[2018] UKFTT 766 (TC)

TC06900

Appeal number: TC/2017/04282
TC/2017/04290

INCOME TAX – relief claimed for trading losses incurred on a venture in Poland – whether or not claimants were trading in partnership or through a corporate vehicle – held trading through a corporate vehicle – appeal dismissed – penalties assessed without maximum discount for telling – held that maximum discount for telling should be given

FIRST-TIER TRIBUNAL
TAX CHAMBER

(1)	**HAROLD WIESENFELD**	**Appellants**
(2)	**ALEXANDER STROM**	

- and -

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

TRIBUNAL: JUDGE PHILIP GILLETT
CHARLES BAKER

Sitting in public at Taylor House, 88 Roseberry Avenue, London, EC1R 4QU on 7 November 2018

Michael Weissbraun, of Michael Pasha & Co, Chartered Accountants for the Appellant

Jeremy Schryber, Officer of HMRC, for the Respondents

DECISION

1. These are the joined appeals of the appellants who both claimed relief for losses from a property development business operating in Poland (the "Polish Losses") which they claimed they carried on in partnership.

2. In HMRC's view, these losses were in fact incurred by a separate legal entity in Poland, Alex Harold Sp zoo ("The Company"), in whose name the transactions had been carried out.

3. At the conclusion of investigations into the tax affairs of the appellants, HMRC issued closure notices denying the appellants the benefits of the Polish Losses. The appellants appealed.

4. HMRC subsequently assessed penalties on the appellants, which were also appealed, in relation to each of the closure notices for making incorrect tax returns.

5. We heard these appeals together because they concerned common facts and issues. Neither appellant was present. Having satisfied us that he was authorised to represent both appellants, Mr Weissbraun informed us that Mr Strom was suffering from serious and long-lasting ill health.

6. At the beginning of the hearing, Dr Schryber apologised for omitting from the bundle a letter dated 17 June 2014 written by Mr Wiesenfeld direct to HMRC, with some enclosures. Although Mr Weissbraun had not previously seen the letter, he did not object, so we decided to admit it together with its enclosures.

Introduction

7. The appellants had claimed income tax relief for trading losses incurred in Poland. They appealed against HMRC assessments to withdraw the benefit of that relief and against penalty notices for making the claims carelessly. In summary, the amounts were:

	Mr Wiesenfeld		Mr Strom	
Year ended April	Losses disallowed	Penalty assessed	Losses disallowed	Penalty assessed
2010	92,998	1,273.21		
2011	70,188	* 3,168.11		
2012	77,227	4,179.16	95,188	2,070.00
2013	59,250	3,349.65	70,188	3,384.54

8. Due to the existence of unrelated losses, HMRC invited us to reduce the assessed liability of Mr Wiesenfeld for 2011 and to reduce the corresponding penalty (marked *) to £1,638.90.

HMRC Procedural Background

9. 15 Feb 2011: HMRC opened investigations into the Appellants' tax affairs under HMRC's Code of Practice 9 "Civil investigation into Cases of Suspected Serious Fraud" (known as COP9). All matters arising were settled by agreement between the parties except the issue of the Polish Losses.

10. 29 Oct 2013: HMRC opened an enquiry into Mr Wiesenfeld's 2010-2011 self-assessment tax return. HMRC requested information and documentation relating to the Polish Losses.

11. 21 Feb 2014: HMRC issued an information notice to Mr Wiesenfeld requesting information relating to the Polish Losses.

12. 21 Mar 2014: HMRC received Mr Wiesenfeld's tax returns for the tax years ending April 2008, 2009, 2010, 2012 and 2013.

13. 25 Jun 2014: HMRC opened section 9A enquiries into Mr Wiesenfeld's tax returns for the tax years ending April 2008, 2009, 2010, 2012 and 2013. HMRC requested information relating to the Polish Losses.

12. 15 Aug 2014: HMRC opened enquiries under section 9A TMA into the self-assessment tax returns for 2011/12 and 2012/13 of Mr Strom. HMRC wrote to Mr Strom's representative for information and documentation relating to the Polish Losses.

The Law

14. Section 64, Income Tax Act 2007 allows an individual to claim income tax relief for a loss incurred by him in carrying on a trade. Section 62 extends that to a loss incurred by an individual trading in partnership. There are various limitations on the relief that are not relevant to this appeal.

