*Procedure – undertaking governed by Scots law – First-tier Tribunal sitting in Scotland consisting of Scottish qualified judge and both parties being represented by Scottish qualified counsel – First-tier Tribunal treating Scots law as a matter of law and not a matter of fact- First-tier Tribunal refusing to admit expert opinion from independent Scottish qualified counsel as to Scots law– whether First-tier Tribunal had judicial knowledge of Scots law- whether expert evidence of Scots law as foreign law admissible - appeal dismissed*

**Upper Tribunal**

**(Tax And Chancery Chamber)**
**ON APPEAL FROM THE**
**FIRST-TIER TRIBUNAL (TAX CHAMBER)**

**[2023] UKUT 00091 (TCC)**
Appeal No**: UT-2021-000160**

**Sitting in public at George House, 126 George Street, Edinburgh**
**on 23/11/ 2022**

**Decision & Reasons Promulgated**

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**SPRING CAPITAL LIMITED**

Appellant

**and**

**THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS**

Respondents

**Tribunal**: The Honourable Lord Ericht, Judge Dean

**Representation:**

For the Appellant: Michael Upton, Advocate and Timothy Haddow, Advocate

For the Respondent: Andrew Webster KC and Ms Sadiya Choudhury, Barrister, instructed by the General Counsel and Solicitor to HM Revenue and Customs

**DECISION**

## Introduction

1. Spring Capital Limited (the "Taxpayer") wishes to lead, as a matter of fact and not law, expert evidence of Scots law from a Scottish qualified senior counsel. At a preliminary hearing dealing with case management (the "Preliminary Hearing") the First-Tier Tribunal dealt, as a preliminary issue, with the following question which had been posed by the appellant:

> "In the Tribunal is Scots law (a) a matter of judicial knowledge or (b) a matter in which evidence is admissible?"

The First-tier Tribunal held that it was a UK wide Tribunal and Scots law was a matter of judicial knowledge and that therefore the question of admissibility of evidence and therefore the expert witness did not arise (para 99). The Taxpayer appealed to the Upper Tribunal.

## The background to the preliminary issue

2. This case is an appeal against a tax liability and penalties arising out of a transfer of trade by Scottish Salmon and Seafood Ltd ("SSS") to the current appellant, Spring Capital Ltd ( the "Taxpayer").

3. The question of judicial knowledge and admissibility arises in relation to an undertaking given in Court of Session proceedings. The relevance of the undertaking to the current case can be seen from grounds of appeal 1.1 and 2.1 in the current case. Ground 1.1 states:

> "The Undertaking given by H.M.R.C. to the Court of Session on 19th May 2010 (having been adjusted by counsel for H.M.R.C. and the present appellant) ('the Undertaking') bars H.M.R.C. from disputing that Spring Salmon & Seafood Ltd.'s ('SSS's') trade commenced in July 2002, and is accordingly deemed to have been acquired by the appellant at market value by virtue of para. 92 of Sched. 29 to the Finance Act 2002".

Ground 2.1 states:

> "The Undertaking bars H.M.R.C. from challenging the figures for SSS's losses as stated in its accounts".

4. This case is one of a long series of related cases which have been heard in the Court of Session and the First-tier and Upper Tribunals.

5. Scottish Salmon and Seafood Ltd ("SSS") was struck off and dissolved by the Registrar of Companies in August 2007 at a time when HMRC had open enquiries in respect of its accounting periods ending 31 July 2002 to 2004 inclusive and to 31 January 2005. HMRC petitioned the Court of Session for restoration of SSS to the Register of Companies (the "Petition"). The Petition was opposed *inter alia* on the ground of oppression. That ground of opposition was abandoned on the granting by HMRC of the following undertaking:

