Neutral Citation: [2025] UKUT 00428 (TCC)

Case Number: UT/2024/000121

UPPER TRIBUNAL
(Tax and Chancery Chamber)

Rolls Building, London

INCOME TAX – Remittance basis of taxation – application of s809L Income Tax Act 2007 to bank transfers by relevant person from offshore bank account to UK bank account of non-relevant persons and to transactions involving use of offshore credit card to make UK purchases – appeal allowed in part

Heard on: 4,5 November 2025
Judgment date: 19 December 2025

Before

MR JUSTICE EDWIN JOHNSON
JUDGE SWAMI RAGHAVAN

Between

AFZAL ALIMAHOMED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Michael Firth KC, Counsel, instructed by Brian White Tax Resolution Limited

For the Respondents: Richard Vallat KC, Louis Triggs, Counsel, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

DECISION

INTRODUCTION

1. The Appellant, a UK resident but non-domiciled individual, claimed the remittance basis of taxation in the relevant year (2016/17). This appeal concerns the question of whether various bank transfers from the Appellant's non-UK account to UK bank accounts, and payments the Appellant made using an offshore credit card in respect of goods and services amounted to taxable remittances under s809L of Income Tax Act 2007 ("**ITA 2007**"). HMRC issued a closure notice for 2016/17, in the amount of £133,681.90, on the basis that the transfers and payments were remittances, which the Appellant then appealed to the First-tier Tribunal (Tax Chamber) ("**FTT**"). The FTT subsequently dismissed that appeal in its decision published as *Afzal Alimahomed v HMRC* [2024] UKFTT 00432 (TC) ("**FTT Decision**").

2. With the permission of the FTT, the Appellant now appeals arguing that the FTT erred in law on its interpretation and application of the provision of s809L ITA 2007. HMRC's position is that the FTT's decision was correct for the reasons it gave and should be upheld.

BACKGROUND, LAW AND FTT DECISION

3. As the FTT Decision explained at [26], ordinarily a UK resident individual's worldwide income and gains are taxed on an "arising" basis in the UK. The remittance basis (a system of taxation available for UK resident but non-UK domiciled individuals up until 2024/25) allowed for the individual's non-UK source income and gains to go untaxed in the UK if that income and those gains are not remitted to the UK.

4. As relevant to 2016/17, the tax year with which this appeal is concerned, s809L specifies a definition of remittance to the UK.

5. Conditions A and B in ITA 2007, s809L (both of which must be met for a remittance to occur) provide as follows:

> "(2) Condition A is that —
>
> (a) money or other property is brought to, or received or used in, the United Kingdom by or for the benefit of a relevant person, or
>
> (b) a service is provided in the United Kingdom to or for the benefit of a relevant person.
>
> (3) Condition B is that —
>
> (a) the property, service or consideration for the service is (wholly or in part) the income or chargeable gains,
>
> (b) the property, service or consideration —
>
> (i) derives (wholly or in part, and directly or indirectly) from the income or chargeable gains, and
>
> (ii) in the case of property or consideration, is property of or consideration given by a relevant person,
>
> (c) the income or chargeable gains are used outside the United Kingdom (directly or indirectly) in respect of a relevant debt, or
>
> (d) anything deriving (wholly or in part, and directly or indirectly) from the income or chargeable gains is used as mentioned in paragraph (c)."

6. The term "relevant person", as defined in s809M(2) ITA 2007 includes the individual, their spouse or civil partner or children or grandchildren under the age of 18. On the facts of

this case none of the transfers were in respect of "relevant persons". Although, as will be seen, some transfers were to the Appellant's son, he was not a "relevant person" as he was over the age of 18.

7. The term "relevant debt" is defined in s809L(7) ITA 2007:

> "(7) In this section "relevant debt" means a debt that relates (wholly or in part, and directly or indirectly) to
>
> (a) property falling within subsection (2)(a),
>
> (b) a service falling within subsection (2)(b),
>
> […]"

8. Section 809X provides an exemption to what is treated as a remittance, which is relied on by the Appellant in this appeal in respect of jewellery the Appellant bought for himself and his wife, and provides as follows:

> "(1) Exempt property which is brought to, or received or used in, the United Kingdom in circumstances in which section 809L(2)(a) applies is to be treated as not remitted to the United Kingdom.
>
> (2) Subsections (3) to (5) set out the cases in which property is exempt property.
>
> …
>
> (4) Clothing, footwear, jewellery and watches are exempt property if they meet the personal use rule (see section 809Z2).

9. The personal use rule is set out at s809Z2.

> "(1) Clothing, footwear, jewellery or watches meet the personal use rule if they —
>
> (a) are property of a relevant person, and
>
> (b) are for the personal use of a relevant individual.
>
> (2) In this section —
>
> …
>
> (b) 'relevant individual' means an individual who is a relevant person by virtue of section 809M(2)(a), (b), (c) or (d) (the individual with income or gains, or a husband, wife, civil partner, child or grandchild)".

BACKGROUND AND FTT DECISION

10. The Appellant, a non-UK domiciled individual, had moved to Dubai in 2007, after selling his family business in 2006. After a period being non-UK resident he subsequently became UK resident again from 2014 as a result of time spent in the UK. He held a bank account in Dubai, which was used to make bank transfers including those which are the subject of this appeal, and to pay off a non-UK credit card that was used to make purchases of goods and services. That bank account contained income from overseas sources.

11. The Appellant made a claim to the remittance basis of taxation in his 2015/16 tax return. His return for 2016/17 did not include any remittances. The appeal before us concerns the closure notice and amended assessment HMRC issued for 2016/17 (£133,681.90), following an enquiry that was opened in 2018, alleging taxable remittances in respect of various transactions involving the bank transfers and offshore credit card payments namely ([13] and [24(5]):

(1) Transfers from the Appellant's non-UK account to his adult son's UK account and the UK accounts of other persons (none of whom fell within the definition of "relevant persons") being:

(a) to his adult son for his son's use

(b) to friends and family for their own use

(c) to persons providing services to the Appellant's adult son related to his adult son's university living and study.

(2) Transactions paid for with the Appellant's offshore credit card in respect of (a) UK university expenses (b) services, including booking flights with a UK element provided to persons who were not relevant persons and (c) jewellery gifts received by persons in the UK who were not relevant persons.

(3) Jewellery purchased in the UK by the Appellant (for the Appellant's and his wife's personal use) paid for using the Appellant's offshore credit card.

The FTT Decision

12. We return to the FTT's reasoning in more detail, as necessary, in our discussion of the relevant grounds but in outline the FTT considered that:

(1) Transfers from the Appellant's offshore bank account to UK accounts of non-relevant persons (including his adult son and service providers) constituted remittances under s809L(2)(a) (FTT [95]). The FTT dismissed arguments that electronic bank transfers do not involve property being "brought to" the UK. It rejected the Appellant's reliance on the strict legal analysis of bank transfers in *Foskett v McKeown* [2001] 1 AC 102 and *R v Preddy* [1996] AC 815 that entailed on the one hand the extinguishment of a chose in action against the paying bank and the creation of a new chose in action against the receiving bank (and therefore, it was argued, no bringing to the UK of the same "property"). The FTT held that initiating a transfer or authorising a payment was sufficient to satisfy Condition A.