15. Schedule 24 of Finance Act 2007 sets out a scheme of penalties for submitting a document of a type described that contains an inaccuracy. That inaccuracy must be due to careless or deliberate behaviour and must lead to any of :

(a) An understatement of a liability to tax,

(b) A false or inflated statement of a loss, or

(c) A false or inflated claim to repayment of tax.

16. Paragraph 4 of the schedule says that an inaccuracy is careless if the inaccuracy is due to a failure to take reasonable care.

The Facts

17. We had before us a large bundle of documents. This included very brief witness statements from Mr Wiesenfeld and Mr Weissbraun and an unsigned draft statement from Mr Strom. HMRC were not therefore able to cross examine or challenge the

witnesses on their evidence. The bundle also included a lengthy witness statement and exhibits from Mr Pumfrey, an HMRC officer. Mr Pumfrey was present but, as his witness statement was unchallenged, he was not called to give oral evidence.

18. Mr Weissbraun stated that he was prepared to give evidence under oath that he had heard Mr Wiesenfeld declare in his presence that the Company was holding its assets on trust for Mr Wiesenfeld and Mr Strom. We considered however that this would amount to no more than hearsay and that although HMRC would have the opportunity to cross examine Mr Weissbraun on what he had heard they would be unable to cross examine Mr Wiesenfeld himself. As such this evidence would have limited value. Had Mr Weissbraun wished to call Mr Wiesenfeld as a witness he could have done so, but he did not.

19. We also had the benefit of brief witness statements from Mr Wiesenfeld and Mr Strom. Again the appellants had plenty of opportunity to make more detailed witness statements but they did not. We therefore relied on the evidence which was presented to us and which made clear that they intended to enter into a partnership.

20. The individuals signed a document dated 10 June 2007 headed up "Partnership Agreement" but referred to as a deed of trust in a good deal of the correspondence. This read:

> **"Partnership Agreement**
>
> This partnership agreement is made between Alexander Strom of {address} and Harold Wiesenfeld of {address}
>
> Both parties will provide equal funds from their own private resources or through bank facilities to purchase and develop property primarily in the Lodz area of Poland. The partnership will be managed through the offices of Mr Wieslaw Nowakowski of Szarady 3, Lodz, Poland. Any loan facility entered into will be the equal responsibility of the partners personally. Mr Nowakowski will have no personal responsibility or liability
>
> In compliance with Polish legislation which permits foreign nationals to invest in property only though a limited company, a company will be formed named Alex Harold Ltd in whom title to any properties bought and traded will be invested. The company will be registered at Mr Nowakowski's home address. Mr Nowakowski (a Polish national) will hold 2% of the shares in Alex Harold Ltd and will be authorized to sign agreements under a Power of Attorney. The balance of 98% shares will be held by Alexander Strom who frequently travels to Poland on other textile related business and who will be holding 50% of the remaining 98% shares in trust for Harold Wiesenfeld.
>
> The beneficial owners of the properties will be Alexander Strom and Harold Wiesenfeld who will each have beneficial ownership of 48% [this should presumably say 49% if Mr Nowakowski

holds 2% of the shares] of any property or assets purchased and will be equally responsible for costs, profits and losses."

21. The agreement therefore sets out the clear intention that the partners will have the beneficial ownership of 48% (or more correctly 49%) of any assets of the company. It was submitted to us that this meant that the company would hold all its assets on trust for Messrs Strom and Wiesenfeld, but this is not what the agreement says. This assertion totally ignores the interests of Mr Nowakowski in the company, and there is no suggestion that Mr Nowakowski's interest in the Company and its assets is, or will be, anything other than a conventional 2% interest in the shares of the company. Importantly, the Company was not a party to this agreement and indeed had not been formed at the time the agreement was entered into. This document could not therefore constitute a deed of trust executed by the Company in favour of the appellants

22. If this is the case, it would be totally wrong of the Company to make a declaration of trust over all its assets in favour of Messrs Strom and Wiesenfeld, since it would deprive Mr Nowakowski of any of the value in those assets. In this respect, the statement of intent in the Partnership Agreement that Messrs Strom and Wiesenfeld will each have the beneficial ownership of 48% of the company's assets is at odds with, and cannot be reconciled with, the previous statement that Mr Nowakowski will hold 2% of the shares in the company.

