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## Litigation Update

# UK Court of Appeal Upholds Treaty Relief in Win for Secondary Market Participants

By [Jenny Doak](#) and [Bernard van der Merwe](#)

In welcome news for secondary debt markets, the UK Court of Appeal upheld decisions in the lower tribunals in favour of the taxpayer that the “principal purpose test” (PPT) in the UK/Irish double tax treaty (DTT) did not apply to deny relief for UK withholding tax (WHT).

In particular, the court held in [HMRC v. Burlington Loan Management DAC \[2026\] EWCA Civ 461](#) that the sale of a debt claim to an unconnected third party is priced to reflect the buyer’s entitlement to tax treaty relief on subsequent interest payments it receives — even when the seller would not have been so entitled — did not invoke the PPT.

### Background

The case concerned the assignment of a debt claim (the SAAD Claim) by a Cayman Islands tax resident company, SAAD Investments Company Limited (SICL), to an Irish tax resident company, Burlington Loan Management DAC (BLM). The SAAD Claim was outstanding against a UK tax resident company, Lehman Brothers International (Europe), which was in administration. BLM purchased the SAAD Claim after SICL had received the outstanding principal amount. It purchased the right to future payments of interest. Notably, SICL did not know the identity of the buyer at the time the terms were agreed and whether the buyer would benefit from an exemption from UK WHT under the DTT (or be otherwise entitled to a tax exemption or relief).

HM Revenue & Customs (HMRC) argued that the PPT test in Article 12(5) of the DTT applied to deny relief. This article provides that treaty relief for interest would not apply if the main purpose or one of the main purposes of any person concerned with the assignment was “to take advantage of” Article 12(1), which gives Ireland sole taxing rights over interest to the recipient’s country of residence.

### Findings

HMRC essentially argued that Article 12(1) of the DTT was being taken advantage of through the sale of the SAAD Claim to BLM for a sum that reflected a higher amount of interest receipts than was possible if such sale did not take place due to UK tax relief under the DTT.

The Court of Appeal confirmed the approach to interpretation of double tax treaties as set out in [Royal Bank of Canada v. HMRC \[2023\] EWCA Civ 695](#). It held that the purpose of double tax conventions is to eliminate double taxation for contracting states by agreeing that only one state levy tax in the situation in question and that the other will provide the taxpayer with an exemption from tax or the ability to claim tax relief. In analysing the purpose of the taxpayer, the court considered that the taxpayer’s reliance on Article 12(1) of the DTT was in line with the objects and purposes of the DTT, i.e., to promote the movement of capital between the UK and Ireland by eliminating double taxation. The court held that enabling BLM, as a resident of Ireland, to bid a higher price to acquire the SAAD

Claim on the assumption that it would only be taxed on those monies in Ireland and not also in the UK was thus in line with such objects and purposes.

In the leading judgment, Snowden LJ cited Popplewell LJ's conclusion in the recent case of *VietJet Aviation JSC v. FW Aviation (Holdings) Limited* [2025] EWCA Civ 783. In particular, "to take advantage of" under Article 12(1) within the meaning of Article 12(5) of the DTT means obtaining the benefit of the article in a way that is contrary to the object and purpose of the treaty, and that "to take advantage of" in this context cannot simply be synonymous with "obtain the benefit" of that provision. The fact that HMRC would recover less UK WHT as a result of the assignment of the SAAD Claim than it would have done if the SAAD Claim had not been sold by SICL was held not to be in point, and that the object and purpose of Article 12 of the DTT is not to maximise tax revenues for HMRC.

Further, the court held that Article 12(5) of the DTT does not prohibit assignments on the basis that they result in HMRC recovering less tax than if the assignment had not taken place. Emphasising that BLM made its offer for the SAAD Claim at arm's length and that SICL did not retain any economic entitlement to the debt claim, the court agreed with the findings of the lower tribunals that BLM was entitled to conduct its own affairs and offer to acquire the SAAD Claim on the basis that, as a resident of Ireland and the beneficial owner of the SAAD Claim, it should only be taxed on the interest payable in Ireland.

### Conclusion

This decision represents the first significant UK tax case on the "principal purpose" test in a double tax treaty context.

The Court of Appeal's finding provides reassurance for participants in the UK secondary debt markets who factor in the available treaty reliefs and reaffirms the conclusions previously drawn by the lower courts whilst providing helpful clarification on the interpretation of anti-abuse provisions in a treaty context.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings London lawyers:*

Jenny Doak  
+44-20-3986-1285

[jennydoak@paulhastings.com](mailto:jennydoak@paulhastings.com)

Bernard Van Der Merwe  
+44-20-3023-5239

[bernardvandermerwe@paulhastings.com](mailto:bernardvandermerwe@paulhastings.com)