(2) Payments made using a offshore credit card for goods and services in the UK also constituted remittances, creating a "relevant debt" under s809L(7) (FTT [99]-[101]). The FTT accepted HMRC's case that "the purchase via a credit card is treated as being equivalent to the cardholder authorising the credit card company to pay the bill for the goods, or service, on their behalf".

(3) The jewellery purchased in the UK for the Appellant and his wife was not exempt property under s809Z2 as the Appellant had argued because it was purchased in the UK using an offshore credit card. By using that card the Appellant was making a remittance as he was "…effectively, authorising the offshore credit card company to make a payment in the same way as if he had instructed the credit card company to make a direct payment to the person supplying the goods". The use of the credit card created a debt which the Appellant paid off using untaxed foreign income or gains (FTT [102] - [105]).

GROUNDS OF APPEAL

13. The Appellant's grounds, which we address in turn below and which relate in turn to the three categories of transaction above at ([12]) are that the FTT erred in law in concluding that:

(1) a transfer by the Appellant from his non-UK bank account to the UK bank account of a non-relevant person amounts to a remittance ("**Ground One"**).

(2) payment for goods or services, received by a non-relevant person, with the Appellant's non-UK credit card amounted to a remittance ("**Ground Two**").

(3) payment for jewellery for the Appellant's own / his wife's personal use with the Appellant's non-UK credit card amounted to a remittance ("**Ground Three"**).

GROUND ONE

14. This ground focuses on transfers from a non-UK bank account to the UK bank account of someone who is not a relevant person namely i) the Appellant's adult son ii) the Appellant's friends and family and iii) service providers in respect of his son's attendance at a UK university. (We will refer to these together as the "**Bank Transfers**").

Parties' submissions in outline

15. The submissions of Mr Firth KC, who appeared for the Appellant raised three main points. First, it is submitted that the correct legal analysis of the Bank Transfers did not involve any property being brought to the UK. With respect to money held in a bank account, the relevant property was a chose in action. Upon transfer that was extinguished, with a new chose in action being created in the receiving bank account. Second, it is argued the meaning of "brought" connoted some form of accompaniment. In other words "bringing" as distinct from the term sending (and consistent with the use elsewhere of the term "received") needed the thing brought to be accompanied by a person bringing it. Third, it is submitted that the meaning of "brought" should take account of the purpose of the remittance rules. That in essence was all about the situation where income was enjoyed by a "relevant person".

16. HMRC dispute all three propositions and support both the FTT's decision that the Bank Transfers were remittances, and the FTT's reasoning for that conclusion.

Discussion: Ground One

17. The focus of this ground is the proper interpretation of Condition A (there not being any dispute regarding the satisfaction of Condition B). Condition A, so far as contained in subsection (2)(a) of s809L, requires that money or other property is brought to, or received or used in, the United Kingdom by or for the benefit of a "relevant person".

18. On the facts of the present case, it is not said that money or other property has been received or used in the United Kingdom by or for the benefit of a "relevant person". Nor is it said that money or other property has been brought to the United Kingdom for the benefit of a "relevant person". The question is whether "money or other property" has been "brought to the United Kingdom" by a "relevant person".

19. The relevant transactions are the bank transfers made by the Appellant from his offshore bank account to bank accounts of non-relevant persons in the United Kingdom (at [12(1)]); which we are referring to as the Bank Transfers. It is not in dispute that the Appellant made the Bank Transfers, and that he made them in his capacity as a "relevant person". The question raised by Ground One therefore becomes whether the Bank Transfers constituted the bringing of money or other property to the United Kingdom.

20. The Appellant's arguments proceed on the basis that the correct approach is first to identify the relevant property and second to consider whether that property has been brought to the United Kingdom. We agree with that approach in the sense that one cannot determine whether property has been brought to the United Kingdom without first identifying whatever is said to constitute the relevant money or other property.

21. As to the first question, the Appellant identifies the relevant property as the rights represented by him being the creditor of the offshore bank account. As a matter of the law of

England and Wales, and as a matter of strict analysis this is correct. As explained by Lord Millett in *Foskett v McKeown* [2001] 1 AC 102 at 127H–128C:

> "We speak of money at the bank, and of money passing into and out of a bank account. But of course the account holder has no money at the bank. Money paid into a bank account belongs legally and beneficially to the bank and not to the account holder. The bank gives value for it, and it is accordingly not usually possible to make the money itself the subject of an adverse claim. Instead a claimant normally sues the account holder rather than the bank and lays claim to the proceeds of the money in his hands. These consist of the debt or part of the debt due to him from the bank. We speak of tracing money into and out of the account, but there is no money in the account. There is merely a single debt of an amount equal to the final balance standing to the credit of the account holder. No money passes from paying bank to receiving bank or through the clearing system (where the money flows may be in the opposite direction). There is simply a series of debits and credits which are causally and transactionally linked."

22. A particular point to note in this context is that whether the analysis of Lord Millett is correct in the case of the Appellant's offshore bank account will, as it seems to us, depend upon the law of the jurisdiction in which the offshore bank account is located. This point was not addressed in the submissions in the Appeal.

23. If however one proceeds, as we are prepared to do, on the basis that the Appellant had no more than a chose in action in relation to the offshore bank account, this paves the way for the Appellant's argument that no property could have been brought to the United Kingdom by the Bank Transfers, because no property passed. Instead, all that occurred was that the Appellant's chose in action against the offshore bank was reduced or extinguished and a new chose in action was created in the payee's account in the United Kingdom, consisting of a credit in the amount of the relevant payment. If the payee's account was in overdraft then, depending upon the amount of payment, either a new chose in action was created to the extent that the payee's account went into credit, or the bank's chose in action against the payee was reduced.

24. This analysis reflects the analysis of Lord Goff in his speech in *R v Preddy* [1996] AC 815, at 834C-E. The position is usefully summarised by Lewison LJ in *First City Monument Bank Plc v Zumax Nigeria Ltd* [2019] EWCA Civ 294, at [76]:

> "If a bank receives an instruction from the customer to make a payment to another account, and makes the payment telegraphically or electronically, then as the House of Lords explained in *R v Preddy* [1996] AC 815, the chose in action consisting of the credit balance in the customer's account is extinguished or reduced to the extent of the requested payment. A new chose in action is created in the payee's account, consisting of the credit in the amount of the payment instruction. These are two different choses in action, although their monetary value may be equivalent. No "money" actually changes hands. In point of law, the payment instruction is an instruction to the bank to debit the customer's account in the amount of the payment; and to credit (or procure the credit) of the payee's account with a credit in the equivalent amount."

25. On the basis of this analysis, no money or other property could have passed by the bank transfers. In the case of each of the bank transfers there was simply a debit and credit which were "causally and transactionally linked".

26. However, this assumes that the reference to "money" in Condition A cannot mean what is conventionally referred to as money in the bank. Putting the matter another way the

Appellant's argument assumes that, for the purposes of Condition A, the Appellant's chose in action in relation to the offshore bank cannot be treated as money, and that the "causally and transactionally linked" debits and credits as between the paying bank and the receiving bank, which occurred by the bank transfers, cannot be treated as the transfer of money from the paying bank to the receiving bank.

27. In our judgment there are a number of reasons why this assumption is wrong, and why the reference to money in Condition A does include money in the bank.

28. First, there is no definition of *"money"*, as this expression is used in Condition A. This expression is however routinely used to mean money in the bank and, in the absence of a good reason to the contrary, it seems reasonable to assume that the use of this expression to include a credit balance in a bank account was intended by Parliament.

