[2019] UKFTT 516 (TC)

CAPITAL GAINS TAX – entrepreneurs relief – section 169 whether J Taxation of Chargeable Gains Tax Act 1992 – trust business assets – shares – settlement business assets – whether "qualifying beneficiary" must be a qualifying beneficiary throughout a period of one year ending not earlier than three years before the date of disposal – section 169 J (4) – appeals allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

TC07312

Appeal number: TC/2018/ 04092
TC/2018/04095 & TC/2018/04096

BETWEEN

(1) THE QUENTIN SKINNER 2005 SETTLEMENT L
(2) THE QUENTIN SKINNER 2005 SETTLEMENT R
(3) THE QUENTIN SKINNER 2005 SETTLEMENT B **Appellants**

-and-

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

TRIBUNAL: JUDGE GUY BRANNAN

Sitting in public at Taylor House, London on 29 July 2019

Michael Firth, counsel, for the Appellant

Christopher Vallis, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. These appeals concerned the question whether the appellants are entitled to entrepreneurs' relief ("**ER**") under s169J Taxation of Chargeable Gains Tax Act 1992 ("**TCGA**"). HMRC issued closure notices dated 1 June 2018 to the effect that the appellants are not entitled to that relief and the appellants now appeal against those closure notices.

2. The relevant facts are not in dispute – this appeal relates solely to the correct construction of the relevant statutory provisions. The relevant provisions provide:

> "throughout a period of 1 year…the company is the qualifying beneficiary's personal company…and the qualifying beneficiary is an officer or employee of the company"

3. In particular, it is disputed whether s169J(4) TCGA and s169J(4)(a) TCGA require the beneficiary under the settlements in question to have an interest in possession (and therefore be a "qualifying beneficiary") throughout the period of 1 year. HMRC's case that they do and, therefore, that the appellants are not entitled to ER. The appellants argue that they do not and contend that they are entitled to ER.

THE FACTS

4. On 30 July 2015 Mr Ludovic Skinner, Mr Rollo Skinner and Mr Bruno Skinner ("**the Beneficiaries**") were given interests in possession, under the L Skinner Settlement, the R Skinner Settlement and the B Skinner Settlement respectively, in the whole of the settled property.

5. On 11 August 2015, by three separate deeds of gift, Mr Quentin David Skinner gave 55,000 D ordinary shares in DPAS Limited ("**the Shares**") each to the L, R and B Skinner Settlements ("**the Skinner Settlements**"). The Beneficiaries had each held 32,250 C class shares, granting full voting rights, since 2011. As such, DPAS Ltd was a "personal company" of each of them (for the purposes of section 169S TCGA).

6. On 1 December 2015 the Skinner Settlements disposed of the Shares ("**the Disposals**").

7. On 31 January 2017 the Skinner Settlements and respective beneficiaries each made claims for ER in accordance with section 169M TCGA.

8. On 31 January 2017 the Respondents received the Skinner Settlements' tax returns for the year ended 5 April 2016 into which, on 16 January 2018, the Respondents opened enquiries pursuant to s.9A of the Taxes Management Act 1970 ("**TMA**").

9. On 1 June 2018 the Respondents closed the enquiries pursuant to s.28A TMA, concluding that "Entrepreneur's Relief is not due in this case as the beneficiary…had not held an interest in possession in the shares held by the trust for the requisite 12 month period."

10. The appellants now appeal to this Tribunal.

STATUTORY PROVISIONS

11. ER is given under TCGA[1] s.169N in respect of a "qualifying business disposal":

> "169N Amount of relief: general
>
> (1) Where a claim is made in respect of a qualifying business disposal—

[1] All statutory references are to the TCGA, unless otherwise stated. Significant prospective changes to ER were introduced in the Finance Act 2019, but these are disregarded for the purposes of this decision which relates to earlier periods.

(a) the relevant gains (see subsection (5)) are to be aggregated, and

(b) any relevant losses (see subsection (6)) are to be aggregated and deducted from the aggregate arrived at under paragraph (a).

(2) The resulting amount is to be treated for the purposes of this Act as a chargeable gain accruing at the time of the disposal to the individual or trustees by whom the claim is made.

(3) The rate of capital gains tax in respect of that gain is 10%, but this is subject to subsections (4) to (4B)."

