[2013] UKFTT 211 (TC)

TC02625

Appeal numbers: TC/2011/06520, 06522, 06523, 06525 & 06527

INCOME TAX – Discounts – STICS –Corporate Bond stripped of interest and sold to customers of Bank – Whether customer taxable in respect of discount – Whether STICS a deeply discounted security

FIRST-TIER TRIBUNAL
TAX CHAMBER

PHILIP SAVVA, ANDREW SAVVA, MARIO SAVVA, SAVVA SAVVA & KALLIOPI PERICLEOUS — **Appellants**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS — **Respondents**

TRIBUNAL: SIR STEPHEN OLIVER QC
DAVID E WILLIAMS CTA

Sitting in public in London on 27 & 28 November 2012

Hennessy Thompson of Thompson & Co, Accountants and Auditors, for the Appellants

Michael Gibbon QC, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. These appeals arise out of amendments made to the Appellants' self assessment Tax Return for 2005/2006 following the closure of enquiries on 9 February 2011. They concern the question of whether profits made by the Appellants on investments in "STICS" (described in more detail below) should be chargeable to income tax (as is contended by HMRC) or not, (as is contended for the Appellants).

2. There are two questions in these Appeals. First: were the profits made by the Appellants discounts of an income nature being discounts within the meaning of the expression "all discounts" as found in Section 381 of Income Tax (Trading and Other Income) Act 2005 ("ITTOIA") (replacing Section 18 of ICTA 1988)? Second: was the profit of each Appellant a profit "on the disposal of deeply discounted securities" within the meaning of Section 427(1) of ITTOIA?

3. The legal issues as regards all the appeals are the same and there are no relevant differences of fact. We will refer, for simplicity, to the circumstances of the Appeal of Mr Andrew Savva. The answers to both the questions referred to above will in turn depend on an inquiry into what Mr Savva actually acquired when he embarked on the transactions that produced the profit with which this Appeal is concerned. For this purpose we will start by setting out the agreed facts, and, where necessary, our findings of facts. From those we will draw our conclusions as to what Mr Savva acquired and disposed of the course of the relevant transactions; and with that question in mind we will turn to the second question.

"STICS"

4. Sometime in 2004, Mr Savva was made aware of the existence of a "product" being marketed by UBS Wealth Management. The product is known as STICS which stands for "Sterling Investment in Capital Security". On or around 20 September 2004, Mr Savva signed a pre-printed "Key Features Document" in relation to STICS. This recorded the "Objective" of STICS as:

> *"To improve after tax returns compared with holding cash or short to medium term deposits. After tax returns are expected to be 30% and 60% in STICS compared with a normal deposit."*

The product was described as follows:

> *"The client purchases a corporate bond from UBS. The bonds will be issued by financial institutions with credit ratings of A plus or above. The bond purchased will have had its coupons removed ("stripped") and will be sold at a present value reflecting interest rates to redemption. The value of the bond should appreciate during the term and reach par at maturity*"

Under "taxation" it was stated:

> *"We have been advised that the profit on sale or maturity of the bond should be a capital item for tax purposes, not income. The bonds selected are intended to be Qualifying Corporate Bonds. We have also been advised that capital gains on sale of Qualifying Corporate Bonds are exempt from capital gains tax. We recommend that you take your own independent advice on the tax treatment of the investment.*"

5. The Key Features Document had been prepared in advance and supplied to UBS Wealth Management's representatives as part of the marketing materials. An account of the STICS arrangements which UBS Wealth Management disclosed under the Disclosure of Tax Avoidance Schemes ("DOTAS") rules had been given at a meeting between HMRC and UBS Wealth Management in February 2007. We were provided with a note of that meeting ("the Meeting Note"); the note has been approved by UBS and its contents were not challenged by Mr Savva. The account given by UBS AG in its DOTAS Notification of 29 September 2004 is as follows:

> *"The client purchases a corporate bond from UBS. The bond is issued by a financial institution with a credit rating of A plus or above; the bond purchased has had its coupons removed ("stripped") and is sold to the Client at price reflecting the present value (based on current interest rates) of the future redemption value; the value of the bond appreciates during the term and reaches par at maturity.*"

Mr Savva obtains a STICS

6. In preparation for the marketing of the product, UBS had obtained advice as to the tax consequences of the STICS arrangements from a City law firm. The STICS arrangements had been "signed off" by UBS's risk committee.

