



Neutral Citation: [2026] UKUT 00418 (TCC)

Case Number: UT/2025/000087

UPPER TRIBUNAL
(Tax and Chancery Chamber)

The Royal Courts of Justice,
Rolls Building, London

INCOME TAX – whether tax charge on participator in close company because loan made by close company to participator had been released – appeal dismissed

Heard on: 28 July 2026
Judgment date: 28 October 2026

Before

JUDGE THOMAS SCOTT
JUDGE GUY BRANNAN

Between

NICHOLAS POWELL

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents

Representation:

For the Appellant: Scott Redpath, instructed by Hazlewoods LLP

For the Respondents: Charles Bradley, instructed by the General Counsel and Solicitor to His Majesty’s Revenue and Customs

DECISION

INTRODUCTION

1. The Respondents (“HMRC”) issued a closure notice to Mr Powell (the “Appellant”) which concluded that he was liable to a charge to income tax on the release of a loan which had been advanced by a close company in which Mr Powell was a participator.
2. Mr Powell appealed against the closure notice to the First-tier Tribunal (Tax Chamber) (the “FTT”). In its decision issued on 9 May 2025 (the “Decision”), the FTT dismissed the appeal.
3. This is Mr Powell’s appeal against the Decision. It raises a short but interesting point of law as to the meaning of “releases” in the relevant provisions.

RELEVANT LEGISLATION

4. The tax legislation contains various anti-avoidance provisions relating to “close companies”. Very broadly, these are companies which are controlled by five or fewer “participators” (a category which includes shareholders and various other persons with an interest in the company).
5. One such provision is section 455 Corporation Tax Act 2010 (“section 455” and “CTA”). This has the effect that where a close company makes a loan or advances money to a participator, the company becomes liable for an amount of corporation tax equal to the upper dividend rate. It provides as follows (so far as relevant):

Charge to tax in case of loan to participator

(1) This section applies if a close company makes a loan or advances money to—

(a) a relevant person who is a participator in the company or an associate of such a participator

...

(2) There is due from the company, as if it were an amount of corporation tax chargeable on the company for the accounting period in which the loan or advance is made, an amount equal to such percentage of the amount of the loan or advance as corresponds to the dividend upper rate specified in section 8(2) of ITA 2007 for the tax year in which the loan or advance is made.

6. The central provision in this appeal is section 415(1) Income Tax (Trading and Other Income) Act 2005 (“section 415” and “ITTOIA”). This deals with the position of the person receiving the loan or advance and provides as follows:

Income tax is charged if—

(a) a company is or was chargeable to tax under section 455 of CTA 2010 (loans to participators in close companies etc.) in respect of a loan or advance, and

(b) the company releases or writes off the whole or part of the debt in respect of the loan or advance.

7. Section 416 ITTOIA brings the sum identified in section 415 into the charge to tax in the hands of the participator to whom the loan or advance was made, treating it as dividend income.
8. Section 458 CTA applies to the company when and if the underlying loan or advance is “repaid” or “released or written off”:

458 Relief in case of repayment or release of loan

- (1) Subsection (2) applies if a close company has made a loan or advance which gave rise to a charge to tax on the company under section 455.
- (2) Relief is to be given from that tax, or a proportionate part of it, if—
 - (a) the loan or advance or part of it is repaid to the company, or
 - (b) the whole or part of the debt in respect of the loan or advance is released or written off.
- (3) Relief under this section is to be given on a claim, which must be made within 4 years from the end of the financial year in which the repayment is made or the release or writing off occurs.