12. Qualifying business disposals include a disposal of trust business assets:

"(2) The following are qualifying business disposals—

(a) a material disposal of business assets: see section 169I,

(b) a disposal of trust business assets: see section 169J, and

(c) a disposal associated with a relevant material disposal: see section 169K." (s.169H(2)).

13. There is a disposal of trust business assets where three conditions are satisfied:

"169J Disposal of trust business assets

(1) There is a disposal of trust business assets where—

(a) the trustees of a settlement make a disposal of settlement business assets (see subsection (2)),

(b) there is an individual who is a qualifying beneficiary (see subsection (3)), and

(c) the relevant condition is met (see subsections (4) and (5))."

14. It is common ground that the Shares were settlement business assets (s.169J(2)):

"(2) In this Chapter "settlement business assets" means—

(a) assets consisting of (or of interests in) shares in or securities of a company, or

(b) assets (or interests in assets) used or previously used for the purposes of a business, which are

part of the settled property."

15. An individual is a qualifying beneficiary if s.169J(3) is satisfied:

"(3) An individual is a qualifying beneficiary if the individual has, under the settlement, an interest in possession (otherwise than for a fixed term) in—

(a) the whole of the settled property, or

(b) a part of it which consists of or includes the settlement business assets disposed of."

16. There is no dispute that each of the Beneficiaries was a qualifying beneficiary at the time of disposal of the Shares. Instead, the dispute relates to whether the relevant condition was satisfied. As the assets were shares in a company, this is found in s.169J(4):

"(4) In relation to a disposal of settlement business assets within paragraph (a) of subsection (2) the relevant condition is that, throughout a period of 1 year ending not earlier than 3 years before the date of the disposal—

> (a) the company is the qualifying beneficiary's personal company and is either a trading company or the holding company of a trading group, and
>
> (b) the qualifying beneficiary is an officer or employee of the company or (if the company is a member of a group of companies) of one or more companies which are members of the trading group."

17. As defined for all purposes of ER, a company is a person's personal company if the person has, essentially, 5% of the ordinary shares and 5% of the voting rights:

> "(3) For the purposes of this Chapter "personal company", in relation to an individual, means a company—
>
> (a) at least 5% of the ordinary share capital of which is held by the individual, and
>
> (b) at least 5% of the voting rights in which are exercisable by the individual by virtue of that holding." (s.169S(3)).

18. It is common ground that DPAS Limited was each of the Beneficiaries' personal company[2], that they were each an officer of the company and that the company was a trading company.

19. The sole dispute is as to whether s.169J(4) contains a requirement for the beneficiary to have been a qualifying beneficiary throughout a period of 1 year ending not earlier than 3 years before the date of the disposal.

20. HMRC rely on s.169O (as an aid to the interpretation of s.169J(4)) which provides that:

> "169O Amount of relief: special provisions for certain trust disposals
>
> (1) This section applies where, on a disposal of trust business assets, there is (in addition to the qualifying beneficiary) at least one other beneficiary who, at the material time, has an interest in possession in—
>
> (a) the whole of the settled property, or
>
> (b) a part of it which consists of or includes the shares or securities (or interests in shares or securities) or assets (or interests in assets) disposed of.
>
> (2) Only the relevant proportion of the amount which would otherwise result under subsection (1) of section 169N is to be treated as so resulting.
>
> (3) And the balance of that amount, is accordingly a chargeable gain for the purposes of this Act."

21. The relevant proportion is:

> "…the same proportion of the amount as that which, at the material time—
>
> (a) the qualifying beneficiary's interest in the income of the part of the settled property comprising the shares or securities (or interests in shares or securities) or assets (or interests in assets) disposed of, bears to
>
> (b) the interests in that income of all the beneficiaries (including the qualifying beneficiary) who then have interests in possession in that part of the settled property." (s.169O(4))

22. The qualifying beneficiary's interest here means:

> "the interest by virtue of which he is the qualifying beneficiary (and not any other interest the qualifying beneficiary may have)" (s.169O(5))

[2] See HMRC Statement of Case, paragraph 16.

23. The material time is defined in s.169O(6):

> "(6) In this section "the material time" means the end of the latest period of 1 year which ends not earlier than 3 years before the date of the disposal and—
>
> (a) in the case of a disposal of settlement business assets within paragraph (a) of subsection (2) of section 169J, throughout which the conditions in paragraphs (a) and (b) of subsection (4) of that section are met.…"

SUBMISSIONS IN SUMMARY

24. Mr Firth, appearing for the appellants, submitted that the purpose of the relevant statutory provision supported his interpretation that words in s.169J(4) did not require a Beneficiary to be "qualifying beneficiary" throughout a period of one year ending not earlier than three years before the date of the disposal.