29. There is strong support for this analysis in the judgment of Lord Leggatt in *Court Enforcement Services Ltd v Marston Legal Services* [2020] EWCA Civ 588. As Lord Leggatt explained, at [90], the term *"money"* is capable of a narrow and a broad meaning:

> "90 The term "money" is capable of being used in the narrow sense contended for by CES to denote only physical objects which are accepted within a legal system as having value and as a medium of exchange. But the term can also be used in a broader sense to include what is sometimes referred to as "bank money" - that is, sums credited to a bank account which are also accepted as having those characteristics. Unlike coins and banknotes, bank money has no physical existence. In legal terms it consists solely of obligations owed by banks to their customers (and vice-versa) and, when a payment is made from one bank account to another, no item of property is transferred: all that happens is that an amount is subtracted from the balance of one bank account and an equivalent amount added to the balance of another."

30. Lord Leggatt explained why the broader interpretation was appropriate, at [98] to [104]. In particular, Lord Leggatt said this, at [100]:

> "100 The question then is whether, and if so how, bank money can be taken in exercise of the power conferred by a writ of control, even though - being purely intangible - it cannot be taken control of. The answer, as it seems to me, is illustrated by the facts of this case. If an enforcement agent acting under the power to enter premises and take control of goods threatens to remove goods unless the debtor pays a sum of money, and to avoid that outcome the debtor makes the payment by debit or credit card or bank transfer thereby causing the sum to be credited to a bank account, I do not think it a strained use of language to describe the credit to the account as "money taken in exercise of the [enforcement] power". It also makes rational sense to treat equally as proceeds from the exercise of the power money paid to avoid the seizure and sale of goods and money realised by actually seizing and selling them. Indeed, I can see no rhyme or reason for distinguishing in terms of the use to which they should be put between payments obtained in these two ways."

31. Mr Firth sought to distinguish this case, emphasising that the question in *CES* was whether "money taken in the exercise of [an enforcement power]" constituted "proceeds". In that context it could well be seen why the sum in issue which had been credited to the enforcer's account could be regarded as "money" so "taken" and accordingly "proceeds". In that particular context, of "proceeds" in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007, it did not matter that the property (the chose in action) was not the same property as was in the creditor's hands. The concept of "proceeds" was wide enough to

cover property that had been derived from other property. In contrast, so Mr Firth submitted, the relevant legislation here, namely Condition A (and as distinct from Condition B), was concerned with the specific property, and did not extend to property which had somehow been derived from other property.

32. We reject these attempts to distinguish *CES*. Lord Leggatt's proposition that the term "money" could bear a wider meaning was a general one. Where there was a difference in meaning the question would become one of what was intended in the relevant provision in which the term "money" was used. While it is true that the case was concerned with the enforcement provisions, the reasoning of Lord Leggatt on the application of the broad interpretation of the term "money" was thus not confined to that statute. As mentioned above there is no reason to suppose that the term "money", in the context of s809L, should not bear that wider meaning. The term "money" in Condition A is accordingly to be read as including "bank money". There is, accordingly, no difficulty, as argued, with having to rely on an analysis which depends on the new chose in action on the payee side being derived from the chose in action that the payor had, in order to justify the view that the same property was brought over to the UK.

33. Second, there is the provision in s809V, the purpose of which is to ensure that a remittance in the form of a direct payment to HMRC is not taxable (up to an "applicable amount"). Section 809V provides as follows:

> **"809V Money paid to the Commissioners**
>
> (1) Subsection (2) applies to income or chargeable gains of an individual if —
>
> (a) the income or gains would (but for subsection (2)) be regarded as remitted to the United Kingdom by virtue of the bringing of money to the United Kingdom,
>
> (b) the money is brought to the United Kingdom by way of one or more direct payments to the Commissioners, and
>
> (c) the payments are made in relation to a tax year to which section 809H applies as regards the individual.
>
> (2) The income or chargeable gains are to be treated as not remitted to the United Kingdom to the extent that the payments do not exceed the applicable amount (as defined in section 809H)…"

34. The language of s809V makes it clear that, but for the deeming provision in s809V, a direct payment to HMRC (the Commissioners not being a "relevant person") from an offshore account, using income or chargeable gains, would be a remittance caught by s809L. It would be very odd if the reference to bringing money to the United Kingdom in s809V(1)(b) had a different meaning to the equivalent reference to bringing money to the United Kingdom in Condition A. In our view Mr Vallat KC was right to stress that the argument based on the wording of s809V is not an argument of redundancy, but rather an argument on the statutory language. Section 809V quite clearly contemplates that a remittance can be made by way of a direct payment, such as a bank transfer, to HMRC.

35. Third, there are the bizarre results which flow from treating the reference to money in Condition A as not including "bank money". If this is correct, it means that Condition A cannot apply to a transfer of funds from an offshore bank account to a bank account in the United Kingdom. This seems a very odd result, given that one would expect the remittance provisions to extend to the most obvious means of remitting income and chargeable capital gains from overseas to the United Kingdom, namely a bank transfer.

36. Mr Firth argued that even if "money" was interpreted to include "bank money" then that was irrelevant. The fact that Condition A referred to "money or other property" meant it was only ultimately money *in so far as* that constituted property that was caught by the provision. The only property (even if money included "bank money") was the chose in action.

37. This attempt to sideline the wider definition of "money" (that we have indicated is the correct one) must be rejected. It gives insufficient recognition to the point that Parliament has seen fit to specifically make a separate reference to "money" and that the reference to "or other property" follows the reference to "money". The legislation does not envisage any kind of money that is not property, which it might easily have done by referring, for instance, to money in so far as it was property. The reference to "or other property" instead conveys the idea that the property will encompass all that is included within the term "money" which precedes it and thus encompass "bank money" as a type of property. Thus even if one approaches Condition A from the perspective of having to identify "property" the relevant property will cover "bank money". It is not necessary to look to the legal mechanics underlying the make-up of bank money to identify a particular chose in action.

38. We also reject Mr Firth's argument that the reference to "money" in Condition A can effectively be disregarded as superfluous because the formulation in Condition B which is used to refer back to what is covered by Condition A just refers to property. That simply reflects concision in the drafting where, because the drafter has already confirmed that money is a species of property, it is not strictly necessary in the same section repeatedly to have to refer to the whole phrase "money or other property".

39. This analysis, that the focus is on "money" and that it is the bank money which is the property, not a chose in action also explains why the difficulties which Mr Firth advanced in respect of transfers, where either or both of the accounts were in deficit, are not an issue. In that regard, Mr Firth took us to a passage in *R v Preddy* (at 835A) where the court had highlighted that it was:

> "difficult to see how an increase in borrowing can constitute an extinction of a chose in action owned by the lending institution, or a reduction in borrowing can constitute the creation of a chose in action owned by the defendant."

40. The difficulties said to arise, where one or other of the accounts is in deficit (and there is therefore no chose in action) but either a decrease in indebtedness on the payment side or a reduction in indebtedness on the receipt side, only come about however if property is analysed at the level of the particular chose in action. For the reasons explained that is the wrong starting point. It overlooks the specific reference in the legislation to "money". In the ordinary language sense in which that term is used, which will cover "bank money", no-one would sensibly suggest that where a bank transfer had been made to a payee, the payee had not received the payor's money just because the payee happened to be overdrawn and all the credit had done was make them less overdrawn.