FACTUAL BACKGROUND

9. References below in the form [x] are to paragraphs of the Decision, unless indicated otherwise.

10. The agreed facts are summarised at [4], as follows:

- (1) Thermoline [Limited] is a close company under section 439 Corporation Tax Act 2010 (“CTA”) which was incorporated on 13 February 1989 (then under the name Astormere Limited). During the tax year ended 5 April 2021 and on a continuing basis the Appellant was a director of Thermoline. Prior to 2 July 2020 the Appellant was the sole shareholder. The Appellant therefore meets the definition of participator in section 454 CTA.
- (2) On 2 July 2020 following a share for share exchange Property Holding SW Limited (“PHSW”) became the holding company of Thermoline. During the tax year ended 5 April 2021 and on a continuing basis the Appellant was a director of PHSW.
- (3) Thermoline incurred expenditure on behalf of and/or advanced sums to the Appellant. The sum outstanding on the director’s loan account on 31 March 2020 was £309,338. Further indebtedness arose in the accounting period ended 31 March 2021 and the sum outstanding on 31 December 2020 was £512,713.89.
- (4) Thermoline was liable to a charge to corporation tax under section 455 CTA in each tax year in which his indebtedness to Thermoline increased to tax year ended 5 April 2021.
- (5) We have no evidence as to the motivation or context prompting it but on 16 March 2021 the Appellant, Thermoline and PHSW entered, by way of deed, a novation of the sums outstanding on the director’s loan account (the “Novation Deed”). The terms of the Novation Deed (which we address below) were that the novation itself was deemed to take effect on 31 December 2020 and that the Appellant continued to have a liability in respect of the sums to PHSW rather than Thermoline.
- (6) Thermoline claimed and was granted relief in respect of the section 455 CTA charge under section 458 CTA as regards the balance to 31 March 2020. Such relief was repaid on 9 November 2022. HMRC accepted that no tax fell due in respect of the sums advanced in the period from 31 March 2020 to 31 December 2020 on the basis that in consequence of the Novation Deed the sums so advanced had been released (as per the claim to that effect dated 10 February 2022) by Thermoline on 31 December 2020 and thereby within 9 months of the year end.
- (7) The Appellant rendered his tax return for the tax year ended 5 April 2021 on the basis that he had received no deemed payment of dividend income in respect of the sums which were the subject of the Novation Deed.

11. On 9 March 2023, HMRC issued to Mr Powell a closure notice. This concluded that he was liable to a charge to income tax arising under section 415 on a deemed payment of dividend in the sum of £512,713.89 received from Thermoline Limited (“Thermoline”). The amendment to Mr Powell’s 2020/21 tax return as a result of that conclusion was £194,580.60.

12. There was no dispute between the parties as to the quantum or calculation of the amendment or as to the procedural validity of the closure notice. The issue in contention was whether there had been a “release” of the loan.

COLLINS V ADDIES

13. The principal authority which is relevant to the issue in this appeal is the decision in *Collins v Addies*. The High Court decision (“*Collins HC*”) is at [1991] STC 445, and the decision of the Court of Appeal (“*Collins CA*”), upholding that of the High Court, is at [1992] STC 746. It is necessary to understand the two decisions in detail.

The facts

14. Mr Collins and Mr Greenfield were participators in a close company, and both were indebted to the company; the total debt was £79,000. Mr Brent was also a shareholder. The shares held by Mr Collins and Mr Greenfield were transferred to Mr Brent and the three individuals and the company entered into an agreement regarding the outstanding indebtedness. The terms of that agreement provided:

2. In consideration of the covenant by [Mr Brent] hereinafter contained the Company hereby releases and discharges [Mr Collins and Mr Greenfield] from all liability to repay to the Company the Current Accounts (insofar as the same does not exceed £68,000) and from all actions claims proceedings and demands in respect thereof (up to the said sum of £68,000).

3. In consideration of such release and discharge [Mr Brent] hereby covenants with the Company that he will henceforth assume liability for and pay and discharge the Current Accounts due and owing to the Company by [the taxpayers] (insofar as the same does not exceed £68,000) and the Company hereby accepts [Mr Brent] as debtor up to the said sum of £68,000 in place of [Mr Collins and Mr Greenfield].

15. As to the balance of the indebtedness, Mr Collins and Mr Greenfield paid Mr Brent £11,000 and Mr Brent in turn settled that portion of the outstanding sum.

16. The issue before the Special Commissioner was whether the provisions of the agreement gave rise to a charge under section 287 Income and Corporation Taxes Act 1970 (“section 287”), which was the predecessor to section 415. The Special Commissioner determined that the release provided under the agreement fell squarely within the terms of section 287, and as a consequence there was a charge to income tax on each of Mr Collins and Mr Greenfield for their proportionate share of the £68,000 indebtedness from which they were released.

Collins HC

17. The taxpayers appealed to the High Court, contending that (a) the novation did not constitute a “release” because in the context of section 287 a release ought to be confined to one which was either wholly voluntary or made for less than adequate consideration, and (b) the company had not released the taxpayers from their obligation, because the taxpayers had satisfied the obligation since there had been no depletion of the company’s assets following the discharge of the taxpayers’ liability and the taxpayers had furnished full consideration in the form of Mr Brent’s promise under seal to repay the debt.