7. Armed with the Key Features Document, a PowerPoint presentation and the City law firm's advice, UBS's representative had a meeting with Mr Savva in the course of which Mr Savva signed the Key Features Document; this is dated 20 September 2004. The Meeting Note states that "*instructions would normally be given either by phone or by email….. They would not usually be in writing"*. The consequence is a shortage of written evidence of the strip in the STICS arrangements. Signed Key Features Documents were, according to the Meeting Note, "*grouped with those of other clients and passed to the MT Loan Desk for the transaction to proceed"*.

8. A written record (the "Consolidated Advice Report") produced by UBS Wealth Management on 28 September 2004 records Mr Savva as having made a "purchase" of £2,029,000 of "Abbey National Treasury Services 0% 2004 – 29.01.2006 STICS 48" for a gross amount of £1,923,068.20 (representing 94.78% of the nominal value). We refer to the subject-matter of that purchase as "Mr Savva's STICS". The facts relating to Mr Savva's STICS are now summarised.

9. In or around 29 March 2004, an Information Memorandum ("the Information Memorandum") had been issued in respect of a USD 15,000,000,000 Euro Medium Term Note Programme ("the Programme") on behalf of various companies within the Abbey National Group of companies. "UBS Investment Bank" was named as one of the Programme Dealers.

10. By a "final" Pricing Supplement issued by "Abbey" (supplemental to and to be read in conjunction with the Information Memorandum) dated 4 October 2004, various terms of an issue under the Programme of £14,000,200 Fixed Rate Notes due 2006 ("the FRNs") were set out. (We refer to that as "the Pricing Supplement"). UBS Ltd was named as the "relevant Dealer".

11. The terms of the Pricing Supplement showed the issuer as Abbey National Treasury Services plc ("ANTS"). The "issue price" was "100% of the nominal value". The "issue date" was 5 October 2004 and the "maturity date" was 27 January 2006. The "rate of interest" on the FRNs was "4.98% fixed, payable annually in arrears". "Interest payment dates" were 19 October 2004, 19 April 2005, 19 October 2005 and 27 January 2006. The FRNs were to take the form of a registered "Regulation S Global Note". By provisions found on page 16 of the Information Memorandum, Regulation S Global Notes were to be deposited with a common depositary for, and registered in the name of a common nominee of, Euroclear and Clearstream.

12. The FRNs were held in Euroclear. Euroclear is a clearing system that maintains records of the owners of bonds on a computer-based system. Typically there is one physical certificate (known as a global note or bond) representing the entire issue by the borrowing company. This is held by a common depositary on behalf of the clearing system, e.g. Euroclear. Ownership interests in bonds, such as these FRNs, are represented by entries in the accounts of participants or clients of Euroclear. The title to the notes can only be exchanged via Euroclear. The practical effect of the above is that on the issue of each tranche of FRNs to UBS, UBS would be the custodian and all the FRNs would be held to their account in Euroclear. A record of which UBS client held the particular note would be maintained by UBS. UBS's customers, such as Mr Savva, did not receive certificates denoting their interests in the FRNs.

13. It was not in dispute and we accept that, by 28 September 2004 when the Consolidated Advice Report was released by UBS Wealth Management (stating that Mr Savva had purchased £2,029,000 nominal of "ANTS 0% 2004 – 27.01.2006 STICS 48(GBP)"), Mr Savva had acquired rights against UBS; the most significant of those was the right to redemption at face value on the due date.

14. According to the Pricing Supplement, UBS duly obtained the FRNs, the issue date being 5 October 2004. We infer that the £14,200,000 of FRNs covered the requirements contained in the STICS that had been ordered by the then current batch of UBS's customers for the product: the batch included Mr Savva's order placed when he signed the Key Features Document on 20 September 2004 as well as the orders of the other Appellants in this appeal.

