



Neutral Citation: [2026] UKFTT 985 (TC)

Case Number: TC 09934

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Heard in public at Taylor House, London

Appeal reference: TC/2022/11083

VALUE ADDED TAX – Recovery of input tax – economic activity – whether economic activity ceased when business transferred out of VAT group but Intellectual Property retained – whether subsequent sale of Intellectual Property constituted economic activity – application of test set out in Wakefield College v HMRC [2018] EWCA Civ 952

Heard on: 5-6 February 2026

Judgment date: 30 June 2026

Before

**TRIBUNAL JUDGE MALCOLM FROST
IAN SHEARER**

Between

COMPOUND PHOTONICS GROUP 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 Ltd

For the Respondents: Laura Inglis and Rajkiran Arhestey of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. This is an appeal against two decisions made by HMRC on 18 February 2022:
 - (1) To raise an assessment for £544,878, disallowing all input tax from VAT periods 03/18 to 12/20 and 06/21 to 12/21; and
 - (2) To disallow a VAT credit of £11,542 for VAT period 03/21.
2. This decision deals with the questions of
 - (1) Whether the Appellant company (as representative member of a VAT group) ceased economic activity for VAT purposes on the sale of its business in May 2017; and
 - (2) Whether the subsequent sale of retained Intellectual Property (“IP”) constituted economic activity.
3. For the reasons set out below, we answer both questions in the affirmative.

THE FACTS

4. We were provided with a hearing bundle of 982 pages. We also heard live evidence from Mr Geoffrey Rowley (joint administrator of the Appellant), who was cross examined by Ms Arhestay for HMRC.
5. From that evidence, we find the facts as follows.
6. The Appellant is the representative member of a VAT group comprising itself (“CPGL”) and two other companies: Compound Photonics Limited (“CPL”), and Compound Photonics UK Limited (“CPUK”). CPL and CPUK are 100% subsidiaries of the Appellant. We refer to CPGL, CPUK and CPL collectively as “the UK Group”.
7. CPL owns 100% of a US company, Compound Photonics US Corporation (“CPUS”). This company is outside the CPGL VAT group.
8. The Appellant voluntarily registered for VAT on an intending trader basis with effect from 1 January 2011. The Appellant and its subsidiaries were intended to be the vehicle for the intended development and commercialisation of academic research into gallium arsenide and liquid crystal technology. The intention was to develop, manufacture and sell a very small projector.
9. In June 2013, CPUK acquired a large gallium arsenide fabrication plant, located in Newton Aycliffe in the UK.
10. In May 2017, the UK Group’s operating business in the UK (including the Newton Aycliffe facility) was sold to a third party (the “May 2017 Disposal”). Certain intellectual property (“IP”) rights relating to the business are said to have been retained by CPL, we make more detailed findings in relation to the IP rights later in this decision.
11. CPUS continued its operating business in the USA. This business included continuing the development of its display technology.
12. On 6 January 2022, the remaining operating assets of the UK Group, including the IP rights held by CPL, are said to have been sold to Snap Inc for \$101m (the “Snap Sale”). We make more detailed findings on this point later in this decision.

THE ISSUES

13. At a high level the issue between the parties is whether or not the Appellant was entitled to reclaim the input tax which is the subject of the decisions under appeal. More specifically, the issues break down as follows:

- (1) Whether the Appellant was carrying on or intending to carry on economic activity at the material times.
- (2) Whether the Appellant has established a direct and immediate link between supplies made to it (in respect of which it incurred the disputed input tax) and taxable supplies (or supplies that would be taxable supplies if made in the UK) made or to be made by it.

14. This decision only deals with the first issue. The first issue is in turn broken down into the following sub-issues:

- (1) Was there actual ongoing economic activity between the May 2017 Disposal and the Snap Sale?
- (2) Was there an ongoing intention to carry on economic activity following the May 2017 Disposal?
- (3) Did the Snap Sale itself constitute economic activity?

15. We have dealt with each of these in turn, making further findings of fact as necessary.

16. The burden of proof on each issue is on the Appellant and the standard of proof is the balance of probabilities.

17. There was no dispute as to the procedural validity of HMRC's decisions.

18. Counsel each provided skeleton arguments, the Appellant also provided a reply to HMRC's skeleton. There was also a further exchange of written submissions following the hearing. We are very grateful to counsel for their thorough and considered submissions. We have taken into account all the arguments put forward, even if we have not referred to every point in this decision.

PROCEDURAL ISSUE

19. At the hearing, there was a preliminary dispute as to whether the issue of direct and immediate link had been pleaded in HMRC's statement of case, so as to put the point in issue before us. We heard argument on the point and decided that the issue was properly before us. We set out our reasons for that decision below.

20. The starting point is Rule 25(2) of the First-tier Tribunal (Tax Chamber) Rules 2009 which requires that the statement of case must:

- “(a) in any appeal, state the legislative provision under which the decision under appeal was made, and
- (b) set out the respondent's position in relation to the case.”

21. The requirement was clarified by Judge Mosedale in *Allpay Limited v HMRC* [2018] UKFTT 273 (TC) (cited with approval by the Upper Tribunal in *Kingston Maurward College v HMRC* [2023] UKUT 00069 (TCC) (“*Kingston Maurward*”). At [14] the FTT said:

“The Tribunal's rules require HMRC to set out its position in respect of a case; what that means is that HMRC should explain its position in sufficient detail to enable the appellant to properly prepare its case for hearing. Anything less may lead to injustice.”

22. The point was also considered in the Upper Tribunal's decision in *Fairford Group plc v HMRC* [2014] UKUT 329 (TCC), in the following terms:

"[20] ... it is not procedurally fair for the party without the burden of proof to do no more than say the other party must prove every part of their case. Both parties should set out the key parts of their legal and factual case in advance."

23. It is common ground between the parties that the above are correct statements of the law. We now consider the pleadings themselves.

24. Our starting point is the Appellant's grounds of appeal. These grounds firstly assert that "the company will receive between \$15 and \$20 million in the next 12 months and has therefore not ceased trading". The grounds then go on to state (emphasis added):

"The VAT recovered on costs relates directly to this income from the US."

25. HMRC's statement of case then states, at paragraph 29 (emphasis added):

"The Appellant also contends, in its Grounds for Appeal, that the Appellant will receive \$15-20 million within 12 months of filing the Notice of Appeal and has therefore not ceased trading. The Appellant claims that the VAT recovered on costs relates to this future income. To date, the Respondents have not received evidence of this."

26. The rules governing pleadings before this Tribunal are in some ways less prescriptive and formal than may be required in other forums. However, where an Appellant has expressly made an assertion as to a particular point, and HMRC has made it clear that they do not accept that assertion, an Appellant cannot reasonably argue that the Appellant need not prove their assertion.

27. In the present case, the Appellant has made a clear assertion of the existence of a direct and immediate link and HMRC have responded by saying that no evidence has been provided. In our view, the proper analysis of this exchange is that the Appellant must provide evidence to prove a direct and immediate link.

28. Mr Firth, for the Appellant, argued that HMRC's position was 'a bare denial, or worse than a bare denial', which (on the basis of *Kingston Maurward*) would be inadequate. However, in circumstances where there are no other facts or legal arguments advanced by the Appellant in relation to which HMRC could meaningfully set out its legal or factual stance, it is unclear what the Appellant expects HMRC to do.

29. Put more simply, we see no problem with a bare assertion being met with a bare denial.

30. Mr Firth also argued that there is a fundamental difference between putting forward a general point that a lack of economic activity implies there is no direct and immediate link to output supplies and a more granular requirement that the Appellant must take each individual invoice and show how it relates to any economic activity. He submitted that HMRC's Statement of Case does not fairly put the granular issue before the Tribunal.