> "UNDERTAKING
>
> As revised by agreement at court 19 May 2010.
>
> That upon the restoration of the Company [i.e., SSS] to the Register HMRC will forthwith (that is to say as soon as is practicable within the requirements of the Taxes Acts and applicable regulations and procedures) issue closure notices and assessments in respect of the outstanding enquiries into the Company's liabilities. The Revenue will a) make no further demands of the Company's officers or any other person in relation to the said outstanding enquiries, and b) raise no further enquiries into the Company's trade to the date that ceased, namely 31 January 2005. The Company may appeal any assessments made on issue of the said closure notices, if so advised. Apart from assessments made on the closure of the said enquiries the Revenue will have no power to, and will not, raise any assessments on the Company in relation to the said trade to the said date save on the discovery of fraudulent or negligent conduct on the part of the taxpayer within the meaning of s.29 of the Taxes Management Act 1970, and has no present reason to anticipate making any such discovery or discovery assessment."

6. The petition then proceeded to an evidential hearing and Lord Glennie ordered the restoration of the Company (Advocate General for Scotland, petitioner [2010] CSOH 117).

7. Subsequently Lord Glennie, sitting this time as a judge of the Upper Tribunal, required to construe the undertaking in an appeal by SSS ( Scottish Salmon & Seafood v HMRC ([2016] UKUT 313 TCC). Lord Glennie stated (para [37]):

> "The undertaking was an undertaking given to the Court. It should be construed in the same way as any legal document, adhering so far as possible to the plain meaning of the words used in the way in which they would have been understood by the interested parties"

8. After considering the wording of the undertaking in detail he concluded:

> "The clear intention of the undertaking was that the outstanding enquiry could be brought to a conclusion and then that would be that."

9. The First-tier Tribunal hearing in that case ([2014] UKFTT 887 (TC)) had taken place in Edinburgh and was argued by Scottish qualified counsel with the judges including a Scottish qualified Queen's Counsel. The Upper Tribunal hearing before Lord Glennie also took place in Edinburgh and was also argued by Scottish qualified counsel. There is no suggestion in the judgments of either the First-tier Tribunal or the Upper Tribunal that the undertaking was governed by anything other than Scots law. Nor was there any suggestion that the construction of the undertaking under Scots law was a matter of fact which required to be proved by expert evidence.

10. However, it was SSS and not the current Taxpayer who was a party to the UT case heard by Lord Glennie. There were also appeals by the current Taxpayer ([2015] UKFTT 66 (TC), [2016] UKUT 264 (TCC), [2019] UKFTT 699 (TC)). In the [2015] UKFTT 66 (TC) appeal (which was heard in London by an English qualified judge, with the Taxpayer being represented by a director/shareholder), the current Taxpayer and HMRC agreed that the undertaking was governed by English law (para [275]). We are surprised by that agreement. It is difficult to see on what basis an undertaking given to a Scottish court in Scottish court proceedings, which did not have an express English choice of law clause, could be governed by anything other than Scots law. It is also difficult to see on what basis the current Taxpayer, who was not a party to the undertaking, could after the event determine the governing law of an undertaking entered into by SSS. Be that as it may, that is what the parties to the appeal decided and the tribunal in that case proceeded on that basis. That led to the remarkable situation whereby the Contract (Rights of Third Parties) Act 1999, which forms no part of Scots contract law, was applied to a contractual undertaking given to the Court of Session in Court of Session proceedings (paras [276]-[279]). The Taxpayer has now changed its position and in the current case takes the view that it is Scots and not English law which applies to the undertaking. After some initial uncertainty, HMRC confirmed prior to the Preliminary Hearing that HMRC also takes that view.

11. The decision in [2015] UKFTT 66 (TC) was considered at a previous hearing in the current case. That hearing was heard in Edinburgh before an English qualified judge with the Taxpayer being represented by its current Scottish qualified counsel (Spring Capital v HMRC [2017] UKFTT 0465 (TC)). Counsel for the Taxpayer accepted that the Tribunal had a UK wide jurisdiction. He made submissions as to English law as a matter of law and did not lead expert evidence of English law as a matter of fact. He made a submission as to Scots law as a matter of law and did not lead expert evidence of Scots law as a matter

of fact. The judgment notes the English legal submissions at paras [7] and[8] then goes on to say at para [9]:

> "In addition, [counsel for the Taxpayer], while accepting that the Tribunal has a UK wide jurisdiction made the point, especially as the hearing was in Edinburgh, that there was no Scottish authority to support the proposition that an attempt to relitigate an issue is an abuse of process"

12. The Preliminary Hearing which is the subject of the current appeal took place in public at George House Edinburgh. It was heard by a First-tier Tribunal judge who was qualified in Scots law. It was argued by counsel qualified in Scots law. Notwithstanding all of that, the Taxpayer's position was that Scots law was a matter of fact, not law, and required to be proved by expert evidence.

