CORPORATION TAX – Property holding company part of a larger group of companies letting its properties to the trading company of the same group – Assignment by the property company to a bank of the right to receive its rents for a five year period in consideration of a lump sum payment received from the bank – Whether the lump sum is to be treated and taxed as an income receipt or as a capital receipt – Whether the assignment of the rents by the property holding company was a part disposal of its properties or an entire disposal of five years' rents – Whether roll over relief is available to the property holding company – Sections 15 and 18 Income and Corporation Taxes Act 1988; sections 21, 42, 152 and 155 Taxation of Chargeable Gains Act 1992 – Appeal allowed

THE SPECIAL COMMISSIONERS

JOHN LEWIS PROPERTIES PLC Appellant

- and -

THE COMMISSIONERS OF INLAND REVENUE Respondents

Special Commissioner: MR T H K EVERETT

Sitting in London on 12, 13 and 14 July 2000

Mr David Goldberg QC and Mr Wayne Clark of Counsel, instructed by Messrs Lovells, solicitors, for the Appellant

Mr Launcelot Henderson QC and Mr Michael Furness QC of Counsel, instructed by the Solicitor of Inland Revenue, for the Respondents

DECISION

John Lewis Properties Plc ("JLP") appeals against an assessment to corporation tax for its accounting period ended 31 January 1996 in the sum of £31 million.

The evidence before me consisted of a statement of agreed facts and a bundle of agreed documents. In addition I received brief expert evidence from Mr Richard William Asher FRICS and Mr Philip Haberman FCA.

I admitted in evidence a Deed of Assignment of rents ("the Deed of Assignment") made between JLP and Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. ("Rabobank") and dated 20 November 1995 although unstamped, on receiving an undertaking from the Appellant's solicitors Messrs Lovells, to cause the Deed of Assignment to be brought into the jurisdiction and to arrange for it to be duly stamped ad valorem.

The facts

There is no dispute as to the facts in this appeal. They are the subject of a statement of agreed facts, the relevant parts of which read as follows:

1. JLP is the property holding company for the John Lewis Partnership Group of Companies. JLP owns the freehold or long leasehold interest in the Properties set

out below (the "Properties"). The trading company of the John Lewis Partnership, John Lewis Plc ("JL") has for a number of years occupied the Properties for the purposes of its trade. For such occupation, JL has been required to pay the amount set out beside each Property as follows (such amounts being hereinafter referred to as the "rents"):

(A) 278-306 Oxford Street (even), 1 to 10 Old Cavendish Street, 22 to 27 Cavendish Square and 16 to 28 (even) Hollis Street, London – JLP owns the freehold; JL pays £3,500,000 per annum

(B) 22a Cavendish Square, London – JLP owns the freehold; JL pays £15,000 per annum

(C) 11/12 Old Cavendish Street, London – JLP owns the freehold; JLP pays £100,000 per annum

[A, B and C above together comprise the JL Oxford Street store London]

(D) Jessop & Son Department Store, Victoria Centre, Nottingham – JLP owns a long leasehold interest (under a lease from Capital and Counties Property Co); JL pays £525,000 per annum

(E) John Lewis Department Store, Brent Cross, London – JLP owns a long leasehold interest (under a lease from Standard Life Assurance Co); JL pays £1 million per annum

2. On 20 November 1995, JLP entered into a transaction with the UK branch of the Dutch Bank Rabobank, pursuant to which JLP assigned to Rabobank the right to receive the rents payable by JL in respect of the Properties for a five year period. In consideration of the assignment, JLP received a lump sum payment from Rabobank. This assignment is hereinafter referred to as the "rental assignment".

The rental assignment

3. The rental assignment was effected by JLP and Rabobank entering into a Deed of Assignment of rents dated 20 November 1995 ("the Deed of Assignment") (Document 1 of the bundle of agreed documents). Pursuant to the Deed of Assignment, JLP assigned to Rabobank its right to receive the rents from JL in the period from 23 January 1996 up to and including 23 January 2001 in respect of the Properties (as referred to in Schedule 1 to the Deed of Assignment). The amount paid by Rabobank to JLP for the rental assignment was £25,556,762.55.

