982.

(c) Corporation tax computation for the company for the accounting period.

(6) Letter from H.M. Inspector of Taxes of 18 July 1983 to Clark Whitehill.

(7) Letter from H.M. Inspector of Taxes of 18 January 1985 to Clark Whitehill.

(8) (a) Letter from Clark Whitehill of 5 August 1983 to H.M. Inspector of Taxes enclosing (b) and (c).

(b) Report and financial statements for Gallic Shipping Ltd. for the year ended 31 March 1982.

(c) Corporation tax computation for Gallic Shipping Ltd. for the accounting period ended 31 March 1982.

(9) (a) Letter from Clark Whitehill of 30 June 1983 to H.M. Inspector of Taxes enclosing (b) and (c).

(b) Report and financial statement for Gallic Management Ltd. for the year ended 31 March 1982.

(c) Corporation tax computation for Gallic Management Ltd. for the accounting period ended 31 March 1982.

(10) Letter from H.M. Inspector of Taxes of 20 July 1983 to Clark Whitehill. A

(11) Letter from Clark Whitehill of 9 August 1983 to H.M. Inspector of Taxes.

(12) Letter from a director and secretary of Gallic Shipping Ltd. of 30 October 1981 to the company. B

(13) Report and financial statements for Fairmile Construction Co. Ltd. for the year ended 31 March 1982.

(14) Report and financial statements for West Bay Shipping Ltd. for the year ended 31 March 1982. C

(15) Report and financial statements for Interflow (Tank Container System) Ltd. for the year ended 31 March 1982.

(16) Schedule of group relief and surrendering companies. D

(17) Letter from H.M. Inspector of Taxes of 19 December 1985 to Clark Whitehill.

(18) Notice of decision on a claim by H.M. Inspector of Taxes of 4 December 1986. E

These documents are not appended to this Case but will be available to the Court if required.

5. Oral evidence was given, on behalf of the company, by Mr. M.J. Subert, a partner in Messrs. Clark Whitehill, chartered accountants, who dealt with the company's tax affairs and, on behalf of the Crown, by Mr. A.J. Tillett, H.M. Inspector of Taxes who was involved in correspondence in relation to the appeals. F

6. No authorities were referred to in the course of the hearing. G

7. The contentions advanced on behalf of the company were as follows:—

(1) The Commissioners of Inland Revenue had not determined under s 42(5) Taxes Management Act 1970, the form in which the claim to group relief should be made. Accordingly, there is no legal requirement as to the precise form of a group relief claim. H

(2) Under s 114 Taxes Management Act 1970, the references to group relief in the application for postponement of tax and the corporation tax computation should be regarded as a proceeding which should not be "... deemed to be void or voidable for want of form" if they are "... in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts". It follows that the notice of appeal stating "profits covered by group relief" and the entries in the final accounts and the corporation tax computation referring to group relief either individually or together constitute a claim to group relief, there being no necessity for the amount of the relief claimed to be specified. I

A (3) The Inspector's letters of 18 July 1983 and 18 January 1985, constituted his acceptance that a group relief claim had been made. Further evidence of such an acceptance is afforded by the Inspector's failure to seek a determination of the assessment under s 54, Taxes Management Act 1970.

(4) Accordingly it should be decided that the company had made a valid B claim within the appropriate time-limit, that the full group relief claimed of £321,291 should be allowed and that the corporation tax assessment should be reduced to nil.

8. The contentions advanced by the Inspector of Taxes were as follows:—

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(1) Although the Commissioners of Inland Revenue had not determined under s 42(5) Taxes Management Act 1970, the form in which the claim to group relief should be made, it was necessary for a claim to specify the accounting period, the surrendering company, its accounting period and the amount claimed as well as being signed by or on behalf of the company.

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(2) The references to group relief in the application for postponement and the corporation tax computation did not constitute such a formal claim.

(3) The term "other proceeding" in s 114 Taxes Management Act 1970, must be construed as relating to actions taken by the Revenue and cannot E therefore refer to a claim for relief.

(4) The Inspector's letters of 18 July 1983 and 18 January 1985, could not be construed as his acceptance that a valid claim to group relief had been made.

F (5) The Inspector's decision to refuse the claim to group relief should be upheld and the corporation tax assessment for the accounting period to 31 March 1982 should be increased to £321,291.

9. We, the Commissioners who heard the appeals, gave our decision in writing on 8 July 1987 as follows:— G

(1) These are appeals by the Appellant Company ("the company") against an assessment to corporation tax made on the company for the accounting period 12 months ended 31 March 1982 ("the accounting period") and against the decision of the Inspector to refuse group relief for that period claimed by the company under s 258 Income and Corporation H Taxes Act 1970.

(2) The question for our decision is whether a valid claim for group relief was made by the company within the time-limit of two years from the end of the accounting period of each surrendering company to which the claim relates as required by s 264(1)(c) of the Act, i.e., within two years from I 31 March 1982, the latest date being 31 March 1984. This in turn depends on whether certain statements made in documents submitted to the Inspector before that date constitute such a claim.

(3) We have been given oral evidence by Mr. M.J. Subert, the partner in Messrs. Clark, Whitehill, chartered accountants ("the accountants") dealing with the company's tax affairs and Mr. A.J. Tillett, H.M. Inspector of Taxes

("the Inspector") who was involved in correspondence on behalf of the Revenue in relation to the appeals. We have also been supplied with documentary evidence and an agreed statement of facts.

(4) We find the following facts:—

(a) The company carried on the trade of equipment leasing and was a member of a group of companies within s 258 Income and Corporation Taxes Act 1970.

(b) The company's agreed profit before group relief for the accounting period was £321,291. The agreed reliefs of the surrendering companies were as follows:—

	£
Gallic Shipping Ltd.	261,094
West Bay Shipping Ltd.	25,701
Interflow Tank Container Systems Ltd.	12,933
Fairmile Construction Co. Ltd.	10,846
Gallic Management Co. Ltd.	10,717
	£321,291

(c) An estimated corporation tax assessment was issued on 1 October 1982 of £35,555. A notice of appeal was made by the accountants on 31 October 1982, which contained an application for postponement of payment of the full amount of the tax of £18,488.60, the grounds of the application being stated as—"Profits will be covered by group relief". The postponement was agreed by the Inspector on 16 November 1982.

(d) The company's accounts and corporation tax computations in support of the appeal were submitted to the Inspector by the accountants on 30 June 1983. The computation of the profit of £321,291 contained the statement—"Subject to Group Relief". Paragraph 6 of the notes in the company's accounts showed—

Taxation:

	£
Corporation Tax @ 52% on profits of the year:	167,000
Group Relief:	167,000
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(e) In his letter of 18 July 1983 the Inspector said "... I have no enquiries to raise and now await details of the group relief." In a further letter of 18 January 1985, the Inspector said

> "I am sorry through an oversight I have not yet sent you my agreement to the computations for the year ended 31 March, 1982. The profits are agreed at £321,291, and I should now like particulars of any group relief to be claimed."

A We accept the Inspector's evidence that in asking for particulars of group relief he had overlooked the fact that the time-limit for a claim had expired and that he had not regarded the statements quoted in (c) and (d) above as a valid claim.

(f) We were not shown the notices of consent of the surrendering com-
B panies made to the Revenue under s 264(1)(b) Income and Corporation Taxes Act 1970, but we infer that they were made after 31 March 1984.

(g) The accounts and computations for two of the surrendering companies, Gallic Shipping Ltd. and Gallic Management Ltd. submitted to the Inspector on 5 August 1983 and 30 June 1983, respectively failed to indicate
C that the surplus of charges over income and the surplus management expenses were to be surrendered as group relief.

