

INHERITANCE TAX - settlements without interests in possession – settlor made five similar settlements dated on different days within about a month – shares in same private company subsequently transferred to trustee for each settlement - whether the property comprised in all five settlements was property comprised in "a" settlement for the purposes of the ten-year anniversary charge – whether associated operations - yes – whether dispositions by associated operations were dispositions of property whereby the property was held in trust – yes - appeal dismissed - IHTA 1984 ss 43, 64, 107 and 272

THE SPECIAL COMMISSIONERS SpC 00290

RYSAFFE TRUSTEE COMPANY (CI) LIMITED

Appellant

- and -

THE COMMISSIONERS OF INLAND REVENUE

Respondents

SPECIAL COMMISSIONER : DR A N BRICE

Chairman's name: use right arrow to move to starting point after this box

Sitting in London on 13 August 2001

**David Ewart of Counsel, instructed by Messrs Howes Percival Solicitors,
for the Appellant**

**Peter Twiddy, Assistant Director of Inland Revenue : Capital Taxes, for
the Respondents**

© CROWN COPYRIGHT 2001

DECISION

The appeals

1. Rysaffe Trustee Company (CI) Limited (the Appellant) appeals against two Notices of Determination each dated 17 April 2000.

2. The first Notice of Determination was in the following form:

"The Commissioners of Inland Revenue have determined –

In relation to

- a. the Settlements made by Richard John Warburton Utley on 7, 10, and 13 February, 1 and 12 March 1984;
- b. the holdings of "A" Deferred Shares of 10 pence in Richard Utley Ltd held by the trustees of those Settlements immediately before the ten year anniversary thereof.

That, for the purposes of the charge to tax under section 64 Inheritance Tax Act 1984, having regard to the provisions of section 43(2) and section 268 of that Act, the holdings referred to above are to be taken to be property comprised in one Settlement commencing on the first transfer of property into any of the Settlements referred to at a) above,"

3. The second Notice of Determination was in the following form:

"The Commissioners of Inland Revenue have determined –

In relation to

(a) the Settlements made by John Holdsworth Stott Utley on 16, 19, 21, 23 and 26 March 1984;

(b) the holdings of "B" Deferred Shares of 10 pence in Richard Utley Ltd held by the trustees of those Settlements immediately before the ten year anniversary thereof.

That, for the purposes of the charge to tax under section 64 Inheritance Tax Act 1984, having regard to the provisions of section 43(2) and section 268 of that Act, the holdings referred to above are to be taken to be property comprised in one Settlement commencing on the first transfer of property into any of the Settlements referred to at a) above."

4. Mr Richard John Warburton Utley (Mr Richard Utley) and Mr John Holdsworth Stott Utley (Mr John Utley) are brothers. They each created five settlements on the dates mentioned in the Notices of Determination and subsequently they both entered into similar transactions. In this Decision, therefore, it is convenient to consider Mr Richard Utley's five settlements on the understanding that the same conclusions apply to Mr John Utley's five settlements.

The legislation

5. Part III (sections 43 to 93) of the Inheritance Tax Act 1984 (the 1984 Act) now contains the provisions about settlements. When the settlements at issue in this appeal were created (early in 1984) the relevant legislation was contained partly in the Finance Act 1975 (the 1975 Act) and partly in the Finance Act 1982 (the

1982 Act). However, this appeal concerns the first ten-year anniversary charge which occurred in 1994 at which time the relevant legislation was that contained in the 1984 Act. The provisions of the 1984 Act were also referred to in the Notices of Determination. It is convenient therefore to consider the provisions of the 1984 Act only as the parties agreed that nothing turned on the difference between the two sets of statutory provisions.

6. This appeal concerns the value of property, and the rate of tax applicable to the property, in five discretionary settlements at the first ten-year anniversary. It was not disputed that the value of the property in all five settlements taken together was higher than the sum of the value of the property in each settlement and that a higher rate of tax was applicable to the higher value than would have been applicable to the value of the property in each settlement taken separately.

7. Chapter III of Part III (sections 58 to 85) of the 1984 Act contains the provisions about settlements without interests in possession. Section 64 provides :

"64 Charge at ten-year anniversary

Where immediately before a ten-year anniversary all or any part of the property comprised in a settlement is relevant property, tax shall be charged at the rate applicable under sections 66 and 67 below on the value of the property or part at that time."