23. We received no other evidence that the company had made a declaration of trust over its assets in favour of the appellants. As explained above, Mr Weissbraun stated that he was prepared to state under oath that Mr Wiesenfeld had declared in his presence that the company held the assets on trust for the appellants but, since Mr Wiesenfeld was only the owner of 49% of the company's share capital he could not, in any case, bind the company without the agreement of Mr Strom, and we received no evidence indicating that Mr Strom had made a similar declaration.

24. We therefore find, as a matter of fact, that the Company did not make any declaration of trust over its assets in favour of Messrs Strom and Wiesenfeld and that the company, as a matter of simple law, was the beneficial owner of the assets which it held and was directly liable for any costs or other obligations entered into in its name.

25. In accordance with the Partnership Agreement Alex Harold Sp zoo, (a Polish limited company) was registered on 10 August 2007. We use Sp zoo as the abbreviation for the long Polish form.

26. A notary's deed or declaration in Polish recorded the purchase of property. This declaration dated 2 January 2008 is numbered 153/2008. The declaration recorded the purchase of property near Lodz by Alex Harold Sp zoo. Apparently 400,000 Z had been paid as a deposit on 30 October 2007, 1,280,000 Z was to be paid that day with a final instalment of 3,200,000 Z on 10 January 2008. That made a gross price of 4,880,000 Z. According to the notary's deed the 3,200,000 Z was to come from a loan granted by Bank Zachodni WBK of Wroclaw. A bank statement of Alex Harold Sp zoo for a current account with Bank Zachodni WBK shows a receipt and then a

payment of 3,200,000 Z on 7 January 2008. The payment is marked "zaplata czesci ceny zakupu nieruch" meaning, we believe, "payment of part of the purchase price."

27. A loan contract in both Polish and English dated 7 April 2011 recorded a one year loan of 330,000 PLN from Strom International Ltd, of London, to Alex Harold (Ltd or SP zoo). A similar contract dated 25 September 2011 recorded a loan of 124,200 PLN.

28. A valuation report dated March 2011 valued the property in its existing condition at 2,020,670 Z. Three years later, in February 2014 a sales agent wrote:

> "I am writing to confirm that we are still actively marketing the above property as agreed with your Bank. Whilst it is true that there has been little real improvement in land prices your site is still an attractive one that would benefit from development of an apartment block as envisaged and planned.
>
> We have received a number of expressions of interest during the past but to date none have come to fruition. Regretfully the longer the property remains unsold the value diminishes. We are currently entertaining interest at around the PLN 1.2m mark. We are aware that the original purchase price was some PLN 8m and that interest and costs will have increased the cost considerably but with an absence of foreign buyers who historically took an upbeat view on selling prices per square meter we are restricted to locally based buyers who do not have a great deal of disposable income nor can they obtain mortgages of over 75%
>
> We would calculate that the property lost in value in excess of PLN 900,000 in the past year."

29. HMRC obtained copies of the Polish tax declarations of Alex Harold SP zoo from the Polish tax authorities. These showed:

Calendar year	Submitted	Profit or (Loss) Z
2008	08.05.2009	(331,865.12)
2009	31.03.2010	(163,740.79)
2010	15.03.2011	59,401.48
2011	02.04.2012	(129,730.62)
2012	25.01.2013	(27,887.02)
2013		Return outstanding

30. In the bundle was a profit and loss account of Alex Harold Sp zoo for the calendar year 2012 showing an accounting loss of 34,089.89 PLN with a previous year loss of 132,268.26 PLN. There was no operating income. The main costs were

the finance costs of 22,837 PLN and operating costs of 10,964.79 PLN. Other costs and miscellaneous income were trivial. There was no balance sheet shown to us.

31. On 29 October 2013, HMRC opened an enquiry into Mr Wiesenfeld's 2011 tax return, questioning the origin of the Polish losses. This version of the return showed a loss of £70,188.

32. Under cover of a letter dated 17 March 2014, Michael Pasha & Co submitted hard copy tax returns of Mr Wiesenfeld for the tax years 2008, 2009, 2010, 2011, 2012 and 2013. This version of the 2011 return showed a Polish loss of £58,337 rather than the original £70,188.