Stripping the FRNs

15. When the FRNs were actually stripped is not disclosed by any evidence. There is no dispute that the FRNs were stripped of their coupons. The machinery for stripping is set out in an Operations Information publication issued by Euroclear. This says of "*stripping*" that it is:

> *"…the process whereby interest coupons for future payment dates are separated from the security corpus that entitles the holder to the principal repayment. Each stripped coupon (Coupon Only or CO) or stripped corpus (Principal Only or PO) becomes, in effect, a zero coupon security and is assigned a separate security code, different from the security code of the original security."*

16. Stripping required the "*participant"* to fill in and lodge a form instructing the "detachment" (or stripping) of the coupons. We proceed on the basis that UBS in its capacity as a participant, on some date following the issue to it of the FRNS, instructed Euroclear to detach the coupons from those FRNs. The stripped (Principal only) "corpus" of the FRNs was recorded in Euroclear's records under the name UBS. In UBS's records, the stripped FRNs were, at all material times, allocated to its customers (including Mr Savva and each other Appellant) according to their holdings of STICS product.

Redemption of Mr Savva's STICS

17. The Consolidated Advice Report, produced by UBS Wealth Management on 28 January 2006, records the "settlement" of Mr Savva's STICS for £2,029,000 on 27 January 2006.

The Issues

18. We now turn to the two relevant issues of law. We will address first the question whether the profit determined by reference to the return obtained by Mr Savva on redemption of his STICS is taxable as a discount (under Section 381 of ITTOIA). Section 381(1), we mention, directs that the return cannot be charged to tax both as a discount and as a deeply discounted security. Nonetheless, and with that in mind, it remains relevant to address the second issue, namely whether Mr Savva's profit was a profit "on the disposal of a deeply discounted security" within the meaning of Section 427 (1) of ITTOIA.

Discounts

19. Mr Hennessy Thompson for Mr Savva contended (to use the words in his Skeleton Argument) that *"the profit realised on the redemption of the Eurobond (STICS) should not fall to be taxed for the following reasons: (a) the Eurobond was issued at par and redeemed at par, (b) it is an income bearing instrument, (c) it is not a promissory note, bill of exchange or other instrument which in the ordinary*

commercial usage is issued at a discount and does not carry a right to interest". He submitted that *"Mr Savva's initial investment in the form of a loan to Abbey National to acquire the Bond in exchange for that Loan was a Capital Investment"*. Pointing out that the corpus of the FRN was a Qualifying Corporate Bond, as defined in section 132(3)(b) of TCGA, Mr Hennessy Thompson contended that *"the capital appreciation of the corpus of the Qualifying Corporate Bond is capital appreciation and not interest"*. FRNs were not, he contended, deeply discounted securities; nor was any discount contained in any of the relevant transactions.

20. HMRC contend that Mr Savva actually bought a bundle of rights and it was not relevant to the question of whether he obtained a discount to determine whether those rights consisted of either the original FRNs (stripped of their coupons) or the STICS. If the "securities" in question were the STICS, then they were bought by Mr Savva at a discount; and if they were FRNs (stripped of their coupons), then he was an intermediate purchaser who bought the modified package rights at a discount.

Discounts: the Charging Provision

21. Section 369 of ITTOIA provides that:-

> *"(1) Income tax is charged on interest.*
>
> *(2) The following sections extend what is treated as interest for certain purposes –*
>
> …
>
> *Section 381 (discounts)"*

Section 381 provides that:-

> *"(1) All discounts, other than discounts in deeply discounted securities, are treated as interest for the purposes of this Act.*
>
> *(2) In this section "deeply discounted securities" means securities to which Chapter 8 of this Part applies (profits from deeply discounted securities)"*

The wording of section 381 reflects the wording of Schedule D Case III (b) (see section 18 of ICTA 1988 and its predecessors). Section 18, which applied in September 2004 when the Appellants made their investments provides:-