18. Millett J (as he then was) refused the appeal. He noted (at page 451):

It is not in dispute before me that as a matter of law what took place was a novation under which Mr Brent was substituted as debtor in respect of £68,000, part of the liability of the taxpayers to repay the company.

19. Millett J dealt with the arguments raised by the taxpayers as follows (at 452-454):

The question before me comes down to this: did the transaction on 11 November 1980 constituting a novation of the two loans, by which Mr Brent's obligation to repay was substituted for that of the taxpayer, amount to a release of part of the debt in the sum of £68,000 previously due from the taxpayers?

Before the Special Commissioner only one argument was raised. Before me the argument has ranged a little more widely. The taxpayers' main argument is that a novation of this kind is simply not a release of the kind contemplated by the section.

Counsel for the taxpayers submitted that while it was true as a matter of technical analysis that a novation amounted to the release of a debt due from the original debtor and its replacement by a debt due from a new debtor, this was not enough to bring the transaction within the meaning of the word 'releases' in s 287(1). He submitted that the meaning of the word 'releases' must be qualified by importing the requirement that any such release must be wholly voluntary or gratuitous or made for less than full consideration. He pointed to the fact that the word 'releases' went with 'writes off' and while the writing off of a debt did not affect the legal relationship of the parties, it constituted for all practical purposes a release of the debt in the sense that the debtor would be unlikely to be pursued by the company for repayment of the debt, and the writing off of a debt would invariably be voluntary or gratuitous. He submitted that the word 'releases' should be similarly construed.

I do not find that argument of much help. The mere fact that the writing off of a debt is almost certainly gratuitous does not mean that the release of a debt must mean a gratuitous release. In my judgment, it is not permissible to import any such qualification into the word 'releases'. To adopt the language of Lord Wilberforce in *IRC v Plummer* [1979] STC 793 at 800, [1980] AC 896 at 911, that would be legislation not interpretation. If Parliament had intended the word to mean 'releases otherwise than for full value' it could and must have said so. Nor am I impressed by counsel for the taxpayers' submission that ss 286¹ and 287 are concerned with the depletion of the assets of the company. If the company claims full value for the release of the loan its assets are unaffected and, it is submitted, the section should have no application. But in my judgment s 286 is focused on the company's position and s 287 on that of the participator. The question under s 287 is not whether the company's assets are or are not depleted but whether the legal obligation of the participator has been released.

...

But that is not the end of the case because the next argument of counsel for the taxpayers is that the word 'releases' must mean the discharge of the debt otherwise than by payment or satisfaction. If a creditor accepts payment from a third party in satisfaction of the debtor's liability that would clearly constitute the repayment of the debt, not the release of the debt. The debt is discharged by payment and not release. Again, if a creditor accepts something of equal value, whether from the debtor or a third party, that would equally constitute a discharge of the debt; it would be discharged by satisfaction rather than repayment, but not by release. Again, that would not give rise to a charge to

¹ The predecessor provision to section 455 CTA.

tax. Payment in kind from the debtor himself or payment by a third party on behalf of the debtor would bring the liability to an end by repayment or satisfaction and not release. The Crown rightly accepts both contentions.

Counsel for the taxpayers submits that in the present case all that happened was that the company accepted Mr Brent's obligation in satisfaction of the taxpayers' indebtedness. That, he submitted, amounted to the discharge of the taxpayers' indebtedness not by release but by accord and satisfaction. Indeed, as he points out, accord and satisfaction have been judicially defined as meaning the purchase of a release. Thus the word 'releases' is perfectly capable of extending to an accord and satisfaction. Yet it would be absurd to regard s 287(1) as biting in either of the cases postulated where there was payment in kind or by a third party.

Accordingly, counsel for the taxpayers submits that where a debt is discharged by the acceptance of a promise to repay it made by a third party, the debt is not released within the meaning of the section but is to be treated as discharged by satisfaction. It is not in dispute in the present case that Mr Brent ultimately repaid the debt so that his covenant was as good as that of the taxpayers.