33. In each of his tax returns from 2008 to 2013 Mr Wiesenfeld answered "Yes" to "Self-employment" and "No" to "Were you in partnership?". He described the business as "Polish property development" or "Poland development" and the business address was the same as his home address. The boxes for the different categories of expense were blank. However the box for the total of those categories did contain a figure. The declared results were:

Year to 5 April	Net loss for tax purposes	Set against other income
2008	23,758	23,758
2009	69,718	35,159
2010	92,998	31,520
2011	58,337 (original version 70,188)	56,319
2012	77,227	75,450
2013	59,250	59,250

34. We had selected extracts from the electronic returns of Mr Strom. These declared "Property development" based at his home address showing:

Year to 5 April	Net loss for tax purposes	Set against other income
2012	95,188	60,532
2013	70,188	66,930

35. The analysis of the 2012 loss showed a single expense of £95,188 in the box "Cost of goods bought for re-sale or goods used".

36. In 2013 the "Cost of goods bought for re-sale or goods used" was £50,000. There appears to be a page missing which presumably showed other expenses to arrive at the loss of £70,188.

37. We do not have any evidence of the date of submission of these returns, but it must have been before HMRC opened their enquiries into these returns on 15 August 2014.

38. In a letter of 9 April 2014, Mr Weissbraun wrote to HMRC explaining a delay in providing information and saying "I have now been informed that in Polish Law, all papers relating to the particular project have to be kept in the country. It is for that reason that those papers were in the country, but my client has now requested that they be sent here".

39. A Polish Court gave judgment on 17 October 2016. The official translation into English by the Court is unclear, but it appears to say that Doroty Wielislaw successfully claimed 22,112.92 PLN plus interest from Nowakowski but that Alexandra Strom had responsibility. Another part of her claim was rejected. Mr Weissbraun said that the claim was by the architect of the project, for fees. Beyond the fact that Doroty Wielislaw was owed money, the documents give no indication of the wider circumstances.

40. Mr Weissbraun suggested that this demonstrated that Messrs Strom and Wiesenfeld were the true beneficial owners of the company's assets and were directly responsible for its expenses.

41. We cannot be sure of the logic behind this statement. If Messrs Strom and Wiesenfeld were indeed directly responsible for the company's expenses then we cannot see why the Court and the Company became involved. Alternatively, under UK law, if a company continues trading whilst insolvent then the directors of the company can become personally liable for the company's liabilities, and it may be that this also holds in Poland. In the absence of a clear English translation of this document, and a fuller explanation of the events leading up to this apparent Court Order, we are therefore unable to put much weight on it.

Submissions

42. In correspondence, Mr Weissbraun had argued that the document of 10 June 2007 was a trust deed that appointed Alex Harold Sp zoo as bare trustee for the two appellants. HMRC had given a number of reasons why this could not be the case, principally that Alex Harrold Sp zoo was not a party to the document and could not be because it did not exist at the time. Also, the document lacked the certainty required to create a trust.

43. During the hearing, Mr Weissbraun said that the Partnership Agreement was clear evidence of an intention by the appellants to buy and develop property in Poland, in partnership, using the company as their nominee. The parties had carried this intention into effect. They controlled the company and did not need a document to ensure that the company acted as their nominee. The individuals had long-standing business dealings with each other in the UK as individuals and not through any company. They had only used a company in Poland to comply with Polish law and the returns made to the Polish authority were only to comply with Polish law. The

individuals took out personal loans to purchase the property. Furthermore, the architect had sued Mr Strom as an individual and not the Company, thus demonstrating that the architect knew that it was the individuals who were trading.

44. HMRC argued that the declared intention was irrelevant. The individuals were only entitled to loss relief if they had in fact carried on a loss making trade as individuals, either alone or in partnership. The Company had submitted returns to the Polish tax authorities on the basis that the company had traded and incurred trading losses. The appellants had failed to show that they had incurred losses as individuals.

Discussion

Losses

45. The burden of proof is on the taxpayers to show that they are entitled to relief.

46. Much of the correspondence focussed on a claim that the document of 10 June 2007 was a trust deed appointing the company as trustee for the individuals. As stated above however, we have found, as a matter of fact, that the company did not make any declaration of trust over its assets in favour of Messrs Strom and Wiesenfeld and that the company, as a matter of simple law, was the beneficial owner of the assets which it held and was directly liable for any costs or other obligations entered into in its name.

47. For the avoidance of doubt, we are clear that that document is not a trust deed. There are numerous reasons including (a) the lack of formality (b) the purported trustee did not yet exist (c) uncertainty of subject matter because the property later acquired was not yet under the control of the purported settlors.