41. The way that Parliament has chosen to express the scope by referring to "money or other property" also helps explain why there is no inconsistency, as Mr Firth argues, with the analysis in *R v Preddy.* It is true that the House of Lords rejected the argument that the CHAPS transfers at issue there were the property that was obtained. The House of Lords decided instead that the chose of action in the defendant's hands was not property belonging to another (because the chose in action in the lender's hands had been extinguished). The focus there however was on the different legislative context of whether there was obtaining of property "belonging to another" under the Theft Act 1968, and on the debate in the Court of

Appeal's decision, which had led to the question referred on appeal. That question had focussed on whether the CHAPS transfer was "intangible property" rather than "money". It is also notable that Lord Goff had referred specifically to the legislative background to the provisions, noting at 832 G-H that it was "legitimate to comment that it is improbable that obtaining a loan such as a mortgage advance by deception should have been intended to fall within s15(1) of the Act of 1968, when s15(2) as proposed provided for a separate offence of dishonestly obtaining credit by deception in terms wide enough to include obtaining credit in respect of the repayment of a loan." In other words it appears the fact that there was originally another subsection of the legislation which looked to have intended to catch the relevant situation may have given some reassurance to the House of Lords' view that s15(1) of the Theft Act should *not* be interpreted as covering that situation.

Brought involves accompaniment?

42. As to the Appellant's argument that the reference to "brought" in Condition A, where there is a transfer of property by a relevant person, is confined to a case where the relevant person accompanies the property being brought to the United Kingdom there are, again, several reasons why this argument is wrong.

43. First, as a matter of language there is no good reason to construe "brought" in such a narrow way. If someone arranges a transfer of funds from an offshore bank account to a United Kingdom bank account, one would naturally refer to this as bringing funds to the United Kingdom. Mr Firth emphasised the distinction between sending and bringing, arguing it was significant that Parliament had, with that in mind, specifically chosen to refer to bringing. There are however obviously situations where those terms can be used interchangeably. A bank transfer by a person is a case in point. One might just as well describe it as a situation where the bank money was sent to the UK by the person or brought to the UK by the person.

44. Second there is, again, the language of s809V. The reference is to money "brought" to the United Kingdom by direct payments. As we have said, the reference to direct payments clearly includes bank transfers. A person cannot physically accompany a bank transfer. It would be very strange if "brought" in s809V(1)(b) did not connote a requirement for accompaniment of the relevant money, but "brought" in Condition A did connote such a requirement.

45. Third, there is the use of this language in the case law. The facts of *Thomson v Moyse* [1961] AC 967 concerned a taxpayer who had sold cheques drawn on dollars in a US bank account in return for Sterling in London. The English banks then cashed the cheques in New York receiving the dollars in New York. Although there was much argument about the relevance or otherwise of this case, the key point is that the legislation under consideration in that case (Cases IV and V of Schedule D to the Income Tax Act 1918) included reference (in Case V) to *"*remittances, property, money or value brought or to be brought into the United Kingdom*"*. There was no suggestion that this connoted a requirement that the remittances, property, money or value had to be accompanied by the taxpayer. The opening passages of Lord Radcliffe's speech are illuminating in this respect. As Lord Radcliffe noted, at pg 992-993 (underlining added):

> "What has puzzled me throughout is to see how or why the banking transactions for effecting the remittance of his money from America to which the respondent resorted should be regarded as insufficient to constitute the sterling proceeds received as assessable sums for the purpose of these two cases. He did not, of course, invest his American income in bullion or commodities to be shipped over here and sold or in United States dollar bills for similar realisation: but then nobody says or supposes that

> assessability is confined to such transactions. Nor did he instruct his bankers or agents to use his dollar income in buying a bill on London which could have been discounted or presented here for payment. These would have been possible methods of "bringing" the money here, and, no doubt, have all been resorted to in their time. But what he did do seems to me to have been in all essentials a similar transaction and to have amounted just as much to a " bringing " in the relevant sense. He wrote out his cheques on his New York bankers directing them to hand over his dollars to or to the order of his United Kingdom purchasers and these purchasers in return acknowledged a sterling debt to him calculated at the current rate of exchange between New York and London. He parted with his dollars: he got his sterling. He emptied one pocket of dollars in order to fill another pocket with sterling. It is true that the cheques in question were written out and signed in London and, if you please, sold here, so that the instruments themselves did not cross the Atlantic until he had made this sale and even then only in the outward direction; but what importance can there be in the actual place of making the instrument or in its physical movements if the direct result of the mechanism employed was to turn the taxpayer's income in one country into money or value in the other country to which he had decided to transfer it?"

46. Mr Vallat rightly acknowledged that the relevance of this case lies not in its direct precedent value (the legislation in point was differently structured and worded) but to support the point that, in accordance with the ordinary meaning of brought, judges have used the term in a way that does not involve accompaniment. Mr Firth's point in reply that the legislation then applicable was concerned with income, a broader and more amorphous concept than property, does not detract from that point. As can be seen from the extracts above, the language used by Lord Radcliffe was not couched in terms of bringing income but referred to various methods of ""bringing" the money".

47. For his part Mr Firth also sought to rely on *Thompson* highlighting the House of Lords' conclusion that a requirement in the relevant legislation for money or value arising from property to be "not imported" was satisfied. The property (i.e. the dollar credit in New York) had not been brought to the UK. He referred in particular to the dicta of Lord Reid (at pg986) agreeing with the taxpayer's argument there that there was "nothing to show that any money was ever brought to the United Kingdom in connection with" the transactions. However that analysis simply reflected the different facts there, where rather than the money simply being transferred to England there was a sale of the taxpayer's right to draw down a US dollar amount. The judgment did not address the question of whether a dollar credit that had been transferred to the UK would amount to the property being imported.

48. Fourth, there are, again, the bizarre results which flow from importing a requirement of physical accompaniment into the word "brought" in Condition A. Such a construction means that the transfer of any property by a relevant person to the United Kingdom could not be caught by the "brought to....by" limb of Condition A unless the property was accompanied by the relevant person. This would exclude all kinds of transfers of property which one would have expected to be caught by Condition A, most notably a bank transfer. So far as money is concerned, on the Appellant's construction of Condition A, the transfer of money would only be caught by Condition A if the taxpayer physically carried the money into the United Kingdom. This would effectively restrict the scope of Condition A, so far as the transfer of money by a relevant person was concerned, to cash in a wallet. This cannot have been Parliament's intention in framing Condition A.

49. Mr Firth also argued that his definition (of "brought" requiring accompaniment) made more sense alongside the legislation's reference to "received". The reference to brought (with the connotation of accompaniment) forestalled any possible argument that a person who had

brought their property from abroad (in the sense of having accompanied it) could be said to have received the relevant property. Such a person could not be said to have "received" the relevant property in the UK, because they would always have had the relevant property with them. However even if that interpretation of "received" were correct it would not, in our judgment, imply that the term "brought" should *only* apply to cases where the property was accompanied. It would be just as consistent with the reference to "brought" covering *both* cases of accompaniment and those without.