... In my judgment, ss 286 and 287 draw a clear distinction between the release or writing off of the debt on the one hand and its repayment or satisfaction on the other. While payment by a third party on behalf of the debtor, or payment in kind by the debtor himself or by a third party, accepted in full discharge of the debt may well constitute repayment or satisfaction and not a release for the purpose of these sections, I do not consider that the substitution of a fresh promise to pay by a third party can be similarly treated. A promise to pay by a new debtor constitutes valuable consideration and may properly be accepted by the company in substitution of the debt of the original obligee, but as a matter of ordinary usage it would not be regarded as payment. In my judgment there is a clear distinction to be drawn between a novation which involves the release of one debt and the substitution of another, and all other forms of payment or satisfaction under which the debt is treated as repaid with no outstanding obligation on any party in respect of the debt or any similar sum.

Collins CA

20. In the Court of Appeal, Nourse LJ, giving the leading judgment, rejected the taxpayers' renewed argument that, in context, a "release" must have an element of gratuity, stating (at page 748):

The taxpayers contend that s 287(1) applies only to releases given gratuitously or for less than full value and not to releases given for full value such as those which were given by the company in the present case. On their behalf Mr Thornhill QC [counsel for the taxpayers], recognises that this contention necessarily invites us to put a limitation on the ordinary meaning of 'release', which comprehends a release given for full value no less than one given gratuitously or for less than full value. But he says that the limitation is required by the context both of s 287(1) itself and of the provisions of the 1970 Act relating to company distributions as a whole.

With regard to s 287(1) itself, Mr Thornhill relies on its application not only to releases but also to the writing off of loans or advances. He submits that the inclusion of writing off, an inherently gratuitous exercise, demonstrates that the releases which the subsection has in view are likewise confined to those given gratuitously or for less than full value. Although it may be possible, in theory at any rate, to conceive of a case where a writing off was not gratuitous, I will certainly accept that Parliament did not have such a case in mind. But on the wording of s 287(1) itself I can see no warrant at all for putting a similar

limitation on the releases which are contemplated. I agree with Millett J who, in adopting the language of Lord Wilberforce in *IRC v Plummer* [1979] STC 793 at 800, [1980] AC 896 at 911, said ([1991] STC 445 at 452)—

'... that would be legislation not interpretation. If Parliament had intended the word to mean “releases otherwise than for full value” it could and must have said so.'

21. Nourse LJ expressed the relevant limitation on the meaning of “release” in the following terms (at page 749):

Mr Henderson [counsel for HMRC] accepts that that means that some limitation must be put on the meaning of 'release' in s 287(1). But it is not the limitation contended for by Mr Thornhill. The only limitation, says Mr Henderson, is one which arises from the terms of s 286(5). That subsection in terms applies where a loan is repaid by the debtor. But the Crown goes further and concedes that it also applies where the loan is repaid by a third party or where the company agrees that it shall be satisfied by the acceptance of valuable consideration in kind; in other words, where there is an accord and satisfaction... Mr Thornhill has argued that it is illogical on the one hand to accept that an accord and satisfaction falls within s 286(5) and on the other to contend that a novation falls within s 287(1).

In my view there is no such illogicality. The Crown's basic proposition, with which I agree, is that 'release' does not include any transaction which either consists of or amounts to a repayment of the loan, even if the transaction, when viewed in isolation, might be said to have the effect of releasing the debtor from his obligation to repay the loan. The reason for that limitation is that the repayment of the loan, or the acceptance by the company of something equivalent to it, effectively enables it to recover its money, in which event there is no justification for imposing a liability to tax on the participator. The limitation has nothing to do with gratuitousness. Moreover, it is not one which excludes a novation, being a transaction which does not enable the company to recover its money.

THE FTT'S DECISION

22. Having considered the decisions in *Collins*, the FTT analysed the Novation Deed. It also analysed the related letter, in the form annexed to the Novation Deed, dealing with the payment amount owed by PHSW to Thermoline (the “Payment Letter”). It described the arguments put forward by Mr Redpath (who also represented the Appellant before the FTT). They were (in summary) that the release under the Novation Deed was made for valuable consideration, and that *Collins* was distinguishable because it related to a substitution of debtor rather than, as in this appeal, a substitution of creditor. Mr Redpath argued that the recognition of the new indebtedness by PHSW amounted to repayment to Thermoline or “the receipt of something equivalent to payment”. He relied in support on the FTT decision in *Esprit Logistics Management Ltd v HMRC* [2018] UKFTT 0287 (TC) (“*Esprit*”).