13. The First-tier Tribunal found ([2021] UKFTT 0147 (TC)) that Scots law was a matter of judicial knowledge. Any judge of the Tribunal was eligible to decide matters throughout the UK (Tribunals Courts and Enforcement Act 2007 (the "2007 Act") sec 4, 147). This was also apparent from the criteria of the Judicial Appointments Commission. There were no territorial limits in the Tribunal Rules or in the Senior President of Tribunals Practice Statement Composition of tribunals in relation to matters that fall to be decided by the Tax Chamber of the First-tier Tribunal and the Finance and Tax Chamber of the Upper Tribunal on or after 1 April 2009 dated 10 March 2009 (the "Composition Practice Statement"). In Advocate General for Scotland v Murray Group Holdings Ltd 2016 SC 201 Lord Drummond Young expressly stated that the Tribunal had a UK wide jurisdiction. There was one UK system (2007 Act sec 13). The Tribunal deals with the relevant law before it specifies which appeal court is relevant. Tribunal judges know when they are bound by Court of Appeal decisions and when bound by Court of Session decisions. In certain cases panels of judges from the three jurisdictions had been appointed and this would not have been possible if the different legal provisions were foreign law.

14. The Taxpayer appealed to the Upper Tribunal on the ground that the First-tier Tribunal erred in law in not admitting the Scottish senior counsel's opinion as expert evidence.

**Submissions for the Taxpayer**

15. Counsel for the Taxpayer invited the Upper Tribunal to allow the appeal and remake the First-tier Tribunal's decision to the extent to finding that Scots law was foreign law and not within the judicial knowledge of the First-tier Tribunal when it is deciding a case which arises under the law of England and remit the appeal to the First-tier Tribunal to proceed as accords.

16. Counsel submitted that there was no such thing as "UK law" or "UK legal system". Scotland and England were independent foreign countries unconnected with each other (Union with Scotland Act 1706, art XIX; Union with England Act 1707, art XIX; Stuart v Marquis of Bute (1861) 11 ER 799, per Lord Campbell LC at p805; Orr Ewing's Trs v Orr Ewing (1884) 11 R 600, per Lord President Inglis at p631 and (1885) 13 R (HL) 1, per Lord Blackburn at p17). There was only one significant exception: as the ultimate appeal court of both Scotland and England the House of Lords could decide matters of both Scots and English law regardless of whether it was sitting as a Scots or English Court (Elliot v Joicey [1935] AC 209, per Lord Tomlin at p213 and Lord Macmillan at p236). As a matter of English law, Scots Law was foreign law which may be proved with evidence (Dicey, Morris & Collins, Conflict of Laws (16th edn) at para 1-001; Orr Ewing's Trs at p631; Halsbury, Laws of England, "Conflict of Laws", vol 11, para 711; Phipson, Evidence (20th edn), para 33-92). Previous UK-wide Tribunals did not assume the dual jurisdiction enjoyed by the House of Lords (Burt v HMRC, [2008] STC (SCD) 814. Spring Salmon and Seafood Ltd v HMRC [2005] STC (SCD) 830). Where there were long established legal and constitutional principles, clear, definite and positive enactments were required to overturn them (Leach v R [1912] AC 305 per Lord Atkinson at p311; Thoburn v Sunderland CC [2002] EWHC 195; Akbarali v Brent LBC [1983] 2 AC 309.) The law should be interpreted in such a way as that involves the least alteration of the existing law (Wimpey & Co Ltd v British Overseas Airways Corp [1955] AC 169, per Lord Reid at p191.) An example of such an enactment which endowed the courts with the power to take judicial notice of non-domestic law was sections 2 and 3 of the European Communities Act 1972.