4. Notice of the rental assignment was given by JLP to JL on 20 November 1995 (the "Notice of Assignment") (Document 2 of the bundle of agreed documents). By the Notice of Assignment, JLP authorised and requested JL to pay the rents which were the subject of the rental assignment directly to the appointed UK agent for Rabobank. JL acknowledged receipt of the Notice of Assignment and undertook to pay the rents to the agent of Rabobank by service on Rabobank of an acknowledgement also dated 20 November 1995 (the "Acknowledgement") (Document 3 of the bundle of agreed documents). The UK agent subsequently appointed by Rabobank to receive the rents on its behalf from JL was Rabo Nominees Ltd.

5. Pursuant to a further agreement dated 20 November 1995 and made between JLP, JL and Rabobank (the "Guarantee and Indemnity"), (Document 4 of the bundle of agreed documents). JL (inter alia) gave certain warranties and undertakings to Rabobank in relation to its and JLP's financial position, guaranteed to Rabobank that JLP would duly perform its obligations under the Deed of Assignment and agreed to indemnify Rabobank against various matters including the non-payment of the rents.

Economics of the rental assignment

6. As noted above, the rental assignment comprised the assignment by JLP to Rabobank of its right to receive the rents in respect of the Properties from JL during the period from 23 January 1996 up to and including 23 January 2001. During that period, there fall six rental payment days and on each of those days, JL was (and is) required to pay total rents in respect of the Properties of £5,140,000. In consideration of the right to receive those rents, Rabobank paid to JLP the sum of £25,526,762.55. That amount was calculated as being the value of those rents on the date of the rental assignment using a discount rate of 7.56804534%. A copy of a Schedule produced by Rabobank prior to the rental assignment detailing this calculation is to be found as Document 6 of the bundle of agreed documents.

7. On the day of the rental assignment, Rabobank and JLP also entered into a swap arrangement pursuant to which JLP would pay to, or receive from, Rabobank the amount by which a notional commercial floating rate of interest on an amount equal to the consideration for the rental assignment exceeded or was less than the fixed rate applied in arriving at the value of the future rents at the date of the rental assignment. Copies of the swap documentation are included as Documents 7 and 8 of the bundle of agreed documents.

8. Pursuant to the accounting standard, Financial Reporting Standard 5 ("FRS 5"), JLP has been required to show the rental assignment transaction in its statutory accounts as a loan and accordingly to show the rents the subject of the rental assignment as continuing to be receivable. However, it is agreed that the Deed of Assignment did effect a valid assignment to Rabobank of at least a contractual right of JLP to receive the rents and that in the events which have happened no part of the consideration received by JLP for the rental assignment has been returned (or required to be returned) by JLP to Rabobank. Copies of statements signed on behalf of Rabobank dated 22 June 2000 and 7 July 2000 confirming that no part of the consideration has so been returned to it are produced as Documents 9 and 25 of the bundle of agreed documents.

9. Following the rental assignment, JL claims that expenditure equal to the bulk of the consideration received from Rabobank on the rental assignment has been incurred by it in opening new stores and upgrading its existing stores. This expenditure is the subject of claims for "roll over relief" made by JLP and JL; these claims were made pursuant to section 175 Taxation of Chargeable Gains Act 1992 as JLP and JL were at all relevant times members of a group for the purposes of taxation of chargeable gains.

Taxation of the rental assignment

10. In JLP's tax return for its accounting period to 27 January 1996, JLP provided for the receipt of the rental assignment from Rabobank to be treated as consideration for the part disposal by it of its interests in the Properties. As noted at paragraph 9 above, claims for "roll over relief" in respect of that consideration

(pursuant to section 152 Taxation of Chargeable Gains Act 1992) have been made by JLP and JL.

