Appeal number: UT/2016/0191

Withholding tax for manufactured overseas dividends in stock lending transactions – issue whether tax contravenes Article 63 TFEU and whether it is justified – proposed reference to the CJEU before substantive appeal – Art 267, Treaty on the Functioning of the European Union – forthcoming exit of UK from the EU - whether questions of EU law should be referred to the CJEU – principles to be applied – decision not to refer

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

COAL STAFF SUPERANNUATION SCHEME TRUSTEES LIMITED **Appellant**

- and -

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

TRIBUNAL: MRS JUSTICE ROSE, CHAMBER PRESIDENT

Sitting in public at The Rolls Building, Fetter Lane, London EC4A 1NL on 10 March 2017

Malcom Gammie QC and James Rivett instructed by Pinsent Masons LLP for the Appellant

Rupert Baldry QC and Oliver Conolly, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. The Appellant ('the Trustee') is the Trustee of the British Coal Staff Superannuation Scheme. It has applied to the Upper Tribunal for an immediate reference to the Court of Justice of the European Union (CJEU) of certain questions which, the Trustee argues, must be answered before the Tribunal can dispose of an appeal from the decision of the First-tier Tribunal ('the FTT') released on 27 June 2016 ('the FTT Decision'). In that decision, the FTT (Judge Jonathan Cannan and Mrs. Helen Myerscough) dismissed the Trustee's appeal against a decision of HMRC refusing the Trustee's claims for repayment of the disputed withholding tax.

2. The appeal in the Upper Tribunal against that FTT Decision has not yet been heard. The Trustee argues that the sole issue that arises in the appeal relates to the compatibility of the relevant domestic law with the requirements of EU law. The Trustee accepts that it would be unusual for the Tribunal to make a reference to the CJEU at this stage, without first hearing the appeal. But, the Trustee argues, we live in unusual times. Shortly after the hearing of this application, HM Government served notice under Article 50(2) of the Treaty on European Union of the United Kingdom's intention to withdraw from the European Union. Although the precise terms of that withdrawal are still to be negotiated, it appears to be a core policy of HM Government that our exit from the EU will bring an end to the jurisdiction of the CJEU in the United Kingdom. This means that any delay in referring the questions on EU law that arise in this case may result in the Trustee being peremptorily deprived of its ability to seek the assistance of the CJEU in resolving the EU-law based claim that has been made.

3. HMRC submit that there is no justification for the Tribunal to depart from its usual practice when considering whether to make a reference to the CJEU in a particular case. Applying the case law of the courts and the Upper Tribunal on the question of whether and when to make a reference, it makes sense for the Tribunal to hear the appeal first before deciding whether it needs to refer questions to Luxembourg. HMRC submit that the service of notice under Article 50 should have no influence on the progress of this case. If the Tribunal ultimately decides that a reference is necessary but that is superseded by legal developments that we cannot foresee, so be it.

The appeal

4. The dispute in this appeal relates to a claim for repayment of withholding tax in connection with stock lending transactions entered into by the Trustee in the tax years 2002-2003 to 2007-2008. The total amount of tax reclaimed is over £8.8 million.

5. The Trustee holds a portfolio of different shares. These include shares in overseas companies as well as in companies registered in England. To make additional money from its holdings, the Trustee enters into stock lending arrangements in respect of both English and overseas companies' shares. Although these arrangements are referred to as stock *lending* in fact it is always the case that the borrower becomes the legal and beneficial owner of the shares so that he can lend or

sell them to other people during the period of the 'loan'. That means that it is the borrower who may (if he has not sold on the shares) receive any dividends paid by the company on the shares during the period of the loan. Under the contractual terms governing the stock lending agreement, the borrower must pay the Trustee sums equivalent to the dividends paid by the company on its shares over the period. Such payments are known as manufactured dividends and when they are paid in relation to overseas registered companies are known as manufactured overseas dividends, or MODs.

6. The taxation of MODs for the relevant tax years was dealt with in Schedule 23A to the Income and Corporation Taxes Act 1988. Those provisions were subsequently re-enacted without material differences in the Income Tax Act 2007. The legislation was repealed with effect from 1 January 2014.