17. Counsel further submitted that the 2007 Act could not be read as overturning the long established principles applied in Burt. Section 26 of the 2007 Act simply provides that the Tribunals may sit anywhere in the UK, regardless of which law applies to the case it is deciding. It does not create a "UK-wide jurisdiction". It is described as governing the "sitting places" and falls under the cross-heading of "miscellaneous". Further, section 13 of the 2007 Act was the antithesis of a necessary implication that the established constitutional position had been overturned. Section 13 gives the Upper Tribunal the power to send an appeal to a different jurisdiction which is intended to deal precisely with circumstances which arise in this appeal: that a First-tier Tribunal and the Upper Tribunal are dealing with an appeal which had arisen under English law but for which it has become clear that a determining question of law is one of Scots law. The House of Lords sitting as a court of Scots law could deal as a matter of law with something which a lower court of tribunal sitting as a court of English law has dealt with as a matter of evidence and (Cooper v

Cooper (1888) 13 App Cas 88). If each of their respective courts had judicial knowledge of the law of the other two countries, sub-section 13(11) and (12) would be superfluous because it would not matter to which court the appeal was taken. He further submitted that section 4 of the 2007 Act did no more than appoint a common panel of judges. The personal knowledge of a judge cannot generally be considered as judicial knowledge (Phipson, Evidence (20th edn) at paragraphs 3-03 to 3-07).

18. He submitted that Advocate General for Scotland v Murray Group Holdings Ltd was, in this appeal, not authoritative or even persuasive. It proceeded on the basis that both parties accepted the UK-wide jurisdiction of the FtT and UT had judicial knowledge of both Scots and English law. The issues argued in the present appeal were not argued or even canvassed before the court.

19. Finally, he submitted that it would be surprising if evidence was not admissible in the Ft-T when that evidence was admissible in the ordinary court (Dicey, Morris & Collins, para 3-004; Halsbury, Laws of England, "Conflict of Laws", vol 19, para 329; Murray at para 49; JXJ v Province of Great Britain of the Institute of Brothers of the Christian Schools [2020] EWHC 1914.) If a matter being within judicial knowledge entailed inadmissibility of evidence about it, the ordinary legislative practice would be adopted to provide that judicial notice was to be taken (Benyon Statutory Interpretation 7th edn section 27(1)) Scotland Act 1998 section 20(6).) There was no authority for the proposition that where judicial notice may be taken of a matter, it necessarily follows that all evidence about it is to be excluded.

**Submissions for HMRC**

20. Senior counsel for HMRC submitted that there was no error of law in the First-tier Tribunal's conclusion that it had judicial knowledge of Scots law because it was a Tribunal with UK-wide jurisdiction.

21. Where legislation has UK-wide application, English courts do not ask for evidence of Scots law nor do Scottish courts ask for proof of English law (R (aaoDK) v HMRC [2022] EWCA Civ 120 at [45]).

22. It was not the site of the hearing that matters but the fact that any judge was eligible to decide matters within the Tribunal's jurisdiction throughout the UK (section 26 of the 2007 Act). The First-tier Tribunal correctly interpreted how the 2007 Act was intended to operate and was entitled to take into account in doing that the criteria issued by the Judicial Appointments Commission the lack of territorial stipulations or limits in the Tribunal Rules, and the lack of

territorial stipulations or limits in the Practice statement on composition of tribunals.

23. The First-tier Tribunal had heard three lead appeals arising in England, Scotland and Northern Ireland Chelmsford City Council v HMRC [2020] UKFTT 432 (TC), Midlothian Council v HMRC [2020] UKFTT 433 (TC), Mid-Ulster District Council v HMRC [2020] UKFTT 434 (TC). The appeals were heard by three judges, together qualified in the three jurisdictions, pursuant to a direction issued by the president of the Tax Chamber of the FtT. The different legal provisions were not treated as foreign law. There was no error in the FtT's reliance on the reasoning in Murray to treat Scots law as being within its judicial knowledge.