31. We reject that submission. HMRC's Statement of Case responds to the grounds of appeal in terms that correspond with the assertions made. The Statement of Case makes it clear that HMRC have received no evidence and therefore do not accept the assertion made. The starting point therefore is that the Appellant must discharge the burden of proving that assertion. The level of granularity with which that issue must be dealt is largely a matter for the Appellant. It is open to the Appellant to seek to extract concessions from HMRC, to seek to confirm whether issues can be narrowed or evidential points agreed. The Appellant had not taken steps to narrow down what it is obliged to prove and therefore the entire point remains before this Tribunal.

32. We therefore find that the point was properly before us.

33. However, we do consider that HMRC's Statement of Case could have been clearer. The extract cited above was in a section entitled "Appellant's contentions". The section entitled "Points at issue" makes no reference to the requirement to prove a direct and immediate link.

34. Therefore, although we consider the point has been properly put before the Tribunal, we have some sympathy with the Appellant having not focussed any effort on preparing to present its case on this point. We therefore indicated at the hearing that we would consider any further applications on behalf of the Appellant in order to ensure the Appellant had a full opportunity to present its case.

35. In the event, the hearing time estimate proved inadequate. As a result, the parties were content to focus on the 'economic activity' issues and to leave any 'direct and immediate link' matters to be dealt with subsequently as needed.

THE LAW

36. The general legal principles relevant to the issues to be decided are as follows. The parties primarily argued their cases by reference to the European legislation so we have set that out below.

37. Article 2(1) of the Principal VAT Directive (2006/112/EC) ("PVD") states:

"The following transactions shall be subject to VAT...

(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such..."

38. Article 9(1) PVD defines "taxable person" as follows:

"'Taxable person' shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as 'economic activity'. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity."

39. Article 168 PVD provides for the deduction of input tax as follows:

"In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person..."

40. At the material time, Article 169 PVD provided materially that:

"In addition to the deduction referred to in Article 168, the taxable person shall be entitled to deduct the VAT referred to therein in so far as the goods and services are used for the purposes of the following:

(a) transactions relating to the activities referred to in the second subparagraph of Article 9(1), carried out outside the Member State in which that tax is due or paid, in respect of which VAT would be deductible if they had been carried out within that Member State..."

41. The corresponding domestic legislation appears in the Value Added Tax Act 1994 (VATA), in particular at sections 3-5, 24-26, and Schedule 1 thereof. We refer to the UK legislation only where it is of particular relevance.

ISSUE 1: WHETHER THE APPELLANT WAS CARRYING ON ACTUAL ECONOMIC ACTIVITY FOLLOWING THE MAY 2017 DISPOSAL.

42. We begin by making a number of relevant factual findings. We have dealt with each company in the UK Group in turn:

(1) By a business sale agreement dated 3 May 2017, CPUK sold its operating business in the UK to a third party. CPL was not a party to this agreement. CPGL acted as guarantor.

(2) The business sale agreement contained a definition of “Excluded IPRs” (being intellectual property rights expressly not transferred under that agreement) as follows:

“Excluded IPRs means any Business Information and/or Intellectual Property Rights relating to GaAs based infra-red (“800– 880nm”) and red (“635– 650nm”) laser diodes; red laser modules; neodymium doped yttrium ortho-vanadate (“Nd:YVO4”) material growth and processing, periodically poled magnesium doped lithium niobate processing; construction and assembly of green emitting Diode Pumped Solid State Lasers; CLAGO (“CaGdAlO4”) material growth and processing; liquid crystal on silicon (“LCoS”) material processing and optically addressed spatial light modulators;”

(3) The strategic report, forming part of the accounts of CPUK for 2017 stated “Post the sale there has been no manufacturing or Research & Development activities and only limited business operations within the Company. The Company has not traded through 2018... As a consequence of the sale, headcount decreased to zero from the 109 at the end of 2016”.

(4) The accounts for 2017 and onwards do not record any intellectual property being held by CPUK. It is nonetheless possible that intellectual property was held, but not capitalised on the balance sheet. However, we have not been presented with any evidence on the point.

(5) The absence of any evidence indicating that CPUK held any IP following the May 2017 Disposal means that we find that CPUK did not hold any material IP following that sale.

(6) Turning to CPL, the accounts for CPL dated December 2017 show intangible fixed assets with a current carrying value of £285,561 as at 31 December 2017. No information is provided about the nature of such intangible fixed assets.

(7) The accounts for CPL dated December 2020 show intangible assets with a written down value of USD 168,600 as at 31 December 2020.

(8) We were provided with a copy of a witness statement produced by Jeremy Fletcher (a director of CPGL) in February 2023 as a part of proceedings to appoint an administrator over the UK Group companies. In that statement, Mr Fletcher stated that CPL held “certain intellectual property rights relating to the business”.

(9) We find that CPL held some material intangible assets in both December 2017 and December 2020. We are unable to make any finding as to the exact nature of such IP, save that they related to the business of the UK Group prior to the May 2017 Disposal.

(10) Looking finally at CPGL, the accounts for CPGL dated 31 December 2017 show intangible assets with a written down value of £699,000 at 31 December 2017, under the heading “patents and intellectual property”. The accounts dated 31 December 2020 show intangible assets with a carrying amount of USD 35,000 at 31 December 2020, identified as patents and licences.

(11) We find that CPGL held material intangible assets in both December 2017 and December 2020. We are unable to make any finding as to the exact nature of such IP.

43. Mr Firth suggested that “The UK companies allowed that IP to be used for the continued development of microdisplays,”. That implied that there existed an agreement under which the UK Group was making ongoing supplies by providing some sort of licence to CPUS to make use of its IP in return for consideration.

44. Mr Firth subsequently clarified the point, conceding that at no point did the UK Group make actual supplies to CPUS for a consideration. Instead, Mr Firth submitted, the UK Group would receive a percentage of future sales. This formed the basis for Mr Firth’s submissions relating to an intended future exploitation of IP held by the UK Group. We consider this point in the next section.

45. We therefore conclude that the Appellant did not carry on any actual economic activity following the May 2017 Disposal (with the possible exception of the Snap Sale, which we consider in a later section).

ISSUE 2: WHETHER THE APPELLANT HAD AN ONGOING INTENTION TO CARRY ON ECONOMIC ACTIVITY FOLLOWING THE MAY 2017 DISPOSAL

46. It is common ground that an intention to carry on economic activity can itself constitute economic activity.

47. We begin by setting out the key evidence as to the actual activities carried on by the UK Group in the relevant period. We then make factual findings based on the totality of the evidence, before considering the submissions of the parties.

48. The agreed background facts are:

(1) The Appellant’s VAT group did carry on substantial physical activities aimed at developing its technology prior to the May 2017 Disposal.

(2) In May 2017, the UK Group’s operating business in the UK was sold to a third party and any actual UK development activity ceased. We have found above that two members of the UK Group, namely CPL and CPGL, held intellectual property after that time.

Key evidence

49. We have set out below the key evidence we have been provided with. We do not necessarily accept all the below evidence and have set out our findings in a separate section.

50. The accounts for members of the UK Group include statements as to the activities of the UK Group from time to time:

(1) The accounts for CPGL for 2017 include the statement:

“Compound Photonics Group Limited and its subsidiaries (the “Group”) is developing next generation microdisplays for the augmented and head up display market. During 2017 and 2018 the Group successfully executed upon its plans to simplify the business, refocus upon its core microdisplay technology and improve financial efficiency... During the course of 2018 the Group’s main research and development (R&D) efforts have been directed at:

- 1080p microdisplays
- Control electronics and software for the microdisplays
- Microdisplay system assemblies”.

(2) The accounts for CPL for 2017 include the statement:

“The principal activity of the company [CPL], through its trading subsidiary [CPUS], during the year was the development of next generation microdisplays for the augmented reality and head up display market as well as laser diodes and systems for the aerospace & defence and communication markets.”

51. In each case the assertions in the accounts refer to the activities of the group rather than the UK companies. The accounts make it clear that after the May 2017 Disposal any development activities being carried on were carried on by CPUS rather than any member of the UK Group.