8. The Inland Revenue were of the view that the five settlements were "a settlement" for the purposes of section 64 and they relied upon the statutory definitions of settlement (in section 43(2)), disposition (in section 272), and associated operations (in section 268).

9. Section 43 of the 1984 Act defines the word "settlement" and related expressions and the relevant parts provide:

"(1) The following provisions of this section apply for determining what is to be taken for the purposes of this Act to be a settlement, and what property is, accordingly, referred to as property comprised in a settlement or settled property.

(2) "Settlement" means any disposition or dispositions of property, whether effected by instrument, by parol or by operation of law, or partly in one way and partly in another, whereby the property is for the time being-

(a) held in trust for persons in succession or for any person subject to a contingency, or

(b) held by trustees on trust to accumulate the whole or part of any income of the property or with power to make payments out of that income at the discretion of the trustees or some other person, with or without power to accumulate surplus income, "

10. Section 272 of the 1984 Act is the general interpretation section and provides that **"disposition" includes a disposition effected by associated operations**".

11. Section 268 of the 1984 Act defines associated operations and provides:

"268 Associated operations

(1) In this Act "associated operations" means, subject to subsection (2) below, any two or more operations of any kind, being –

(a) operations which affect the same property, or one of which affects some property and the other or others of which affect property which represents, whether directly or indirectly, that property, or income arising from that property, or any property representing accumulations of any such income, or

(b) any two operations of which one is effected with reference to the other, or with a view to enabling the other to be effected or facilitating its being effected, and any further operation having a like relation to any of those two, and so on,

whether those operations are effected by the same person or different persons, and whether or not they are simultaneous; and "operation" includes an omission.

...

(3) Where a transfer of value is made by associated operations carried out at different times it shall be treated as made at the time of the last of them; but where any one or more of the earlier operations also constitute a transfer of value made by the same transferor, the value transferred by the earlier operations shall be treated as reducing the value transferred by all the operations taken together, "

The issues

12. Two settlors each made five settlements which were dated on five separate days within about a month. Each settlement was in exactly the same form except for the date. At the dates of the settlements the intention was to issue bonus deferred shares in a private company and to transfer these to the trustee, one-fifth of the total for each settlement. This was done but the issue of the bonus deferred shares was later found to be invalid. Accordingly, some of the existing ordinary shares in the company were then re-designated as deferred shares and transferred to the trustee, one-fifth of the total for each settlement.

13. The Inland Revenue were of the view that, in respect of each settlor, there was "a" settlement (within the meaning of section 64 of the 1984 Act) for the purposes of the ten-year anniversary charge. Their main argument was that section 272 provided that a "disposition" included a disposition by associated operations; that brought in section 268 which provided that any two operations, of which one was effected with reference to the other, were associated. The creation of the five settlements, and the transfers of the shares to the trustee, were all associated operations within the meaning of both section 268(1)(a) and (b). Accordingly, there was a single settlement within the meaning of section 43 and, at the ten-year anniversary, the tax should be charged under section 64 at the rate applicable to the total value of the property in all five settlements. Alternatively, they argued that "settlement" was defined in section 43 as any "disposition or dispositions of property" and that the five settlements were five dispositions of property which resulted in one settlement.

14. The Appellant argued that section 268(1)(a) did not apply as the operations in connection with each settlement did not affect the same property and section

268(1)(b) did not apply because the operations had not been effected with reference to each other. The Appellant also argued that each of the five settlements should be looked at separately as in trust law each settlement was a separate settlement.

15. Thus the issues which were raised by the arguments of the parties were:

(1) whether there were associated operations within the meaning of section 268(1)(a);

(2) whether there were associated operations within the meaning of section 268(1)(b); and

(3) whether, if there were associated operations, they were dispositions of property whereby the property was held in trust within the meaning of section 43(2); alternatively,

(4) whether the five settlements together comprised "any disposition or dispositions of property" within the meaning of section 43(2).

The evidence

16. A white bundle of documents was produced by the Appellant. A statement of agreed facts was also produced by the parties,

The facts

17. From the evidence before me I find the following facts.

The company

18. At the beginning of 1984 Mr Richard Utley and his brother Mr John Utley were members and directors of a private company known as Richard Utley Limited (the company). There was a third director, namely Mr W D Wilson.