(h) On 4 December 1986 the District Inspector of Taxes, Mr. H. Coburn, issued a notice of his decision on the claim refusing group relief on the grounds that it was not made within the time-limit prescribed by
D s 254(1)(c) of the Act.

(5) In support of the proposition that the statements referred to in para (4)(c)–(d) above ("the para (4)(c)–(d) statements") should be regarded either individually or collectively as a claim to group relief within s 264, it was contended on behalf of that company that:—
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(a) the Board of Inland Revenue had not determined under s 42(5) Taxes Management Act 1970, the form in which a claim to group relief should be made and, therefore;

(b) under s 114 Taxes Management Act 1970, the para (4)(c)–(d) state-
F ments should be regarded as a "proceeding" which shall not be "deemed to be void or voidable, for want of form" if they are "in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts"; and

(c) the Inspector accepted and acknowledged initially that a claim had
G been made as indicated in his letters referred to in para (4)(e) above.

We hold that the term "other proceeding" in s 114(1) must be construed in the light of the preceding words "assessment, warrant" and the provisions of subs (2), as relating to actions taken by the Revenue and cannot therefore refer to a claim for relief. We also hold that s 42 requires a claim to be in an
H identifiable form signed by or on behalf of the claimant and containing such particulars as are required to make it intelligible.

We decide that the para (4)(c)–(d) statements merely indicate an intention to make a claim and do not themselves constitute a claim.

I (6) We decide, therefore, that a group relief claim was not made within the time-limit specified by s 264(1)(c) Income and Corporation Taxes Act 1970, i.e. by 31 March 1984. Accordingly we uphold the Inspector's decision refusing the claim to group relief under s 42 Taxes Management Act 1970. We increase the corporation tax assessment for the accounting period ended 31 March 1982 to £321,291 and so determine the appeal against the assessment.

10. Dissatisfaction with the Commissioner's decision given above, as being erroneous in point of law, was expressed on behalf of the company and it was requested that we state a Case for the opinion of the High Court of Justice pursuant to s 56 Taxes Management Act 1970, which Case we have stated and do sign accordingly.

11. The question of law for the opinion of the High Court is whether, on the facts found by us, our decision that a valid claim to group relief within s 264(1)(c) Income and Corporation Taxes Act 1970 had not been made was correct in law.

8 March 1988

The case was heard in the Chancery Division before Vinelott J. on the 14 February 1989 when judgment was reserved. On the 2 March 1989 judgment was given against the Crown, with costs.

David Goldberg Q.C. for the Company.

A.G. Moses for the Crown.

No cases were cited in argument.

Vinelott J.—This is an appeal from the General Commissioners for the City of London. The question before the Commissioners was whether a valid claim to group relief had been made by Gallic Leasing Ltd. ("Gallic Leasing") in respect of its profits for the accounting period to 31 March 1982. Section 258(1) of the Income and Corporation Taxes Act 1970 ("the Taxes Act") provides that relief for trading losses may be surrendered by one company within a group and on the making of a claim by another company within the same group may be allowed to that company by way of relief from corporation tax. Gallic Leasing was at all material times a member of a group which included (among others) Gallic Shipping Ltd., West Bay Shipping Ltd., Interflow Tank Container Systems Ltd., Fairmile Construction Co. Ltd., and Gallic Management Co. Ltd. During the accounting period to 31 March 1982 each of those companies sustained losses which were capable of being surrendered. Under s 264(1)(c) a claim for group relief must be made within two years from the end of the surrendering company's accounting period. The question is thus whether Gallic Leasing made a valid claim for group relief before 31 March 1984.

The facts can be shortly stated. On 1 October 1982 the Inspector of Taxes sent Gallic Leasing a notice of assessment to corporation tax for the period to 31 March 1982. On 31 October 1982 an appeal was lodged on behalf of Gallic Leasing by its accountants, Clark Whitehill, and in the notice of appeal they applied to postpone the payment of the whole of the tax (which would have been due on 1 January 1983). A manuscript note at the foot of the notice of appeal (which is a printed form provided by the Revenue) reads, "Profits will be covered by group relief". The postponement was agreed by the Inspector on 15 November 1982. On 30 June 1983 Clark

Whitehill sent a copy of Gallic Leasing's accounts for the period to 31 March 1982 to the Inspector with their corporation tax computation. The profit and loss account showed nothing payable by way of taxation and note 6 to the accounts, under the heading "Taxation", set out the corporation tax payable at 52 per cent. on the profits for the period and an equivalent amount of group relief. The Inspector acknowledged receipt of the accounts and computations on 18 July 1983 and added that he had no enquiries to raise and awaited details of the group relief. Nothing else passed between Clark Whitehill as accountants of Gallic Leasing and the Inspector until after 31 March 1984. The question is whether the notice of appeal or the accounts or the notice of appeal and the accounts together constituted a claim for relief by Gallic Leasing. Before turning to examine the group of sections (ss 258 to 264) which govern group relief I should mention that accounts and computations for two of the other companies in the group, Gallic Shipping Ltd. and Gallic Management Co. Ltd., were sent to the Inspector on 5 August 1983 and on 30 June 1983 respectively. The accounts did not show that the surplus of charges over income and the surplus of management expenses of those companies were to be surrendered to Gallic Leasing and no notice of consent by any of the companies in the group to the surrender of losses to Gallic Leasing was given to the Inspector before 31 March 1984.

I have already sufficiently summarised s 258(1). There is nothing in the remaining subsections of s 258 which is material to this appeal. Section 259 identifies the kinds of loss that can be surrendered and the income of the claimant company against which it can be set off. Under subs (1), if the surrendering company has incurred a loss computed as for the purposes of s 177 in carrying on a trade, the loss can be set off against the total profits of the claimant company unless the loss is excluded from s 177(2) by s 177(4) or by s 180. Under subs (2) of s 259, if for any accounting period capital allowances fall to be made to the surrendering company which are given by discharge or repayment of tax and are to be available primarily against a specified class of income, only the amount of the capital allowances (exclusive of any carried forward) in excess of income of the relevant class arising in that period (before deducting capital losses of any other period or any capital allowance) may be set against the total profits of the claimant company. Under subs (3) of s 259, if the surrendering company is an investment company and is entitled under s 304(1) to deduct expenses of management for the relevant period, so much of that amount (exclusive of any amount deductible only by virtue of s 304(2)) as exceeds the company's profit for that period may be set against the profits of the claimant company.

Section 261 deals with the case where the accounting periods of the claimant and surrendering companies do not coincide. The amount which can be set off against the profits of the claimant company is reduced by a fraction of which the numerator is the period common to the two periods and the denominator the length of the accounting period of the surrendering company, and the profits against which that amount (as reduced) may be set off are reduced by a fraction of which the numerator is again the common period and the denominator the length of the accounting period of the claimant company. Section 262 in effect applies s 261 to the case where a company joins or leaves a group during an accounting period. The amount of the losses and the amount of profits against which group relief can be allowed must be ascertained by apportionment on a time-basis; and s 261 then applies to the profits and losses apportioned to the period while the company joining or leaving the group was a member of it. Section 263

contains elaborate provisions designed to ensure that relief is not given more than once in respect of the same amount whether by giving group relief and some other relief to the surrendering company or by giving group relief more than once.