23. The FTT adopted a purposive construction of section 415, taking the purpose as being that identified in *Collins*. It stated (at [37]) as follows:

From *Collins* it is also clear that, where a debtor is released from a debt as the natural and ordinary consequence of having repaid or satisfied the debt, section 415 ITTOIA will not apply. Given the purpose of the tax charge, and by reference to the articulated position adopted in *Collins*, repayment or satisfaction requires that the close company has received full value of the debt

in cash or kind from the debtor or a third party by way of satisfaction of the loan such that the close company “recovers its money”. The substitution of one repayment obligation for another has clearly been rejected as representing repayment or satisfaction. However, the setting off of equal value and mutual financial obligations between the close company and the participator was accepted as payment and not a relevant release in *Esprit* (see paragraph 113 and 117).

24. In relation to the Novation Deed, the FTT concluded that PHSW’s obligation to pay Thermoline as reflected by the inter-company loan account represented valuable consideration for the creditor-to-creditor novation: [40]. However, it decided, the release was taxable under section 415 on the basis of the reasoning in *Collins*. The FTT accepted that the factual matrix in *Collins* was different, but considered that there was no relevant distinction. The FTT concluded as follows, at [44]:

We accept that the contractual analysis demonstrates that the parties provided valuable consideration as between PHSW and Thermoline for the novation, substituting PHSW as creditor in the loan relationship with the Appellant. However, in financial terms Thermoline had not recovered its money and there remained an outstanding obligation from PHSW of the precise amount from which the Appellant had been released by Thermoline. In that sense there was substitution of one debtor for another. Further, we do not consider that the PHSW’s liability to Thermoline could be said to satisfy the debt owed by the Appellant. It arose in consequence of an associated transaction (the transfer of a bundle of rights and obligations to PHSW). The fact that having sold its interest in the Loan to PHSW, Thermoline had no right to pursue the Appellant does not mean that the debt was satisfied. As in *Collins* it had been substituted for equivalent value by way of an alternative debtor. Thus, on both 31 December 2020 and 16 March 2021 the amount of £512,713.89 remained outstanding to Thermoline with the consequence that Thermoline did not recover its money, thereby squarely meeting the conclusion in *Collins*.

GROUND OF APPEAL

25. Mr Redpath’s skeleton argument put forward five grounds of appeal, as follows:

- (1) Ground 1: The FTT misconstrued the limitation in section 415 which follows from *Collins*.
- (2) Ground 2: The FTT misapplied *Collins*, because a substitution of creditor is materially different to a substitution of debtor.
- (3) Ground 3: The FTT failed to apply a purposive construction of section 415, because Mr Powell obtained no economic benefit from the novation, and the FTT focussed instead on Thermoline’s position.
- (4) Ground 4: The FTT reached a conclusion inconsistent with its findings of fact, because its finding that valuable consideration was provided for the novation meant that Thermoline had accepted something equivalent to payment from PHSW.
- (5) Ground 5: The FTT’s reasoning at [42] was legally unsustainable.

26. In substance, these are all aspects of a single ground, namely that the FTT erred in law in applying section 415 to the facts found.

DISCUSSION

Collins

27. Although *Collins* concerned antecedent legislation, the parties accept, and we agree, that for the purposes of this appeal there is no material difference between that antecedent legislation and the provisions engaged in this appeal.

28. *Collins CA* was binding precedent in the FTT, and is binding precedent in this Tribunal. It has not been called into question by any subsequent authority. Therefore, it is helpful to begin by setting out the principles which we consider to emerge from the relevant parts of the decisions. We then consider the application of those principles to the facts.

29. The Court of Appeal's short judgment should be read alongside Millett J's decision. Nourse LJ specifically agrees with Millett J's conclusions on certain issues, takes no issue with his reasoning, and concludes by stating "substantially for the same reasons as those relied on by Millett J, I would dismiss this appeal".