52. The parties drew our attention to a number of responses provided by employees or representatives of the Appellant to questions asked by HMRC during HMRC’s enquiry. These are set out below.

53. On 16 November 2018, in response to questions from HMRC, Grace Colton (Director of Finance and HR for the Appellant) explained that the main business activity was “R&D” but they “no longer have sales in the UK”. Ms Colton also said that “We don’t plan on having any future taxable sales, parent holding company with professional services only”.

54. On 9 February 2021, Chris Egbert, Financial Controller for the Appellant, explained to HMRC:

“The principal activity of Compound Photonics (CP) Group Limited and its subsidiaries (the “Group”) is the development of compact high performance microdisplay solutions for augmented reality and mixed reality (AR/MR) head mounted display applications.

The Group, through its subsidiaries, is bringing to market a suite of liquid crystal on silicon (LCoS) microdisplays for the AR/MR market. Prototype and pre-production release versions of LCoS microdisplays shipped to potential customers and industry partners throughout 2020 with volume production earmarked for late 2021.

Microdisplays are a critical component that determines form factor, size, power consumption and optical performance of mainstream AR/MR glasses. CP is at the forefront of delivering a cutting edge, 3 micron pixel display drive technology & platform to customers in 2021.”

55. Asked by HMRC what supplies (if any) were made between the associated companies, Mr Egbert replied “None”.

56. In response to the question from HMRC “Are there any future plans for the business which may impact the VAT returns?” Mr Egbert stated “Projected increase in manufacturing activity in the US will lead to increased OPEX, Legal and Admin”. No mention was made of any intended supplies.

57. On 11 February 2021 HMRC asked Mr Egbert

“2) In order to recover input tax, it must relate to/be a cost component of a taxable supply. My understanding is that you are not making any taxable supplies. Is this understanding correct? If so, please you explain why you are reclaiming input tax, when you have no taxable supplies.”

58. On 2 March 2021, Mr Egbert responded:

“Expense is incurred in administration of the group entity and its subsidiary businesses that supports the R&D activity in development of products that will later realize return on investment by such entities.”

59. On 16 March 2021, in response to HMRC's further question (raised on 4 March) "Can you provide details of each VAT group member and confirm what the nature of their business is and what supplies they make in and outside the UK?", Mr Egbert responded:

"CPGL is the overall holding company for CPL, CPUK, and CPUS, which is the company that develops advanced optical and display performance products. No supplies are produced in the UK, only administrative expenses. All product is produced in the US."

60. Asked what specific activities each entity undertook in the UK base (its registered office being at Riverbank House in London), he further explained:

"CPGL, CPL, and CPUK are used to process the UK-related Legal Fees, Licensing agreements, Professional Services, and Audit fees that support the company's manufacturing activities in CPUS."

61. On 27 May 2021, in response to the question (raised on 25 March) "(1) I understand the corporate group structure and can see CPUS are part of the CPGL group however, for VAT purposes, they do not appear to be part of the UK VAT Group therefore I am unclear why any input VAT is being reclaimed on CPUS expenses", Mr Egbert responded:

"These are all CPUK or CPGL – related invoices. We run the books from the US on their behalf and not the UK. As such, CPUS is not claiming anything but the UK companies are. The UK companies, especially CPGL are not actively trading given R&D is undertaken in the US. Economic activity in the UK is considered for product distribution come release of the products, which were developed in the US."

62. In response to a question about the recharging of a specific invoice, Mr Egbert said

"This is actually a CPUK invoice. We run the accounts for CPUK and CPGL from the US & are not claiming on behalf of CPUS."

63. In response to a pre-assessment letter of 26 August 2021 from HMRC indicating that input tax would be disallowed, the Appellant instructed specialist VAT advisors. In a letter dated 30 September 2021 and emailed on 1 October, those VAT advisors stated to HMRC that:

"Therefore, from an income perspective, from July 2017 all customer sales have been made from CPUS. This notwithstanding, there is an intention for future sales to be made through CPGL (with CPL holding the relevant IP from a legal perspective) to the extent that it becomes financially viable to do so – e.g., depending on tariffs, US / UK trading preferences etc."

64. The letter also stated:

"As outlined above, all sales made to external customers are carried out by CPUS. Furthermore, the UK VAT group has not made any management charges to CPUS during the historical period under review.

However, there remains an intention to utilise the UK corporate group entities in the future for trading purposes – either for current or future products (see question 3 below for more information). In terms of evidence, HMRC manual VIT22000 acknowledges that an intending trader would likely incur expenditure on costs that 'you would expect a person either already in business or in the process of starting up a business to incur.' HMRC also notes that this may include accountancy or consultancy fees."

65. The letter further stated:

"These products currently remain in the research and development phase. This notwithstanding, and to reiterate, there is an intention for CPGL to make sales

of these goods once they are ready to be sold to external customers (to the extent that it is financially viable to do so through CPGL, and not CPUS).

On this basis, VAT has been historically recovered on the costs summarised at Appendix 2 as input tax on the basis that we consider that CPGL (and the wider VAT group therefore) qualifies as an intending trader. We also understand that there is no timeframe / cap after which intending trader status ‘expires’.”

66. In response to further questions, on 29 October 2021, the VAT advisors stated to HMRC that they were unable to provide any further documentation (such as business plans or board minutes which HMRC suggested as possible sources of evidence) to support the intention to carry on economic activity, but they went on to explain:

“Separately, please note that intellectual property (‘IP’) currently sits within the UK VAT group, and the wider corporate group is looking to sell this imminently to a UK purchaser. This IP was originally held for the benefit of the UK entities and wider group. We understand that once the IP is sold to the prospective UK customer for cash consideration, this sale will be subject to UK VAT and therefore will constitute a taxable supply for VAT purposes.”

67. On 30 November 2021, the VAT advisors for the Appellant stated in an email to HMRC that:

“2. Intention to make supplies

I would also like to add to the point around “no taxable supplies since 2017”. Whilst there have been no taxable supplies since, there has always remained an intention to make taxable supplies in the future on the basis that the UK was developing products for sale. It is also likely that the UK group will make a disposal of intellectual property in the near future, which will either constitute a local taxable supply in the UK (where made to a UK purchaser), or will fall outside the scope of UK VAT but with a corresponding entitlement to recover input tax under UK VATA 1994, s.26(2)(b) where the goodwill is sold to a non-UK purchaser.”

68. The same email also confirmed that the group had no staff in the UK.

69. In response to the question “What activity is taking place in the UK to satisfy the intending trader status?”, the same email stated:

“As previously mentioned in our last email dated 29 October 2021, intellectual property (‘IP’) currently sits within the UK VAT group. The IP was originally held for the benefit of the UK entities (ie to support future taxable sales). However, the intention is now to sell this IP to a US purchaser (since our last email, it is now likely that the purchaser will be based in the US as opposed to the UK). Whilst we appreciate this sale will fall outside the scope of UK VAT, it will carry a corresponding entitlement to recover input tax under UK VATA 1994, s.26(2)(b).

We maintain that the disposal of the IP held by the UK VAT group supports the intending trader status and creates a sufficient link between taxable supplies.”

70. In response to the question “In the absence of any manufacturing/sales/activity taking place in the UK, how does the input tax for services received in the UK have a direct link to taxable sales?”, the email stated:

“Whilst there are currently no sales taking place in the UK, there has been ongoing R&D activity within the UK group in order to support future sales.

This is reflected by the IP which is currently the subject of a proposed disposal in order to support the sale of goods. Separately, prior to the current proposal to dispose of this IP, there was an intention within the business to utilise the UK group companies as trading entities to the extent that it became financially viable to do so – e.g., depending on tariffs, US/ UK trading preferences etc. This formed the basis / rationale for the Group retaining its UK group companies.”

