

Commissioners for Her Majesty's Revenue and Customs (Appellant) v NCL Investments Ltd and another (Respondent)

Case ID: 2020/0125

Case summary

Issue

Whether accounting debits relating to the grant of share options to employees are a deductible expense for corporation tax purposes.

Facts

At all material times the Respondents were members of a corporate group of companies (the "Group"). Their ultimate parent company was Smith & Williamson Holdings Ltd ("SWHL"). The Respondents were the employing entities in the Group. They would employ staff pursuant to contracts of employment and would make the staff available to other group companies in return for a fee.

In 2003, SWHL settled an employee benefit trust (the "EBT") which gave employees a contractual right to acquire shares in SWHL for a specified price. Whenever the EBT granted an employee a share option, the Respondents agreed to pay SWHL an amount equal to the fair value of the option.

The grant of the options was governed by an accounting standard called IFRS 2. Pursuant to IFRS 2, on the grant of a share option to an employee, the employer must debit the fair value of the option in its company accounts. The Respondents debited their accounts when the share options were granted to employees by the EBT. The Respondents claimed a corporation tax deduction in respect of the debits. The Appellant, HMRC, refused the corporation tax deduction and issued "closure notices" disallowing the deductions. The Respondents successfully appealed to the First-tier Tribunal against the closure notices. HMRC's appeals to the Upper Tribunal and then to the Court of Appeal were dismissed. HMRC now appeals to the Supreme Court.

Judgment appealed

[2020 EWCA Civ 663](#)

Parties

Appellant(s)

Commissioners for Her Majesty's Revenue and Customs

Respondent(s)

NCL Investments Ltd, Smith & Williamson Corporate Services Ltd

Appeal

Justices

Lord Reed, Lord Briggs, Lord Sales, Lord Hamblen, Lady Rose

Hearing start date

25 January 2022

Hearing finish date

26 January 2022

Watch hearing

25 Jan 2022 [Morning session](#) [Afternoon session](#)

26 Jan 2022 [Morning session](#)