7. Where the manufactured dividend related to a UK company and the stock borrower making the payment was a UK resident company, the payment was treated as if it were a dividend paid by the borrower. The effect of this was that the stock lender was treated as receiving a dividend from a UK company. Since the Trustee is exempt from tax, this meant that it did not have to pay any tax on the receipt of such manufactured UK dividends and no tax was deducted at source.

8. A different regime applied for payments of MODs. Where the stock borrower paid a MOD to a lender in respect of a dividend to which a foreign withholding tax would normally apply if the lender received an actual dividend from that company, the borrower was required to deduct the withholding tax from the MOD. The lender was then deemed to have suffered overseas tax on the MOD. In the ordinary course, that would give rise to the possibility of double taxation relief. However, the legislation provided that relief was not available if the lender did not have a UK income tax liability for the year of assessment. So the Trustee because it is exempt from payment of tax on dividends has no liability against which to set its tax credit.

9. Thus, as the FTT noted in paragraph 107 of its Decision, in one of the sample transactions involving a loan of 5.5 million shares in an Italian company loaned to Lehman Bros in London, when a dividend of €1,210,000 was paid by way of dividend. The Italian tax authorities operated a withholding tax of 15%. The borrower actually paid a MOD of €1,028,500 being the dividend net of that tax. The Trustee would be entitled to a tax credit of €181,500 but it would have no income tax liability against which to set off that tax credit by way of double taxation relief. The dividend would be exempt from tax in the UK in the Trustee's hand.

10. The FTT considered whether the UK's refusal to repay that €181,500 to the Trustee as a person who was exempt from UK tax on the MOD amounted to a breach of EU law as a restriction on the free movement of capital. Article 56 of the Treaty Establishing the European Community (now Article 63 of the TFEU) and Article 58 (now Article 65) provide so far as relevant:

"**Article 56**

1. Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Members States and third countries shall be prohibited.

…

Article 58

1. The provisions of Article 56 shall be without prejudice to the right of Member States:

(a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested.

(b) to take all requisite measures to prevent infringement of national law and regulations, in particular in the field of taxation …

2. The provisions of this Chapter shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with this Treaty.

3. The measures and procedures referred to in paragraph 1 … shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 56."

11. The FTT identified three issues; whether there is a movement of capital, whether there is a restriction on the movement of capital and whether any such restriction can be justified. On the first issue, the FTT held that the payment of a dividend was indissociable from the capital movement comprised in the acquisition by foreign residents of foreign securities dealt in on a stock exchange. Although the transaction was referred to as a loan and a loan might not of itself involve a movement of capital, in fact the stock lending transactions did involve the acquisition and re-acquisition of foreign shares. The transactions did therefore involve a movement of capital.

12. The FTT went on to state that the EU authorities establish that a restriction on capital is something which makes a crossborder movement of capital more difficult or less attractive, or is liable to deter or dissuade cross-border investment. It is not necessary to establish that the provision has actually had the effect of deterring cross-border movements of capital. It is sufficient that it is capable of having that effect. The FTT identified the question before it as whether a pension fund would be dissuaded from purchasing or retaining foreign shares in favour of UK shares because of the MOD regime. They held that it would not – any disadvantage arising from the fact that the company was foreign arose not from the MOD regime but because income from overseas shares suffers a withholding tax for which the UK does not give credit to people exempt from tax, whether that income arises in respect of actual dividends or MODs. The Trustee would have suffered the overseas withholding tax if it had not lent the shares had received the actual dividend directly from the company, net of the withholding tax imposed by the foreign tax authorities. There was no

additional dissuasive effect in the MOD regime. The MOD regime did not therefore involve a restriction on the movement of capital.

13. The FTT went on to consider whether if, contrary to their finding, there were a restriction, it could be justified. Justification can be established by reference to the cohesion of the tax system, the preservation of the balanced allocation of powers of taxation between the Member States and the prevention of tax avoidance. They held that the MOD regime prevented what would otherwise be a straightforward way for pension funds to avoid the provisions which restrict credit for foreign withholding taxes. It was also justified on the basis of fiscal cohesion in the UK tax system. The FTT therefore dismissed the appeal.