24. If a matter is properly subject of submissions such as domestic law, then it is not a matter on which evidence ought to be adduced (Estera Trust (Jersey) Ltd and Anor v Singh and Ors [2019] EWHC 1540 (Comm) at [13]).

**The Tribunals, Courts and Enforcement Act 2007**

25. Section 13 of the 2007 Act states:

> "(11) Before the Upper Tribunal decides an application made to it under subsection (4) [permission to appeal to the appellate court], the Upper Tribunal must specify the court that is to be the relevant appellate court as respects the proposed appeal.
>
> (12) The court to be specified under subsection (11) in relation to a proposed appeal is whichever of the following courts appears to the Upper Tribunal to be the most appropriate—
>
> (a) the Court of Appeal in England and Wales;
> (b) the Court of Session;
> (c) the Court of Appeal in Northern Ireland."

26. Section 26 of the 2007 Act states:

> "**26 First-tier Tribunal and Upper Tribunal: sitting places**
>
> Each of the First-tier Tribunal and the Upper Tribunal may decide a case—
>
> (a) in England and Wales,
> (b) in Scotland, or
> (c) in Northern Ireland,

even though the case arises under the law of a territory other than the one in which the case is decided."

**Analysis and Decision**

27. There is a long-established general principle of Scots law that, in proceedings in Scottish Courts, except for Scots law and other limited exceptions such as EU law and customary international law, all other law is foreign law and is a question of fact. (Walker and Walker Law of Evidence para 15.5.1). A similar rule applies in English law (Dicey and Morris para 3-004). This case raises the question of whether a similar principle applies to a UK tribunal sitting in Scotland.

28. In the context of this particular case, the answer to that question will make little practical difference to the resolution of the substantive issues between the parties and is of academic interest only.

29. The effect of the First-tier Tribunal decision now appealed against is that a First-tier Tribunal sitting in Scotland with a Scottish qualified judge will hear legal submissions on the substantive issues of Scots law relating to the Undertaking from the Scottish qualified counsel hearing before it. If the Taxpayer is successful in this appeal to the Upper Tribunal, the only difference will be that a First-tier Tribunal sitting in Scotland with a Scottish qualified judge will hear expert evidence from additional Scottish qualified counsel on the substantive issue of Scots law relating to the Undertaking, and the Scottish qualified counsel appearing before the First-tier Tribunal will examine and cross-examine the additional counsel and then make factual submissions on the expert evidence. Either way, the First-tier Tribunal will have heard the same arguments and will be able to come to a conclusion on the substantive issue of Scots law.

30. In our opinion, the First-tier Tribunal and Upper Tribunal have judicial knowledge of the law of England and Wales, Scotland and Northern Ireland. That can be seen from the decision of the Inner House in Murray, which was not challenged or criticised on that point in the subsequent appeal to the Supreme Court (2018 SC (UKSC) 15). We consider that we are bound by that Inner House authority, and in any event, even if we are not bound by it, that it is correct in law and should be followed.

31. The full passage from Lord Drummond Young is as follows (emphasis added):

> "[49] The third preliminary issue is the manner in which the Inner House should deal with questions of English law in hearing an appeal from the Upper

Tribunal under the Tribunals, Courts and Enforcement Act 2007. Normally English law, like any legal system other than Scots law and other systems such as the law of the European Union that have been incorporated into Scots law, is treated as foreign law, which is a question of fact and must be established by evidence. In the absence of evidence or agreement between the parties, it will be presumed that foreign law is the same as Scots law. **In the present case, however, proceedings were initiated in the First-tier Tribunal and the first appeal was heard in the Upper Tribunal. Both of those tribunals have United Kingdom-wide jurisdiction, and it is agreed between the parties that both of them have judicial knowledge of English law**. In the event of an appeal from the Inner House to the United Kingdom Supreme Court, that court too has judicial knowledge of English law. The critical question is whether in that structure of tribunals and courts the Court of Session has judicial knowledge of English law.