I have already referred to the period specified in s 264(1) for the making of a claim by a company claiming relief. Section 264(1)(b) also provides that the claim for group relief "... shall require the consent of the surrendering company notified to the inspector in such form as the Board may require ...". No form has been specified by the Board. Sections 258 to 264 similarly do not specify the way in which a claim for relief under s 258(1) is to be made. However, such a claim clearly falls within s 42(1) of the Taxes Management Act 1970, which provides:

> "Where any provision of the Taxes Acts provides for relief to be given, or any other thing to be done, on the making of a claim, this section shall, unless otherwise provided, have effect in relation to the claim."

Subsection (5) provides:

> "A claim shall be in such a form as the board may determine and the form of claim—(*a*) shall provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the knowledge and belief of the person making the claim, and (*b*) may require—(i) a return of profits to be made in support of the claim, and (ii) any such particulars of assets acquired as may be required in a return by virtue of subsections (2) and (3) of section 12 of this Act ...";

and then it provides that in the case of any person not resident or not ordinarily resident or domiciled in the United Kingdom a statement or declaration may be required to be made by affidavit.

No form has been prescribed by the Board, and it is conceded by the Crown that although para (a) is expressed in mandatory language ("the form of claim (*a*) *shall* provide for a declaration") a claim need not contain such a declaration as is specified in para (a). In effect subs (5) provides that if a form is prescribed the form must provide for the information given on the form to be verified in a way which is appropriate to bring into play penalties for making false returns. But until a form is prescribed no declaration is required or would be practicable: the claim might be contained in more than one document. In the instant case the accounts of Gallic Leasing were signed by two directors and that, it is conceded, was sufficient to satisfy any implied requirement as to the form which a claim must take.

The only other relevant provision is s 114(1) of the Taxes Management Act. That provides:

> "An assessment, warrant or other proceeding which purports to be made in pursuance of any provision of the Taxes Acts shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts, and if the person or property charged or intended to be charged or affected thereby is designated therein according to common intent and understanding."

A The reference to a warrant is a reference to s 63 of that Act, which deals with the recovery of tax in Scotland. For the purposes of English law s114(1) can be read as applying to "An assessment or proceeding".

The Commissioners held that(1)

B "the term 'other proceeding' in s 114(1) must be construed in the light of the preceding words 'assessment, warrant' and the provisions of subs (2), as relating to actions taken by the Revenue and cannot therefore refer to a claim for relief"; and that "... s 42 requires a claim to be in an identifiable form signed by or on behalf of the claimant and containing such particulars as are required to make it intelligible."

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They decided that the notice of appeal dated 31 October 1982 and the accounts and computations of Gallic Leasing submitted on 30 June 1983 "... merely indicate an intention to make a claim and do not themselves constitute a claim".

D Mr. Goldberg, who appeared on behalf of Gallic Leasing, submitted that, no form having been prescribed by the Board under s 42(1), a claim can be made in any form. All that is required is that a company should make it clear to the Inspector that it wishes to use any reliefs available to other members of a group to which it belongs against its profits or a specified part of its profits (whether a proportion or a stated amount). He relied upon the decisions of the House of Lords in *Thompson* v. *Goold & Co.* [1910] AC 409, and *Commissioners of Inland Revenue* v. *Hood Barrs* 39 TC 683. *Thompson* v. *Goold* concerned a claim for compensation under the Workmen's Compensation Act 1897. Under that Act a claim for compensation had to be made within six months after the accident complained of. The question was whether a claim for compensation made within that period which did not specify the amount of the compensation claimed was a valid claim. The House of Lords held unanimously that it was. All their Lordships stressed that it was not necessary for the protection of the employer that a claim should specify the amount of the compensation claimed. Lord Atkinson said (at page 415):

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G "What I fail altogether to realize is that the advantage to the employer is so great as to render it imperative, in order not to defeat the purpose and object of the statute, to interpolate into its provisions words not to be found there, the more especially as the making of a claim serves the main and paramount purpose of protecting the employer against stale demands, even though no amount be mentioned. The essence of this requirement is the element of time."

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In *Commissioners of Inland Revenue* v. *Hood Barrs* the taxpayer applied to the General Commissioners for the adjustment of his liability to tax by reference to an alleged loss incurred in a trade. The application was made under s 34 of the Income Tax Act 1918. That section provided that a person who sustained a loss might within a specified period apply to the Commissioners "... for an adjustment of his liability by *reference to the loss* and to the aggregate amount of his income for that year estimated according to this Act". The main question was whether the Commissioners who issued certificates adjusting the taxpayer's liability to tax had acted in accordance

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(1) Page 405G/H *ante*.

with the rules of natural justice. The Crown were not represented at the meeting of the Commissioners when the certificates were issued and received no copy of any written application for relief nor of any relevant computation of the loss. The House of Lords upheld the decision of the Court of Session that the Commissioners had acted in breach of the rules of natural justice and the certificates were quashed. It is said in the headnote that the taxpayer had made an oral application for relief for losses. That is not, I think, strictly correct. Formal notices were given to the Commissioners on behalf of the taxpayer of his intention to claim for adjustment of his liability to tax, but in the words of Lord Clyde, the Lord President,(1)

> "... these intimations were in quite general terms, and no figures of losses were sent with them. Beyond the formal sending of these notices, nothing further was done about them for some years. Meantime, the disputes about his liability to tax for profits on his business continued."

It was in this context—that is, of a provision enabling a taxpayer to claim an adjustment of liability to tax "by reference to the loss"—that Lord Reid observed(2):

> "Maintaining that [the appellant] had sustained trading losses in each of these years, he appealed against these Income Tax assessments, and he also applied to the General Commissioners ... under Section 34 ... respect of each of the years 1947–1948 to 1950–1951, for an adjustment of his liability by reference to these losses and to the aggregate amount of his income for each year. These applications did not require to state the amounts of the alleged losses, and did not do so."

As for s 114(1) Mr. Goldberg pointed out that if the Commissioners were right a claim might be defeated because it contained some wholly immaterial slip which was not corrected by a supplementary claim made within the two-year period and that that would be so notwithstanding that the substance of the claim was communicated to the Inspector, for s 42(8) only allows a taxpayer to correct a slip or mistake by making a supplementary claim within the period allowed for making the claim. There is no obvious reason why a provision designed to ensure that a proceeding is not to be invalidated by a want of form or a mistake, defect or omission if the proceeding is in substance and effect in conformity with the intent and meaning of the Taxes Act should apply only to a proceeding by the Crown.

I do not find it necessary to decide whether a claim must be in writing signed by or on behalf of a claimant for group relief or whether the amount of profit in respect of which relief is claimed must be specified. In this case the claim was made in a document (the notice of appeal) signed by accountants on behalf of Gallic Leasing, and it was clear both from that letter and also from note 6 to the accounts and computations sent to the Inspector on 5 August 1983 that the claim extended to the whole of the profits of Gallic Leasing for the accounting period to 31 March 1982. The effect of those documents (in particular note 6 to the accounts) was precisely the same as if the accounts had been accompanied by a letter saying, "We hereby claim group relief under s 258(1) in respect of the full amount of the profits of Gallic Leasing for the accounting period to 31 March 1982, being the amount shown in the profit and loss account".

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(1) 39 TC 683, at page 690. (2) *Ibid*, at page 703.

A Nor is it necessary to decide whether a claim for group relief is a proceeding to which s 114(1) applies. The real issue in this case is whether a claim under s 258(1) must identify, in addition to the amount of the relief claimed, the surrendering company or companies and if more than one the amount of the losses to be surrendered by each of them. If a claim which does not contain this information is invalid the claim cannot be said to be in B conformity with or to accord with the intent and meaning of s 258(1), and so cannot be cured by s 114. That is I think what the Commissioners intended to convey when they observed of the notice of appeal and the note to the accounts that they "... merely indicate an intention to make a claim and do not themselves constitute a claim".