> *"(1) … Tax under this Schedule shall be charged in respect of…the annual profits or gains arising or accruing … to any person residing in the United Kingdom from any kind of property whatever …*
>
> *(2) Tax under Schedule D shall be charged under the Cases set out in subsection (3) below …*
>
> *(3) The Cases are …Case III: tax in respect of …all discounts …"*

Conclusions on the Discounts Issue

22. The critical question, in determining whether Mr Savva's "profit" was a discount, is whether the wording of the charging provisions, i.e. "all discounts" (in Section 381 of ITTOIA) covers the circumstances in which Mr Savva derived the profit. The enquiry starts with the point at which UBS committed itself to supply Mr Savva with the product. This happened on 20 September 2004 when Mr Savva signed the Key Features Document.

23. At that point UBS committed itself to acquire the FRNs to cover the STICS to be supplied to Mr Savva. It committed itself to strip the FRNs and to hold the stripped "Principal Only" FRNs for the benefit of Mr Savva, the Appellants and any other members of the batch of applicants involved in that STICS issue. For his part, Mr Savva agreed to pay to UBS the sum of £1,923,086.20 being (according to the Key Features Document) the net present value of the FRNs reflecting interest rates to redemption.

24. UBS duly acquired the requisite amount of FRNs (to be issued on 5 October 2004 according to the Pricing Supplement).Whatever the actual date of the stripping, Mr Savva and the other members of the batch interested in the STICS issue had, by reason of their agreements with UBS, no rights to the interest payable by ANTS on the FRNs.

25. The effect of the stripping of the FRNs was that both Mr Savva (as well as the other members) and UBS had interests in the obligations undertaken by ANTS when it issued the FRNs on 5 October 2004. The stripped FRNs remained in Euroclear's books in the name of UBS as the participator. Mr Savva, in common with the other members, was, in right of his STICS, "beneficially entitled" as against UBS to the appropriate portion of the FRNs (i.e. such part as on redemption at maturity would produce the agreed sum of £2,029.000).

26. The difference between what UBS paid to ANTS in return for the issue of the FRNs required to cover the STICS supplied to Mr Savva and the lesser amount of £1,923,086.20 paid to it by Mr Savva was matched by the net present value of the interest payable until maturity on the stripped coupons. The intended (and the actual) result was to put Mr Savva in the same position as he would have been in had he subscribed directly for the FRNS but with no rights to any interest on them. Had he so subscribed, he would then have been involved in a discounting transaction. The transaction did not, of course, take that form. Nonetheless, it seems to us that the purpose and effect of the proposals, in the Key Features Document and as explained in the rest of the documentation, was for the customer (such as Mr Savva) and UBS to agree to create a separate "Principal Only" right in the FRNs, the value of which was to be equal to the amount to be paid by the customer to UBS.

27. In the circumstances, the FRNs were stripped to order to fulfil the common purpose of UBS and Mr Savva (and the other members of the batch interested in the

STICS issue). The price paid to UBS by Mr Savva and the others reflected the net present value of the stripped FRNs and stood at a discount to maturity. The increased amount payable to Mr Savva was, on that basis (and without the need to rely on any authority), a profit on a discount taxable as income under Case III of Schedule D or section 381(1) ITTOIA.. Further, to address Mr Hennessey Thompson's argument, while we agree that the FRNs were issued at par and redeemed at par, Mr Savva never paid more than their net present value, i.e. the discounted amount, following the stripping of the interest coupons.

28. Principles relating to the taxation of discounts were established by the House of Lords in *Brown v National Provident Institution* [1921] 2 AC 222 (*"NPI")*. The case was concerned with, among other things, the application of the second rule of the Third Case of Schedule D of Section 100 of the Income Tax 1842 to certain transactions in Treasury Bills. The Treasury Bills were variously of 3, 6 and 9 month's maturity. Some had been sold during their currency; others had been held until maturity.