11. The Inland Revenue has contested JLP's treatment of the rental assignment for taxation purposes. In this regard, on 1 September 1998, the Inland Revenue raised an assessment on JLP showing chargeable income from UK land and buildings arising to JLP for the period to 31 January 1996 of £33 million less capital allowances of £2 million, leaving taxable income of £31 million (the "Assessment") (Document 10 of the bundle of agreed documents). The Inland Revenue has since confirmed that the basis of the assessment was other Schedule A income of £4,748,085 (net of audit fees of £10,500 and capital allowances of £2,247,084) plus the amount of the consideration from Rabobank of £25,556,762.55. The resultant figure of £30,304,847 of taxable income was rounded up to £31 million.

12. JLP has appealed against the assessment and has paid the corporation tax charged pursuant to it.

13. It is agreed between JLP and the Inland Revenue that the rents payable by JL are as specified by the Deed of Assignment (and as noted in paragraph 1 above) and that those rents are correctly to be treated as payments for the occupation by JL of the Properties for the purposes of its trade.

The expert evidence

Mr Asher was asked by the Appellant to explain the effect of the assignment by a landlord of its right to receive rentals from a tenant in respect of any Property would have on the value of the landlord's reversionary interest in the Property. In Mr Asher's opinion following the sale by a landlord of its right to receive rentals from a tenant for a fixed period the value of the landlord's reversionary interest would be reduced. The reduction would take place immediately and the value of the Properties should gradually increase again over the five year rental assignment period as the period of the rental assignment outstanding reduces over time.

Mr Henderson's cross-examination consisted of putting to the witness that his conclusions depended ultimately on a question of law. As a non-lawyer, the witness found it difficult to give a meaningful reply.

In re-examination Mr Asher confirmed that the value of the Properties would be reduced if the rents were pre-sold.

Mr Haberman was asked by the Appellant to explain the distinction in economic terms between the receipt of a lump sum representing the proceeds of sale of the right to receive income or rents and the receipt of the income itself by way of regular sums at periodic intervals. He was also asked to consider whether in practice the assignment of the right to receive the rentals by JLP to a bank in return for the receipt of a lump sum has made a real economic difference to the John Lewis Partnership Group as against the position it would have been in had JLP continued to be entitled to receive the rentals throughout the period.

In Mr Haberman's view the distinctions in economic terms were (a) a reduction in the value of the underlying Property, (b) a certainty as to receipt (c) certainty as to timing (d) removal of economic risk (e) removal of regulatory risk (f) creation of opportunity and (g) removal of administrative obligation. He was also of the opinion that a sale of the right to receive the rents has clearly taken place and

that the interest rate swap arrangement did not change his view of the economics of the position.

He prepared tables (Appendices 1 and 2 to his statement) which showed that the profits actually generated by way of return on capital at the end of the assignment period were significantly greater as a consequence of the rental assignment and the receipt and investment of the lump sum than would have been the case had it not occurred and had JLP continued to receive annual rental payments.

In addition, in his opinion (subject to a successful outcome to the present appeal) the profits actually generated by way of return on capital by the end of the assignment period were significantly greater as a consequence of the rental assignment and the receipt of the lump sum than would have been the case had it not occurred and had JLP continued to receive annual rental payments.

In cross-examination Mr Henderson put it to the witness that everything depended on the terms of the deal with which the witness concurred. Mr Haberman also agreed that the assignment was a financing operation and could be viewed as either a loan or a purchase.

I accept the evidence of the witnesses. Each of the experts' reports will be available to the Court should these appeals proceed further.

The contentions of the parties

Both Mr Goldberg QC and Mr Henderson QC produced detailed written skeleton arguments and these will be available to the Court should these appeals proceed further. It falls to me therefore only to summarise briefly the principal contentions of each party.