[50] In our opinion it has such judicial knowledge. The result otherwise would be highly artificial. **The lower tribunals would have judicial knowledge of English law; the court to which a final appeal may be taken would have judicial knowledge of English law; but this court would be constrained by the findings on English law of the First-tier and Upper Tribunals. We cannot believe that that was the intention when the structure of appeals in ss 11–14 of the 2007 Act was set up**. We do not think that this will give rise to any practical difficulties. The basic legal concepts of Scots and English law, in this case the trust, the contract and the loan, are broadly similar. No doubt the theoretical nature of a trust is different, being based on the notion of legal estate and equitable interest in England, whereas in Scotland it is based on the notion of dual patrimonies of the trustee. Nevertheless the practical results are similar, and the institution of the trust fulfils similar functions in both jurisdictions. Consequently Scottish judges should not have any great difficulty in understanding English law, and are expected to do so in the Upper Tribunal and UK Supreme Court. Moreover, **it can be expected that the parties will present careful and informed submissions on English law, as occurred in the present case, and the Court of Session will obviously check submissions against the cases and textbooks that are referred to**. Finally, we note that in IRC v City of Glasgow Police Athletic Association 1953 SC (HL) 13, it was held that the Court of Session could take judicial notice of the English law of charity where that became relevant to liability for income tax, in accordance with the earlier decision in Income Tax Special Purposes Comrs v Pemsel [1891] AC 531, [1891–4] All ER Rep 28. Although that decision is not directly in point, because the result of the decision in Pemsel's case was that for revenue purposes the English law of charity became part of Scots law, it points to the fact that **there is no objection in principle to the Scottish courts' taking judicial notice of English law**."

32. We note that it was a matter of agreement in the Murray case that the First-tier and Upper Tribunals had judicial knowledge of English law. However, in our

view that does not prevent the Inner House decision from being binding on us. Lord Drummond Young goes beyond proceeding merely on the basis of the agreement and makes a positive statement that "The lower tribunals would have judicial knowledge of English law" (para [50]). We would add that the agreement between the parties was made in the full knowledge of the different position prior to the 2007 Act set out in the decisions in Spring Salmon and Seafood v HMRC and Burt v HMRC cases: the Special Commissioner who made these decisions also acted for HMRC in Murray.

33. In any event, having had the benefit of full argument and citation of authority in the current case, in our view that agreement was correctly made.

34. The 2007 Act swept away the various tribunals and similar bodies which had developed over the years and replaced them with a single system of tribunals.

35. In particular the Act swept away the General and Special Commissioners and replaced them with the First-tier and Upper Tribunals.

36. Under the system of General and Special Commissioners, cases were assigned at the outset as being a Scottish or English case and the applicable law and appeal route were governed by that initial assignment. That system was rooted in the geographical legal jurisdictions of the UK. The General Commissioners for divisions in Scotland were appointed by the Scottish local authority and sheriffs were General Commissioners *ex officio* (Taxes Management Act 1970 sec 1) and cases were assigned to the division where the taxpayer resided or conducted business (Sec 44, Sched 3). As was explained by the Special Commissioner in Spring Salmon and Seafood v HMRC at para [40]:

> "… the jurisdiction of the Special Commissioners necessarily follows the jurisdiction of the General Commissioners who would have heard the appeal, absent an election to have it heard by the Special Commissioners. As to which superior court (the High Court in England, the Court of Session, sitting as the Court of Exchequer in Scotland) will have jurisdiction over an appeal from the Special Commissioners, this depends on whether the Special Commissioners have heard an appeal which would otherwise have been heard by the General Commissioners in England (in which case the appeal is to the High Court) or in Scotland (in which case the appeal is to the Court of Session) … The Special Commissioner's jurisdiction is seen to be a substitutionary jurisdiction where the place in which the General Commissioners would have sat determines for any Special Commissioner's hearing, so that for a hearing that would have been heard by General Commissioners in Scotland and determines for any Special Commissioners' hearing the prima facie applicable private law (so that for a hearing which would have been heard by General Commissioners in Scotland under TMA 1970 Schedule , an appeal before the Special

> Commissioners is conducted on the basis that submissions on Scots law are made as legal submissions and submissions on English law are made as submissions of fact, the applicable law of evidence and the relevant rules of procedure."