C Mr. Moses, who appeared on behalf of the Crown, submitted that it is clear from the scheme of the legislation as a whole that the claim must identify at least the source of the losses to be surrendered. Until the claimant has identified the surrendering company the Inspector will not know whether the claimant company is or claims to be a member of a group; and even if he does obtain this information within the two-year period (and the Inspector D learned from the accounts of Gallic Management Co. Ltd. that *that* company at least claimed that Gallic Leasing was a member of a group of which Gallic Management was the principal member) until he knows which companies in the group are to surrender losses he will not be able to check to see whether the accounting periods coincide or whether an apportionment will be necessary or whether the losses of the surrendering company are of a kind capable E of being surrendered against the claimant company's profits. It is thus he submitted essential that the claim should at the very least identify the surrendering company.

Mr. Moses did not go so far as to submit that under s 264(1)(b) the claimant must obtain the consent of the surrendering company or companies F before submitting his claim. That would impose a degree of rigidity which cannot have been contemplated by the legislature. The determination of the profits of the claimant company and of losses available to be surrendered by way of relief against those profits might take considerably more than two years: apart from delay in submitting and obtaining the agreement of the Inspector to the tax computations there might be appeals to the G Commissioners and beyond. A surrendering company could not reasonably be expected to decide whether or not to surrender its losses or part of them until its accounts had been finally determined; its willingness to surrender might depend on the amount of the losses when finally ascertained.

H Mr. Moses accepted (rightly, I think) that the words, "A claim for group relief ... (*b*) shall require the consent of the surrendering company" should be construed not as imposing the requirement of consent to the making of a claim but as requiring consent to be obtained before the claim is given effect. Mr. Moses also accepted that the claim need not specify the amount to be contributed by each surrendering company if there is more than one, I although he reserved this question for argument in a higher court if my observations in *Procter & Gamble Ltd.* v. *Taylerson*[1] [1988] STC 854, at page 866 "b" to "c", are disapproved in the Court of Appeal. He submitted that the claimant must nonetheless identify in its claim the companies in the group by which surrenders to an aggregate amount equal to the group relief claimed will be made.

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[1] 63 TC 481.

Mr. Goldberg submitted that the case for the Crown rests on a confusion between a claim for relief and the working out of the claim. There are three processes which must be followed through before a claim can be finally determined and relief granted or refused. There must be a claim by a company within the group; it must be established that a company or companies within the group has or have available losses of the appropriate kind; there must be consent by one or more of those companies to the surrender of the losses towards the relief claimed. There is a time-limit within which a claim must be made: there is no time-limit within which the consent of the surrendering company or companies must be given.

I have come to the conclusion after some hesitation that Mr. Goldberg's approach is to be preferred. Mr. Moses' submissions if well founded, would lead to some very anomalous and I think unjust results. Suppose for instance that company "A" is a member of a group which includes companies "B" and "C". Company "A" made a profit in a given accounting period of £15,000 and claims group relief specifying company "B" as the company by which the surrender will be made. In the event company "B" refuses to consent or perhaps is unable to consent to the surrender before its accounts are finally determined. The claim is invalid, and company "A" fails to obtain group relief even though company "C" had losses available to be set against company "A's" profit and is willing to surrender them, unless, of course, there is still time for company "A" to make another claim within the two-year period. I can see no reason for importing into this group of sections a requirement that produces that anomalous result. The scheme of the legislation works perfectly well if all that the claimant is required to do is to claim group relief, whether in respect of the whole or a proportion of its profits or a specified sum, leaving that claim to be allowed or disallowed when its profits and the losses of other group companies are finally determined and any necessary consents are obtained. There is no detriment to the Crown. No relief will fall to be afforded until the claim is established. In the meantime the claimant company may apply for the postponement of tax on an actual or estimated assessment. That is what happened in this case. At that stage it is open to the Inspector to require the claimant company to indicate the companies from which the claimant company hopes to obtain a surrender, and in cases of doubt he may wish to be satisfied that those companies are within a group of which the claimant company is a member and that they are likely to have available losses referable to the relevant accounting period. But that only arises if a claim for postponement is made, and as the Inspector has a discretion whether or not to agree a postponement the Crown is fully protected.

In my judgment, therefore, this appeal succeeds. It is unnecessary to consider whether a claim for relief must be in writing and signed by or on behalf of the claimant company and whether it need be a claim for relief on all or a proportion of its profits or for a specified sum, or whether a claim for group relief to the whole extent of the losses available within the group would suffice, and I express no opinion on those points.

Appeal allowed, with costs.

A The Crown's appeal was heard in the Court of Appeal (Fox, Balcombe and Stocker L.JJ.) on 5 and 6 December 1990 when judgment was reserved. On 13 February 1991 judgment was given unanimously in favour of the Crown, with costs.

B *Alan Moses Q.C.* and *Launcelot Henderson* for the Crown.

David Goldberg Q.C. for the Company.

The following cases were cited in argument in addition to the cases referred to in the judgement:—*Elliss* v. *BP Oil Northern Ireland Refinery Ltd.* C 59 TC 474; [1987] STC 52; *Farmer* v. *Bankers Trust International Ltd.* TC Leaflet 3238; [1990] STC 564; *Procter & Gamble Ltd.* v. *Taylerson 63* TC 481; [1990] STC 624; *Regina* v. *Arkwright* (1848) 18 LJNS 26.

D

Fox L.J.:—[Delivering the judgment of the Court] This is an appeal by the Revenue from a decision of Vinelott J. that a valid claim had been made for group relief under s 258 of the Income and Corporation Taxes Act 1970 ("ICTA"). The claim was made by Gallic Leasing Ltd., ("the taxpayer company") in respect of its profits for the accounting period ending on 31 March E 1982.

Section 258(1) of ICTA provides that relief for trading losses may be surrendered by one company within a group of companies and on the making of a claim by another company in the same group may be allowed to that company by way of relief from corporation tax.

F

The subsection is in the following terms:

> "Relief for trading losses and other amounts eligible for relief from corporation tax may in accordance with the following provisions of this Chapter be surrendered by a company (called 'the surrendering company') which is a member of a group of companies and, on the making G of a claim by another company (called 'the claimant company') which is a member of the same group, may be allowed to the claimant company by way of a relief from corporation tax called 'group relief'."

H The taxpayer company was at all material times a member of a group which included five other companies. During the accounting period to 31 March 1982, each of those companies sustained trading losses which were capable of being surrendered. All the companies had accounting periods to 31 March.

I Section 264(1)(c) of ICTA provides that a claim for group relief

> "... must be made within two years from the end of the surrendering company's accounting period to which the claim relates."

The issue in the case is whether the taxpayer company made a valid claim before 31 March 1984.

The other material facts relating to the claim are as follows: A

(1) On 1 October 1982 the Inspector sent to the taxpayer company a notice of assessment to corporation tax for the period to 31 March 1982. On 31 October 1982 an appeal was lodged on behalf of the taxpayer company by its accountants. In the notice of appeal application was made to postpone payment of tax (which was due on 1 January 1983). The notice of appeal B (which is a printed form) bore a manuscript note at its foot stating: "Profits will be covered by group relief".

The postponement was agreed by the Inspector on 15 November 1982.

(2) On 30 June 1983 the accountants sent a copy of the accounts of the C taxpayer company for the period ending 31 March 1982 to the Inspector, together with a corporation tax calculation.

The profit and loss account showed nothing payable in respect of tax. Note 6 to the accounts under the heading "Taxation" set out the corporation tax payable at 52 per cent. on the profits for the period, and an equivalent D amount of group relief.