48. There is a lack of clarity about the drafting of the document of 10 June 2007. The last paragraph says that the two individuals would be the beneficial owner of the property [to be purchased] with 48% ownership each. The document is silent about the remaining 4%. By implication, Mr Nowakowski would own 2%, still leaving 2% unaccounted for. We assume that this is simply inaccurate drafting. Mr Weissbraun says that the document is clear evidence of the intention to trade as a partnership of individuals. This may have been their intention, but, in any event, we agree with HMRC that the individuals can only claim relief if, irrespective of the original intention, they in fact went on to incur trading losses as individuals.

49. Mr Weissbraun said that the architect had sued Mr Strom as an individual and not the company thus demonstrating that the architect knew that it was the individuals who were trading. We do not agree. There are several possible reasons why Mr Strom might have been a party to the legal action. There is nothing in the English version of the Court Judgement to explain the background to the claim in a way that is relevant to this matter.

50. Mr Weissbraun said that the individuals took out loans in a personal capacity to finance the purchase of the property. There are a number of ways that the individuals

could have used personal loans to inject funds into the company but we had no evidence about any personal loans or their use. We did however have evidence that the Company borrowed a little over 65% of the purchase price from Bank Zachodni WBK and subsequently took loans from Strom International Ltd, which would seem to contradict the statement made by Mr Weissbraun.

51. So, the evidence for a partnership between the individuals is very weak. The evidence against includes:

(1) The Company bought the property.

(2) There is no contemporaneous document stating that the Company was buying the property other than for its own benefit.

(3) The Company drew up accounts showing that it was trading. It submitted tax returns to the Polish authorities for the calendar years 2008 through to 2012. These returns showed that it made trading losses in four years and a profit in one year.

(4) The individuals did not register a partnership with HMRC and did not submit partnership tax returns. Mr Wiesenfeld's personal tax returns clearly state that he was not in a partnership.

(5) The individuals did not draw up partnership accounts to show their respective contributions, drawings and share of profits and losses. Whilst the preparation of such accounts is not compulsory, it is normal practice where partners are not close relatives.

(6) The individuals submitted their claims as self-employed individuals and not as partners.

(7) The financial records of the project were in Poland without, apparently, copies in the UK.

(8) There is inconsistency in treatment of the costs. Mr Weissbraun said that he calculated the losses of Mr Wiesenfeld by reference to the fall in the value of the property. He did not receive financial information about the administrative and interest costs from Poland until after he had submitted the tax returns and so could not have included them in his calculations. In this regard, we are relying on the statements of Mr Weissbraun because we have not seen any calculations of the losses.

52. Taken together this evidence paints the clearest possible picture that it was the Company and not the individuals that was engaged in a Polish property venture.

53. At the heart of this case is the question of whether or not Messrs Strom and Wiesenfeld were carrying on the trading activities in Poland as individual partners or via the Polish company, Alex Harold Sp zoo. We have decided as a matter of fact that the trading activities in Poland were carried out by the Company, Alex Harold Sp zoo, in its own name, and not by Messrs Strom and Wiesenfeld directly. This therefore disposes of the prime ground of appeal in this case.

54. However, for the sake of completeness we should also consider whether, in the language of HMRC, the vehicle carrying on the trade in Poland was "tax transparent" or "opaque".

55. The question of whether any particular corporate vehicle is tax transparent or not has been addressed in a number of cases over the years. Traditionally, this has not presented many difficulties in the context of UK entities but more difficulty has arisen when examining foreign entities, which, as a result of local corporate legislation, may have some traits similar to those of a UK limited company, which would be tax opaque, and some which are similar to those of an English partnership, which would be tax transparent. The case of *Memec v IRC* [1998] STC 754 addressed the tax status of a German Gmbh and that of *Anson v HMRC* [2015] UKSC 44 the tax status of a Limited Liability Company formed under the laws of the state of Delaware, USA.

56. These cases effectively produced a list of various factors which could be used to assess whether or not a particular corporate vehicle, formed under the laws of a foreign state, was or was not tax transparent.