71. Mr Geoff Rowley, the administrator of the Appellant, in his witness statement, stated that:

“The group consolidated its UK and US activities in 2017 and sold off a small part of its non-core US activities to a third party. The result was that the personnel and physical premises were in the US, but the UK companies retained their IP and allowed it to be used for the continued development of the micro displays, making progress in 2018 with a view to launching these new high-tech processors for use in head up displays in 2019/20. The UK companies did not receive a licence fee but, instead, would have received a percentage of the sales if the project was successful. The UK group also provided very large loans to the US company (CPUS) to support the continuation of the project.”

72. Mr Rowley described the input tax incurred following the May 2017 Disposal in the following terms:

“Input tax incurred from the date of sale of the majority of the UK business operations up to the date of sale of the intellectual property was predominantly associated with the professional costs incurred by the Appellant and other group companies in conjunction with this sale, alongside ongoing adherence to statutory responsibilities; maintaining the books and records of the Appellant’s group; and progressing legal actions underway.”

73. Mr Rowley was challenged on the above paragraph in cross examination. In response to a suggestion in cross examination that the above statement suggested that the majority of input tax was associated with the Snap Sale, Mr Rowley accepted that in fact around 21% of input tax was related to the Snap Sale.

74. We note that Mr Rowley was not appointed administrator until 17 February 2023 and confirmed in cross examination that he had no first-hand knowledge of the relevant events.

75. In particular, as regards the suggestion that “The UK companies did not receive a licence fee but, instead, would have received a percentage of the sales if the project was successful.” Mr Rowley conceded in cross examination that there was no agreement or other documentation to support that suggestion. Mr Rowley also conceded that what knowledge he had of events prior to his appointment was derived from the documents.

76. In his 2023 witness statement, Mr Fletcher stated that:

(1) In May 2017, HSBC notified CPGL that it was closing the CPGL bank account in the UK from 1 August 2017. Since that date, there had been only one bank account in the CP Group that of CPUS held at Wells Fargo.

(2) Between May 2017 and January 2022, the CP Group’s substantive business was primarily based in the US, and CPGL and CPL acted as holding companies for that CPUS business.

77. Mr Christopher Jarvis, Partner at Fieldfisher LLP, a law firm that acted for the Appellant, provided a witness statement for the purposes of this appeal (but did not give live evidence),

which included a summary of the work carried out by his firm in the period June 2017 to December 2020 as follows:

- (1) 80% of the work was on an unfair prejudice claim brought by the minority shareholders in CPGL. The Petitioners sought the purchase of their shares in CPGL at fair value.
- (2) The remaining 20% was on various corporate matters, including multiple equity funding rounds into CPGL and obtaining loans directly to CPUS.

78. After December 2020 and up until February 2023, Mr Jarvis stated that Fieldfisher's work consisted of:

- (1) Dealing with the unfair prejudice proceedings;
- (2) General corporate matters, including compliance with the Persons with Significant Control regime, the appointment of directors and the administration of board meetings;
- (3) The Snap Sale;
- (4) Sanctions advice; and
- (5) Advice in respect of administration applications.

Findings of fact on intention to carry out economic activity

79. From the evidence we have been provided with (including that outlined above, but we have taken into account all the evidence presented), we find that:

- (1) The UK Group was carrying out no development activity from May 2017 onwards.
- (2) From May 2017 the UK Group operated as a passive holding structure, holding shares in CPUS and intellectual property.
- (3) CPUS was carrying out ongoing development activity.
- (4) A number of administrative activities were carried on by (or recharged to) the UK Group. The activities carried out primarily related to:
 - (a) Obtaining funding for CPUS' ongoing development activities;
 - (b) The administration of the corporate entities themselves (filing of returns, board meetings etc); and
 - (c) Responding to the unfair prejudice petition.
- (5) None of the activities took the form of preparation to make future supplies by the UK Group.
- (6) There was a stated intention for the UK Group to sell products developed by CPUS if the circumstances were right.
- (7) Mr Rowley stated that the UK Group allowed the use of its IP on the basis that they would have received a percentage of the sales if the project was successful. We do not accept this as an accurate statement of the position at the material time. Mr Rowley's evidence on this point was more akin to a supposition of what might have happened than evidence of an actual intention positively held at the material time. In particular:
 - (a) We do not consider that the UK Group had, at any time between the May 2017 Disposal and the Snap Sale, formed a subjective intention to license IP rights if CPUS developed a product that made use of those rights.

(b) We do not consider that the UK Group had made an active decision to permit CPUS ongoing use of the UK Group’s IP rights in CPUS’ development activities.

(c) We are unable to make any finding that CPUS had in fact made any use of any rights held by the UK Group.

Submissions on intention to carry out economic activity.

80. It was not in dispute between the parties that it is up to the person who seeks to deduct VAT to prove its entitlement, and authorities may require that a stated intention be confirmed by objective evidence. HMRC drew our attention to the following illustrative extract from the CJEU decision in *Rompelman* (Case 268/83) at [24] that:

“it is for the person applying to deduct VAT to show that the conditions for deduction are met and in particular that he is a taxable person. Therefore Article 4 does not preclude the revenue authorities from requiring the declared intention to be supported by objective evidence...”.

81. Ms Arhestey, for HMRC, took us through a number of authorities aimed at illustrating the sorts of evidence commonly encountered and the approach the courts have taken.

82. The first such authority is the case of *Rompelman* itself. In that case the declared intention was to let future property that was as yet unconstructed. The court gave as an example of suitable evidence “proof that the premises which it is proposed to construct are specifically suited to commercial exploitation”.

83. In the case of *Inzo* (C-110/94), the taxpayer had commissioned a study on the profitability of a project for the construction of a desalination plant. Ms Arhestey submitted that a feasibility study is a paradigm example of a preparatory activity that objectively evidences an intention to make future supplies.

84. In *Breitsohl* (C-400/98), the taxpayer intended to build and operate a commercial establishment for the sale and repair of motor vehicles. The taxpayer had acquired a plot of land to be the site of the business, obtained an agreement for a dealership from a motor manufacturer and commissioned the construction of the repair workshop. Ms Arhestey submitted that these steps plainly objectively demonstrated the requisite intention.

85. In *Frank A Smart and Son Ltd v HMRC* [2014] UKFTT 1090, the intended activities included:

- (1) Establishing a windfarm, for which technical information and costings had been obtained; and
- (2) Construction of further farm buildings. Site preparation works had already been undertaken and the necessary planning applications had been made.

The First-tier Tribunal decided that these preparatory activities were sufficient to evidence the intention. That point was not undermined on further appeal.

86. In *Hedge Fund Investment Management Limited v HMRC* [2022] UKFTT 340 (TC), the FTT found that the appellant had demonstrated that, at the time he incurred the challenged input tax, he was an intending trader. The Tribunal noted that, in the period in question, the appellant had:

- (1) A commercial and regulatory business plan and had produced a professional prospectus;
- (2) Engaged in commercial activities evidenced by emails showing introductions to clients, attended relevant conferences and produced marketing material for presentations; and

(3) Employed interns to carry out market research.

87. The FTT found that this overall demonstrated that the appellant's company was carrying on all the activities that one would expect from an organisation which was intending to introduce investors to fund managers and to provide financial advice to funds and to those investors.

88. The *Hedge Fund Investment* case can be contrasted with *Norseman Gold Plc v HMRC* [2016] UKUT 69 (TCC) ("*Norseman*").

89. In *Norseman* the Appellant company ("NG") was the ultimate holding company of a corporate group. A non-UK company within the group carried out most of the operating activity. NG directed what was done, provided working capital and took care of shareholders' interests.

90. NG obtained UK VAT registration on the basis of a declared intention to levy management charges on the operating subsidiary.

91. In the event, no actual charges were made to the subsidiary, and therefore there were no actual supplies. The subsidiaries were making losses so no charges were levied. Nonetheless, NG argued that there was an intention to start charging, and therefore an intention to make taxable supplies in future. At first instance it was found that there was not an intention to start charging at a sufficient level to give rise to a taxable supply.

92. The judge at first instance found that nothing had been done by way of agreeing amounts to be charged, the frequency with which invoices would be sent, to which subsidiary they were to be sent, and the detail of the services to be provided in exchange for the charge.