50. There was also some argument before us by reference to the dictionary definitions of "bring" (the Appellant referred to the definition "To cause (something or someone) to come along with oneself, either by carrying or bearing…"). We did not for our part find recourse to such definitions instructive. The term "bring" is clearly used in an ordinary language sense. When understood that way (and moreover in relation to money or other property) there is, as mentioned, no difficulty in describing a bank transfer from the taxpayer's non-UK bank account to a UK bank account as one as where money has been "brought" to the UK by the taxpayer.

Purpose of Condition A – no additional need for enjoyment / benefit to relevant person

51. As to the arguments relating to the purpose of the provision, contrary to what was argued by the Appellant, it is clear that Condition A is not concerned solely with the transfer of property to the United Kingdom which is for the benefit of a "relevant person". If Condition A had been intended to have this limited scope, Parliament would have said so. Condition A also catches transfers of property to the United Kingdom by a "relevant person", whether by bringing, receiving or using. In the case of bringing and receiving property by a relevant person, there is no additional requirement for any benefit thereby to accrue to a "relevant person". In the case of using property it may be that such use is of benefit to a "relevant person", but there is still no independent requirement for any benefit to a relevant person.

52. Mr Firth also argued that the proposition that Parliament did not intend to tax the taxpayer when property deriving from the taxpayer was enjoyed by a non-relevant person in the UK was borne out by the general thrust of s809L in that Conditions C and D, set out in respectively s809L(4) and (5), targeted situations where property was enjoyed by a relevant person in the UK. Mr Firth also drew further support for the necessity, as he contended, of enjoyment from the Background Note in relation to the Finance Bill 2008 (Clause 23 Schedule 7) and which had introduced the legislation containing s809L. The relevant part of the Note was in the following terms:

> "The general aim is to ensure that income or gains to which the remittance basis applies are only excluded from charge to UK tax where they are genuinely kept offshore and not brought to the UK. But where they are in effect remitted to the UK in such a manner that the individual has the use or enjoyment of them in the UK, the individual should be liable to tax on them, precisely because the individual has effectively remitted them to the UK."

53. The FTT had similarly, as Mr Firth highlighted, itself described the purpose of s809L as being "to identify situations where remittance basis income [was] generally enjoyed in the UK by the taxpayer (or a relevant person)" (at [90]).

54. We do not accept that any of these points make good the argument that the purpose of the provisions is confined to situations involving the enjoyment of the property by the relevant person. If anything, the specific references in Conditions C and D to property being "enjoyed" by the relevant person in these provisions reinforces the particular scope of the earlier conditions that we have explained above. If Parliament had intended the "brought to

the United Kingdom…by the relevant person" route to satisfaction of Condition A to also require enjoyment on the part of the relevant person then it would have been very straightforward to provide for this. The Background Note (and the FTT's view of purpose) speak to the legislation in general terms, including the whole of the provisions which ended up in s809L, many elements of which do refer to benefit and enjoyment of the relevant person. Nothing in the Note's description precludes the view that it was enough for a remittance to be constituted by money or other property being brought by the relevant person to the UK. Indeed, the contrast between the reference in the first sentence to income or gains "brought to the UK" (with no reference to enjoyment) and the second sentence (which covers the situation where income or gains is "in effect remitted" and does refer to use or enjoyment in the UK) is entirely consistent with there being *no* requirement for enjoyment or use in respect of the route to remittance whereby the money or property is brought to the UK by the relevant person. It is to be contrasted with the other routes to remittance which do stipulate enjoyment as a requirement.

55. The focus, in relation to this particular route of remittance, on property being brought by the relevant person (as opposed to someone else) also explains why the supposed absurdities and differential treatment as between bank transfers to a non-relevant person and transfers by cheque do not arise. If a bank transfer to a non-relevant person (which did not result in any enjoyment to a taxpayer) amounted to a remittance then it would, so the Appellant argues, be odd if a cheque given to a non-relevant person, that the non-relevant person then chose to cash in the UK, also amounted to a remittance. However, HMRC accept, where the cheque is made out to the non-relevant person overseas and cashed by that person in the UK, that this would not amount to a remittance on the basis that such property was being brought to the UK. This was because it was the non-relevant person who had brought the property to the UK, not the taxpayer. Given this position, the alleged oddity disappears.

Impractical consequences if bank transfers by relevant person to UK account are remittances?

56. In his oral submissions Mr Firth stressed the consequences of HMRC's construction of Condition A. His example of the purchase of a car in France (and where the taxpayer paid by bank transfer at the seller's request to the seller's UK bank account) was replaced, in his oral submissions, by the example of an internet transaction, where a taxpayer might purchase goods online. If the online payment was made to a bank account which happened to be located in the United Kingdom, there would be a bringing of the money used to make the payment to the United Kingdom, within the meaning of Condition A, in circumstances where the taxpayer would be unaware that this had occurred. Mr Firth's other example in his oral submissions was the purchase of a tin of beans in a supermarket in the Republic of Ireland, where the purchase money was paid into a bank account in Northern Ireland.

57. The answer to this and the other examples given by Mr Firth was supplied by Mr Vallat. At the time when this tax regime existed for non-domiciled persons resident in the United Kingdom, the relevant taxpayer was in a privileged position, having the benefit not having to pay tax on their income and chargeable capital gains, save to the extent remitted to the United Kingdom. There was nothing unreasonable in placing the risk on such a taxpayer to ensure that they did not, inadvertently, make a remittance to the United Kingdom by an online transaction offshore, or any other transaction offshore and, if they did, in placing the onus on the taxpayer to verify the correct timing and amount of remittance. It was the duty of the taxpayer to be vigilant, if the taxpayer wished to enjoy the financial benefits of their special tax status.

58. The correct analysis therefore is that when a taxpayer who is a relevant person makes a bank transfer of money from their non-UK account to a UK account, this will amount to

money being brought to the UK by a relevant person for the purposes of s809L and will therefore constitute a remittance. That ought to be an altogether unsurprising outcome and, in our judgment, it is the one which the FTT correctly arrived at.

59. The reasoning of the FTT, in relation to the question of whether the Bank Transfers fell within the terms of Condition A, is not as clear as it might be. Nevertheless it is clear that the FTT rejected the Appellant's arguments based upon an analysis of the property at the level of a chose in action and the relevance of taxpayer enjoyment or benefit. The FTT found, at [91], that there was "no reference in the legislation to choses in action, simply to income/gains being 'brought to' the UK by the relevant person," and, at [92], that it was "of no relevance that the Appellant did not benefit from the money or other property as the Appellant made remittances when he initiated the transfers."

60. In the light of what we have said above, we conclude that there was no error of law in FTT holding, as it did at [95], that "…when the Appellant made bank transfers from his offshore bank account to the UK bank accounts of non-relevant persons… he remitted money to the UK" and that he had, therefore, made remittances to the UK.

61. For completeness we ought also to mention that Mr Firth took issue with the FTT's discussion (at [70] to [89]) of numerous authorities which neither party had referred the FTT to. These included *W T Ramsay Ltd v Inland Revenue Commissioners* [1982] AC 300 and subsequent cases in relation to purposive interpretation and also cases dealing with the court's role in correcting drafting mistakes (as discussed in *Inco Europe Ltd v First Choice Distribution* [2000] 1 WLR 586). Although it is not clear to us that such extended discussion was necessarily called for (the relevant principles did not appear to have been in dispute) there was nothing here which amounted to an error of law and certainly not any that was material in the circumstances of this case.