14. Judge Cannan granted permission to appeal against the FTT Decision on 31 August 2016 on all grounds identified by the Trustee in its notice of appeal, on the basis that it is 'reasonably arguable' that the FTT Decision contains an error of law.

15. The Trustee then lodged its appeal with the Upper Tribunal on 30 September 2016 relying on the grounds for which permission had been given. The grounds of appeal noted that this appeal was a test case for a number of other proceedings brought in the UK by pension funds, charities and others exempt from income tax. The first ground of appeal asserts that the FTT erred in law in holding that the MOD withholding tax did not amount to a restriction on the movement of capital. This was because:

(1) The FTT appears to have based its Decision on a misunderstanding of the effect of the domestic regime.

(2) The FTT erred in analysing the issue of whether there was a restriction by reference to a perceived purpose of the MOD withholding tax in achieving equivalence between an investment return in the form of actual dividends and the manufactured dividends.

(3) Contrary to the FTT Decision, the MOD withholding tax did not reflect the tax treatment of the underlying foreign dividends in certain circumstances (because the level of tax was a deemed amount rather than an actual amount).

(4) The FTT was wrong to assert that the operative provision that might dissuade an investor like the Trustee from investing in overseas registered companies was the imposition of tax by the foreign tax authority not the withholding tax regime here. The Trustee asserts that the investor would consider the potential impact of both the MOD regime and the foreign withholding tax and that is sufficient for the MOD withholding tax to constitute a restriction under Article 56.

16. The second main ground of appeal is that the FTT erred in law in holding that any restriction was justified. So far as the cohesion of the tax regime is concerned, the Trustee argues that a key element in any such claim for justification should be the need to balance some fiscal advantage conferred on the taxpayer. There is no such advantage here. Further, the tax was not focused on preventing tax avoidance but was of entirely general application.

17. Initially the Trustee's request for a reference to the CJEU was limited to questions on the issue of justification on the basis that the issue of restriction was acte clair in its favour (and contrary to the finding of the FTT). However, by the time of the hearing before me, the Trustee accepted that it would be appropriate for questions to be sent to the CJEU on both the issue of restriction and the issue of justification.

18. Article 267 TFEU provides:

> 'The Court of Justice of the European Union shall have jurisdiction to give preliminary rules concerning:
>
> (a) The interpretation of the Treaties;
>
> (b) The validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;
>
> Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.
>
> Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.'

19. Mr Gammie's first submission on behalf of the Trustee is that in the unprecedented circumstances arising from the service of the notice under Article 50, the Upper Tribunal is in effect 'a tribunal of a Member State against whose decision there is no judicial remedy under national law'. If that is right, then the Upper Tribunal *must* make a reference of a question if a decision on that question is necessary to enable the Upper Tribunal to give judgment on the Trustee's appeal. Mr Gammie accepted that usually the Upper Tribunal is not such a tribunal because section 13 of the Tribunals and Courts Enforcement Act 2007 provides for appeals against the Upper Tribunal's decision to go to the Court of Appeal. But since the Upper Tribunal will be the last UK court or tribunal with the ability to make a reference, a purposive or teleological construction of Article 267 requires the Upper Tribunal to consider itself bound by the third paragraph of Article 267. He referred to the well-known statement of Lord Diplock in *Henn and Darby v DPP* [1981] AC 850 at 905 describing the teleological approach to the interpretation of the Treaties that the CJEU applies; seeking "to give effect to what it conceives to be the spirit rather than the letter of the Treaties; sometimes, indeed to an English judge, it may seem to the exclusion of the letter'.

20. Mr Gammie submits that the substantive appeal in this case is not likely to be listed until October 2017 at the earliest. If the Upper Tribunal's decision on the appeal then takes some months to prepare, it may not be until well into 2018 before the Upper Tribunal is able to consider further the desirability of a reference to the CJEU. At that point it would be very unlikely that a preliminary ruling could be

sought and obtained from the CJEU before the expiry of the two year period envisaged in Article 50. I will assume for the purposes of this application that the Trustee's rather pessimistic assessment of the speed of progress of this appeal is correct.