19. Before 1984 the issued share capital of the company comprised 150,000 10 pence ordinary shares of which 69,000 A shares were held by Mr Richard Utley, 69,000 B shares were held by Mr John Utley and the remaining 12,000 C shares were held by Mr Wilson. (The designation of A, B or C shares was only relevant to the transfer provisions in the articles of association but otherwise all the ordinary shares ranked equally.) Thus the shareholdings at that time were:

Mr Richard Utley (A shares) 69,000

Mr John Utley (B shares) 69,000

Mr W D Wilson (C shares) 12,000

Total 150,000

20. The company was a non-trading holding company whose principal investment was a subsidiary called Eurotube Limited (Eurotube).

1983 – the discussions about tax planning

21. On 9 November 1983 the two settlors had a meeting with their solicitors and explored the scope for creating trusts and the associated tax planning opportunities. (The solicitors instructed by the settlors in 1983 and 1984 were not the solicitors who represented the Appellant in the appeal.)

February and March 1984 – the settlements

22. In February and March 1984 Mr Richard Utley made five discretionary settlements by separate trust instruments (the Richard Utley settlements) and Mr John Utley also made five discretionary settlements by separate trust instruments (the John Utley settlements). Each of the ten settlements was in the same form. Each settlement was expressed to be governed by Hong Kong law and the initial trustee of each settlement was Rysaffe Limited (the trustee), a trust company resident in Hong Kong. Each of the settlements stated that the settlor had paid to the trustee the sum of £10 to be held on the trusts of the settlement and that it was contemplated that further property might be added to the settlement. "The Trust Fund" was defined as "the said sum of ten pounds and any property accepted by the Trustees as additions to the Trust Fund". Each settlement constituted a discretionary trust for the benefit of any one or more of the children (including the settlor) and remoter issue of the settlor's father.

23. On 9 January 1984 engrossed copies of the Richard Utley settlements were forwarded to Mr Richard Utley by his solicitors. Mr Richard Utley was asked to return the five deeds undated and was told that five consecutive dates would be inserted. Mr Richard Utley returned the deeds on 7 February 1984 signed and witnessed but undated as requested by his solicitors. He also enclosed a cheque for £50 which represented the initial sum of £10 for each of the five settlements. A representative of the firm of solicitors then inserted five separate dates on the deeds being 7, 10, 13 February and 1 and 12 March 1984 respectively. The deeds were then sent to the trustee for its execution and they were all executed by the trustee on 27 March 1984. They were then returned to the solicitors and each deed was stamped with nominal 50 pence stamp duty.

24. Mr John Utley executed all his five deeds on 16 March 1984 and his signature was witnessed by a solicitor. He also drew one cheque for £50 being the £10 for each of his five settlements. A representative of the firm of solicitors then inserted five separate dates on the deeds being 16, 19, 21, 23 and 26 March 1984. The deeds were executed by the trustee on 27 March 1984. They were then returned to the solicitors and stamped in the same way as Mr Richard Utley's deeds.

25. At that time section 106 of the 1982 Act provided that two settlements were related if and only if the settlor was the same and they commenced on the same date. Section 104 provided that references to the commencement of a settlement were references to the time when property first became comprised in it and section 105 provided that the ten-year anniversary was the tenth anniversary of the date on which the settlement commenced.

26. There was no evidence of the dates upon which the sums of £10 for each settlement were paid to the trustee so that the property in the money became comprised in the settlements for the purposes of section 104 of the 1982 Act. Accordingly, there was no evidence of the date upon which each settlement commenced for the purposes of that section and section 106. However, the probability is that the trustee received from each settlor the sum of £50 and so the initial property became comprised in all the five settlements for each settlor on the same date. Accordingly, for inheritance tax purposes, the settlements did

commence on the same date, irrespective of the dates which appeared on the deeds.

May 1984 – the creation of the deferred shares

27. On 3 May 1984 there was an extraordinary general meeting of the company at which special resolutions were passed and amended articles of association were adopted. The authorised share capital was increased by the creation of 1,350,000 deferred shares of 10 pence each. The amended articles of association provided that, for twelve years from 3 May 1984, the deferred shares would not entitle the holders to any dividends or other income distribution, or any return of capital on a winding up, and that the holders of the deferred shares had no right to receive notices of, or attend or vote at, general meetings. After the end of the period of twelve years each deferred share was to rank *pari passu* with the ordinary shares. The sum of £135,000 was capitalised and the 1,350,000 deferred shares were issued by way of bonus to the holders of the ordinary shares on the basis of nine deferred shares for each ordinary share. (The deferred shares were also designated as A, B and C deferred shares and the transfer provisions in the amended articles of association were the same as those for the ordinary shares.) Thus after 3 May 1984 the holdings of the deferred shares were:

Mr Richard Utley (A deferred shares) 621,000

Mr John Utley (B deferred shares) 621,000

Mr W D Wilson (C deferred shares) 108,000

Total 1,350,000

28. The issue of the deferred shares was by way of renounceable letters of allotment. On 12 June 1984 Mr Richard Utley renounced 69,000 A deferred shares in favour of the trustee for his first settlement. On 18, 22, 28 June and 4 July 1984 he renounced 69,000 A deferred shares in favour of the trustee for each of his second, third, fourth and fifth settlements. On 30 May, 7, 15 and 25 June and 3 July Mr John Utley renounced 69,000 B deferred shares in favour of the trustee for each of his five settlements.

The legal advice

29. After the renunciations had been effected the company received legal advice that the bonus issue of the deferred shares was invalid. This was because reference had been made, in the resolution creating the bonus deferred shares, to a capitalisation of reserves standing to the credit of the company's profit and loss account. In fact there were no such reserves. The only reserves that had been created arose on a revaluation of the company's investment in Eurotube, which was not a realised profit available for distribution. Those who had been allotted the bonus deferred shares were informed of the position; the entries in the register of members with respect to the bonus deferred shares were cancelled; and the holders of the share certificates were requested to return them for cancellation.

30. The company was then advised that, rather than creating bonus deferred shares, the simplest thing to do would be to convert part of the existing ordinary

shares into deferred shares and for these to be transferred by ordinary stock transfer into the name of the trustee.

31. Accordingly, a further extraordinary general meeting was held on 15 November 1984 at which nine out of ten of the ordinary shares were re-designated as deferred shares with the rights described in the amended articles of association passed on 3 May 1984. Thus the shareholdings then were:

Ordinary Deferred Total

Mr Richard Utley (A shares) 6,900 62,100 69,000

Mr John Utley (B shares) 6,900 62,100 69,000

Mr W D Wilson (C shares) 1,200 10,800 12,000

Total 15,000 135,000 150,000

32. At a meeting of the board of directors of the company on 20 December 1984 stock transfer forms were produced and the intended share transfers were approved. Thereafter Mr Richard Utley transferred 6,900 A deferred shares to the trustee for each of his settlements (making a total of 34,500 A deferred shares transferred) and Mr John Utley transferred 6,900 B deferred shares to the trustee for each of his five settlements (also making a total of 34,500 B deferred shares transferred).

1992 – recent events

33. In 1992 the company sold Eurotube. Before the sale some commercial property assets were extracted from Eurotube and retained. The entire share capital of Eurotube was then sold for cash of approximately £4,400,000. Since 1992 the principal activity of the company has been that of a property holding company. It owns the freehold of industrial property which is still let to Eurotube and that accounts for 65% of the rental income received by the company.

34. In May 1996 the period of twelve years, mentioned in the articles of association as amended on 3 May 1994, expired. All the deferred shares then ranked *pari passu* with the ordinary shares and were re-designated as ordinary shares.

35. Rysaffe Limited retired as trustee on 23 May 1997 in favour of the Appellant. The Appellant is resident in Guernsey.

Reasons for decision

(1) - Section 268(1)(b)

36. It is convenient to consider the first two issues in the appeal in the reverse order and so the first question is whether the five settlements were "associated operations" within the meaning of section 268(1)(b) which mentions:

" (b) any two operations of which one is effected with reference to the other, or with a view to enabling the other to be effected or facilitating its being effected, and any further operation having a like relation to any of those two, and so on,"

37. For the Appellant Mr Ewart argued that section 268(1)(b) did not apply to the facts of the present appeal. He first looked at the connection between the transfer of the sums of £10 and the transfer of the shares to each settlement and argued that these operations were not effected by reference to the other. He referred to the word "reference" in The Shorter Oxford English Dictionary which gave a meaning for "in or with reference to" of "with respect or regard to; with a view to, according to". He argued that that definition contemplated that there would be some planning between the two. However, if anything had been contemplated when the settlements were created it would have been the creation of the deferred shares, their bonus issue and the renouncing of the letters of allotment. At that time the transfer of the deferred shares in September 1984 was not contemplated. He accepted that the settlements might have been "with reference to" the void issue of the bonus deferred shares but the re-designation of the ordinary shares as deferred shares in September 1984 was a different operation and was not contemplated at the time the settlements were created. Mr Ewart also argued that the transfer of shares to one settlement was not done "with reference to" the transfer of the £10 to another. The words "with reference to" required at the minimum a plan at the time of the first operation and a connection with intention. The £10 did not enable or facilitate the transfer of the shares which could have been done without the £10. And the £10 transferred to one settlement did not facilitate the transfer of the sums of £10 to any of the others.