93. The judge at first instance stated (reproduced at [67] in the Upper Tribunal decision):

".....In his correspondence with HMRC prior to Norseman's registration for VAT Mr Bottomley indicated that it was the intention that fees would be payable, and I am willing to accept that he genuinely believed it to be the case. It does not, however, seem to me that a rather vague intention to levy an unspecified charge, at some undefined time in the future, is enough."

94. This point was supported by the Upper Tribunal (at [136]):

"On the facts found by the Judge, Norseman is reduced to reliance on a vague and general intention that payment would be made. This is not a case where the payment could be particularised in any way. Thus, on the facts found, it cannot be said that the intended payment would be full cost recovery (although I remark that, even if the intention was full cost recovery, there would still remain uncertainty about whether payment would be made at all, let alone about exactly when)."

95. The Upper Tribunal continued (at [137]):

"Putting the matter in the very briefest of ways, this is a case where one party (Norseman) has supplied services to closely related parties (its subsidiaries) with, at best from Norseman's point of view, an intention on its part to charge at some unspecified time in the future for its services, but with no agreement with the subsidiaries to that effect (even to the effect that the subsidiaries would pay if and when they had funds available to do) and no understanding of the amount of timing of such payment."

96. NG's appeal was therefore dismissed.

97. Ms Inglis, for HMRC, argued that the Appellant had not discharged the burden of establishing the necessary intention. She referred to the various statements made in

correspondence to the effect that the Appellant was intended to be a holding company. Ms Inglis also submitted that Mr Egbert's March 2021 statement that "Economic activity in the UK is considered for product distribution come release of the products, which were developed in the US" was not a statement of intention to make future taxable supplies, but merely a statement that such a course is being considered, contingent on future events.

98. Ms Inglis also cautioned against imputing activities of CPUS to the UK Group more generally. CPUS is a third party for VAT purposes.

99. Mr Firth's submissions to the contrary relied heavily on the activities of CPUS. In summary, he put his case as follows:

(1) It is common ground that up to the point of the consolidation of activities and sale of the UK plant in 2017 the Appellant/its VAT group were carrying on economic activity. Through that economic activity the Appellant/its VAT group had developed and come to own valuable intellectual property rights relating to the business of the group as a whole.

(2) What changed in 2017, Mr Firth submitted, was that instead of the Appellant/its VAT group carrying on the physical aspects of developing the technology, that was thereafter undertaken by the Appellant's US subsidiary.

(3) However, Mr Firth argued that development of such technology did not depend solely upon the physical activities in the US. Mr Firth's case was that it depended upon a combination of those physical activities and use of the intellectual property rights owned by the Appellant/its VAT group.

(4) Therefore, Mr Firth submits, through the combination of the physical activities in the US (funded by the Appellant through loans) and the use of the Appellant's intellectual property, it was hoped that the group would be able to develop a product for sale in future. For its part, Mr First suggested that the Appellant would have received a percentage of sales. Mr Firth submitted that there 'was no doubt' that this was economic activity.

100. Mr Firth reminded us that Article 9(1) PVD expressly states that the exploitation of intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.

101. Mr Firth also drew our attention to a number of cases which he suggested assisted his argument. We have considered those in the context of our discussion below.

102. Mr Firth also submitted that the UK VAT group "did not flit in and out of having an intention to exploit the IP". In other words, that the intention prior to the May 2017 Disposal must be said to have continued following what he termed "the change of plan".

Discussion on intention to carry out economic activity.

103. It is necessary that the Appellant establish an intention to make taxable supplies, supported by objective evidence.

104. Mr Firth is of course correct that Article 9(1) PVD expressly includes the exploitation of intangible property in the definition of economic activity. However, the key point to consider here is the existence of the relevant intention.

105. This Tribunal must therefore make a determination on the basis of the evidence as to whether the Appellant (as representative member of the UK Group VAT group) had an intention to carry on taxable economic activity following the May 2017 Disposal.

106. We have considered here both of the declared intentions put forward by the Appellant: firstly the intention for the UK Group to sell products developed by CPUS if the circumstances

were right, and secondly the intention that the UK Group allowed the use of its IP on the basis that they would have received a percentage of the sales if the project was successful.

107. We first consider whether the declared intentions set out above were supported by the objective evidence, before turning to the question of whether those intentions would be sufficient to give rise to economic activity in any event.

Were the declared intentions supported by objective evidence?

108. As a starting point, we accept Mr Firth's premise that the UK Group is likely to have originally developed or acquired the relevant IP with a view to making supplies.

109. However, in our view that intention changed fundamentally when operating activities were discontinued, assets sold, and development solely continued by CPUS. We must consider the intentions that existed after the May 2017 Disposal.

110. We have found that the UK Group was, after the May 2017 Disposal, a passive holding group. We have also found that the UK Group carried on administrative activities relating to funding, dealing with legal action and general corporate administration.

111. In our view, none of these activities provide objective support to the declared intentions. The actions amount to activities aimed at keeping the holding structure in existence but are insufficient to support a suggestion of an intention for the group to make any taxable supplies, let alone to make the supplies contended for.

112. Keeping a corporate structure in place is a prerequisite for that corporate structure to make supplies, but there must be further evidence to demonstrate objectively an intention for that corporate structure to be used to make taxable supplies.

113. In this case we consider that the corporate structure was maintained because it was a necessary part of CPUS carrying on its activities. However, CPUS is outside the Appellant's VAT group and so supplies made by CPUS do not assist the Appellant. We note that Article 9(1) of the PVD defines a taxable person as a person who carries on economic activity *independently*, meaning that we must focus on the activity of the person concerned.

114. There is an element of consistency between the present case and the facts in *Norseman*, albeit in that case the focus was primarily on the question of consideration. In that case, as in this, the stated intention was vague, with insufficient steps being taken to provide objective support for the stated intention.

115. In order to support an intention to make supplies of IP to CPUS in future, a taxpayer might point to an agreement to charge CPUS, or steps being taken in order to make such an agreement. If the intention was to make supplies to other entities, then a taxpayer might point to evidence showing consideration being given to potential markets or licensing terms. If the supplies were going to be of completed product developed by CPUS, then a taxpayer might point to agreements, or steps towards agreements, to make such supplies.

116. These are only examples, but they serve to illustrate that evidence of general corporate administrative activities is insufficient for this purpose.

117. In the absence of actual activity, a taxpayer would need to point to circumstances that provide inherent support for the stated intention without the need for actual activity. In this case, Mr Firth relies heavily on the fact that IP is property which, by its nature, is only suitable for economic exploitation.

118. Mr Firth suggested (relying on *Enkler* (C-230/94) that, because IP was property that would normally be exploited for economic purposes, that would almost automatically imply that an intention to carry on economic activity in future existed.

119. However, that case involved actual exploitation of property (the bonnie activity of renting out of motor caravans). The decision related to the circumstances in which actual exploitation can be considered to be for the purposes of obtaining income on a continuing basis. It does not create a presumption that exploitation is automatically intended by virtue of mere holding of an asset.

120. The *Enkler* case therefore does not greatly assist in a context where, as here, there was no actual exploitative activity. As we have found, the Appellant had ceased carrying on any activity related to exploitation and instead begun to passively hold the IP.

121. As to Mr Firth’s contention that “The UK VAT group did not flit in and out of having an intention to exploit the IP”, our view is that there was a clear and decisive change of intention. An entity can change its mind as to what it intends to do with assets, or it may put itself in a position where it has no intention, or no intention capable of being supported by objective evidence. This may result in the entity’s taxable status changing from time to time.

122. It is relatively common for a company to discontinue operations without immediately disposing of all its assets. The cessation of operations may (as in the present case) give rise to a cessation of economic activity. The fact that the retained assets may be sold or otherwise turned to account in future does not automatically imply that economic activities continue. It is only once an objectively evidenced intention to do something with the assets is formed that economic activities will continue. Accordingly, there is nothing unusual about economic activity stopping and starting in circumstances like the present case.