29. At page 254 of the *NPI* decision, Lord Sumner emphasised the width of the statutory language:

> *"The rule…relates to 'profits' on all discounts from whomsoever made. There is no definition of discount in the statutes; no restriction of it to transactions in use in the year 1842; no evidence of its meaning as a term of art at any time"*

30. The abbreviated nature of the statutory language was noted. This resulted in judicial interpretations. Lord Atkinson, on page 250 of *NPI*, considered – "The words are not happily chosen, but must, I think, be taken to mean 'all profits arising from discount'". Viscount Cave adopted the approach of Scrutton LJ in the Court of Appeal and, on page 238, considered that "The expression 'profit on a discount'… is probably elliptical for 'profit on a security bought at (or a transaction involving) a discount'".

31. Viscount Cave, at page 238 of *NPI*, emphasised that a purchase, in that case of a Treasury bill from the Treasury, was a transaction by way of discount. He went on to say – "*if it were decided otherwise, an easy way would be opened to money lenders of evading the payment of tax on their interest on short loans*". He then observed that the legislation invited no investigation on what accretion was capital and what was income; the whole profit was to be treated as an income profit. He observed at pages 238-9 that a relevant factor of importance was that the amount secured by the bill remained unaltered.

32. In the circumstances of that case, the House of Lords concluded that profits had been made on discounts within the meaning of Third Case of Schedule D. Here, the rights attaching to the STICS are and remain embedded in the underlying security, i.e. in the FRNs that were obtained as part of the scheme. Moreover, the amounts secured by the FRNs remained the same. By purchasing, at a discounted price, the benefit of repayment at par on maturity of the FRN, Mr Savva came to make a profit on a

discount in the sense of a "profit on a security bought at (or a transaction involving) a discount" (see the words of Viscount Cave at 238, cited above).

33. *Ditchfield v Sharp* [1983] 3 All ER 681 was concerned with a promissory note purchased on 26 February 1970 (which had originally been issued on 23 May 1969). This had been redeemed on maturity on 1 February 1973, and the purchasers received £460,065 more than they had paid. The Court of Appeal held that this profit was a discount within the meaning of paragraph (b) Case III of Schedule D.

34. The Court of Appeal (see Fox LJ at 684 c-d) noted that the promissory note had fallen within the OED definition of discount. This had been cited by Lord Atkinson in *NPI*. The definition of "Discount" includes the following:

> *"… as used in commerce (1) is defined to mean a deduction (usually at a certain rate per cent) made for payment before it is due of a bill or account….(2) the deduction made from the amount of a bill of exchange or promissory note by one who gives value for it before it is due".*

At no point in *Ditchfield v Sharp* had it been suggested that discounts were, as has been contended here by Mr Hennessey Thompson, limited to discounts on bills, accounts, bills of exchange or promissory notes (all mentioned in the OED quotation). That would have been inconsistent with the expression "all discounts", and with, for instance, the views of Viscount Cave in *NPI* cited above.

35. The Court of Appeal in *Ditchfield v Sharp* rejected an argument that the profit was of a capital nature. In doing so (at page 685), they pointed out that it was for the Appellant to displace the assessment and the question for the Court was what was the proper conclusion on the facts. Fox LJ referred to and applied *Lomax v Peter Dixon* [1945] KB 691: in circumstances where there was no interest payable as such, a discount "*will normally, if not always, be discount chargeable under Case III, r.1(b)"* (as the legislation then was). Fox LJ went on to say: "*I see no reason to doubt tha*t *approach. The holder of the discount, must, one assumes, be getting a return for his money. It is up to him to demonstrate the capital quality of the discount if he asserts its existence*."

36. A further point made in the decision of the Court of Appeal in *Ditchfield v Sharp* is that the purchase of a promissory note by an interim holder was a discount (see Fox LJ 684 e-f, referring to Lord Sumner in *NPI*); therefore, whether or not there was a discount on original issue was not relevant if a discount was found on the intermediate transaction. If authority were needed, that displaces an argument, based on Mr Savva's position as an intermediate purchaser presented in reply by Mr Hennessey Thompson.