21. Mr Gammie's alternative submission was that even if the Upper Tribunal has a discretion inherent in the second paragraph of Article 267 rather than being required to make a reference, the impending exit of the United Kingdom from the EU means that the Upper Tribunal should exercise its discretion in favour of making a reference now.

Discussion

22. I accept for the purposes of this application that the appeal raises issues of EU law that are not acte clair. I do not agree with Mr Gammie's submission that that conclusion necessarily follows from the fact that the FTT granted permission to appeal in this case. It is possible for an appellate court to decide that an EU law question is acte clair even if the lower court considers that a contrary view has a sufficient probability of success to merit the grant of permission to appeal.

23. I also accept that it appears at present that HM Government intends to bring an end to the jurisdiction in the United Kingdom of the CJEU. That much is clear from Chapter 2 of the Government White Paper (Cm 9417) *The United Kingdom's exit from and new partnership with the European Union* published in February 2017. Chapter 2, called "Take control of our own laws" states:

> "2.3 The Court of Justice of the European Union (CJEU) is the EU's ultimate arbiter on matters of EU law. As a supranational court, it aims to provide both consistent interpretation and enforcement of EU law across all 28 Member States and a clear process for dispute resolution when disagreements arise. The CJEU is amongst the most powerful of supranational courts due to the principles of primacy and direct effect in EU law. We will bring an end to the jurisdiction of the CJEU in the UK. We will of course continue to honour our international commitments and follow international law."

24. However, the points of detail as to how this will be achieved have not yet been explained by the UK Government. In particular, we do not know what kind of transitional provisions will be put in place by the Government and the CJEU or other EU institutions to deal with people in the same position that the Trustee anticipates being in as at the date of the UK's exit, namely in the course of litigation to determine issues of directly applicable EU law that have arisen during a period before that exit took place.

25. Mr Gammie argues that the Trustee has enjoyed rights under Article 56 TEC (now 65 TFEU) which are protected by the European Communities Act 1972 and that there is a real risk that any future inability of a UK court or tribunal to make a reference will make it excessively difficult for the Trustee to enforce those rights. The Trustee's submissions in this application invite me to assume that the

arrangements that the Government will make for resolving disputes about the interpretation and application of EU law that are pending at the date of UK's exit will be so unsatisfactory that the Tribunal should change its usual practice and accelerate the making of references to prevent that situation arising wherever possible. I am not prepared to make that assumption. Some solution to the problem that arises in this case will have to be implemented because there are likely to be very many people in the same position as the Trustee may be on the date of exit. Whatever those arrangements are will apply to the Trustee and will be implemented by the courts in accordance with whatever the law dictates. It would not be right to pre-empt that by rushing a preliminary reference off to the CJEU in the hope that the Court will give a ruling before the UK exit.

26. I reject the submission that a purposive approach to the interpretation of Article 267 now means that this Tribunal is a final court which is obliged to refer the case to the CJEU. The interrelationship between the two limbs of Article 267 and their application to the court system in the UK have been settled over many years and the service of a notice under Article 50 cannot change that interpretation now, even adopting the appropriate teleological approach. Similarly, in my judgment the triggering of Article 50 does not alter the test which the Tribunal has hitherto applied when deciding whether, as a matter of discretion it should make a reference.

27. That test was considered recently by Judge Berner in *Capernwray Missionary Fellowship of Torchbearers v HMRC* [2015] UKUT 368 ('*Capernwray*'). In that case the parties applied jointly to the Upper Tribunal before the substantive hearing of the taxpayer's appeal for the Judge to make a reference to the CJEU. Judge Berner referred to the authoritative summary of the approach to be adopted by courts and tribunals in considering whether to make a reference by Sir Thomas Bingham MR in *R v International Stock Exchange of the United Kingdom and the Republic of Ireland Ltd ex parte Else (1982) Ltd and another* [1993] QB 534 ('*Else*'). At p 545 Lord Bingham said:

> "… I understand the correct approach in principle of a national court (other than a final court of appeal) to be quite clear: if the facts have been found and the Community law issue is critical to the court's final decision, the appropriate course is ordinarily to refer the issue to the Court of Justice unless the national court can with complete confidence resolve the issue itself. In considering whether it can with complete confidence resolve the issue itself the national court must be fully mindful of the differences between national and Community legislation, of the pitfalls which face a national court venturing into what may be an unfamiliar field, of the need for uniform interpretation throughout the Community and of the great advantages enjoyed by the Court of Justice in construing Community instruments. If the national court has any real doubt, it should ordinarily refer. I am not here attempting to summarise comprehensively the effect of such leading cases as *H. P. Bulmer Ltd. v. J. Bollinger S.A.* [1974] Ch. 401, *C.I.L.F.I.T. (S.r.l.) v. Ministry of Health* (Case 283/81) [1982] E.C.R. 3415 and *Reg. v. Pharmaceutical Society of Great Britain, Ex parte Association of Pharmaceutical Importers* [1987] 3 C.M.L.R. 951, but I hope I am fairly expressing their essential point."

28. Judge Berner considered that that test had not been overtaken by the decision of the CJEU in Case C-338/95 *Wiener S I GmbH v Hauptzollamt Emmerich* [1998] CMLR 1110. In my view, it has not been overtaken, either, by the service of notice under Article 50. The question before me is therefore the same as the question before Judge Berner in *Capernwray*, namely whether at this stage of the proceedings I am satisfied that this Tribunal will not be able, with complete confidence, to resolve the issues of EU law before it, issues that are necessary to enable the Tribunal to decide this appeal. In considering that, I must have regard to the factors described in *Else* such as the nature of the issues, whether they are likely to have application beyond the particular facts of this case and the existence or absence of an established body of case law of the CJEU setting out the principles that should be applied to these facts.

29. Judge Berner in *Capernwray* also commented on the fact that the application was being made to him before the hearing of the substantive appeal. He said the following:

> "I accept that counsel for both parties have developed the arguments on the issues very fully, setting out not only where they consider there is a lack of clarity in the jurisprudence of the CJEU but also their own respective submissions on the EU law. That is not, however, the same as being in the position of a Tribunal on the substantive appeal which will have heard all the arguments in a different context, namely that of deciding the appeal, with the sharp focus that necessarily provides. It would not, in those circumstances, in my view be appropriate for the test to be that a reference should be made at this stage unless I am satisfied that the Tribunal hearing the appeal will be able to determine the matter with complete confidence. That, it seems to me, would tip the balance too far in favour of making a reference at an early stage, and would encourage such applications without the case proceeding to a substantive hearing, and without the Tribunal being in the best position to judge the degree of confidence it actually has. I have therefore taken the approach that for a reference to be made at this stage I need to be satisfied that this Tribunal will not be able to resolve the relevant issues with complete confidence."

30. I agree with that passage and I find myself in a similar position here. Attached to the Trustee's skeleton argument for the hearing were two appendices, one containing an introduction to the UK taxation of MODs and one setting out in detail the Trustee's position on the issues of whether the regime amounted to a restriction on the movement of capital and whether, if so, it was justified. The Trustee has not yet formulated the questions that it would want to refer but I reject HMRC's criticism of it for that. It is often the case that the parties cooperate in drafting questions for the court to refer only once a decision to refer has been made.

31. Despite that helpful material I do not consider that it is appropriate to make a reference to the CJEU for the following reasons.

32. First it is difficult to decide at this stage how many questions will need to be referred and on what issues. If the MOD regime does not constitute a restriction on capital, then the issues as to justification do not need to be resolved in order to dispose

of the case. If the Upper Tribunal agrees with the FTT that there is no restriction on capital here, it may or may not go on to consider the question of justification. It would not be right, in my view, to refer questions about justification without having a clearer idea of whether those questions actually arise in this case. Contrary to the Trustee's submissions I find that there is a prejudice to HMRC in making the application at this stage since it requires HMRC to devote time and resources participate in proceedings which may prove to be unnecessary. The Trustee gives various examples of where a reference to the CJEU was made by a court before that court had heard argument on the appeal. In those cases, that course may well have been the appropriate one but that does not indicate that it is always appropriate to make a reference at this early stage.