Mr Goldberg QC for the Appellant submitted that by the rental assignment, JLP sold an interest in the Property to Rabobank and accordingly the price received by JLP was inherently capital in nature and there is no basis on which it can be characterised or taxed as income. He placed considerable reliance upon dicta from the judgments of Sir Wilfrid Greene MR and Lord Romer in Paget v IRC 21 TC 677.

Mr Goldberg QC further contended that the sale effected by the rental assignment was a part disposal of the Properties so that:

"(a) In calculating the chargeable gain in arising on the disposal section 42 of the Taxation of Chargeable Gains Act 1992 requires that part of the base cost of the Properties may be set against the price; and

(b) Any gains arising on the rental assignment may be rolled over under section 152 of the same Act."

Mr Henderson QC for the Respondents contended primarily that the price received by JLP from Rabobank is chargeable to corporation tax on income under Schedule A. In the alternative the Revenue's primary case is that the price is chargeable as income under Schedule D Case VI.

If the Revenue are wrong in saying that the price is chargeable as income then they say that the asset disposed of was a chose in action or a bundle of choses in action comprising the right in equity to sue for the rents during the assignment period. The choses in action had no acquisition cost and therefore the entire price represents a chargeable gain in the hands of JLP.

Although contending that the assignment by JLP did not represent a part disposal of the Properties Mr Henderson QC recognised the force of Mr Goldberg QC's argument that what took place was in fact a part disposal by JLP.

Conclusion

Mr Goldberg QC in his address referred me to some very old decisions. I must say at once that those decisions are irrelevant and can have no bearing on the questions before me in this appeal. Those old authorities deal with the state of land law before the Conveyancing Act of 1881 which began the process which revolutionised English land law. Upjohn LJ dealt with the question in the case of In re King deceased, Robinson v Gray [1963] 1 Ch.459 where he said at pages 489-490:

"We have been referred by Counsel, whose researches were extensive, intensive and painstaking, to a vast body of authority dealing with the state of the law before the Conveyancing Act of 1881. The Master of the Rolls has pointed out in his judgment that we were able to put most of them on one side marked "Not to be looked at again" because so many of them hardly touched the fringe of the problem before us. Upon a full consideration of the matter, I do so for an additional reason. I would put all the pre-1881 authorities on the shelf "Not to be looked at again". Where the language of a statute is clear and unambiguous it is wrong to interpret the statute by reference to earlier law. The language of the statute prevails."

It seemed from Mr Henderson's cross-examination of Mr Haberman that there was a possibility that the Inland Revenue was seeking to argue that the transaction effected between JLP and Rabobank was in fact a loan but Mr Henderson immediately made clear that such was not his client's intention. He was merely wishing to show that from an accounting perspective the transaction was to be viewed as one for the provision of finance. I do not understand that to be disputed by Mr Goldberg on behalf of JLP. Nor does he seek to deny that what I am being asked to consider is, broadly, a tax avoidance scheme. Its details were not unique to Rabobank and the evidence shows that there was at least one other bank which offered terms to JLP for a similar transaction, but Rabobank's terms were more attractive from a financial point of view to JLP.

Mr Goldberg has indulged in diagrammatic representations of the effect of the rental assignment in his skeleton argument. In his submission prior to the rental assignment JLP had a bundle of rights comprising (a) freeholds or long leaseholds of various properties, (b) the right to possession of those properties at the termination of the various leases, (c) the benefit of covenants under the leases (with the exception of the five years rent covenant) and (d) the benefit of the five years rent covenant. In Mr Goldberg's submission after the rental assignment JLP retained (a), (b) and (c) but had assigned (d) to the bank, thereby reducing JLP's interest in the Properties.

Mr Goldberg referred me to section 205(1) of the Law Property Act 1925 (the definition section) and to the definitions thereof "land" and "rent". And I accept his contention that the assignment of the benefit of the rent covenant is an assignment of an interest in land.