123. Overall, we conclude that the Appellant has failed to establish an intention to make taxable supplies (following the May 2017 Disposal) that is supported by objective evidence.

Was the intention sufficient to constitute economic activity?

124. We also consider the question of what was described in *Norseman* as being the “vague and general” nature of the intention. This point may sometimes be solely relevant to the question of objective evidence of intention. However, even if the intention has been objectively established, it is nonetheless possible, in our view, that such an intention is not sufficient to constitute an intention to carry on economic activity.

125. That is to say, there must be some sort of lower bound to the notion of intention, such that a vague or fanciful intention, no matter how clearly expressed and established, is still too speculative to amount to give rise to a right to deduct input tax.

126. Mr Firth made the submission that it does not need to be clear when output supplies will commence being made, or even what the nature or terms of those supplies will be, in order for input VAT recovery to be available. Mr Firth relied in particular on *HMRC v. Frank A Smart* [2019] UKSC 39, *Inzo* C-110/94, and *Hotel La Tour v. HMRC* [2025] UKSC 46 to put forward the proposition that intentions may be contingent and unclear, and that the associated output supplies may be some time in the future, but still be sufficient.

127. Mr Firth cited the following passage from *Hotel La Tour* (at [106]):

“[106]...This [in *Frank A Smart*] concerned the potential time lag between the incurring of the input and the carrying on of the economic activity to which FASL said it was linked. As I have explained in para 96 above, if a taxable person is not carrying on economic activity at the time it incurs the inputs (as happened in *Sveda*) then the input can still be linked to the future economic activity and hence can still be deductible if the court determines on the basis of objective evidence that it is the taxable person's intention to use the input in future for carrying on taxable economic activity. The authorities that Lord Hodge cites in para 60 and in support of his proposition (vii) relate to that

point. In proposition (vii) he cites *Sveda* where that timing point was in issue and the two cases that the CJEU cited in *Sveda*. Those are cases in which the CJEU made clear that even if the goods acquired are not used immediately for economic activity, the right to deduct arises even if their use in an economic activity may occur sometime later: see the passages from *Sveda* cited at paras 51 and 53 of Lord Hodge's judgment."

128. We accept Mr Firth's basic premise that an element of uncertainty or contingency is not fatal to the existence of an intention, but we do not think those cases imply that any intention, no matter how speculative, must be accepted as giving rise to a right to deduct input tax.

129. Put another way, the notion that 'something will turn up' may suffice for *Wilkins Micawber*, but is not sufficient to create economic activity.

130. In the present case, the UK Group undertook no development activity for itself and was wholly dependent on CPUS carrying out activities which might have created an opportunity for the UK Group to make supplies.

131. The stated intentions were (i) the UK Group might have one day sold products developed by CPUS if the circumstances were right and (ii) the intention that the UK Group would have received a percentage of the sales if the project was successful. In relation to the second intention, the word "would" might more correctly be replaced with the word "might" as there had been no steps taken to make any agreement as to the potential use of IP.

132. In our view, the stated intentions amount to no more than a vague hope. The UK Group held assets that it was taking no steps to bring to account. It was merely passively holding those assets. Taken at its highest, the UK Group was hoping that CPUS (a third party in VAT terms) might make technical advances that would mean it would wish to enter into deals with the UK Group. Such hope cannot give objective support to a finding of economic activity for these purposes.

133. An intending trader must take control of its own destiny and show that it is doing something to support its intention to carry on economic activity, beyond simply holding assets. Otherwise, it would naturally follow that the holding of any valuable asset would give rise to economic activity - on the basis that such assets may one day be exploited or sold. Holding an asset in the hope of a market arising in future is too vague to amount to an intention for these purposes.

134. In *BAA Ltd v HMRC* [2013] EWCA Civ 112 the Court of Appeal (at [23]) confirmed the long-accepted position that merely acquiring and holding shares is not regarded as an economic activity for VAT purposes. That principle applies equally to any other asset where a person is passively holding it rather than manifesting an intention to put it to use in carrying on economic activity.

135. Our conclusion on this point is therefore that the stated intentions were inadequate to constitute an intention to carry on economic activity.

Other cases referred to in argument

136. We also deal briefly with other cases referred to by Mr Firth in argument.

137. Mr Firth also drew our attention to *Vittamed* C-293/21 and *ITH Comercial* C-734/19 in order to support the proposition that where a person commences preparations for one economic activity, but the plan subsequently changes, there is no adjustment of VAT if the new plan will involve taxable supplies.

138. Mr Firth emphasised that the UK Group had historically carried out development activity and sought to draw parallels with research and development companies that develop IP in order

to exploit it in future. He wished to characterise the UK Group as having reorganised its development activity and ‘changed the plan’.

139. However, as we have found, we do not consider this characterisation to be truly reflective of reality. The UK Group had entered into development activity prior to May 2017, but it had then sold its business and ceased any further activity aimed at making supplies. This was a clean break with what had happened previously. There was no properly evidenced ‘new plan’.

140. The cases cited do not therefore assist, as they are relevant to the question of whether input tax incurred at a time when there was an intention to carry out economic activity might be subsequently adjusted on a change of plan. In this case there was no such intention after the May 2017 Disposal, so the point does not arise.

141. Mr Firth also drew our attention to cases involving the termination of a business, or its insolvency.

142. We do not consider that the insolvency cases offer any real assistance as there was no insolvency in the present case.

143. Cases relating to termination activities more generally do not assist in relation to the ongoing activities of the UK Group because the activities actually carried on by the UK Group were administrative matters aimed at continuing the company in existence, rather than being aimed at terminating the business. These cases do however have some relevance to the Snap Sale, which we consider in the next section.

Conclusion on intention to carry on economic activity following the May 2017 Disposal

144. Overall, our conclusion on this issue is that there was no ongoing intention to carry on economic activity following the May 2017 Disposal. There is insufficient objective evidence to support a conclusion of intended economic activity. Furthermore, the stated intentions are too speculative to amount to an intention for this purpose.

145. The UK group was therefore not (with the possible exception of the Snap Sale, considered below) carrying on any economic activity during that period.

ISSUE 3: WAS THE SNAP SALE ECONOMIC ACTIVITY?

146. We now go on to consider whether the Snap Sale nonetheless constituted economic activity in its own right.

147. We begin by making findings of fact.

Findings of fact on the Snap Sale

148. From the accounts, HMRC correspondence, and other evidence we have been provided with, we find that the UK Group had a sufficiently evidenced intention to dispose of IP by 29 October 2021 at the latest. In particular we note that at this stage the sale was described as ‘imminent’ in correspondence.

149. Ms Inglis submitted on behalf of HMRC that the Appellant had not provided sufficient evidence to establish that the Appellant in fact received any consideration for the sale of IP rights to Snap. Ms Inglis reminded us that the burden of proof rested on the Appellant to establish the point.

150. It certainly struck us as surprising that, for a disposal said to have been made for some \$101m US, there was scant evidence actually made available as to the existence and details of the transaction.

151. The evidence on this point essentially consisted of an assertion in the witness statement of Mr Jeremy Fletcher. That witness statement was produced in connection with High Court

proceedings in 2023 and Mr Fletcher was not a witness in these proceedings. Mr Fletcher therefore did not give evidence in chief and was not cross-examined. In that statement, Mr Fletcher stated:

“As noted above, the remaining operating business of the CP Group was sold to Snap on 6 January 2022 under an asset purchase agreement dated 10 December 2021 between CPGL, CPL, CPUS, Snap and me (as Seller Representative) ("APA"). The governing law of the APA is the law of the State of Delaware and there is an exclusive jurisdiction clause in favour of the Delaware Court.

The terms of the APA are expressly strictly confidential and Snap has been very concerned to maintain that confidentiality. However, I can inform the English Court as follows:

(a) The total consideration for the sale by CPGL, CPL and CPUS of assets under the APA was US\$101 million. That consideration was split into two tranches.