Conclusion on Ground One

62. For the reasons which we have set out, we conclude that the FTT did not err in law in reaching the conclusion it did in relation to the Bank Transfers by the taxpayer to the UK bank accounts of non-relevant persons. Ground One is therefore dismissed.

DISCUSSION: GROUNDS TWO AND THREE

63. Ground Two concerns transactions paid for with the Appellant's non-UK credit card in respect of (a) UK university expenses, (b) services, including booking flights with a UK element provided to persons who are not relevant persons and (c) jewellery gifts received by persons in the UK who were not relevant persons. (We refer to these credit card payments as "the Credit Card Payments").

64. Ground Three concerns jewellery purchased in the UK by the Appellant (for the Appellant's and his wife's personal use) paid for using the Appellant's non-UK credit card. (We refer to these credit card payments as "the Additional Credit Card Payments").

65. It is convenient to deal with these two grounds together because they both, at their root, concern the treatment of transactions paid for using an offshore credit card, and because some of the reasoning provided under Ground Three is also relied on in respect of Ground Two.

66. The relevant legislative provisions for this ground include s809L(3)(c) (at [5] above). That provision, through the definition of "relevant debt" in s809L(7) (at [7] above), brings the requirements of Condition A back to the fore in that it requires there to be a relationship to either "property falling within subsection (2)(a)" ("the Condition A property"), or a "service falling within subsection (2)(b)".

67. While it is a matter of dispute whether such debt was a "relevant debt" it was not in dispute that any such debt (taking the form of the taxpayer's debt to the overseas credit card company) was paid, outside of the UK, using funds, which included non-UK source income, from the taxpayer's overseas bank account in Dubai.

68. HMRC's case, as argued before us (Mr Vallat and Mr Triggs did not appear below), is that the relevant Condition A property is the money the overseas credit card company used to pay the UK provider of goods or services. It is submitted that when the taxpayer "authorised payment by the overseas credit card company to make a payment in the UK" that money was "brought" over to the UK. It is then argued the debt the taxpayer owed to the credit card company relates to that payment of money and is therefore a "relevant debt". Although, according to HMRC, the payment through the overseas credit card is ultimately treated as a remittance (just as a bank transfer to the UK is), HMRC have explained that their reliance on the "relevant debt" provision in s809L(7) (as opposed to simply s809L(2)(a)) stems from the fact that the money which is brought over is that of the credit card company rather than the taxpayer as a "relevant person".

69. The Appellant's case was summarised by the FTT (at [98]) as being that the legislation did not treat the enjoyment of a service by a non-relevant person as a remittance. Here it was a non-relevant person (who could include a close family member such as an adult son) who was enjoying the service.

70. Given, as will be seen, there is an argument regarding the scope of the FTT's reasoning and its agreement with HMRC's case, it is convenient to set out what the FTT understood as HMRC's argument and the FTT's response in relation to that. The FTT summarised HMRC's case as follows at [99]:

> "Mr Hunter, on the other hand, submits that by using an offshore credit card in the UK, the Appellant created a "relevant debt" so that payment of that credit card with an offshore bank account amounted to the use of income or chargeable gains outside the UK in respect of a relevant debt (thus implicitly satisfying Condition B by falling within s 809L(3)(c)). In essence, HMRC's case is that the purchase via a credit card is treated as being equivalent to the cardholder authorising the credit card company to pay the bill for the goods, or service, on their behalf, and that this creates a 'relevant debt', the definition of which encompasses a debt that relates to...property within subsection (2)(a) of s 809L(7)."

71. The FTT's ensuing reasoning was that:

> "100. Having considered the legislation, we are satisfied that the use of any credit card to make purchases in the UK of property falling within Condition A creates a relevant debt, so that payment of the credit card account from an offshore bank account containing foreign income or gains amounts to a remittance under s 809L(3)(c). Whilst a non-relevant person may have benefitted from the service/gifts, the Appellant is the person who made the purchases using his offshore credit card, using foreign income or gains to pay the offshore credit card company. In this respect, it was not suggested that the non-relevant person(s) made the purchases themselves using money given to them by the Appellant. In any event, such a situation would still require the Appellant to have transferred the money from his offshore bank account (or to have physically brought it) for a non-relevant person.
>
> 101. We find that it is neither here nor there that the relevant person (i.e., the Appellant) purchased the gifts for a non-relevant person. The key consideration is that the Appellant first purchased the items in the UK, using funds held overseas, and then gifted the purchases to a non-relevant person.

> In further analysis of such transactions, the vendor from whom the Appellant made the purchases did not make a gift to the non-relevant person but sold an item to the relevant person who either gave it to a non-relevant person, or directed it to be delivered to a non-relevant person. The credit card payments/purchases emanated from foreign income or chargeable gains and a relevant debt was created."

72. As regards the jewellery purchased for the taxpayer's and his wife's personal use and paid for with his non-UK credit card (the Additional Credit Card Payments which are the subject of Ground Three), after having set out the exemption relied on by the Appellant (see s809X ITA 2007 above at [8]) the FTT rejected the Appellant's case that the exemption applied, explaining at [104]:

> "…This is because the exemption applies to property brought to, received, or used in the UK for personal use. The position in this appeal is that the Appellant actually purchased jewellery in the UK using his offshore credit card, and that jewellery was for a relevant person (the Appellant and his wife)."

73. The FTT's reasoning at [105] (which is also relevant to Ground Two in that that too concerned payments by an offshore credit card) was that as the purchase (in the case of jewellery)

> "…was purchased by the Appellant using his offshore credit card, the Appellant was making a remittance".

74. The FTT explained:

> "This is because the Appellant was, effectively, authorising the offshore credit card company to make a payment in the same way as if he had instructed the credit card company to make a direct payment to the person supplying the goods. Whilst the terms of credit card agreements may differ as to the moment of indebtedness between the cardholder and the credit card company, the use of the credit card to pay for goods used, or received, in the UK will create a relevant debt. The use of the Appellant's untaxed foreign income, or gains, to pay the offshore credit card company in respect of the debt is a taxable remittance."

Parties' arguments in outline

75. Before the Upper Tribunal, the Appellant argues in summary that the FTT erred in law in the following main respects:

(1) The FTT failed to explain how Condition A was satisfied and to identify what property was brought to the UK by the Appellant.

(2) The FTT in any case wrongly concluded the Appellant's debt to the credit card company "related to" goods or services received by and for the benefit of a non-relevant person and therefore erred in its conclusion that the debt was a "relevant debt".

(3) To the extent it was suggested the Appellant had received the goods and gifted them to non relevant person such finding lacked any basis in fact.

76. HMRC in turn argue in summary :

(1) The FTT did address Condition A. The relevant Condition A property was the money the credit card company paid to the vendor of the goods or services. That was HMRC's argument and the FTT accepted it. HMRC further explain (in answer to the point that taxpayer could not rationally determine whether there is a remittance) that the FTT focused "on the United Kingdom in its capacity as the point of purchase":

(referring to FTT[100], [101]. Money is brought to the United Kingdom by virtue of the fact that the liability that would otherwise arise on purchase is discharged in the United Kingdom. The means by which that liability is in fact discharged by the credit card company is, it is argued, irrelevant, as indicated by the approach taken by the House of Lords in *Thomson*.

(2) The Appellant's debt clearly "related to" money the credit card company paid to the relevant service and product vendors.