Mr Henderson submitted that the assignment would have taken place in equity, it being impossible to effect a legal assignment of a future chose in action. However, I reject that analysis and accept Mr Goldberg's submission that the Deed of Assignment effected an assignment of present property not an assignment of future property. I accept that the assignment was effected in law on the authority of section 136 of the Law Property Act 1925.

Mr Goldberg also referred to the case of Knill v Prowse [1884] reported in volume XXXIII of the Weekly Reporter at page 163. However, the report is very brief, it contains no note of argument and the judgment is recorded in only two lines.

The transaction before me is admittedly an arms length transaction for valuable consideration and for the Crown to succeed I must either disregard or distinguish the case of Paget v IRC 21 TC 677.

The headnote of that case reads as follows:

"Miss Paget held certain Hungarian Bearer Bonds the interest coupons of which were payable in London in Sterling and in certain other countries in the respective currencies of those countries. By a Decree dated 22 December 1931 the Hungarian Government directed that the interest on the Bonds should not be paid direct to creditors but that its equivalent in pengos should be deposited with the Hungarian National Bank and placed in a foreign creditors' fund, out of which Bondholders might obtain payment of interest coupons in pengos, but only for use for certain purposes in Hungary. Miss Paget did not obtain payment in this way, but sold certain coupons, after they had fallen due, through agents or coupon dealers in London, who deducted income tax on payment to her of the proceeds of such sales.

Miss Paget also held certain Bearer Bonds of the Kingdom of Jugoslavia the coupons of which were payable in American Dollars in New York. On 24 July 1933, the Jugoslavian Government gave notice of its inability to pay the interest in full and offered to meet the coupons maturing from 1 November 1932 to 1 May 1935 either by payment in "blocked" dinars in Belgrade or by payment of 10 per cent of their face value in dollars and by the issue of funding Bonds for the balance. Miss Paget did not accept this scheme but in September 1933 sold the interest coupons due on 1 November 1932 and 1 May 1933 through agents or coupon dealers in London, who deducted income tax on payment to her of the proceeds of such sale.

On an appeal against assessments to sur-tax for the year 1932-33 and 1933-34 the Special Commissioners decided (a) that the deposit of pengos with the Hungarian National Bank constituted performance of the obligation to pay interest on the Hungarian Bonds and the proceeds of the coupons falling due at the respective dates of deposit represented interest arising to Miss Paget and must be included in her total income for sur-tax purposes, and (b) that, as regards the Jugoslavian Bonds, the offer made did not, in the absence of acceptance by Miss Paget and payment to her, constitute performance or satisfaction of the Government's obligation; that the mere fact that the existence of the offer gave value to the coupons in the market did not cause interest to arise; and that the proceeds of sale should be excluded from assessment.

Held, that in neither case did the proceeds of sale of coupons received by Miss Paget constitute income for income tax purposes."

Mr Goldberg relies upon two extracts from the judgments in the Court of Appeal. First at page 692 Sir Wilfrid Greene, MR said:

"The purchase price received by Miss Paget was not income arising from the Bonds at all. It arose from contract for sale and purchase whereby Miss Paget sold whatever right she had to receive such income in the future, as well as her right to take what was offered by the defaulting debtors. It is, in my opinion, quite impossible to treat this as equivalent in any sense to "income arising from" the Bonds."

An even stronger statement is to be found in the judgment of Lord Romer, where he said at page 699:

"In these circumstances, the only question to be decided is whether the proceeds of sale of a right to receive income in the future can be treated as income for the purpose of the Income Tax Acts. The question thus broadly stated plainly admits of but one answer, and that answer must be in the negative. The proceeds of sale for a lump sum of an annuity, for instance, are capital in hands of the vendor and not income. And this is true even when the subject of the sale is not the annuity for its whole duration, but the right to be paid the annuity for a number of years, or even for one year."

At page 700 he continued:

"The transactions appear to have been bona fide transactions of sale and purchase. The moneys received from them by Miss Paget were held by Finlay J to be simply the purchase price of the coupons, and in no sense income from foreign securities. In my judgment he was right in so holding, and the appeals should be dismissed with costs."