(3) The Inspector acknowledged receipt of the accounts and computations on 18 July 1983. He added that he had no inquiries to raise and awaited details of the group relief.

E

(4) The accounts of two of the other companies in the group—Gallic Shipping Ltd. and Gallic Management Co. Ltd.—were sent to the Inspector in August 1983 and June 1983 respectively. The accounts do not show that any reliefs were to be surrendered.

(5) There was no further correspondence, or supply of information by F or on behalf of the taxpayer company, until after 31 March 1984. In particular, no notice of consent by any company in the group to the surrender of any losses was given to the Inspector by any of the companies by 31 March 1984.

The issue is whether the notice of appeal or the accounts (or the both G together) constituted a "claim" for any group relief by the taxpayer company.

We should now refer further to the statutory provisions. The statutory references are to ICTA.

(a) As we have already indicated, s 258(1) permits trading losses and H other amounts eligible for relief to be surrendered by one company within a group and "on the making of a claim" by another company in the same group may be allowed to the claimant company by way of relief from corporation tax.

(b) Two or more companies may make claims relating to the same sur- I rendering company and the same accounting period of that surrendering company (s 258(3)).

(c) One company is deemed to be a member of the same group as another if it is a 75 per cent. subsidiary of that other company, or if both are 75 per cent. subsidiaries of a third company (s 258(5)).

A (d) The amount of surrendered relief may be set off against the total profits of the claimant company's corresponding accounting period, subject to certain exclusions (s 259).

(e) Where the accounting period of the claimant company does not coincide with the accounting period of the surrendering company, the losses B available for surrender are reduced by applying a fraction of which the numerator is the period common to both companies, and the denominator the length of the accounting period of the surrendering company. The profits against which the losses so reduced can be set are reduced by applying a fraction of which the numerator is the period common to the two accounting periods and the denominator the length of the corresponding accounting C period of the claimant company (s 261).

(f) If a company joins or leaves a group during an accounting period, the profits and losses are apportioned on a time basis, and s 261 is then applied (s 262).

D (g) A surrendering company must give consent (s 264(1)).

Section 42 of the Taxes Management Act 1970 contains general provisions as to relief to be given upon the making of a claim. Section 42(5) provides that a claim shall be in such form as the Board may determine. No E determination as to the form of a claim for group relief has been made by the Board.

The Revenue assert that no claim for group relief was made by the taxpayer company within the two-year period. On appeal, the General Commissioners for the City of London upheld the Revenue's contention. On F appeal to the High Court, Vinelott J. allowed the appeal.

The first question is: what is the nature of the claim with which the case is concerned? In answering that, it is necessary to bear in mind that the basis of the statutory provisions as to group relief is that each claim to losses of a surrendering company is a separate claim. Although the relief is conveniently G referred to as group relief, the group only consists of two companies which must satisfy the 75 per cent. shareholding requirements of s 258(5). There may be a number of claims, but the number depends on the number of surrendering companies. In relation to a particular claim, there will be one claimant company and one surrendering company. Accordingly, each claim must be considered separately. This is emphasised by the provisions of H s 264(1)(c), which relates each claim to a particular surrendering company. The two-year provision is tied to the surrendering company's accounting period to which the claim relates.

Thus far, therefore, a claim must be a claim to losses or reliefs surrendered by a particular company.

I Secondly, the claim must relate to specific losses or reliefs. That follows from s 258(1), which provides that:

> "Relief for trading losses and other amounts eligible for relief from corporation tax may ... be surrendered ... and, on the making of a claim by ... (... the 'claimant company') ... may be allowed to the claimant company by way of relief from corporation tax ..."

The Revenue accept, as we understand it, that losses may be claimed in any objectively determinable manner—for example, in figures or as proportions of total losses or subject to a limit or by reference to a formula relating to the losses of the surrendering company or the profits of the claimant company for the relevant accounting period.

A claim, it seems to us, must be in such a form that the Inspector is able to accept or reject it, wholly or partially, within the provisions of the legislation. A claim which does not identify each surrendering company and the amount surrendered by that company is not a valid claim. Its content is not such that the Inspector can determine whether it should be accepted or not. A claim, of course, can be accepted in a different amount from that claimed. There may well be disputes as to questions on the facts and the law. But to constitute a claim, a sufficiently defined quantification of the sums to be surrendered is, it seems to us, a necessary requirement. That does not mean that it must be immediately quantifiable. It may have to await figures and calculations not yet available.

In the present case, the documents relied upon as constituting the claim are:—

(i) the manuscript note on the notice of appeal of 31 October 1982 "Profits will be covered by group relief";

(ii) the taxpayer company's accounts to 31 March 1982 (sent to the Inspector on 31 October 1982) which state, in note 6:

> "Corporation Tax at 52 per cent. on profits of the year—£167,000
> Group relief—£167,000."

These statements give no indication of the identity of a surrendering company or companies, or of the amount to be surrendered by any company. They do not, in our view, constitute a valid claim.

The contention of the taxpayer company, in effect, is that there is a sufficient claim if, within the two-year period, the claimant company notifies the Inspector that it claims group relief on the whole of its profits. All further information to explain and justify the claim can be supplied outside the two-year period. If that were right it would, it seems to us, largely deprive the statutory time-limit of real effect. It seems to us improbable that Parliament, having imposed a time-limit for claims, can have intended such a consequence. It can be said that if the Inspector feels that there is undue delay by a claimant company in providing necessary information relating to the claim, he can issue a notice of assessment and let the company appeal. We do not, however, think that it is acceptable in relation to the present issue.

The purpose of the appellate procedure is to resolve disputes, not to extract information which the taxpayer has failed to give.

Thompson v. *Goold & Co.* [1910] AC 409 and *Commissioners of Inland Revenue* v. *Hood Barrs* 39 TC 683, do not, in our view, assist the taxpayer company. They are examples of claims based on existing and ascertainable facts. In the case of a claim in the present form the claim cannot be resolved until the taxpayer discloses who are the surrendering companies and what are the amounts to be surrendered. The taxpayer leaves itself free to disclose

A those particulars when it thinks fit. On the taxpayer company's case, the identity of the surrendering company and the amounts to be surrendered need not be determined at all at the time of the claim. They can be determined at a future date outside the two-year period.

In a case such as *Thompson* v. *Goold & Co.*, the employer knows of the
B accident and knows of the claim. He is in as good a position as anybody to know what is a reasonable sum to offer. The Inspector, in such a case as the present, is not in any comparable position. He does not know the essential facts required to base a valid claim.

Mr. Goldberg, for the taxpayer company, referred us to a number of
C examples which he said might give rise to difficulty on the Revenue's case.

The examples undoubtedly show that it will not always be easy to demonstrate logically why one claim which does not satisfy the statutory criteria should fail, while another which does satisfy those criteria should succeed. The short answer is that Parliament, having established these criteria, it
D is for the courts to apply them. But what the Court is applying is an arbitrary time rule. The arbitrary nature of the rule has the consequence that there are bound to be some hard cases and some cases which give rise to the logical difficulties which we have mentioned. The problem is exemplified by facts postulated by Vinelott J. in stating his conclusions on the case. He said
E at page 14A(1);

> "I have come to the conclusion after some hesitation that Mr. Goldberg's (for the taxpayer company) approach is to be preferred. Mr. Moses' (for the Crown) submissions, if well founded, would lead to some very anomalous and I think unjust results. Suppose for instance
F that company 'A' is a member of a group which includes companies 'B' and 'C'. Company 'A' made a profit in a given accounting period of £15,000 and claims group relief specifying company 'B' as the company by which the surrender will be made. In the event company 'B' refuses to consent or is perhaps unable to consent to the surrender before its accounts are finally determined. The claim is invalid, and company 'A'
G fails to obtain group relief even though company 'C' had losses available to be set against company 'A's' profit and is willing to surrender them—unless, of course, there is still time for company 'A' to make another claim within the two-year period."