35 Similarly, in another Scottish Special Commissioners case an issue of English law was dealt with as a matter of fact.(Burt para 41-42).

36 The new Tribunal system under the 2007 Act takes a different approach. There is no initial decision ascribing the case to one of the specific legal jurisdictions of the UK and predetermining the appeal route. Instead the First-tier and Upper Tribunals have a UK wide jurisdiction. The First-tier and Upper Tribunals may decide a case in one of the UK jurisdictions even though the case arises under the law of a jurisdiction other than the one in which the case is decided (sec 26 of the 2007 Act). The appeal route is not predetermined at the outset of the case. It is not determined until the Upper Tribunal is considering whether to grant permission to appeal, at which stage it must specify whether the relevant appeal court for the proposed appeal is to be the Court of Session, the Court of Appeal in England and Wales or the Court of Appeal in Northern Ireland (sec 13(11)). The court to be specified is whichever court appears to the Upper Tribunal to be the most appropriate (sec 13(12)). That is a very flexible provision. It allows the Upper Tribunal to direct an issue to the appeal court which is best placed to deal with. If the issue to be appealed is a Scots law issue, it can be directed to the Court of Session. If it is an English law issue, it can be directed to the High Court. That flexibility would be lost if English or Scottish law (as the case may be) was treated as foreign law and therefore a matter of fact in the tribunals. Appeals can only be made on a point of law (sec 13(1)) so if a Scots law issue were to be treated as a matter of fact in the First-tier Tribunal there would be no appeal on that Scots law issue to the Court of Session or indeed any other court. In our opinion, treating English or Scots law (as the case may be) as a matter of fact not law in the First-tier and Upper Tribunals would frustrate the clear intention on the face of the 2007 Act that the Upper Tribunal has discretion to decide which court is the most appropriate to hear the appeal.

37 As the 2007 Act is clear in its terms, we take the view that the previous case law referred to in argument by the Taxpayer relating to the different court systems within the UK and to the Special Commissioners does not apply to the tribunal system established under that Act.

38 We note that our conclusion that 2007 Act tribunals have judicial knowledge of the laws of Scotland, England and Wales and Northern Ireland is consistent with the tribunal rules, practice and case law. The Tribunal Procedure (First-

tier Tribunal) (Tax Chamber) Rules 2009, The Tribunal Procedure (Upper Tribunal) Rules 2008 and the Composition Practice Statement proceed on the basis that there is a UK wide jurisdiction and do not provide for allocation of cases on the basis of the various legal jurisdictions within the UK. In appropriate circumstances, a tribunals is constituted with judges from different jurisdictions within the UK, so that the tribunal is well placed to deal with legal submissions (rather than factual expert evidence) about the laws of the different jurisdictions. This has happened for example in Chelmsford City Council v HMRC [2020] UKFTT 432 (TC), Midlothian Council v HMRC [2020] UKFTT 433 (TC), Mid-Ulster District Council v HMRC [2020] UKFTT 434 (TC): the case management directions in these cases providing for the Tribunal panel to consist of three judges together qualified in England and Wales, Scotland and Northern Ireland are set out in para [96] of the decision of the First-tier Tribunal in the current case. We have not been referred to any case law where a First-tier or Upper Tribunal has treated the law of a jurisdiction within the UK as a matter of fact. Indeed, as we have seen in para [9] above, at a previous stage of the current case, the current Taxpayer and its current counsel made submissions on both English and Scottish law as matters of law and not fact.

39 The appeal is dismissed.

**Signed on Original**

**Lord Ericht**

**Tribunal Judge Jennifer Dean**

**Release Date 13 April 2023**