30. The following principles can be derived from *Collins* in relation to the meaning of "release" in section 415:

- (1) A release is not confined to a release which is voluntary, gratuitous or for less than full consideration or value. That would be an unwarranted restriction on the wording of the legislation.
- (2) A release arises whether or not there is any depletion of the company's assets.
- (3) Repayment of a loan or advance is not a release.
- (4) Repayment of a loan or advance can be effected by a third party, and can be effected by the creditor accepting in satisfaction of the debt "something of equal value" to the debt (Millett J) or "valuable consideration" (Nourse LJ).
- (5) Notwithstanding the preceding principle, repayment (as a result of which no release arises) does not extend to a situation where one debt is replaced by another. There is no payment "as a matter of ordinary usage" (Millett J) where a debt is discharged by "the acceptance of a promise to repay it made by a third party" or by "substitution of a fresh promise to pay by a third party" (Millett J). The reason for the limitation of "release" to a repayment is that "the repayment of the loan, or the acceptance by the company of something equivalent to it, effectively enables it to recover its money" (Nourse LJ).
- (6) The limitation on the meaning of release which arises where there is a repayment of the debt "is not one which excludes a novation, being a transaction which does not enable the company to recover its money" (Nourse LJ). As Millett J puts it, "there is a clear distinction to be drawn between a novation which involves the release of one debt and the substitution of another, and all other forms of payment or satisfaction under which the debt is treated as repaid with no outstanding obligation on any party in respect of the debt or any similar sum".

The arrangements in this appeal

31. The Novation Deed included the following relevant terms:

BACKGROUND

- (A) [Thermoline] is the lender under a loan with [the Appellant] (**Loan**)
- (B) [Thermoline] has advanced monies to [the Appellant] under the Loan which ... are outstanding as at the date of this deed.

(C) This deed sets out the terms and conditions on which the parties agree [Thermoline] will transfer by novation all of its rights and obligations under the Loan to [PHSW].

Agreed terms

1. Definitions and interpretation

Debt: the principal amount of £512,713.89 ... owing by [the Appellant] to [Thermoline] under or in connection with the Loan which are outstanding at the Novation Date.

Novation Date: the 31 December 2020

Payment Amount: the amount specified in the Payment Letter to be paid by [PHSW] to [Thermoline] (or left outstanding on inter-company loan account between [Thermoline] and [PHSW]) on the Novation Date in consideration of the novation to be effected under this deed.

Payment Letter: a letter from [Thermoline] to [PHSW], substantially in the form set out in the Schedule 1, referring to the novation to be effected under this deed and specifying, among other things, the Payment Amount.

...

3. Novation

3.1 The parties agree that on and from the Novation Date:

(a) subject to clause 3.3 [Thermoline] irrevocably and unconditionally releases [the Appellant] from all [the Appellant's] obligations under the Loan, ... including its obligation to repay the Debt to [Thermoline] and [Thermoline's] rights against [the Appellant] shall be cancelled;

(b) [the Appellant] irrevocably and unconditionally releases [Thermoline] from all the [Thermoline's] obligations under the Loan, ... and [the Appellant's] rights against [Thermoline] shall be cancelled;

(c) subject to clause 3.3 [PHSW] shall acquire rights, title, interest and benefits in and to the Debt and the Loan which are identical in character to the entire rights, title, interest and benefits in and to the Debt and the Loan which [Thermoline] had;

(d) [PHSW] undertakes to perform obligations towards [the Appellant] under the Loan which are identical in character to the obligations under the Loan which [Thermoline] had; and

(e) [PHSW] shall be substituted for [Thermoline] as a party to and bound by the terms of the Loan.

3.2 [The Appellant] agrees that on and from the Novation Date (and in consideration of the release in clause 3.1(a)) it shall:

(a) repay the Debt; and

(b) subject to clause 3.3, pay ... amounts owing in respect of the Loan, in each case to [PHSW] on the due dates in accordance with the terms of the Loan.

3.3 The parties agree that, with effect on and from the Novation Date:

(a) [PHSW] shall set up an intra-group loan account with [Thermoline] in the amount of the Loan; and

(b) [Thermoline] no longer has any rights or recourse in or to any obligation or liability of [the Appellant] in respect of ... amounts owing in respect of the Debt accrued up to but excluding the Novation Date.

3.4 On the Novation Date, [PHSW] shall agree to owe the amount of the Debt to [Thermoline] on inter-company loan account in accordance with the Payment Letter.

4. Confirmation and indemnity

[Thermoline] and [PHSW] agree and confirm that with effect on and from the Novation Date:

(a) [Thermoline] no longer has any rights or obligations in relation to the Debt with [the Appellant], but will have rights in relation to the subsequent intra-group debt owed to it by [PHSW] as detailed in clause 3.3(a) above;

...

32. The Payment Letter provided, so far as relevant, as follows:

We refer to the executed deed of novation (**Novation Deed**) dated 16th March 2021 under which [Thermoline] has agreed to novate its entire rights and obligations (including in respect of the Debt) under the loan between [Thermoline] and [the Appellant] (**Loan**) to [PHSW]. ...