37. We revert to the facts of the present case. Mr Savva obtained a bundle of rights from UBS. It is not material how those rights are characterised. Whether they amount to a security is not a requirement of the charging provision in Section 381 (1) (and the words of its predecessors). The duration of the STICS tends to confirm that, viewed from the perspective of period to maturity, they fall within the type of

transaction that can amount to a discount; they lasted for some 15 months from purchase to maturity. Significant also is the lack of payment of interest on the STICS; it points in the direction of Mr Savva's profit having been an income return. It is also clear, from Mr Savva's evidence (provided in a Witness Statement) and from the Key Features Document, that the investment was made so that Mr Savva could get a better return than on a bank deposit.

38. Our conclusion is that the "profit" obtained by Mr Savva was within the scope of section 381 of ITTOIA, the charging provision. His purchase was for an amount discounted to maturity. There was no economic return to him other than the discount and the investment was evidently chosen because it provided a better return than the bank deposits. In our view, the transaction falls within the words "all discounts" used in the charging provision.

Deeply Discounted Securities

39. HMRC submit that Mr Savva's profit falls within the alternative head of charge as being a profit "on the disposal of deeply discounted securities" within the meaning of Section 427(1) of ITTOIA. The success of the UBS scheme, and of Mr Hennessey Thompson's argument, both rely for their success on the correct analysis being that Mr Savva purchased the underlying FRNs (albeit stripped of all their coupons). On that basis it was argued that as these securities were issued and redeemed at par, they could not be deeply discounted securities. (See Section 430 of ITTOIA). If however the correct view is, as HMRC contend, that the STICS purchased by Mr Savva were securities separate and distinct from the FRNs, then the deeply discounted security requirements will have been met.

40. A "security", it will be recalled, is deeply discounted security within the definition in Section 430(1) of ITTOIA if, "*as at the time it is issued*" the amount payable on maturity exceeds "*the issue price*" by more than the amount calculated using the formula in Section 430.

41. It is not in dispute, as regards the bundle of STICS rights, that the redemption amount exceeds the price paid for it by the relevant amount. The questions that arise, in deciding whether the profit falls within Section 427(1), are whether the bundle of STICS rights can promptly be described as "securities" and whether the STICS were "issued". We start with the "securities" question.

42. Although the available authorities referred to below derive from the capital gains tax context, that case law throws a light on the meaning of "security" for present purposes.

43. In *Ramsay v IRC* [1982] AC 300, Lord Wilberforce discussed (at 329) the concept of "security" which was clearly a flexible one. He referred back to earlier cases, including *Aberdeen Construction v IRC* [1978] AC 885. He took the view that one of the characteristics which distinguished "a debt on a security" from a security was that the latter might increase in value or be dealt with at a profit (see 329 b-c) (i.e. by virtue of "tradability"). In *Taylor Clark International v Lewis* (1998) 71 TC 226,

at 256-267, the Court of Appeal reviewed the authorities. One issue in that case arose from the contention that a debt on a security needed to be a secured debt. That contention was rejected by the Court of Appeal which concluded from the authorities that, in the context of the "debt on a security" provisions under consideration, there were three principal characteristics to be considered. The first of those indicia was that, to be a security, the debt should be capable of being assigned so as to realise a gain. Second, the debt should bear interest. Third, there should be a structure of permanence.

44. Looked at in the context of the circumstances of the present appeals, the second of these requirements cannot be relevant; that is because many deeply discounted securities are issued as such because they are designed to give a return which is the economic equivalent of interest, which is done through the discount.

45. The STICS have, in our view, a sufficient "structure of permanence" to satisfy the *Taylor Clark International* criteria. Most securities have a term and here the fifteen month period to maturity is sufficient to satisfy that test. The rights comprised in the STICS were, albeit that they were not in fact traded, designed to be "capable of being assigned". We refer to the provision dealing with "sale before redemption" in the Key Features Document. This reads:

> *"Should you wish to dispose of all or part of your bond holding before redemption, you may do so in the normal manner of the transferable security. However it should be remembered that the market for Sterling Corporate Bonds might be volatile and illiquid, therefore it could be difficult to find a buyer of those securities".*

46. Turning now to address the underlying basis of Mr Hennessey Thompson's argument, we need to determine whether the rights which together make up the STICS are capable in law of amounting to securities. In this connection two further matters arise. The first of these is whether there is anything about their origin in the Fixed Rate Notes that prevents the STICS from being securities. In our view, the fact of the continuance of the underlying FRNs is not material. (We acknowledge that the original FRNs were not issued at a discount.) The focus should, however, be on the STICS and their characteristics. The second question is whether the STICS became sufficiently differentiated from the Fixed Rate Notes to constitute separate securities. We are satisfied that there was sufficient differential, not least because Mr Savva's STICS should (for the reasons explained above) have been represented by a distinct PO (Principal Only) entry within the Euroclear system.