38. For the Inland Revenue Mr Twiddy argued that one operation facilitated the other dispositions. The intention always was to transfer the shares. Although the first attempt failed the second attempt remedied that failure and so they were associated.

39. Dealing first with the creation of the settlements and the transfer of the five sums of £10 to the trustee, the facts as found lead to the conclusion that the transfer of the sum of £10 was part of the establishment of the settlement. Each deed of settlement recited that the settlor had paid the sum of £10 to the trustee and defined the "trust fund" as "the said sum of ten pounds and any other property accepted by the trustees."

40. Turning now to the transfer of the deferred shares a number of facts are relevant. First, the settlors met with their solicitors in November 1993 to discuss tax planning opportunities. Secondly, each deed of settlement executed in February or March 1984 stated that it was contemplated that further property might be added to the settlement and the definition of the trust fund mentioned additions to it. And thirdly, the invalid bonus deferred shares were created in May 1984. Mr Ewart did not argue that when the settlements were created the creation of the deferred shares, their bonus issue and the renouncing of the letters of allotment was not contemplated nor did he adduce any evidence in support of that contention. Accordingly, the conclusion is that the creation of each settlement was effected with a view to enabling or facilitating the subsequent transfer of the deferred shares to the trustee. The fact that the original transfer to the trustee of the bonus issue of deferred shares was invalid, and had to be remedied by the September 1984 transfer, is not relevant as the September 1984 transfer completed the original intention. Thus the creation of each settlement (with the payment of the sum of £10) and the subsequent transfer of the deferred shares were associated operations.

41. It is then necessary to consider whether all five settlements were associated operations and specifically whether each was "effected with reference to the other". Here the relevant facts are that all the five settlements were treated in

exactly the same way both by the settlor and by the trustee and that the only difference between them was the dates. Section 268(1) and (3) provide that the fact that operations are not simultaneous is not relevant. In any event, all the settlements commenced on the same date for inheritance tax purposes. Perhaps the most significant facts are that the initial sums of ten pounds for each settlement were paid as one sum of £50 and that the deferred shares transferred into each settlement were originally part of one holding of shares. Thus the five settlements were associated operations.

42. The conclusion therefore is that the establishment of the five settlements (with the transfers of the sums of £10) and the subsequent transfers of the deferred shares to the five settlements, were all associated operations within the meaning of section 268(1)(b).

(2)- Section 268(1)(a)

43. Having reached that conclusion on section 268(1)(b) it is not necessary to consider section 268(1)(a) but as arguments were put some tentative views are expressed. Section 268(1)(a) mentions:

"(a) operations which affect the same property, or one of which affects some property and the other or others of which affect property which represents, whether directly or indirectly, that property, or income arising from that property, or any property representing accumulations of any such income"

44. For the Appellant Mr Ewart argued section 268(1)(a) did not apply because the settlements did not affect the same property. Each sum of £10 was distinct and each parcel of shares was distinct. The shares could not be linked to the sums of £10 and the separate transfers of shares could not be linked to each other. Each share was a separate piece of property as each had a vote and was entitled to share in a dividend and in capital.

45. For the Inland Revenue Mr Twiddy argued that one original holding of shares in an unquoted company was "the same property" for the purposes of section 268(1)(a). Unlike holdings of shares in quoted companies, a large holding of shares in an unquoted company could give voting powers for the purposes of passing a special resolution and control and a holder would be unlikely to want to fragment his holding. In this appeal there were five identical trusts, all signed by the same settlor on the same day, all dated within a short period of time, and all of which commenced on the same day. The only reason for the proposed fragmentation was to get tax advantages and that was what the legislation was designed to counter.