(3) The FTT's reasoning that the Appellant had made onward gifts to the non-relevant person was not the primary basis for the FTT's decision but was in any case correct. Moreover the Appellant ought to have raised what was essentially an *Edwards v Bairstow* challenge for lack of evidence earlier and with the necessary level of particularity. It was too late to do so now.

Centrality of need to identify Condition A property

77. It is fair to say much of the parties' argument before us, and also, it appears, before the FTT, concerned the question of whether a "relevant debt" existed and the nature of the relationship contemplated in order for the putative debt to be "related to" the relevant property. As we indicated at the hearing before us, there was a lack of clarity, certainly in terms of the facts, regarding what exactly the Condition A property was that was said to be brought over to the UK. That was of course a central question because if there was no such property, then there was nothing which the Appellant's debt to the credit card company could be said to be "related to" in order for such debt to be constituted as a "relevant debt".

78. As to HMRC's argument that money is "brought to" the UK by a relevant person "when they authorise the card-issuer to make a payment into the UK", the Appellant's first argument is the procedural one that HMRC's case is out of scope of the appeal before the Upper Tribunal. Mr Firth emphasises that HMRC did not, in the proceedings before the Upper Tribunal, file any Rule 24 Response in the appeal. If a Respondent to an appeal wished to identify any alternative reasoning that it sought to rely on for the FTT's dismissal of an appeal then it was incumbent on the Respondent to identify that in such Response. HMRC could only therefore rely on the reasoning in the FTT's decision and there was nothing in that which set out the proposition that HMRC now rely on that the Appellant had, through his use of the offshore credit card, authorised a payment to be made into the UK.

79. Second, the Appellant argues that even if in scope, HMRC's argument is without merit. The use of an overseas credit card company involved many parties, typically the cardholder, card issuer, merchant acquirer and the vendor. At our request for assistance from an authority which described these sorts of arrangements Mr Firth helpfully referred to the Court of Appeal's discussion in *Lancore Services Ltd v Barclays Bank plc* [2009] EWCA Civ at [5]. There were, Mr Firth submitted, all sorts of issues as to whether a payment was made to the third party vendor (the relevant amount would depend on the situation as between the vendor and merchant acquirer at the time for settling up), when payment was made, and crucially where it was made in that the vendor might receive payment into a non-UK bank account. A taxpayer would have no idea about such matters and could not reasonably determine whether there was a remittance. There was, in any case, no evidence that any payment had been made to the UK in respect of the particular purchases in question. (Mr Firth emphasised for instance that the services at issue in this case simply related to flights with a UK connection booked on the global site of Emirates.com).

80. Mr Vallat's submissions in response were that, read as a whole, the FTT Decision did address the issue HMRC raised and HMRC's argument was therefore within scope. The overseas credit card payments were remittances in the same way direct payments via a bank

transfer or cheque to pay for the goods and services would have been. In looking at the concept of whether money or other property was brought to the UK, the precise mechanisms of the credit card arrangements were, in his submission, irrelevant. The FTT had, in his submission, been correct to accept HMRC's approach of looking at the issue at a high level.

Was HMRC's argument reflected in the FTT's reasoning?

81. In considering the Credit Card Payments the FTT appear, at [96], to have gone straight to s809L(7), and to the question of whether a Relevant Debt was created by each of the Credit Card Payments. The reason why the FTT did this, it appears, was because there was argument before them as to whether Condition B was satisfied in relation to the Credit Card Payments; see [99]. There it can be seen that HMRC argued that Condition B was satisfied because (i) use of the offshore credit card in the United Kingdom created a "relevant debt", with the result that (ii) the payment of that credit with an offshore bank account amounted to the use of income or chargeable gains outside the United Kingdom in respect of a "relevant debt". This satisfied, so HMRC argued, the requirements of paragraph (c) of s809L and, by that route, satisfied Condition B.

82. The FTT accepted this argument, at Paragraphs 100 and 101. In doing so however, the FTT do not appear to have addressed the question of whether the Credit Card Payments actually satisfied Condition A. There is a reference in Paragraph 100 to *"*property falling within Condition A*"*, but it is not clear whether this is a reference to property being brought into the United Kingdom or, if so, what property is referred to.

83. HMRC's written argument also suggested the part of the sentence in [100] that "…the Appellant is the person who made the purchases using his offshore credit card, using foreign income or gains to pay the offshore credit card company [emphasis added]." clearly goes to the satisfaction of Condition A, but it is not at all clear that this is the meaning of what was said by the FTT.

84. Mr Vallat also referred to [101]. But there the FTT says the key consideration is that the Appellant first purchased the items in the UK using funds overseas then gifted the purchases to non-relevant persons.

85. Mr Vallat also relied on [99] where the FTT had set out HMRC's submission. The FTT there refers to creation of "relevant debt" and to HMRC's case in essence being that "the purchase via a credit card is treated as being equivalent to the cardholder authorising the credit card company to pay the bill for the goods, or service, on their behalf, and that this creates a 'relevant debt', the definition of which encompasses a debt that relates to...property within subsection (2)(a) of s 809L(7)." That submission similarly does not say what the property under that subsection of Condition A is. It does not accordingly avail HMRC to rely on the FTT's acceptance of this submission.

86. In order to deal with this point Mr Vallat was forced, in his oral submissions, to make reference to [105] which, although addressed to the transactions concerning jewellery bought for the Appellant and his wife, similarly concerned the significance of the use of an offshore credit card, (see above). Mr Vallat relied, in particular, upon the explanation given by the FTT that there was remittance because:

> "…the Appellant was, effectively, authorising the offshore credit card company to make a payment in the same way as if he had instructed the credit card company to make a direct payment to the person supplying the goods".

87. It appears that the FTT analysed the Credit Card Payments and the Additional Credit Payments on the basis that the Appellant was authorising the making of a payment by the

offshore credit card company. There is however no finding in Paragraph 105 that money or other property was brought to the United Kingdom, within the meaning of Condition A. A finding that there was a direct payment to the person supplying the goods does not amount to saying there was "authorisation to make a payment into the UK". The fact that offshore credit is used to pay for goods and services in the UK does not mean there was payment into the UK (the seller of the goods or services need not have a UK account).

88. It is accordingly not clear that a finding that there was authorisation to make a payment into the UK can legitimately be inferred from this paragraph. Nor in our view can it be inferred from elsewhere in the decision.

89. That conclusion means there is merit in the Appellant's procedural argument that HMRC seeks, impermissibly, to rely on reasoning that was not in the FTT Decision. If HMRC had wished to rely on such reasoning they need to raise this in their Rule 24 response. That means we should exclude from our consideration HMRC's argument that the FTT Decision was correct on the basis of any argument regarding authorisation by the taxpayer being regarded as authorisation to make a payment into the UK.

90. The failure by the FTT to properly analyse what property was bought to the UK for the purposes of Condition A also means we agree with the Appellant that there was an error of law in the FTT's analysis. There could only ever be a relevant debt that gave rise to remittance if there was something the debt could relate to that fell within Condition A, and it was not explained what that was. In fairness to the FTT there is nothing to suggest this point was specifically brought to the FTT's attention by either party. It was not however agreed, and remained at large. It was a fundamental component to the analysis on whether the offshore credit card transactions constituted remittances.