We quite see the force of the Judge's point here. There is a hardship
H (assuming it to be the law that consent cannot be given outside the two-year period). But it is not, we think, really an anomaly. It is simply a hardship arising from a time-limit provision.

We should, however, observe in relation to the question of hardship that the two-year period is a period from the end of the surrendering company's
I accounting period to which the claim relates (s 264(1)(c)). Since it is tied to the end of the surrendering company's relevant accounting period, Parliament must have regarded the two years as adequate to enable the identity of the surrendering company and the amount surrendered to be decided upon. If, as we understand Mr. Goldberg to suggest, the period may in some

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(1) Page 412C/E *ante*.

cases be inadequate, that is a matter for amending legislation. Parliament having evidently directed its mind to the matter, we can only give effect to the statutory language.

There are two further matters to which we should refer. First, as regards consent to the claims, there was no issue before the Commissioners as to that, and no evidence was directed to it. Accordingly the Revenue neither sought nor obtained a finding that any necessary consent was not given during the two-year period. The Revenue, contrary to their previous practice, do now seek to say that consent must be given within the two-year period. Since, however, the matter does not, on the view which we have taken, affect the result of this appeal and there are no findings of fact relating to it, we do not think it appropriate to express any views about it.

Secondly, as regards s 114(1) of the Taxes Management Act 1970, the Judge held (rightly) that, since he held that there was a valid claim, it was unnecessary for him to decide whether a claim for group relief is a "proceeding" to which s 114(1) applies. The point was raised again on this appeal. Since, however, the Revenue are, in our view, right in contending that a valid "claim" must identify the surrendering company and the amount of losses to be surrendered, it cannot be said to be in conformity or to accord with the intent and meaning of s 258(1) of ICTA to apply the section so as to validate the claim in this case.

Looking at the whole matter we conclude that the Revenue are correct and that there was no valid claim in the present case, and that the appeal accordingly succeeds. We think however, as indeed Mr. Moses concedes, that the Revenue might have been more helpful to taxpayers than they have been. Section 42 of the Taxes Management Act confers powers on the Revenue to settle a form of claim. They have not, in fact, done so, and we think it is in the interests of both sides that taxpayers and their advisers know what information has to be provided in order to make a valid claim. That would reduce disputes and delay.

We allow the appeal.

Appeal allowed, with costs.

The Company's appeal was heard in the House of Lords (Lords Keith of Kinkel, Templeman, Oliver of Aylmerton, Goff of Chieveley and Lowry) on 28 and 29 October 1991 when judgment was reserved. On 28 November 1991 judgment was given unanimously against the Crown, with costs.

Alan Moses Q.C. and *Launcelot Henderson* for the Crown.

David Goldberg Q.C. and *Mrs. F. Cullen* for the Company.

No cases were cited in argument.

Lord Keith of Kinkel:—My Lords, I have had the opportunity of considering in draft the speech to be delivered by my noble and learned friend Lord Oliver of Aylmerton. I agree with it, and for the reasons he gives, would allow this appeal.

Lord Templeman:—My Lords, for the reasons given by my noble and learned friend, Lord Oliver of Aylmerton, I would allow this appeal.

Lord Oliver of Aylmerton:—My Lords, Chapter I of Part XI of the Income and Corporation Taxes Act 1970 contains provisions enabling the company which is part of a group of companies to claim reliefs available to other companies within the group by way of relief from corporation tax for which it is liable. The question at issue in this appeal relates to the form in which such a claim requires to be made if it is to be valid.

The Appellant Company, Gallic Leasing Ltd., is a wholly-owned subsidiary of Gallic Shipping Ltd., a company which had, at the material time, a number of other subsidiaries and which was itself a subsidiary of Gallic Management Ltd. On 1 October 1982 an estimated assessment to corporation tax for the accounting period ended 31 March 1982 was raised upon the Appellant. On 31 October 1982 the Appellant appealed the assessment and, at the same time, applied to postpone payment of the full amount of the tax claimed, stating as the ground for postponement that "... profits will be covered by group relief". On 15 November 1982 the Inspector of Taxes agreed the postponement. On 30 June 1983 the Appellant's accountants sent to the Inspector for agreement a copy of the Appellant's accounts for the period to 31 March 1982 duly signed by the directors together with a computation of its income assessable to corporation tax which was submitted "subject to group relief". Note 6 to the accounts, headed "taxation", stated corporation tax at 52 per cent of profits of the year as £167,000 from which there was deducted the like sum described as "group relief". At the same time the accountants submitted accounts for the same period of Gallic Management Ltd. Thereafter, on 5 August 1983, accounts were submitted for Gallic Shipping Ltd. On 18 July 1983 the Inspector acknowledged receipt of the Appellant's accounts and concluded by saying "I have no inquiries to raise and now await details of the group relief". Thereafter nothing further appears to have happened for some eighteen months save that I infer that accounts of other companies in the group for the same accounting year—in particular, West Bay Shipping Ltd., Interflow (Tank Container System) Ltd. and Fairmile Construction Co. Ltd.—were submitted to the Inspector for agreement. On 18 January 1985 the Inspector wrote to the Appellant's accountants agreeing the Appellant's profits for the year in question at £321,291 and adding "I should now like particulars of any group relief to be claimed". Subsequently a schedule of group relief was submitted but on 4 December 1986 group relief was formally refused on the ground that "... no claim was made within the time-limit prescribed by s 246(1)(*c*) (sic) Income and Corporation Taxes Act 1970". The reference to s 246 is plainly a misprint for s 264 which provides a two-year time-limit for making claims. From this decision the Appellant appealed to the General Commissioners who upheld the Inspector's decision, holding that the references to group relief in the notice of appeal of 31 October 1982, in the note on the accounts and in the accountants' computation of assessable income did not, either severally or collectively, constitute a valid claim to group relief, but amounted to no more than an intimation that group relief would or might be claimed in the future. On appeal to the High Court, Vinelott J., [1989] STC 354 on

2 March 1989, allowed the appeal holding that in order to make a valid claim to group relief all that was required was for the claimant company to make it clear that a claim was being made and that it was unnecessary to identify either the surrendering companies or the amount of the relief to be surrendered by each. On 13 February 1991 the Court of Appeal [1991] STC 151 reversed Vinelott J.'s decision, holding that it was essential to a valid claim for group relief that the surrendering companies be identified and the amount of the relief surrendered by each be quantified. From that decision the Appellant now appeals to your Lordships' House, leave for that purpose having been obtained on 9 May this year.

The Act of 1970 contains numerous references to the making of claims for reliefs of various kinds, from relief for small maintenance payments (s 65(4)) or trade losses (ss 168, 177) to relief for copyright payments (s 389), relief from tax on delayed remittances (s 419) and double taxation relief (s 497(4)). At the same time, Parliament provided, in s 42 of the Taxes Management Act 1970, a general code intended to govern the procedure to be employed in making such claims. Section 42(1) provides that where the Taxes Acts provide for relief to be given on the making of a claim, the section shall have effect unless otherwise provided for. Thus every claim is to be made to an inspector (subs (2)) and provision is made in subs (3) for an appeal against an inspector's decision. As regards the form or content of any such claim, however, the section leaves this to the determination of the Board of Inland Revenue. Subsection (5) (so far as relevant at all to this appeal) provides as follows:

> "A claim shall be in such form as the Board may determine and the form of claim—(*a*) shall provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the knowledge and belief of the person making the claim, and (*b*) may require—(i) A return of profits to be made in support of the claim ..."