57. HMRC have considered a number of such foreign corporate entities over the years and have classified them in accordance with the factors set out in Memec and Anson and other similar cases. They have classified a Polish Sp zoo as being tax opaque. We received no submissions from Mr Weissbraun that Alex Harold Sp zoo was anything other than tax opaque and we have not therefore examined its corporate structure by reference to Memec or Anson. We are therefore, for the purposes of this case, content to accept the view of HMRC that it is tax opaque. Messrs Strom and Wiesenfeld cannot therefore be treated as carrying on a trade directly, in their own right, in Poland.

58. It follows therefore that Messrs Strom and Wiesenfeld are unable to offset the losses which arose in Poland against their other UK income as they have sought to do.

59. In passing we note that the individuals, though supposedly partners "equally responsible for costs, profits and losses", claimed different amounts.

Penalties

60. Dr Schryber argued that the returns were inaccurate in that the returns claimed relief for the Polish losses that was not due. That inaccuracy had caused a loss of tax, and, he argued, the inaccuracy was "careless" because it was due to a lack of reasonable care. In particular, the taxpayers did not review what had actually happened. They should have known that they had not put their original plans into action.

61. Mr Weissbraun argued that there was no carelessness because the taxpayers had chosen to put the claims to losses in their tax returns in the belief that they were entitled to do so.

62. As regards penalties, the burden of proof is on HMRC to show that the taxpayers were "careless" and that the penalties were properly calculated. Thereafter, it is for the taxpayers to show a reasonable excuse or special circumstances.

63. An inaccuracy in a return is careless if the inaccuracy is due to a failure to take reasonable care. It is not careless for a taxpayer to prepare his tax return using a basis which HMRC disputes, provided the basis adopted is objectively reasonable.

64. However, in this case, Mr Strom traded in the UK both as a sole trader and through a limited company and so would be aware of the difference. The document of 10 June 2007 stated that Mr Strom travelled frequently to Poland on business and implied that Mr Wiesenfeld did not. In both cases, developing property in Poland was an unusual and complex activity which apparently turned sour fairly quickly. Any reasonable taxpayer would take advice on his tax position. Both individuals had experience of UK property development and could be expected to understand the principles of calculating profits and losses.

65. In our view, given that the factors listed above, which paint the clearest possible picture that the Polish Company carried on the Polish trade, claiming losses as individuals was, at the least, careless.

66. We agree therefore that the behaviour was careless and that the disclosure was prompted. That means the penalty range is 15% to 30% of the tax. The penalty within that range depends upon the quality of the disclosure measured by the three factors of "telling", "helping" and "showing". HMRC allowed the maximum discount for "helping" and "showing". Our impression is that is perhaps too generous but, as the point was not argued, we will not disturb it.

67. HMRC allowed 10% out of a maximum 30% discount for "telling" on the basis that the taxpayers continued to dispute their entitlement to claim the losses. Mr Weissbraun argued that that was the wrong principle. It is not a failure to "tell" if the taxpayer continues to believe that they are right in the period up to the penalty determination. Subsequent events, including the determination of this Tribunal, do not affect that fact. Whilst we are not bound to follow it, we note the HMRC guidance in their manuals at CH82444:

> "If a person disputes that there is an inaccuracy or is unwilling to admit it, this does not necessarily mean that they cannot qualify for a full telling reduction. In order to qualify for the full reduction for telling they must agree that we have a different interpretation of the law and tell us everything we need to know about what we believe is inaccurate and why they disagree. They must do this immediately after we open our check if they know the return or document is not in accordance with our view of the law. If there is a careless inaccuracy that is in dispute, the person must agree that we have a different interpretation of the law and tell us everything we need to know about it immediately after either we tell them about it or they find out about it in another way. Of course, if the person's

view of the law is upheld, the person will have submitted an accurate return or document and therefore no penalty is due."

68. Up to the time of the penalty determinations, Mr Weissbraun was asserting on behalf of the taxpayers that the agreement of 10 June 2007 was a trust deed that made the losses attributable to the individuals. The nature of his assertion was clear enough, even though it was in our view wrong. For that reason, we would give the maximum reduction for disclosure, reducing the penalty rate to the minimum of 15%.

Decision

69. For the above reasons therefore we decided to DISMISS the appeal against the assessments to income tax and national insurance so far as they related to the disallowance of claims to losses incurred on trading in Poland. We partially ALLOW the appeal against penalties by reducing the penalty rate to 15%. The parties are at liberty to return to the tribunal if they are unable to agree the figures.

70. 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.

PHILIP GILLETT
TRIBUNAL JUDGE

RELEASE DATE: 20 December 2018