25. The structure of legislation was to grant ER where an individual had, as Mr Firth put it, an "entrepreneurial connection" (a term which, for convenience, I shall use in this decision) with the company. This required an individual to:

(1) have 5% of the ordinary shares;

(2) have 5% of the voting rights; and

(3) be an employee or officer of the company. (s.169S(3) and s.169J(4)(b)).

26. This entrepreneurial connection had to exist throughout a period of 1 year ending not earlier than 3 years before the date of the disposal (s.169J(4)).

27. Mr Firth submitted that s.169J(4) had a logical structure:

(1) Subsection (1)(a) is the link between the trust and the company. It required the trustees to dispose of settlement business assets, i.e. shares that are part of the settled property.

(2) Subsection (1)(b) is the link between the individual and the trust. It required there to be, at the time of the disposal, a qualifying beneficiary. This meant that a person who had an interest in possession in the whole of the settled property or the part which included the business assets.

(3) Subsection (1)(c) and (4) are the link between the individual and the company. They ask whether that individual held 5% of the ordinary share capital and voting rights and was an officer or employee of the company for one year ending in a three-year period.

28. Section 169J(1)(b) required there to be a qualifying beneficiary. It was common ground that that provision only required the person to be a qualifying beneficiary at the time of disposal.

29. Section169J(1)(c) is concerned with the link between the individual identified in (b) and the company whose shares are being disposed of. This is, Mr Firth argued, the same "entrepreneurial connection" as is used for applying ER to non-trust disposals in s.169I(6):

> "(6) Condition A is that, throughout the period of 1 year ending with the date of the disposal—
>
> (a) the company is the individual's personal company and is either a trading company or the holding company of a trading group, and
>
> (b) the individual is an officer or employee of the company or (if the company is a member of a trading group) of one or more companies which are members of the trading group."

30. In s.169J(4) the term "the qualifying beneficiary" was, Mr Firth contended, used as an identifying term (rather than "the individual") because it was clearer, making it plain that the person being referred to was the person identified in s.169J(1)(b). The second reference to "qualifying beneficiary" in s.169J(4)(b) could only be required to identify the particular individual. Thus, the first reference was identical in nature and could only be performing the same function.

31. Mr Firth noted that the same was true, for example, of the reference to "qualifying beneficiary" in s. 169M(2):

> "(2) A claim for entrepreneurs' relief in respect of a qualifying business disposal must be made -
>
> (a) in the case of a disposal of trust business assets, jointly by the trustees and the qualifying beneficiary, and
>
> (b) otherwise, by the individual."

32. It was (as Mr Vallis confirmed) common ground that a person making a claim under s. 169M(2) did not have to be a qualifying beneficiary at the time of the claim (when the trust may no longer exist). Thus, Mr Firth argue that it was clear that Parliament was referring to "the qualifying beneficiary" as a means of identifying a particular individual and was not implying a need for a continuing status.

33. Furthermore, according to Mr Firth, it was implausible that if Parliament had intended to require the person who was a qualifying individual at the time of the disposal also to have been the qualifying beneficiary throughout the period identified in s.169J(4) (which could end three years before the disposal), it would not have said so in direct terms (as it did for the requirement at the time of the disposal).

34. As regards s.169O, that provision was concerned not with the circumstances in which relief was available but rather with limiting the quantum of the relief in certain circumstances.

35. Section 169O(1), identified when the section applied and contained two time references, viz "on a disposal of trust business assets" and "at the material time". The first question was whether, on a disposal of trust business assets there were (at least) two beneficiaries: the qualifying beneficiary and one other. If that was the case, Mr Firth submitted that it was necessary to move on to the second question which was whether, at the material time, the other beneficiary had an interest in possession in the settled property. Therefore, the restriction on the quantum of relief operated when there was another beneficiary who had an interest in the settled property *both* at the time of the disposal *and* at the end of the one-year period in s.169J(4). The quantum of the restriction was calculated based on the quantum of the qualifying beneficiary's interest at the end of the one-year period compared to the interest of all beneficiaries with an interest in possession. There was, submitted Mr Firth, no assumption that qualifying beneficiary would have an interest at the end of the one-year period and, if the qualifying beneficiary did not, no relief would be due in any event. Similarly, there was no assumption that the trust would own the shares ultimately disposed of at the end of the one-year period. Parliament had adopted a "snapshot approach" which was difficult to explain purposively