If Paget remains good law today there can only be one answer to the question whether the proceeds of the Deed of Assignment received by JLP were capital or income and the answer must be capital, but Mr Henderson has mounted a formidable assault on Paget with which I must deal.

First he stated that Lord Romer’s broad general principle is much too wide and is not part of the ratio of the decision.

Secondly he cited decisions in which the Australian Courts have refused to follow Paget in two quite recent cases. First, in Federal Commissioner of Taxation v Myer Emporium Ltd (1987) 18 ATR 696 where, before the full Court of the High Court of Australia, Paget was distinguished. The judgment of the Court included the following at page 704:

"Unlike the sale of the coupons in Paget, the sale of a right to interest severed from the debt is not a sale of a tree of which the future payments are the fruit. The present case may thus be distinguished from the view of the facts which was the foundation of the decision in Paget. If Paget is not to be distinguished in this way, we should be unable to accept its authority for the purposes of the Act."

That case was followed in Henry Jones (IXL) Ltd v Federal Commissioner of Taxation (1991) 22 ATR 328. That was a decision of the General Division of the Federal Court of Australia.

Whilst Australian cases may be persuasive authority, I am not compelled to follow them and I decline to do so in this particular case where I am being asked to overturn a long standing and respected decision of the English Court of Appeal. I do not go so far as to suggest, like Mr Goldberg, that the Australian authorities are "economically illiterate."

Mr Henderson also sought support from the case of Raja's Commercial College v Gian Singh & Co Ltd [1977] AC 312, a decision of the Judicial Committee of the Privy Council on appeal from the Court of Appeal in Singapore.

The relevant part of the headnote in relation to that case reads as follows:

"Held, dismissing the appeal, that, where damages were received by a trader as compensation for loss of trading receipts, the compensation was to be treated for income tax purposes in the same way as the trading receipts would have been treated had they been received as profits in any year instead of compensation and that there was no logical reason why the treatment of damages for income tax purposes should depend on whether the recipient was a trader or an investor; accordingly, the damages which were awarded in place of lost income fell to be treated as income ...".

Now the facts of Raja were very different from the facts of the instant appeal and Paget was not cited before the Privy Council.

On the other side of the coin Mr Goldberg has referred me to a short extract from the speech of Lord Browne-Wilkinson in Inland Revenue Commissioners v McGuckian [1997] 1 WLR 991, where he said at pages 995-6:

"The crucial question, therefore, is whether in the present case the moneys received by Shurltrust as consideration for the assignment of the right to the dividends from Ballinamore fall to be treated as "income" of Shurltrust. Prima facie those moneys, being the price of the sale by Shurltrust of its right to the future dividends of Ballinamore, constitutes capital not income."

Although there is no reference in the report to Paget, Mr Henderson, who appeared for the Crown in McGuckian has confirmed that Paget was in fact cited to their Lordships. However, the case turned almost entirely on the new approach as first expounded in Ramsay (WT) Ltd v Inland Revenue Commissioners [1982] AC 300.

It is common ground between the parties in this appeal that section 730 Income and Corporation Taxes Act 1988 (first enacted as section 24 Finance Act 1938) was enacted to reverse the effect of Paget. Had that legislation been in force at the time when Miss Paget's transactions took place she would have been deemed to have been in receipt of income.

Mr Goldberg has also drawn my attention to Clauses 43B and 43C of the Finance Bill 2000. On the twin assumptions that those provisions become law and that the Deed of Assignment took place after those provisions had become law then in such circumstances the consideration received by JLP would be "taken into account in computing the profits of the Schedule A business for the chargeable period in which the agreement is made." (Clause 43B)

However, Clause 43C provides that Clause 43B shall not apply to medium and long term transactions involving finance agreements "if the term over which the financial obligation is to be reduced exceeds fifteen years." The implication is that the legislature has recognised that until now (or until the passage of the Finance Act 2000) transactions such as the Deed of Assignment in the instant appeal give rise to consideration which is to be viewed as capital rather than as income and that for the future similar arrangements involving periods of longer than fifteen years shall continue to produce capital sums rather than sums chargeable to income tax under Schedule A.