47. For those reasons we are satisfied the STICS fell within the expression "deeply discounted securities" in Section 427 (1) of ITTOIA.

48. Were the STICS "issued" within the meaning of Section 430? The word "issued" is not defined for the purposes of the deeply discounted securities provision. Its meaning must be obtained from the context. HMRC submitted that the STICS were marketed and purchased as securities in themselves.

49. We refer *Agricultural Mortgage Corporation v IRC* [1978] 1 CH 72. That case was concerned with the term "issue" in the context of stamp duty provisions charging duty on issues of loan capital. We nonetheless consider it to have relevance to the present circumstances. The Court of Appeal observed that the ratio decidendi of in *Heaton's Steel & Iron Co* (1876) 4 Ch.D 140 and of in *Ambrose Lake Tin and Copper Co.* (1878) 8 Ch.D 635 was that "to constitute an issue of shares there must be something more than a lodgement, and that something may be either registration or the issue of a Certificate". Adapting those words to the loan capital with which the *Agricultural Mortgage Corporation* case had been concerned, Goff LJ observed, at 101 D, that:

> "there must be something which is recognisable as a thing which is or can be issued and that there must be something emanating from the company, being either (i) a document which in itself constitutes a security for loan capital or (ii) some act on the part of the company, such as registration or a letter of acceptance or possibly both or the issue of the certificate whereby the company recognises the rights of and perfects the title of surrender".

50. We accept from the Meeting Note of 27 February 2007 that UBS appears to have aimed to keep to a minimum any written records of its relationship with its STICS clients. Nonetheless, the Key Features Document (a UBS document) offers a description of the STICS and its attributes. The Consolidated Advice Report (also a UBS document) evidences the client's purchase.

51. The description given by UBS to HMRC and recorded in the Meeting Note indicates (as one would expect) an internal record "*of the trade being booked within UBS Investment Bank's own settlement systems with UBS holding the coupons as principal and UBS Wealth Management holding the residual amount for the benefit of its clients*". Something evidently falls to be done on the UBS side both to declare the beneficial interests of the clients in their STICS and to evidence the nature and extent of their interests. What was done amounted, we think, to the "issue" to Mr Savva of his rights under the STICS. The STICS were, in our view, issued by UBS within the meaning of the deeply discounted securities legislation.

Sections 452A to 452G of ITTOIA

48. Finally, it was agreed by the parties that the scheme under consideration in this appeal would, if implemented on or after 2 December 2004, have been caught by ITTOIA sections 452A to 452G. Mr Hennessey Thompson argued that we should give weight to the fact that the law had been changed in this manner when considering the tax effects of transactions that had been implemented before the change took effect. Against that argument, HMRC relied on the words of section 452A(1). This provides:

> "All corporate strips are treated as deeply discounted securities for the purposes of this Chapter, *whether or not they would otherwise be so"*. [Emphasis added.]

We agree with HMRC. The emphasised words indicate that this legislation cannot cast any light on the position before the date on which it took effect. We note that

HMRC's Press Release, issued when these provisions were announced, said (in paragraph 20) that they were intended to "put it beyond doubt" that rights derived from a corporate bond are to be treated as relevant discounted securities. While such a statement cannot, we accept, be determinative of the issue, we consider that nothing in sections 452A to 452G prevents us from reaching the conclusions set out above on the basis of the statute and case law before those sections took effect.

49. For the reasons given above the Appeals are dismissed.

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

SIR STEPHEN OLIVER QC
TRIBUNAL JUDGE

RELEASE DATE: 28 March 2013