36. The purpose of the ER provisions relating to the disposals of shares in a company, was to offer a reduced rate of tax to individuals on disposals of those shares if the individual had an entrepreneurial connection with the company. These conditions, Mr Firth continued, had to be satisfied for a period of one year, typically (but not necessarily) ending with the disposal. Once the entrepreneurial connection was satisfied, ER applied to the entirety of the disposal of shares by that individual in the company. It was an inherent part of ER relief that an individual could

obtain relief for a disposal of shares which he or she has held for less a day or less i.e. shares with which he or she had a much looser or shorter connection than the shares which give him or her the entrepreneurial connection.

37. In Mr Firth's submission, trusts gave rise to special issues. The approach adopted by Parliament required there to be an individual who had the standard entrepreneurial connection in his or her own right (as in non-trust cases under s.169I) and, if that requirement was satisfied, the treatment was extended to a trust of which that person was a beneficiary with an interest in possession at the time of the disposal. The appropriate approach was to treat the relief afforded by s.169J as an extension of the ordinary (i.e. non-trust) relief contained in s.169I. The result contended for by HMRC would impose a requirement for the beneficiary to have an interest in possession in the trust for a year during which the trust may or may not own shares in the company.

38. Mr Vallis, appearing for HMRC, argued that a plain reading of s.169J(4) led to the conclusion that the individual had to be a qualifying beneficiary for the duration of the one-year period. If it were otherwise, the legislation would have stated "individual" rather than qualifying beneficiary".

39. Mr Vallis also argued that s.169O was an aid to interpretation. "The material time" was defined in s.169O(6) as being the end of the one year period *throughout* which sub- paragraphs (a) and (b) of s.169J(4) are met. It was therefore evident that there was an expectation by Parliament that this is a period where an interest in possession would be held. On the appellant's argument, sub- paragraphs (a) and (b) of s.169J(4) it would be possible for the material time" to occur before there even was a qualifying beneficiary (if an individual was not given an interest in possession until after the material time). In such a circumstance, the limitation on availability of relief as provided for in s.169O would not apply. On HMRC's interpretation, argued Mr Vallis, the material time would always occur at the end of a period throughout which there was a qualifying beneficiary.

40. Mr Vallis submitted that if the appellants were correct, and that s.169J(4) could be satisfied simply by giving the individual an interest in possession immediately before the disposal, there would be little point in creating the requirement and it would serve little purpose other than to create a "tick-box" exercise for trustees. This is a result the Parliament could not have intended.

DISCUSSION

41. ER is a capital gains tax relief, introduced by the Finance Act 2008, on gains not exceeding £10 million[3]. The effect of the relief is to apply a reduced rate of capital gains tax (i.e. 10%) to gains that qualify for the relief.

42. This appeal relates to assets held through a settlement and the provisions of s.169J therefore apply. The assets in question are shares in DPAS Limited. In the discussion that follows I shall concentrate on the ER provisions which deal with shares rather than other sorts of business assets.

43. I was informed that there were no authorities on the meaning of the words found in s.169J(4) and I am aware of none myself. Therefore, the words of this provision must be given their ordinary and natural meaning when read in context and construed purposively.

[3] This upper limit has been progressively extended – the original limit contained in the Finance Act 2008 was £1 million.

44. In the ordinary case where disposals are made directly (i.e. not involving an interest under a trust) of business assets consisting of shares ("the ordinary case"), ER is available under s. 169I provided a series of conditions are satisfied. Those conditions are set out below.

45. Subsection (6) provides the first condition referred to in subsection (5) ("condition A"). This is that throughout the period of a year immediately preceding the disposal:

> (1) the company is the individual's "personal company"; Section 169S(3) provides that a company is an individual's personal company at any time when the individual holds at least 5 per cent of the ordinary share capital of the company and that holding gives him or her at least 5 per cent of the voting rights in the company; and
>
> (2) the company is a trading company or the holding company of a trading group[4];

46. Subsection (7) sets out various conditions dealing, for example, with the situation where the company has within the three years immediately preceding the disposal ceased to be either a trading company or a member of the trading group.