46. As no authorities were cited by either party in support of their arguments, my views are expressed with considerable hesitation. However, it does seem that the five parcels of deferred shares transferred to the trustee were "the same property" because they were all initially part of the same holding by the same owner of the same type of shares in the same company. It is less easy to conclude that the sums of money were "the same property" as it is possible that that might lead to the odd conclusion that settlements which were completely distinct in every way might then be treated as associated operations just because the same settlor transferred different sums of money to them. On the other hand, there would still need to be a statutory relevance and so the effect would not be quite so wide.

47. Although, therefore, I incline to the view that the five transfers of shares to the five settlements were operations which affected the same property I have formed no view about the sums of money.

(3) – If there were associated operations were they dispositions of property whereby the property was held in trust?

48. The third issue is whether, if there were associated operations, they were dispositions of property whereby property was held in trust within the meaning of section 43(2).

49 For the Appellant Mr Ewart argued that, even if there were associated operations, it was necessary to identify the disposition and ask if the associated operations contributed to that disposition and he cited *Macpherson and another v Inland Revenue Commissioners* [1988] STC 362 and *Reynaud and others v Inland Revenue Commissioners* [1999] STC (SCD) 185 at 190. He also cited *Countess Fitzwilliam and others v Inland Revenue Commissioners* [1990] STC 65 at 99 as authority for the view that, although the definition of associated operations was wide, its scope was limited.

50. For the Inland Revenue Mr Twiddy agreed that, even if there were associated operations, there had to be a statutory relevance. He also relied upon *Macpherson* and referred to Lord Jauncey's views which were that if you could demonstrate relevance the associated operations provisions could be applied. In *Reynaud* there were associated operations but there was no link to the statutory provisions because the subsequent sale of the shares did not diminish the transferor's estate. In the present appeal each transfer of £10 or £50 was a relevant associated operation because it was linked to a loss to the transferor's estate and all the operations were connected to a scheme. Section 268 was directed to the fragmentation of values and that is what had happened in this appeal.

51. In *Macpherson* settled property included valuable paintings. In 1970 one beneficiary (the father) agreed with the trustees that he would care for and insure the paintings and pay the trustees £100 annually. In 1977 the father and the trustees entered into a further agreement about the paintings. The next day the trustees appointed a life interest in the paintings to another beneficiary (the son) subject to and with the benefit of the 1970 agreement as varied by the 1977 agreement. It was accepted that the appointment gave rise to a capital distribution but the Inland Revenue argued that the 1977 agreement had reduced the value of the settled property and that such reduction in value was also a capital distribution. At that time the capital transfer tax legislation provided that a disposition was not a transfer of value if it was shown that it was not intended to confer any gratuitous benefit on any person and it was within that context that Lord Jauncey considered the meaning of "associated operations". At page 368e he said:

"In determining whether the 1977 agreement was made in a transaction, within the extended meaning, intended to confer gratuitous benefit it is necessary to consider what are "associated operations" for the purposes of the subsection. The definition ... is extremely wide and is capable of covering a multitude of events affecting the same property which might have little or no apparent connection between them. It might be tempting to assume that any event which fell within this wide definition should be taken into account in determining what constituted a transaction for the purposes of s20(4). However, counsel for the Crown accepted, rightly in my view, that some limitation must be imposed."

52. Lord Jauncey then concluded that only associated operations which were relevant to the subsection with which he was concerned should be considered. He expanded the relevant statutory provisions accordingly and concluded:

"So read it is clear that the intention to confer gratuitous benefit qualifies both transactions and associated operations. If an associated operation is not intended to confer such a benefit it is not relevant for the purposes of the subsection. That is not to say that it must necessarily per se confer a benefit but it must form a part of and contribute to a scheme which does confer such a benefit."

53. Macpherson was concerned with different statutory provisions than those at issue in these appeals but the principle there established, namely that associated operations must be relevant to the particular legislative provision, applies generally. In *Countess Fitzwilliam* at 99 Vinelott J remarked that the associated operations provisions had a very limited scope; however, the provisions were not in issue in that appeal.

54. The principle established in *Macpherson* was recently applied by the Special Commissioners in *Reynaud*. There shares were transferred to a trustee of settlements and the next day the company purchased the shares and sold them to a third party. At the time of the transfer there was no certainty that the sale to the third party would proceed. The Inland Revenue argued that the transfer of the shares to the settlements and the purchase of the shares by the company were associated operations as they affected the same property. In holding that the transactions were not dispositions effected by associated operations the Special Commissioners at page 190e said:

"There is no doubt that the two operations of the transfer of shares to the discretionary trusts and the purchase of own shares are associated within the meaning of s 268. They affect the same property, the shares. However, the question is not whether they were associated, but whether there is a disposition effected by associated operations."