At the end of the day I have come to the conclusion that I cannot ignore and overrule the authority of the Court of Appeal in Paget, particularly in light of the supporting arguments tendered by Mr Goldberg. The House of Lords apparently had an opportunity to do so in McGuckian but for whatever reason, declined.

Accordingly, I hold in response to the first question put to me that the sum received by JLP from Rabobank under the terms of the Deed of Assignment was capital money and not income.

Having come to that conclusion I do not need to address the head of charge question, so-called, in paragraph 23 of Mr Goldberg's skeleton argument.

There remain therefore only the capital gains tax questions, i.e. did JLP make a part disposal or an entire disposal of five years rents as contended for by Mr Henderson on behalf of the Inland Revenue.

He has submitted that the reversion was substantially unaffected by the terms of the Deed of Assignment in reliance upon section 141 of the Law of Property Act 1925.

He has also submitted that the real value for Rabobank was in the covenants given to the Bank by JLP. In his view there was a composite transaction involving JL, JLP and Rabobank. In substance it was a financing transaction and was shown in the Company's accounts as a loan.

Mr Goldberg, for JLP contends that when JLP entered into the Deed of Assignment and received the price, it made a disposal, which as I have mentioned above, he has endeavoured to illustrate diagrammatically in paragraph 13 of his skeleton argument.

He has supported in his contention by the evidence of the witnesses and as a matter of common sense it does appear that the terms of the Deed of Assignment diminished the assets under JLP's control.

Even Mr Henderson had to admit that Mr Goldberg had force in his argument that the Deed of Assignment constituted a part disposal and I have no hesitation in agreeing with that view.

I prefer the arguments of Mr Goldberg in relation to this question and hold that the Deed of Assignment constituted a part disposal of JLP's Properties.

It is my understanding that having decided that the Deed of Assignment constituted a part disposal, it is common ground that, subject to JLP being able to satisfy the conditions laid down by section 152 Taxation of Chargeable Gains Act 1992, roll over relief will be available to JLP.

The appeal succeeds and I adjourn the hearing to enable the parties to agree figures. On their being reported to me I will determine the assessment formally.

T H K EVERETT

SPECIAL COMMISSIONER

Date of Release: 5th September 2000

Authorities cited but not referred to in the Decision

Robins v Cox and Warwick (1662) 1 Lev 22

Allen v Bryan (1826) 5B&C 512

Williams v Hayward (1859) 1 E&E

Rhodes & Another v Allied Dunbar Pension Services Ltd & Others, re Offshore Ventilation Ltd [1989] 1 AER 1161

Ex parte Hall, in re Whiting (1879) 10 Ch.615

Wood v The Marquis of Londonderry (1847) 10 Beav 465

Kirby v Thorn EMI Plc [1987] STC 621

E V Booth (Holdings) Ltd v Buckwell [1980] STC 578

The Glenboig Union Fireclay Co Ltd v CIR 12 TC 427

The Trustees of Earl Haig v CIR 22 TC 725

Nethersole v Withers 28 TC 501

McClure v Petre 61 TC 226

Greyhound Racing Association (Liverpool) Ltd v Cooper 20 TC 373

London & Thames Haven Oil Wharves Ltd v Attwooll 43 TC 491

Deeny & Others v Gouda Walker Ltd & Others 68 TC 458

Lowe v J W Ashmore Ltd 46 TC 597

Leeming v Jones 15 TC 333

Sargaison v Roberts 45 TC 612

Zim Properties Ltd v Proctor 58 TC 371

Tailby v Official Receiver (1888) 13 App. Cas. 523

Webb v Pollmount Ltd [1966] 1 Ch.584

SC 3029/2000