47. It will be seen, therefore, that in the ordinary case, provided the tests in (1) and (2) in the preceding paragraph are satisfied[5], ER will in principle be available in respect of any shares in the company. Thus, for example, if a taxpayer sells a 20% shareholding in a company which the taxpayer has owned for, say, six months ER will be available in respect of the disposal of that 20% shareholding *provided* the conditions in (1) and (2) above are also satisfied. In other words, provided the "entrepreneurial connection" is established, the relief applies in principle to all shares disposed of.

48. Mr Firth submitted that s.169J(4) should be seen as effectively extending the "entrepreneurial connection" required in the ordinary case (i.e. in s.169I(5) and (6)) to a situation in which a qualifying beneficiary owns an interest in possession in shares through a settlement. In my view, this is indeed the purpose of Parliament when it enacted s.169J(4) if that provision is read in context.

49. It is clear to me that Parliament was intending to extend the one-year holding period in relation to an interest in possession under a settlement so that the requirement that the taxpayer should hold shares in a "personal company" and that the shares be in a trading company or a holding company of a trading group should apply to that shareholding. That is what Mr Firth describes as the "entrepreneurial connection." I accept that the qualifying period set out in the introductory words in s.169J(4) is somewhat different from the corresponding provisions in. in s.169I(5) and (6). For example, the one-year holding period can occur during a three-year window. Nonetheless, Parliament's intention to impose the same type of "entrepreneurial connection" is clear.

50. I reach this conclusion as to Parliament's purpose on what I consider to be the clear wording of s.169J(4) when read in statutory context of the ER provisions as a whole. I shall examine the detailed wording of that provision shortly. In the meantime, I consider that my conclusion on Parliament's purpose when enacting s.169J(4) is supported by the Explanatory Notes to the Finance Bill 2008 (the ER provisions were introduced in the Finance Act 2009). Although I was not referred to the Explanatory Notes, it is well-established that Explanatory Notes are admissible as an aid to construction. In the House of Lords decision in *R (Westminster City Council) v National Asylum Support Service* [2002] 1 WLR 2956 Lord Steyn held at [5] that a court can consider Explanatory Notes as an admissible aid to construction in so far as they "cast light on the objective setting or contextual scene of the statute, and the mischief at which it is aimed". Because the starting point in an exercise of statutory

[4] These terms are, broadly speaking, defined in ss. 165 and 165 A.
[5] I shall assume for the purposes of this discussion that the conditions referred to in (3) are irrelevant.

construction is that the language "conveys meaning according to the circumstances in which it was used", the context "must always be identified and considered before the process of construction or during it".

51. The Explanatory Notes to (what was Clause 7 and Schedule 3 and to) the Finance Bill 2008, dealing with what became s.169J(4) , stated as follows:

> "23 . Subsection (3) explains the circumstances in which an individual can be a "qualifying beneficiary" in relation to a settlement. The individual must have an interest in possession (other than an interest in possession which has a fixed term) in the whole of the settled property of the settlement or in a part of the settled property that contains the settlement business assets disposed of.
>
> 24. Subsection (4) describes the "relevant condition" that must be satisfied if the settlement business assets are shares in or securities of a company, or interests in such shares or securities. *The condition applies to the qualifying beneficiary the tests that would have applied under section 169I(6) or (7) (see paragraphs 16 and 17 above) if the qualifying beneficiary were an individual making a claim for entrepreneurs' relief in relation to a disposal of the shares, securities or interests.* So the condition is that throughout a period of one year ending within the three years up to the date of the disposal:
>
> – the company is the qualifying beneficiary's personal company (see paragraph 16 above);
>
> – the company is a trading company or the holding company of a trading group; and
>
> – the qualifying beneficiary is an officer or employee of the company or of one or more companies that are members of the group." (Emphasis added).

52. I think that the "mischief" at which s.169J(4) was aimed was, essentially, substantially to extend the "entrepreneurial connection" requirement, found in the provisions dealing with the ordinary case, to the provisions dealing with the disposal of trust business assets. This extension was, of course, in a modified form and included what I have referred to as the "three-year window". Nonetheless, the thrust of the provision seems to me plain.

53. Explanatory Notes are only an aid to construction and cannot alter the plain meaning of the words used by Parliament. Nonetheless, it seems to me that when read carefully the provisions of s.169J(4) do not bear the meaning for which HMRC contend. In other words, I do not think that ordinary and natural meaning of the words of s.169J(4) require a "qualifying beneficiary" to hold his or her interest in the shares disposed of for the period mentioned in the introductory wording to that subsection. In my view, it is the status of the qualifying beneficiary's shareholding which constitutes the company as a "personal company" and its

status as "either a trading company or the holding company of a trading group" that must exist in the one-year period during the three-year window.