(i) The first tranche of consideration was US\$41m of Snap shares which was subject to a six month lock-up (until July 2022) before those Snap shares could be sold.

(ii) The second tranche of consideration is US\$60 million in cash or Snap shares (at Snap's discretion) to be transferred in January 2025.

(b) The APA provides for all consideration to be allocated to CPUS (as to 80%) and CPL (as to 20%).”

152. Mr Geoff Rowley, the administrator for the Appellant, confirmed in cross-examination that the consideration had been received. He stated that the Appellant now had a UK bank account in which around £12m was held. No bank statements or other supporting material was provided to the Tribunal.

153. Despite this lack of supporting material to support the above assertions, we are nonetheless content to accept that, on the balance of probabilities, the Snap Sale took place and that CPL received consideration for the sale of IP.

154. We are not able to find that any other entity in the UK Group other than CPL received consideration as a part of the Snap Sale.

155. Accordingly, we find that the VAT group of which the Appellant was a representative member made a supply for consideration in the form of the Snap Sale.

156. Having found that there was a supply for consideration, we must then consider the question of whether that supply constituted economic activity for VAT purposes.

Submissions on the Snap Sale

157. Ms Inglis, for HMRC, made submissions on the basis of the test set out in *Wakefield College v HMRC* [2018] EWCA Civ 952 (“*Wakefield College*”). Ms Inglis submitted that the test has two-stages:

- (1) there must be a supply of goods or services for consideration; and
- (2) that supply must be made for the purpose of obtaining income therefrom on a continuing basis.

158. Ms Inglis argued, relying on a line of European authorities, that this must mean that a ‘one-off’ transaction cannot give rise to economic activity.

159. We need not reproduce every case cited by Ms Inglis, but it is worth setting out the point as expressed in *Slaby v Minister Finansów* (Case C-180/10) (“*Slaby*”). In that case the CJEU stated at [45]:

“According to settled case-law, the simple acquisition and the mere sale of an asset cannot amount to exploitation of an asset intended to produce income on a continuing basis within the meaning of Article 9(1) of the VAT Directive, as the only consideration for those transactions consists of a possible profit on the sale of that asset. As a rule, such transactions cannot, by themselves, constitute economic activities within the meaning of that directive.”

160. In relation to the present case, this meant, in Ms Inglis’ submission, that:

(1) The Snap Sale was a one-off event. The fact that consideration seems to have been provided in two tranches does not affect the analysis of the sale as one transaction. Accordingly, it did not take place even on an “occasional” basis, let alone on a “continuing” or “permanent” one.

(2) Further, as the simple sale of an asset, the Snap Sale was not capable of providing the Appellant with ongoing income. Once the sale occurred, the asset in question was gone and with it all possibility of ongoing income therefrom.

161. The Tribunal sought further clarification from Ms Inglis on the ramifications of her argument. The suggestion that a single transaction could never amount to economic activity seemed to us to be rather surprising.

162. We put to Ms Inglis a number of hypothetical scenarios in order to seek such clarification. In particular, we suggested that a property development carried out through a special purpose vehicle company would almost always culminate in a single sale of the completed building. Was HMRC’s position that such property developments would fall outside the scope of UK VAT on the basis that the single ultimate sale was not economic activity?

163. Ms Inglis’ response to our enquiries was that yes, HMRC’s position is that a sale by an SPV property developer, developing a single building, of that single building, would not be economic activity for VAT purposes. This resulted in raised eyebrows during the hearing.

164. We consider that it is rather too reductive to equate “income on a continuing basis” with a requirement for multiple output transactions. We provide our views on this point in more detail below.

165. As well as contesting HMRC’s position on the meaning of the ‘continuing basis’ test, Mr Firth, for the Appellant, put forward a number of cases relating to the recovery of VAT in connection with the termination or transfer of a business.

166. Of particular relevance to the present case is *Fini* (C-32/03). In that case:

(1) a limited partnership (“*Fini*”) was created in 1989 with the object of running a restaurant.

(2) In order to carry on that activity, it leased premises from 20 May 1988. The lease, which was concluded for a term of 10 years, could be terminated only with effect from 30 September 1998.

(3) *Fini* closed its restaurant at the end of 1993 and the premises subsequently remained unused. It sought to terminate the lease but the landlord refused to consent, and relied on the absence in the lease of a clause providing for early termination.

(4) Fini therefore continued to pay the costs incurred in relation to the lease in question, namely the rent and the heating, electricity and telephone charges. Fini sought recovery of the related input tax.

167. On reference to the CJEU, the court noted that:

(1) Preparatory acts would be regarded as economic activities, giving rise to a right to deduct input tax (referring to *Inzo*);

(2) Where a business is transferred, the costs of such transfer can be regarded as a part of the business as a whole, giving rise to a right to deduct input tax.

168. The court then turned to the facts before it and held at [24] that:

“Those same considerations dictate that transactions such as the payments which Fini H continued to have to make during the period over which its restaurant business was wound up must be regarded as forming part of the economic activity within the meaning of Article 4 of the Sixth Directive.”

169. The court continued:

“Such an interpretation is justified by the deduction system, with regard to which the Court has repeatedly held that it is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures complete neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT”.

170. The court then expressed at [31] the clear conclusion:

“The right to deduct VAT on account of the winding-up of the business must therefore be recognised in so far as its application does not give rise to fraud or abuse.”

171. Mr Firth submitted that the Snap Sale can be seen as terminatory activity and should therefore be considered economic activity for these purposes.

172. Mr Firth also drew our attention to VATA 1994, s 94, which provides (so far as is relevant):

“(5) Anything done in connection with the termination or intended termination of a business is treated as being done in the course or furtherance of that business.

(6) The disposition of a business, or part of a business, as a going concern, or of the assets or liabilities of the business or part of the business (whether or not in connection with its reorganisation or winding up), is a supply made in the course or furtherance of the business.”

173. The word ‘business’ is generally used in UK legislation as a substitute for where EU jurisprudence refers to ‘economic activity’.

174. Mr Firth argued that s 94 VATA 1994 essentially places *Fini* on a statutory footing. This cannot be strictly true, as the provision predates *Fini*. However, the provision does have some relevance, as we discuss below.

175. We note that neither party sought to argue that there ought to have been a deemed supply of the IP at the point the economic activity terminated. We therefore do not consider the point further.

Discussion on the Snap Sale

176. We now set out our views in relation to the Snap Sale. We have not reproduced above nor dealt with below each and every argument put before us. We have however considered all the points made by counsel and are grateful for their assistance.

177. We begin by considering HMRC's argument that the Snap Sale is not economic activity because it was not made for the purpose of obtaining income therefrom on a continuing basis. In particular, because it was a one-off single transaction.

178. As a starting point, we agree that the correct test to be applied is that set out in *Wakefield College*. However, we do not believe that the *Wakefield College* case, or any of the other cases cited in argument, support the proposition that a transaction is deprived of the purpose of obtaining income on a continuous basis purely because it is a single transaction.

179. The cases put forward by Ms Inglis make repeated reference to income on a continuous basis and the need for permanence. However, none of the cases cited make mention of a presumption that a single transaction would not be economic activity.

180. Indeed, in *Slaby* the court expressly held that the number of sales was not decisive in that case, stating (at [37]):

“The Court would point out that the number and scale of the sales carried out in the present case are not in themselves decisive. As the Court has already held, the scale of the sales cannot constitute a criterion for distinguishing between the activities of an operator acting in a private capacity, which fall outside the scope of the VAT Directive, and those of an operator whose transactions constitute an economic activity. The Court has pointed out that a large volume of sales may also be carried out by operators acting in a private capacity”.

181. We also consider that Ms Inglis' reliance on the reference in *Slaby* to “the simple acquisition and the mere sale of an asset” does not greatly assist here. In the current case the IP was created or acquired by the UK Group at a time when active development was ongoing. The facts therefore are not consistent with a simple acquisition and sale.