91. These problems regarding the lack of analysis on Condition A plainly also affect the decision of the FTT that Condition B was satisfied because the Appellant used his income or chargeable gains outside the United Kingdom in respect of a "relevant debt". A "relevant debt" could only exist if the debt related to property falling within paragraph (a) of s809L(7) or related to a service falling within paragraph (b) of s809L(7). The FTT considered that the debts created by the Credit Card Payments related to property falling within paragraph (a); that is to say property falling within subsection (2)(a) of s809L(2). This however takes one back to the question (which was not considered) of whether, by the Credit Card Payments, money or other property was brought to the United Kingdom.

92. We will address the further actions to be taken in relation to the error regarding set aside and remaking by the Upper Tribunal or remittal to the FTT below once we have considered Ground Three.

Ground Three

93. As regards Ground Three, and the treatment of the jewellery received by the Appellant or his wife for their own personal use, paid for with the Appellant's non-UK credit card the parties were agreed that the outcome of the ground stood or fell with the outcome on Ground Two. This was on the basis that if HMRC were correct in their analysis that the relevant Condition A property was money paid into the UK from the credit card company to the third party vendors then the same would be true of the Additional Credit Card Payments. The question of the application of the exemption in s809X would not arise as a remittance for tax purposes (Condition A property) would already have arisen because of the payment of money by the credit card company to the vendor.

94. In our view the FTT's reasoning on Ground Three suffers from the same analytical flaw as we have identified in our consideration of Ground Two. The reasoning of the FTT did not

address what the relevant Condition A property was, in order for it to then be determined whether any debt that was relied upon was a "relevant debt".

95. In our view, that flaw in reasoning amounts to an error of law in respect of both Grounds Two and Ground Three.

96. The errors of law were clearly material in that if they were to be corrected, such that there was due consideration given to the question of what the property was that fell within Condition A, we are not satisfied that the outcome (that there was a remittance for tax purposes) would be the same. Even if we were to assume (in HMRC's favour and ignoring the lack of Rule 24 response) that the use of an offshore credit card by a taxpayer to make purchases for goods and services in the UK was capable of being viewed as an authorisation by a taxpayer to make a payment into the UK and thus a remittance, it does not necessarily follow that the outcome before the FTT would have been the same. That is because there was no finding, on the facts here, that the Appellant had by using his offshore credit card in fact authorised payments into the UK. Nor was it clear that there was any evidence before the FTT from which such finding could be made. HMRC's submissions sought to lay the fault for any lack of evidence at the Appellant's door, arguing that if the Appellant had sought to challenge HMRC's closure notice on the basis that the use of the credit card did not in fact lead to the payment of money into the United Kingdom then it was for the Appellant to lead evidence to that effect. However irrespective of who was at fault for the lack of evidence it would remain the case that the absence of factual finding and lack of evidence would mean that we could not say that the outcome would be the same. Nor do we think it sensible or feasible for us to try to make a decision on this part of HMRC's argument, in circumstances where this question does not appear to have been addressed by the FTT, in circumstances where the relevant findings of fact have not been made, and in circumstances where we are not sitting as the first instance tribunal.

Set-aside of FTT Decision: whether to remit to FTT or remake in UT?

97. The errors of law which we have identified in our analysis of Grounds Two and Three are material. By reason of these errors we consider that the FTT decision must be set aside. The question that then arises is (i) whether the case should be remitted to the FTT, on the basis that the FTT had failed properly to consider the question of whether Condition A was satisfied in relation to the transactions involving offshore credit card payments, and on the basis that the FTT needed to re-address this question, or (ii) whether the decision should be remade by the Upper Tribunal.

98. For the following reasons we consider that the part of the appeal which relates to the Credit Card Payments and the Additional Credit Card Payments should be remitted to the FTT for rehearing.

99. We are conscious that there may, in this context, be important decisions, with wider implications, to be made (i) in relation to the analysis of credit card transactions and (ii) in relation to what has to be proved and by whom where the analysis of a credit card transaction is in issue. There is also the further difficulty that the credit card payments were made using an offshore credit card. Neither we, nor it appears the FTT, were sufficiently addressed on the types of typical credit card arrangements explained in *Lancore*, let alone the question of whether similar types of arrangement would apply to the offshore credit card used.

100. It would, in our view, be unsatisfactory for the Upper Tribunal to seek to remake a decision where the relevant evidence was not before the FTT and was not therefore addressed by the FTT in its factual findings. The legal analysis on whether offshore credit card transactions constitute remittances may well be fact-sensitive and a remaking of the decision

in the Upper Tribunal would likely require further evidence and fact-finding. Those features point strongly towards remitting the matter to the FTT.

101. For similar reasons, while there were various other points that were disputed between the parties under Grounds Two and Three, concerning the competing analyses regarding how the language of "relates… to" in s809L(7) operates, we consider that this appeal is not the appropriate forum in which to address these points of principle. The lack of factual findings critical to the propositions advanced would mean any pronouncement on the correct approach would be made in the abstract, untethered to the relevant facts.

102. Drawing together all of the reasoning set out above, our conclusions are as follows. The FTT Decision insofar as it refused the appeal against the closure notice, so far as the closure notice concerned the Bank Transfers, is upheld. The FTT Decision insofar as it related to the offshore credit payments, that is to say the Credit Card Payments and Additional Credit Card Payments, is set aside. We remit that part of the appeal to the FTT. Our provisional view is that in order for all the necessary issues and evidence to be brought properly before the FTT, both parties should have the opportunity to file amended pleadings and provide additional disclosure and evidence. Accordingly, in respect of the Credit Card Payments and Additional Credit Card Payments, and by way of an expression of our provisional views on the terms of remission to the FTT of the relevant part of the appeal against the closure notice, we consider that:

(1) the Appellant should file a new Notice of Appeal;

(2) HMRC should file a new Statement of Case; and

(3) both parties thereafter should provide disclosure, witness statements and skeleton arguments in the normal way.

103. We see no reason why the appeal should not be heard by the same panel of the FTT. In order however to retain flexibility for the FTT to list the hearing as soon possible we consider the choice of panel composition should be in the discretion of the FTT Chamber President.

104. Recognising that we did not receive submissions on the terms of any remission at the hearing of the appeal, we invite the parties to provide their respective draft directions on remission (agreed if possible) for our further consideration, within 14 days of the issue of this Decision.

CONCLUSION

105. In conclusion:

(1) We dismiss the Appeal on Ground One and uphold the FTT Decision insofar as it concerned the Bank Transfers.

(2) We direct the parties to seek to agree the relevant sums comprised within the Bank Transfers, with liberty to apply to the FTT additional (so far as such additional permission may be required) to the liberty to apply already granted by the FTT, in the event of disagreement on the respective figures or any of them.

(3) We allow the appeal on Grounds Two and Three and set aside the FTT Decision in so far as it concerned the Credit Card Payments and the Additional Credit Card Payments.

(4) We remit the appeal insofar as it concerned the Credit Card Payments and the Additional Credit Payments to the FTT, for the rehearing of this part of the appeal against the closure notice.

(5) The directions in respect of remission will be settled by us having considered the parties' draft directions (to be agreed so far as possible) which shall be sent to us within 14 days of the issue of this Decision. Unless otherwise directed, we shall determine any dispute over the terms of the remission by paper determination, without a hearing.

106. The appeal is accordingly allowed in part.

MR JUSTICE EDWIN JOHNSON
JUDGE SWAMI RAGHAVAN

Release date: 23 December 2025