Section 43 provides that, subject to any longer or shorter period prescribed, no claim is to be allowed unless it is "made" within six years from the end of the chargeable period to which it relates. However, in the determination of how a claim is to be made and when it is to be deemed to be valid or complete, these two sections are in fact totally unhelpful, because, as your Lordships will have been as surprised as I was to learn from Mr. Moses Q.C., speaking on instructions, the power conferred by s 42(5) has never been exercised in the 22-odd years that have elapsed since the Act was passed. Thus, for the determination of what constitutes a "claim" in any given case and when it is to be deemed to have been made, we can effectively put this section on one side and are compelled to rely upon such guidance as is offered by the individual provision for relief to which any alleged "claim" relates.

Group relief was, at the material time, regulated entirely for relevant purposes by ss 258–264 (inclusive) of the Income and Corporation Taxes Act 1970. Section 258(l) provides:

> "Relief for trading losses and other amounts eligible for relief from corporation tax may in accordance with the following provisions of this Chapter be surrendered by a company (called 'the surrendering company') which is a member of a group of companies and, on the making of a claim by another company (called 'the claimant company') which is

A a member of the same group, may be allowed to the claimant company by way of a relief from corporation tax called 'group relief'."

To find out what constitutes a "group", for the purposes of the section, reference has to be made to subs (5)(*a*) which provides that two companies shall be deemed to be members of a group of companies if one is the 75 per
B cent. subsidiary of the other or both are 75 per cent. subsidiaries of a third company.

Thus group relief is, by definition, the allowance to one company, the claimant, by way of relief against its liability for corporation tax of the reliefs by way of trading losses or otherwise of another company to which the
C claimant stands in the relation postulated by subs (5), which reliefs are surrendered by that other company. That allowance is permitted "...on the making of a claim" by the claimant and that expression clearly invokes s 42 of the Taxes Management Act 1970. It tells us, however, nothing more about the procedure for making a claim.

D The types of group relief are enumerated in s 259. It covers, for instance, relief for trading losses, capital allowances, management expenses of an investment company and charges on income. This section contains no clues as to the form in which the claimant company's claim may be made, but it does serve to underline the very real difficulties which may be involved in
E quantifying a claim until not only the accounts of the claimant for the period in question but also those of all the other companies in a group relationship which may have available reliefs have been finally settled and agreed with the Revenue—a process which, in the case of a large group, may take a very considerable time.

F The only other section bearing on the making of a claim is s 264, subs (1) of which provides that:

> "A claim for group relief—(*a*) need not be for the full amount available, (*b*) shall require the consent of the surrendering company notified to the inspector in such form as the Board may require, and (*c*) must be made within two years from the end of the surrendering company's
G accounting period to which the claim relates."

Again, however, this is not of great assistance. Requirement (*a*) is purely negative and indicates that where an amount of relief is or becomes available in a surrendering company it does not have to be, though it can be, claimed *in toto*. The highest that this can be put is that it indicates what *may* be
H included in a claim. It goes no distance towards indicating what *must* be included. Requirement (*b*) indicates nothing about the form or contents of the claim but merely that, whatever be the form of the claim, it requires for its validity a consent of the surrendering company. Once again, the Board has not laid down any form for a consent, but in any event it was conceded before Vinelott J. that a consent is not a condition precedent to a claim but
I only to its acceptance and that the giving of consent is not subject to the mandatory time-limit in requirement (*c*). The Crown did not, in the Court of Appeal, contend that consent was required to be given within the two-year period. As regards requirement (*c*) this indicates, it is true, that the claim is envisaged as "relating" to a particular accounting period of the surrendering company, but that would be implicit in any event since it would be made in relation to the accounting period of the claimant company and s 259 makes

it clear that the allowable reliefs are those in the accounting period corresponding with that of the claimant company.

One is ultimately thrown back to whatever assistance one can derive from s 258 itself. Subsection (1) is simply an enabling provision. It enables available reliefs to be surrendered and it enables another company in the group "on the making of a claim" to set those reliefs off. It is helpful only as containing a definition of "group relief" (i.e. the relief allowed to a claimant company from reliefs surrendered by another company with which it is in a group relationship). It does not, however, indicate any order in which the events leading to such allowance (i.e. surrender, claim and consent) are to take place (by suggesting, for example, that surrender must necessarily precede the claim) and there appears to be no reason why a claimant company should not make its claim to group relief before it knows the extent of any available reliefs or whether the company to which they are available is willing to surrender them. On this analysis the making of a claim serves no other purpose than that of alerting the Inspector to the fact that reliefs are to be sought by the claimant.

If that is right, then the documents relied upon by the Appellants sufficiently constituted a claim for the purposes of the section. The Inspector, who received the accounts with the references to group relief at the same time as he received the accounts of other companies in the group in which the relationships were clearly set out, cannot have been under any misapprehension as to the existence of a group or that the Appellant was claiming reliefs anticipated to be available within the group to an extent necessary to extinguish the tax liability on its profits. Indeed the correspondence shows that he so understood the position and, as Vinelott J. observed in the course of his judgment ([1989] STC 354, 362), the combined effect of the documents sent to the Inspector was precisely the same as if the accounts had been accompanied by a letter saying,(1) "We hereby claim group relief under s 258(l) in respect of the full amount of the profits of the taxpayer company for the accounting period to 31 March 1982, being the amount shown in the profit and loss account". The position subsequently taken by the Revenue, when details were submitted in response to the Inspector's request following the agreement of the Appellant's accounts, may seem, on the face of it, a little less than meritorious having regard to the Board's own omission in the 15 years which had elapsed since the passing of the Act to specify its own requirements for a claim. If the Revenue is right on the construction of the Act of 1970, however, that is irrelevant.

The argument advanced by Mr. Moses on behalf of the Revenue starts from an assumption regarding the purpose of the two-year time-limit prescribed by s 264(1)(*c*). This, it is said, must have some more specific purpose than that of merely encouraging the timeous submission of accounts and alerting the Inspector to the fact that relief under s 258(l) is being sought so that he knows, before raising an assessment, that it may require to be reopened to the extent that relief is ultimately agreed. The purpose, it is argued, is to ensure that, within the defined period, the Inspector has all the necessary material to enable him either to accept or to reject the claim and, if he accepts it, to give effect to it. Thus, it is argued, there is an irreducible minimum of information which a claim, to be valid as a "claim" within the

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meaning of subs 258(1), must contain. This consists of (1) the identification of the claimant company; (2) the amount of profit against which relief is claimed; (3) the identification of each surrendering company; and (4) the amount of the relief of each surrendering company to be surrendered and the origin (e.g. trading loss, capital allowance and so forth) of the relief surrendered expressed either as a firm figure or as a proportion of the total available relief. As a fall-back from this position, an alternative submission is advanced that the very least that is required is an identification of each surrendering company in respect of which the claim is being made. It may be convenient to label these two alternative formulations as "the first and second submissions".

