



Neutral Citation: [2026] UKFTT 321 (TC)

Case Number: TC09805

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Sitting in public in Taylor House, London

Appeal reference: TC/2023/01115

CORPORATION TAX – Charity exemptions – non-charitable expenditure – whether payments are the repayment of a loan made to the charity – yes – appeal allowed

Heard on: 24 –26 November 2025

Judgment date: 27 February 2026

Before

**TRIBUNAL JUDGE MALCOLM FROST
DEREK ROBERTSON**

Between

NEWPIER CHARITY LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Michael Firth KC, instructed by Brian White Tax resolution

For the Respondents: James Kirby of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. This is an appeal by Newpier Charity Limited against final closure notices issued by HMRC on 8 November 2022 in respect of the accounting periods ended 30 June 2017 and 30 June 2019. The closure notices amended the company tax returns to bring into charge payments totalling £821,000 (2017) and £291,559 (2019) on the basis that they were non-charitable expenditure within s 496(1)(d) Corporation Tax Act 2010 (“CTA 2010”).
2. The central dispute is whether those payments were repayments of a loan owed by Newpier. If they were, those payments would not be “expenditure” for the purposes of s 496(1)(d), with the result that the closure notices should be set aside.
3. For the reasons set out below, we find that the payments were repayments of a loan owed by Newpier and consequently we allow the appeal.

FINDINGS OF FACT

4. We were provided with a hearing bundle and supplemental bundle collectively amounting to 1946 pages. We also heard live evidence from Charles Margulies and Brian White. From that evidence we make the following factual findings.
5. Newpier is a charitable company, incorporated in March 1985 and registered with the Charity Commission. Its trustees since 1991 have included Charles Margulies and Rachel Margulies.
6. In the accounting period ended 30 June 1988, Newpier obtained a bank loan from Citibank N.A. of £11,630,967 (the “Citibank loan”). The contemporaneous audited accounts for 1988 record a bank loan secured on the company’s investment in listed shares. The 1989 accounts and management information identify the investment as shares in Berisford International plc (“Berisford”).
7. Since at least 11 August 1989 Newpier had granted a fixed charge over its Berisford shareholding to a Citibank entity, and on 22 March 1990 it granted a floating charge over its other assets.
8. On 18 December 1989, the board of directors of Joyana Holdings Limited (JHL) approved a guarantee under which Joyana guaranteed Citibank in respect of the Citibank Loan.
9. On 3 July 1990 Citibank demanded immediate repayment of £11,731,742.16, threatening to exercise its security. Newpier’s 1990 and 1991 accounts record that the investments were disposed of and that the shortfall arising on the loan was settled by third-party guarantors.
10. We find that JHL guaranteed Newpier’s indebtedness to Citibank and satisfied the shortfall.
11. By virtue of paying the shortfall under the guarantee, JHL acquired subrogation rights against Newpier by reference to Citibank’s rights to the extent of the shortfall and associated interest.
12. The principal shortfall amounted to £5,359,254, with the remainder comprising interest.
13. We find that the debt recorded in Newpier’s accounts as “other creditors” (from 1991 onwards) represented Newpier’s liability to JHL arising by subrogation.
14. In 2012, the debt was assigned to another company – Joyanna (1992) Ltd (“J1992”).
15. The parties dedicated considerable time before us to submissions as to the precise documentation and mechanism by which the assignment was completed. However, for the

purposes of the present appeal, we only need to be satisfied on the balance of probabilities that such an assignment took place. We are satisfied that the Appellant has discharged the burden of establishing that fact. In particular, it is plain from the accounts of the relevant entities that all parties treated the debt as having been assigned.

16. On 28 April 2015, the debt was then further assigned to another company – Ambertown Internation Limited (“Ambertown”).

17. Ambertown wrote to Newpier on 19 March 2018 confirming the outstanding loan balance and again on 18 April 2021 confirming a later balance and offering continued support.

18. Newpier’s accounts between 2011 and 2019 show progressive reductions in “other creditors” greater than one year (which the notes describe as a loan to Ambertown), with movements matching or close to payments said to have been made in the relevant years. While HMRC point to some discrepancies between years and documents, we find the overall pattern of the creditor balance reduces in line with payments recorded and treated as loan repayments in Newpier’s ledgers.

19. For the year ended 30 June 2017, payments totalling £821,000 were made to five recipients connected with the Margulies family or companies linked to them. Newpier’s ledger and bank statements record these payments; several entries are referenced “Ambertown” or similarly. We find the payments were made and were recorded in Newpier’s books against the Ambertown debt.