54. I start by observing that s.169J(3) provides a definition of a "qualifying beneficiary". It provides:

> "(3) An individual is a qualifying beneficiary if the individual has, under the settlement, an interest in possession (otherwise than for a fixed term) in—
>
> (a) the whole of the settled property, or
>
> (b) a part of it which consists of or includes the settlement business assets disposed of."

55. Thus, s.169J(3) defines a "qualifying beneficiary" by reference to the nature of his or her interest in the settlement business assets.

56. Section 169J(4), which lies at the heart of this appeal, is the immediately following provision. It provides:

> "(4) In relation to a disposal of settlement business assets within paragraph (a) of subsection (2) the relevant condition is that, throughout a period of 1 year ending not earlier than 3 years before the date of the disposal—
>
> (a) the company is the qualifying beneficiary's personal company and is either a trading company or the holding company of a trading group, and
>
> (b) the qualifying beneficiary is an officer or employee of the company or (if the company is a member of a group of companies) of one or more companies which are members of the trading group."

57. It seems to me that the natural reading of the reference to "qualifying beneficiary" in subsection 4 (a) is to a person who satisfies the definition in s.169J(3). The focus of s.169J(4)(a) is not on the "qualifying beneficiary" at all but rather on "the company". What that sub-paragraph is aiming to do is to make it clear that during the specified period (the one-year period ending in the three-year window) the company must be a personal company (as to which see s.169S) as well as being a trading company or a holding company of a trading group. The possessive reference to the "qualifying beneficiary's" is simply identifying whose personal company it is i.e. it must be the personal company of someone who is "a qualifying beneficiary". But it does not follow and in my judgment it is incorrect to conclude that the "qualifying beneficiary" has to have the attributes of a "qualifying beneficiary" for a period of one year during the three-year window. That period and that window refer to the status as a personal company and as a trading company or a holding company of a trading group.

58. Therefore, on a careful reading of the words used in s.169J(4), I reject HMRC's construction of that statutory provision.

59. It is common ground that the appellants must each be a "qualifying beneficiary" at the date of disposal – s.169J(1). I think that any argument to the contrary is simply untenable on the statutory language. That requirement is satisfied in respect of each appellant.

60. I am unpersuaded by HMRC's reliance on s.169O. In my experience of modern techniques of drafting of tax statutes, I would find it very strange indeed if the meaning of the primary qualifying conditions of a relief from tax were to be found obscurely by reference to an apportionment provision (which is all s.169O amounts to) and which, in any event, did not apply in this case (because in the qualifying beneficiary in respect of each of settlement in this appeal owned the entire trust property).

61. Mr Vallis argues that if the appellants' argument were correct, an individual could satisfy (a) and (b) of s.169(4) without being a "qualifying beneficiary" throughout the one-year period,

it would be possible for the "material time" to occur before there was even a "qualifying beneficiary", if an individual is not given an interest in possession until after the "material time". Section 169O looked to the qualifying beneficiary's interest at the end of the one-year period during which the s.169J(4) condition must be met and, according to Mr Vallis, confirmed that Parliament intended that the individual must be a qualifying beneficiary throughout that period.

62. I accept, of course, s.169O is part of the statutory context but it seems to me that, even if Mr Vallis is correct, this rather oblique unintended consequence for which HMRC argue simply cannot prevail over what in my judgment is the clear wording and meaning of s.169(4). In any event, I accept Mr Firth's submission that there is no assumption that the qualifying beneficiary will have an interest at the end of the one-year period – if the qualifying beneficiary does not, then no relief will be due.

63. In this case, both Mr Firth and Mr Vallis referred to the unintended or absurd consequences of eachothers' preferred interpretations. I shall not rehearse all those lengthy arguments. It seems to me that to decide this appeal on what is effectively *reductio ad absurdum* arguments is an unsatisfactory approach[6] where the wording of the statute is, in my judgment, clear.

64. I allow these appeals.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

65. 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.

GUY BRANNAN
TRIBUNAL JUDGE

Release date: 6 AUGUST 2019

[6] See, for example, the comments of Lord Normand, disapproving construction by reference to anomalies or competing anomalies, in *Dale and Others v Inland Revenue Commissioners* [1953] 2 All ER 671 at 676.