55. The Special Commissioners then read the inclusive definition of "disposition" into section 3 of the 1984 Act which was the legislation at issue in that appeal.

56. Adopting that principle, the statutory provisions with which these appeals are concerned are contained in sections 43(2) and 64. Section 43 may therefore be re-phrased as follows:

"43(2) "Settlement" means any disposition [including a disposition effected by associated operations] or dispositions ... whereby the property is for the time being ... held in trust ..."

57. And section 64 may be re-phrased as follows:

"64 Where immediately before a ten-year anniversary all or any part of the property comprised in a settlement [which means any disposition [including a disposition effected by associated operations] or dispositions ... whereby the property is for the time being ... held in trust] is relevant property, tax shall be charged at the rate applicable under sections 66 and 67 below on the value of the property or part at that time."

58 Applying that extended section to the facts of the present appeal I first identify the associated operations which were the establishment of the five

settlements (with the transfers of the sums of £10) and the subsequent transfers of the deferred shares to the five settlements. These are all dispositions and they are all dispositions whereby property is for the time being held on the same trusts. Accordingly, there was property comprised in "a" settlement by means of a disposition which included all the dispositions effected by associated operations. It therefore follows that there was "a settlement" within the meaning of section 43(2) and section 64.

59. Thus the conclusion is that, if there were associated operations, they were dispositions of property whereby property was held in trust within the meaning of section 43(2). There was therefore one settlement within the meaning of section 43(2) and for the purposes of section 64. That means that the appeal must be dismissed but as arguments were put on the last issue brief views are expressed.

(4) Did the five settlements comprise one settlement as defined in section 43(2)?

60. The final issue, which arises out of the Inland Revenue's alternative argument, is whether the five settlements together comprised "any disposition or dispositions of property" within the meaning of section 43(2) which provides:

"(2) "Settlement" means any disposition or dispositions of property, whether effected by instrument, by parol or by operation of law, or partly in one way and partly in another, whereby the property is for the time being-"

61. For the Appellant Mr Ewart argued that each settlement had to be considered separately as they were separate settlements under trust law. Even if there were a single disposition by associated operations it could result in property being held upon the trusts of five separate settlements. He also argued that it was not possible to have one settlement only for the purposes of section 64; one would have to be consistent for the other purposes of the 1984 Act and a finding could affect the liability provisions in sections 201 and 204(2).

62. For the Inland Revenue Mr Twiddy argued that section 43(2) referred to multiple dispositions and there was no need to refer to the associated operations provisions. Although there might be five settlements at law, there was only one for the purposes of the ten-year anniversary charge. Section 43(1) of the 1984 Act provided that the section applied for determining what was to be "taken for the purposes of the Act" to be a settlement. Section 43(2) provided that a settlement could be a "disposition or dispositions". Here there were dispositions and a scheme or plan to show that they were linked purposively

63. Section 43(1) provides that the section is to be applied for determining what is to be taken for the purposes of the Act as "a" settlement and what property is referred to as property comprised in "a" settlement. Thus it seems to me that even if the five settlements have to be considered as separate settlements under trust law, the provisions of section 43(1) apply for the purposes of inheritance tax. Sections 201 and 204(2) concern liability but the conclusion that there is "a" settlement will create no difficulty as far as these provisions are concerned because all five settlements are identical.

64. Section 43(2) defines a settlement as "a disposition or dispositions of property whereby the property is held in trust". Bearing in mind that each settlement was identical, with the same settlor, the same trustee, the same type of trust property, the same beneficiaries, and the same commencement date, that each was a disposition, and that each one was effected by reference to the

other, it would appear to be possible to conclude that there was one settlement within the meaning of section 43(2). However, I prefer to reach a decision in this appeal relying upon the associated operations provisions.

Decision

64. The decision is that there were associated operations within the meaning of section 268(1)(b) and that they were dispositions of property whereby property was held in trust within the meaning of section 43(2). There was therefore one settlement within the meaning of section 43(2) and for the purposes of section 64.

65. That means that the appeal is dismissed.

NUALA BRICE

SPECIAL COMMISSIONER

SC 3032/2001

SC 3033/2001