20. For the year ended 30 June 2019, the Appellant produced spreadsheets showing payments of £234,667 and a reduction in the Ambertown debt of £234,667.25, and the 2019 accounts show a reduction in the creditor balance of £291,559. Although the precise alignment of figures is imperfect, we find the year evidenced reductions in the Ambertown creditor balance reflected in the accounts, and that payments were treated by the parties to the debt as loan repayments.

21. By notice dated 6 June 2019, HMRC opened its enquiry into the year ended 30 June 2017. The enquiry into the period ended 30 June 2019 was opened on 29 March 2021.

22. Following a series of correspondence, Newpier applied for a direction to close the enquiry on 1 February 2022. The application was granted by the Tribunal on 12 October 2022.

23. HMRC duly issued closure notices on 8 November 2022 which were appealed.

24. The appeal was notified to this Tribunal by Notice of Appeal dated 12 March 2023.

THE LAW

25. The relevant provisions of CTA 2010 include sections 492, 493, 496 and 498.

26. Section 492 CTA 2010 (“Restrictions on exemptions”) provides:

“(1) This section applies if a charitable company has a non-exempt amount for an accounting period (see section 493).

(2) The exemptions mentioned in subsection (3) do not apply, and are treated as never having applied, to so much of any income of the charitable company for the accounting period as is attributed under section 494 to the non-exempt amount

(3) Those exemptions are—

(a) the exemptions under this Part, and

(b) the exemption under regulation 31(1) of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) (exemption from corporation tax in respect of certain offshore income gains).

(4) Section 256(4) of TCGA 1992 contains corresponding restrictions which apply in relation to section 256(1) of that Act (gains accruing to charities not to be chargeable gains).”

27. The effect of this section is to disallow tax relief to the extent of a ‘non-exempt amount’. In this case, this results in a tax charge on an amount equal to that non-exempt amount.

28. Section 493 CTA 2010 (“The non-exempt amount”) provides:

“(1) A charitable company has a non-exempt amount for an accounting period if it has—

- (a) non-charitable expenditure for the period (amount A), and
- (b) attributable income and gains for the period (amount B).

(2) The non-exempt amount for the accounting period is—

- (a) amount A, or
- (b) if less, amount B.

(3) For the purposes of this Part—

(a) a charitable company's ‘attributable income’ for an accounting period is the charitable company's income for the period that is exempt from corporation tax as a result of any of the exemptions mentioned in section 492(3),

(b) a charitable company's ‘attributable gains’ for an accounting period are any gains accruing to the charitable company in the period that as a result of section 256(1) of TCGA 1992 are not chargeable gains, and

(c) a charitable company's ‘attributable income and gains’ for an accounting period is the sum of its attributable income for the period and its attributable gains for the period.”

29. The effect of the above is that the non-exempt amount in this case is equal to the amount of non-charitable expenditure.

30. HMRC rely on the terms of s 496(1)(d) CTA 2010 (Meaning of “non-charitable expenditure”) to argue that the relevant payments were non-charitable expenditure:

“(1) For the purposes of this Part a charitable company's non-charitable expenditure for an accounting period is—

...

(d) any expenditure incurred by the charitable company in the accounting period which is not incurred for charitable purposes only and is not required to be taken into account in calculating—

- (i) the profits of, or losses made in, any trade, UK property business or overseas property business carried on by the charitable company, or
- (ii) the profit or loss made in any miscellaneous transaction entered into by the charitable company,

...

(3) This section needs to be read with—

...

sections 497 to 501 (supplementary provision in relation to this section, in particular in relation to subsection (1)(d), (g) and (h)), ...”²³

31. Conversely, the Appellant relies on s 498 CTA 2010 to exclude the payments from the meaning of ‘expenditure’ (and in turn from being non-charitable expenditure). That section provides:

“(1) For the purposes of section 496(1)(d) ‘expenditure’ includes expenditure of a capital nature.

(2) None of the following is ‘expenditure’ for those purposes—

(a) the investment of any of the charitable company's funds,

(b) the making of a loan by the charitable company, or

(c) the repayment by the charitable company of the whole or a part of a loan made to it.”

32. It is common ground between the parties that payments made to a guarantor (or their successor) entitled to subrogation rights in respect of a loan would amount to a repayment of the loan for these purposes. We were referred to s 5 of the Mercantile Law Amendment Act 1856, which provides:

“A surety who discharges the liability to be entitled to assignment of all securities held by the creditor.

Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt or perform such duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security which shall be held by the creditor in respect of such debt or duty, whether such judgment, specialty, or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty, and such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and, if need be, and upon a proper indemnity, to use the name of the creditor, in any action or other proceeding, at law or in equity, in order to obtain from the principal debtor, or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have so paid such debt or performed such duty, and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him: Provided always, that no co-surety, co-contractor, or co-debtor shall be entitled to recover from any other co-surety, co-contractor, or co-debtor, by the means aforesaid, more than the just proportion to which, as between those parties themselves, such last-mentioned person shall be justly liable.”

THE ISSUES

33. The issues we must determine are:

(1) Whether, in the years under appeal, Ambertown was the creditor to whom Newpier’s loan was owed, so that payments made were lawfully capable of discharging that debt.

(2) Whether the payments in 2017 and 2019 were in fact repayments of that loan.

34. If the debt was owed to Ambertown, and the payments were repayments of the debt, it follows that the payments are excluded from the definition of expenditure by s 489 CTA 2010, and in turn that they are not non-exempt amounts and the appeal will succeed.

HMRC'S CASE

35. HMRC's position on the first issue is that Newpier has failed to prove that Ambertown held the benefit of any loan in the appeal years. HMRC's arguments primarily revolve around shortcomings in a 2012 deed said to effect the assignment of the debt from JHL to J1992.

36. In relation to the second issue, Mr Kirby for HMRC cross-examined Mr Margulies on a number of points of detail relating to the records regarding to each payment. Mr Kirby pointed to discrepancies between the amounts in ledgers, bank statements and the movements in creditor balances, and to the connected nature of the payees as heightening the need for strict proof. Mr Kirby also suggested that Newpier needed to establish that each payment was made to the relevant third party at Ambertown's request.

37. Mr Kirby's overall submission on the second issue was that Newpier had not proved that the disputed payments were repayments of the loan.

APPELLANT'S CASE

38. Mr Firth, for Newpier, provided detailed submissions on how the 2012 deed might be construed and how the assignment from JHL to J1992 might have been effected. Mr Firth also pointed to the accounts, the subsequent 2015 deed and other documents confirming Ambertown was the creditor.

39. As to the disputed payments, Mr Firth maintained that the payments were made at Ambertown's request to related parties and were credited against the Ambertown loan in Newpier's accounts and schedules. Mr Firth submitted that the ledgers and financial statements reflect the agreed treatment of the payments as loan repayments.

DISCUSSION

40. The first issue – whether or not Ambertown was indeed the creditor to whom the debt was owed – is a factual one. The submissions of the parties focussed on the specific construction of the 2012 deed before the Tribunal. However, we do not consider that we need to come to any conclusions as to the effect of this document in order to make a finding on the balance of probabilities.

41. The question in issue is not whether Newpier has produced every document one might wish to see, but whether, on the totality of the evidence, it is more likely than not that in the relevant years Ambertown was Newpier's creditor.

42. We consider that there was ample evidence before us to conclude that the debt had been assigned from JHL to J1992 and ultimately to Ambertown. In particular, the accounts, produced contemporaneously, show that the entities involved had treated the debt as having been successfully assigned.

43. We therefore make a factual finding on the first issue in favour of the Appellant.

44. On the second issue, HMRC's submissions to the effect that Newpier needed to establish that each payment was made to the relevant third party following a specific request from Ambertown puts the bar too high. It need only be established that both Ambertown and Newpier had a common understanding that each payment be treated as a repayment of the loan.

45. It is common ground that loan repayments can be made to third parties and still discharge the debt. Here, several 2017 payments carry "Ambertown" references on the contemporaneous bank statements, the ledgers and accounts show reductions in the Ambertown creditor and Ambertown provided letters to Newpier confirming balances moving over time.

46. Mr Margulies' recollection of events almost ten years after the events in question is understandably imprecise, and we place only limited weight upon it. However, the accounting

entries clearly demonstrate a contemporaneous understanding between Ambertown and Newpier that the payments were to be treated as reducing the loan balance.

47. Overall, on the balance of probabilities, we find as fact that the payments were indeed repayments of the loan.

48. As a result of the above findings, the appeal must be allowed.

CONCLUSION

49. For the reasons set out above, we allow the appeal. Specifically:

(1) We are satisfied on the evidence that Newpier's subrogated debt was assigned through J1992 to Ambertown,

(2) We are further satisfied that the payments in 2017 and 2019 were treated by Newpier and Ambertown as discharging the Ambertown loan.

50. Accordingly, the payments are excluded from "expenditure" by s 498(2)(c) CTA 2010 and cannot constitute non-charitable expenditure under s 496(1)(d). The closure notices are set aside to the extent they treat those sums as non-charitable expenditure and bring them into charge.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

51. 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.

Release date: 27th FEBRUARY 2026