As regards the first submission, this involves ascribing to s 264(1)(*c*) an assumed purpose which is nowhere expressed in the statute and then arguing backwards from that assumption in order to discover the minimum required to fulfil that assumed purpose. It is an approach which evidently appealed to the Court of Appeal, but I have not, for my part, found it possible to accept it, for, quite apart from the fact that it involves reading into the statute a very great deal which is simply not there and which cannot be gathered from the words either of the section or of s 42 of the Taxes Management Act 1970, it seems to me to impose a rigidity on the operation of the section for which there is no warrant either in the language used or in the scheme which the section was seeking to effect. The Court of Appeal, having postulated that the claim must be in a form which would enable the Inspector to accept it or reject it, nevertheless contemplated both that the claim might not be quantifiable within the time-limit allowed and that it might be accepted in an amount different from that claimed. By implication, this would seem to permit acceptance of an amount of relief in excess of that claimed, which must, on this analysis, I should have thought, necessarily involve a new claim so far, at least, as the excess is concerned. Mr. Moses, if I understood his submission aright, does not accept this but would contend that the claim must specify in each case the maximum amount claimed by way of relief in the case of each surrendering company and in the case of each source of relief within such company even though a lesser amount may upon investigation be actually allowed by the Inspector. There is, it is argued—and, in my view, argued correctly—no such thing as "group relief" in the abstract. The definition of group relief in s 258(1) demonstrates that it is conceived of as a one-to-one transfer of available reliefs involving the claimant on the one hand and a particular second company with which the claimant has the group relationship described in subs (5)(*a*). The claimant may in a single document claim reliefs from a number of different companies with which it has the necessary relationship, just as two or more claimant companies may claim reliefs from a third company in the necessary relationship; but each claim is a separate claim which has to be considered individually and without regard to any other parallel claim which is being made in relation to one or more other surrendering companies. That I find entirely acceptable as a premise, but the conclusion drawn from it that it follows that the claim must contain all the irreducible minima already referred to is one which, in the end, depends upon nothing more than the assumed purpose of s 264(1)(*c*). But the making of that assumption argues, as it seems to me, an ignorance on the part of the legislature of the realities of life. If the purpose is to enable the Inspector to have, within the limited period, all the information necessary for him to adjudicate on the claim, then there can be no room for any subsequent adjustment of the figures on which, by definition, the claim has to be based, for that would defeat the object. If on the other hand, the assumption is that the

claimant must, within the period, tie himself to particular amounts in respect of particular reliefs from particular surrendering companies, then the system becomes divorced from practicality. Anyone familiar with company accounts cannot be unaware that it takes a considerable time to prepare and agree group accounts and that their agreement with the Revenue not only may, but very frequently does, involve correspondence and negotiation over an extended period and also, not infrequently, appeals to the Commissioners and beyond which are highly unlikely to be concluded within the two-year time-limit. Moreover, the Inspector will not in any event be able to accept any claim unless and until he receives the consent of the surrendering company provided for in s 264(l)(*b*) and once it is conceded, as I understand it to be, that the consent does not necessarily require to be lodged within the time-limit prescribed, the assumed object of the time-limit is inevitably negatived in any event.

In the end, the question is one which depends simply upon the proper construction to be placed upon the words which the legislature has used and I find myself unable to deduce either from the words used or from the scheme of the section the rigid requirements for which the Revenue has contended. I can, of course, see that it would be convenient for an inspector to have before him timeously such information as to the sources and composition of group relief claimed as would enable him at least to make a start on the process of considering claims to group relief with a view to their ultimate adjudication, but, as the Appellant has pointed out, the remedy for delay in providing details necessary for adjudication lies in the Inspector's hands. He can make an assessment and require payment of the tax assessed. Moreover I can, speaking for myself, see no reason at all why, if the submission of claims in a generalised form such as that involved in the instant case is proving inconvenient, the Board should not exercise its powers under s 42(5) of the Taxes Management Act 1970 by specifying a form of claim which requires the claimant to state from which members of the group reliefs are claimed and to state to the best of its ability the amounts and sources of the reliefs to which it hopes to establish an entitlement. In the end, the submission came down to this, that the time-limit imposes a requirement that before its expiry the claimant company must not only commit itself to claiming group relief but must commit itself irrevocably to the precise amounts or proportions claimed from each source of relief in each surrendering company, albeit it may not know either the extent of the reliefs available or whether consent to surrender to this extent or at all is going to be given. I find no warrant in the terms of the section for this requirement.

As regards the second submission, it is argued that, since group relief postulates the one-to-one relationship to which I have referred, it follows that a "claim"' to group relief must, to constitute a claim at all, at least specify that company within the group by which the reliefs are being or are to be surrendered. Such an argument might be said to derive some support from subs (3) which speaks of claims by one or more claimant companies "relating to the same surrendering company", thus implying that, at least in this subsection, a claim is envisaged as "relating" to a particular company. It cannot, it is said—and, indeed this must I think be obvious—be sufficient simply to say "I claim", which is meaningless. By necessary implication a claim must be made by an identified claimant and must relate to the corporation tax liability and thus to the profits of that claimant. Section 259, which specifies the reliefs available, necessarily ties those reliefs, and thus group relief, to a particular accounting period. Thus, a "claim" by definition has to be the asser-

A tion by an identified company of a right to set against its profits for a defined accounting period the reliefs available to another group company. A "claim" cannot, for instance, consist of a general assertion that for all future years group relief against whatever profits are made is claimed. Nor equally can a "claim" be made by an annual assertion on 1 April in some such form as "we do not know what (if any) profit we shall make during the year now B current but, if and so far as we do make any, we hereby claim group relief". It is strictly unnecessary for the purposes of this appeal to decide the point, but, for my part, I do feel able to derive from the Act of 1970 that a claim to have any meaning at all must at least be a claim by an identified claimant to relief against identified or identifiable profits for an identified accounting period. But if this be right, it is asked, must it not also at least identify the C company from which the reliefs are to come more precisely than by saying that they are to come from some one or more companies within a group? I was at one time attracted by this argument on the ground that, since "group relief" is defined as the relief allowed to the claimant for the trading losses and other eligible amounts of a surrendering company, a claim which does not identify the surrendering company, whatever else it may be, is not a D claim to "group relief". I have, however, felt compelled to reject this. It is pointed out that, on this footing, a claim to group relief in respect of, e.g. the trading losses (unspecified) of companies A to F inclusive (being all the companies in the group) would be a good claim if one once rejects, as I believe that one must, the minimum criteria propounded by Mr. Moses in his first submission. It would follow that a claim to group relief from all those com- E panies in the group which are eligible to make surrenders and have reliefs available would be a good claim at any rate in any case where the composition of the group was either known to or made known to the Inspector to whom the claim was made. But if one gets to that point, it must equally follow that where the composition of the group is made known to the Inspector (as it was in this case) a simple claim by the claimant in the form "we claim F group relief from the profits shown in our accounts for this period" must have the same effect, for it conveys, although in a different form, exactly the same information. There is nothing in the Act which requires the composition of the group to be made known to the Inspector before or after the claim is made or before or after the two-year time-limit for making the claim. In the end, I find myself persuaded by Mr. Goldberg Q.C.'s submission that G there really is no half-way house between Mr. Moses' irreducible criteria, which I have felt compelled to reject for the reasons which I have endeavoured to explain, and the acceptance of the validity of a claim in the more generalised form of the claim made in the instant case. I would, accordingly, allow the appeal.

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Lord Goff of Chieveley:—My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Oliver of Aylmerton. I agree with it and, for the reasons which he gives, I, too, would allow the appeal.

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Lord Lowry:—My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Oliver of Aylmerton. I agree with it and, for the reasons given by my noble and learned friend, I, too, would allow the appeal.

Appeal allowed, with costs.

[Solicitors:—Messrs. Hewitt Woolacott & Chown; Solicitor of Inland Revenue.] A