182. Ms Inglis' approach relies on the *Wakefield College* reference to the “obtaining of income on a continuing basis” being read as requiring that the output supply itself must be ‘continuous’. We do not agree with that reading, and as a matter of practicality the notion of a sale transaction being ‘continuous’ is a difficult one to rationalise.

183. The notion of ‘continuity’ in the context of transactions might be seen as requiring repeated transactions but in our view that misreads the test. The requirement is that a supply is made for the purpose of obtaining income therefrom on a continuing basis. The continuity applies to income, rather than transactions.

184. Nonetheless, it is rather difficult to conceptualise the notion of ‘continuous’ income. After all, at its most basic level, every pound earned by a business is only earned once.

185. We do not therefore consider that the need for continuity of income requires there to be repeated income receipts.

186. In our view, the concept of continuity is more easily analysed by reference to the concept of ‘remuneration’ rather than simply looking for repetition within supplies.

187. The concept of remuneration is often used in the case law as an alternative for the need for a ‘continuous basis’, albeit sometimes linguistic difficulties have led to difficulties with this term (translations between French and English versions of decisions have sometimes resulted

in consideration and remuneration being used interchangeably). In *Wakefield College* the Court of Appeal said (at [54], per David Richards LJ):

“Having concluded that the supply is made for consideration within the meaning of article 2, the court must address whether the supply constitutes an economic activity for the purposes of the definition of “taxable person” in article 9. The issue is whether the supply is made for the purposes of obtaining income therefrom on a continuing basis. For convenience, the CJEU has used the shorthand of asking whether the supply is made “for remuneration”. The important point is that “remuneration” here is not the same as “consideration” in the article 2 sense, and in my view it is helpful to keep the two terms separate, using “consideration” in the context of article 2 and “remuneration” in the context of article 9.”

188. The Court of Appeal also held that:

“Whether article 9 is satisfied requires a wide-ranging, not a narrow, enquiry. All the objective circumstances in which the goods or services are supplied must be examined”.

189. Before turning to the full circumstances, we first provide our understanding of the meaning of remuneration in the context of single transactions.

190. The concept of remuneration implies, in our view, that activities undertaken to give rise to an output supply are intended to be funded by the consideration earned from the output supply. In *Longridge on the Thames v HMRC* [2016] EWCA Civ 930, Arden LJ described this connection as being a direct link between the service and the payment. That is to say, there is an ongoing intention to make recovery of input costs by way of one or more output supplies.

191. This is to be distinguished from payments where there is no remunerative function. A private individual who sells a capital asset will not normally be undertaking economic activity because they have no business venture that they are intending to fund through the activities. The sale is a one off, and for a consideration, but it is not the individual nature of the transaction that is key, it is that nothing has been done with the intention of earning the consideration.

192. It might be said that ‘consideration’ can be seen as what the recipient has to give for the supply, whereas ‘remuneration’ is why the supplier is charging for it.

193. During the hearing, we put to Ms Inglis that HMRC’s approach would appear to mean that a property development carried on through an SPV would fall outside the scope of VAT because the final sale of the finished property would only be a single transaction. Ms Inglis confirmed that was HMRC’s position.

194. In our view that cannot be correct. In the case of a property developer, there are many years of activity where funds are expended and work carried on in the anticipation of a final payday. The continuity (and therefore remuneration) is to be found in that ongoing work to earn the final consideration. The fact that there will often be a single output sale does not alter the position.

195. In the present case, the remunerative element, and the continuity, arises from the previously carried-on activity. The UK Group held IP as a result of activity conducted prior to the May 2017 Disposal. The Snap Sale was for remuneration because it was to recover the costs of developing that IP.

196. Considering the full circumstances (by analogy with paragraphs [79]-[85] of *Wakefield College*):

- (1) First, the sole activity of the UK Group whilst it was still operating, in the most general terms, was the development of projector technology. The development of IP was not a purely ancillary activity.
- (2) Second, the sale or licensing of IP could be considered a significant part of the UK Group's total undertaking.
- (3) Third, the consideration paid by the purchaser was significant in amount, being around \$20m US.
- (4) Fourth, the consideration would have made a significant contribution to recovering the cost of projector development.
- (5) Fifth, the level of purchase price was set on a commercial basis, and therefore likely to take into account the cost of development.
- (6) Sixth, the purchase price was not fixed by reference to the means of the purchaser.
- (7) Seventh, there is no reason to suppose that the UK Group was anything other than a typical participant in the market in which it operated.

197. We therefore conclude that the Snap Sale was made for the purpose of obtaining income therefrom on a continuing basis, within the meaning of *Wakefield College*.

198. Furthermore, even if we are wrong in our reading of the *Wakefield College* test, considering the approach of the European Court in *Fini*, we accept that the sale of the IP should be considered as a termination activity and ought therefore to be considered as a part of the activity carried on prior to May 2017.

199. The Snap Sale was terminatory because it was the sale of assets used or created in the course of the UK Group's previous economic activities. The majority of such assets were disposed of by way of the May 2017 Disposal. The disposal of the IP is removed in time from that disposal but nonetheless conceptually forms a part of that termination. Once the IP was sold the UK Group would not be able to carry out any further supplies in connection with its previous activities.

200. Our understanding is that the disposal of assets created or acquired as a part of some actual or intended economic activity ought to be treated as a part of that activity. The sale is economic activity because it is in essence a part of the previous business.

201. On that basis, we find that, even if we are incorrect on the application of the *Wakefield College* test, the Snap Sale constituted economic activity.

202. In addition, as put forward by Mr Firth, we consider that s 94 VATA 1994 deems that anything done in connection with the termination or intended termination of a business is treated as being done in the course or furtherance of that business.

203. We consider that the disposal of IP, being the sole remaining capital assets of the UK Group that were derived from pre-May 2017 activities, must be in connection with the termination of the business previously carried on. It follows that s 94 deems the sale to be economic activity.

204. Therefore, even if we are wrong on both the *Wakefield College* and *Fini* tests, we consider that the Snap Sale was economic activity by virtue of s 94 VATA 1994.

Conclusion on the Snap Sale

205. For all the reasons set out above, we conclude that the Snap Sale was economic activity for VAT purposes.

206. However, our conclusion should not be taken to mean that we consider that the economic activities of the UK Group continued throughout the period following the May 2017 Disposal. Our finding remains that economic activity ceased at the point of that disposal. There was no objectively-evidenced intention to carry on ongoing economic activity following that disposal.

207. The Snap Sale was a one-off economic event arising after a period of economic inactivity.

208. This means that the issue of ‘direct and immediate’ link becomes one of considerable significance. Input tax incurred with a direct and immediate link to the Snap Sale would ordinarily be recoverable. However, ongoing costs incurred whilst no economic activity was ongoing or contemplated may not be recoverable. This is consistent with the general expectation (see *BAA Ltd v HMRC* above) that a passive holding company would not be entitled to recover input VAT arising from that passive holding.

OVERALL CONCLUSION

209. For the reasons set out above, we consider that:

- (1) With the exception of the Snap Sale, the Appellant did not carry on any actual economic activity following the May 2017 Disposal.
- (2) The Appellant did not have any ongoing intention to carry on economic activity following the May 2017 Disposal.
- (3) The Snap Sale was nonetheless an instance of economic activity carrying a right to input tax deduction.

210. The question of whether any of the claimed input tax has a direct and immediate link to the supply, as we have found it, remains a live issue in the case. It may be that the parties are able to reach agreement as to the correct figures. If the parties are not able to resolve the matter, we give liberty to apply to the Tribunal for suitable directions to have the Tribunal determine the issue.

211. We note that the decision of the Court of Appeal in the case of *FS Commercial v HMRC* [2026] EWCA Civ 29 may mean that there are procedural barriers to the Appellant establishing its right to deduct where invoices have not hitherto been supplied to HMRC. We leave it to the parties to make any submissions on the point to the extent they consider it relevant.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

212. 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:
30 June 2026**