33. Secondly, the Grounds of Appeal assert at various places that the FTT erred in law and that that error arose from a misunderstanding about the effect of the domestic regime or that it erred in its analysis of how a pension fund was likely to be influenced in its purchases of shares by the operation of the MODs scheme. For the purposes of the hearing, the Trustee submitted that the facts surrounding the operation of the domestic scheme were uncontentious. But it would be better in my judgment for the Upper Tribunal to have a full grasp of both parties' contentions as to how the domestic regime operates before deciding whether a reference is necessary and if so what are the right questions to ask.

34. Thirdly, the likelihood of this case having repercussions beyond the facts of this case and the tribunal cases awaiting the outcome of this appeal is limited. This factor, referred to by Lord Bingham in *Else* was expanded upon by the Court of Appeal in *Trinity Mirror plc (formerly Mirror Group Newspapers Ltd) v Customs and Excise Commissioners* [2001] EWCA Civ 65. The Court of Appeal said:

> "Where the national court is not a court of last resort, a reference will be most appropriate where the question is one of general importance and where the ruling is likely to promote the uniform application of the law throughout the European Union. A reference will be least appropriate where there is an established body of case law which could readily be transposed to the facts of the instant case; or where the question turns on a narrow point considered in the light of a very specific set of facts and the ruling is unlikely to have any application beyond the instant case. Between those two extremes there is a wide spectrum of possibilities … "

35. The MOD withholding tax was abolished with effect from 1 January 2014 so the answers to the questions in this case are of historic interest only. The restriction on which the Trustee relies depends on the fact that the pension fund is exempt from income tax; something that arises under the UK domestic regime and is not necessarily replicated in other Member States. I do not see that this is a question of general importance or one which is likely to have any application beyond the cases arising in the UK under this regime.

36. Fourthly, there is an established body of case law from the CJEU both on the question of what constitutes a restriction on the movement of capital for the purposes of Article 56 and on what kinds of grounds are available to the Member State to justify the imposition of a restriction. These are among the basic building blocks of the EU law. They do not require the Tribunal to venture onto unfamiliar fields of law and the Tribunal is very experienced at interpreting EU instruments given that a substantial proportion of the appeals heard concern indirect taxes which are based on EU directives and often raise difficult points of construction. Their application to the facts of the Trustee's case may be difficult but that is not something on which the Tribunal should seek a ruling unless it is really necessary. HMRC point out that before the FTT there was no dispute between the parties as to the test to be applied for determining whether there was a restriction; agreeing that the correct test was as set out in Case C/9-02 *De Lasteyrie du Saillant v Ministre de l'Economie* [2004] ECR I-2409. The real issue between the parties is whether the operation of the MOD regime was in fact likely to dissuade tax exempt funds from acquiring and lending overseas shares rather than UK company shares. It is true that there is no CJEU case on whether an unlawful restriction arises in these particular or very similar circumstances. But the courts and tribunals in this jurisdiction are very familiar with the process of applying established principles to new sets of circumstances and I am confident that it will not prove too difficult to do so in the present case.

37. The same applies in relation to the question of justification. In paragraph 63 of the FTT Decision, the FTT cited several cases in which the CJEU has already considered arguments seeking to justify restrictions on the free movement of capital by reference to the cohesion of the tax system, the preservation of the balanced allocation of powers of taxation between Member States and the prevention of tax avoidance. Having set out those principles, the FTT stated at paragraph 82 that 'it is the application of those principles to the MOD regime that is the real issue between the parties on this appeal'. If the FTT is correct in that assessment of the appeal, then this is not an appropriate case for a reference. I cannot say at the present stage that they were wrong and that there is some reason why one cannot apply those principles from existing case law to arrive at the answer to the present appeal. Even though the CJEU has stated in Case 283/82 *CILFIT v Ministry of Health* [1982] ECR 3415 that a national court is still free to make a reference even if the question appears already to have been decided by the CJEU, the existence of substantial case law from that Court discussing the relevant principles for national courts to apply is an important factor weighing against the making of a reference now.

38. For those reasons I dismiss the Trustee's application for a preliminary ruling at this stage.

TRIBUNAL JUDGE
RELEASE DATE: 26 April 2017