We write to set out the amount of, and the arrangements for, the payment of the Payment Amount of £512,713.89 (as at 31 December 2020).

...

The Payment Amount shall be a debt due to [Thermoline] by [PHSW] and shall be recorded as an intra-group loan between the companies.

[PHSW] agrees that, once paid, the Payment Amount (or any part of it) payable under this letter will not be refundable under any circumstances. The Payment Amount will not be subject to deduction, counterclaim or set-off, or otherwise affected by any claim or dispute relating to any other matter ...

Applying the principles in *Collins*, did the arrangements give rise to a release within section 415?

33. The critical elements of the arrangements are these:

(1) The company released Mr Powell from his loan: see, in particular, Clauses 3.1(a), 3.3(b) and 4(a) of the Novation Deed.

(2) At the same time, PHSW agreed to owe an amount equal to the loan to Thermoline, with that amount left outstanding as a debt on inter-company loan account between PHSW and Thermoline: see, in particular, the definition of Payment Amount and Clause 3.3(a) of the Novation Deed and the terms of the Payment Letter.

(3) The relevant arrangements were effected by way of a novation of the loan: see, in particular, Recital (C), Clauses 3.1 and 3.4 of the Novation Deed.

34. Applying the principles which we have derived from *Collins*, we have concluded that the FTT was right to decide that these arrangements gave rise to a release which fell within section 415.

35. We do not accept the arguments made by Mr Redpath. We deal first with each of the grounds which he advanced, and then with his subsidiary arguments.

36. **Ground 1** is that the arrangements fell within Nourse LJ's references, in describing the exclusion from a release for a repayment, to "something equivalent" to repayment, or to something which "effectively" enabled the company to recover its money. Looking at the legal and commercial substance of the arrangements, Mr Redpath said, Thermoline had agreed to

accept the new PHSW debt in repayment, thus enabling it to recover the money lent to Mr Powell.

37. This argument fails in light of *Collins*. It is apparent from Nourse LJ's decision read in its entirety that he was referring by those phrases to payment in kind and/or payment by a third party, and not to consideration in the form of a replacement debt. He describes the reason for the repayment limitation as being that it effectively enables the company to recover its money, and then goes on to say that does not extend to a novation "being a transaction which does not enable the company to recover its money". The formulation of Millett J is even clearer, speaking of "a clear distinction to be drawn between a novation which involves the release of one debt and the substitution of another, and all other forms of payment or satisfaction under which the debt is treated as repaid".

38. The argument that the arrangements were equivalent to repayment of Mr Powell's debt, being what Nourse LJ described as "akin to a payment", cannot be sustained in light of *Collins*.

39. **Ground 2** is that *Collins* is materially different because *Collins* involved a substitution of debtor, whereas in this case there was a substitution of creditor. We agree that the factual matrix differs in that respect, but the relevant question is whether that difference renders the principles we have derived from *Collins* inapplicable or requires them to be qualified. Insofar as this represents a distinct argument to Ground 1 (which we have rejected), we do not accept that it does serve to distinguish those principles. The fact that PHSW became a substitute creditor had no material effect on the analysis which is pivotal to section 415, namely that (applying the principles in *Collins*) (1) the debt of the participator was released, (2) it was released by novation and (3) it was not repaid.

40. **Ground 3** is that the FTT failed to apply a purposive construction of section 415, because the purpose of the section is to impose a charge on a participator who has obtained an economic benefit from a release, as did the taxpayers in *Collins*, whereas Mr Powell extracted no value from Thermoline. The FTT erred by looking solely at Thermoline's economic position rather than that of Mr Powell, notwithstanding that the section 415 charge is on the participator and not the creditor company.

41. This issue caused us some concern.

42. In relation to the purpose of section 415, the FTT followed the description of its purpose given in *Collins*. A differently constituted FTT took the same approach in *Esprit* (at [111] of that decision). Millett J described the underlying scheme of the provisions as follows (at 452-453):

If the company claims full value for the release of the loan its assets are unaffected and, it is submitted, the section should have no application. But in my judgment s 286 is focused on the company's position and s 287 on that of the participator. The question under s 287 is not whether the company's assets are or are not depleted but whether the legal obligation of the participator has been released.

In my judgment, the true analysis of s 287 is that it is linked for this purpose with s 233 which exempts the original loan from being a distribution and thus being taxable in the participator's hands only because it is made for full consideration consisting of the obligation to repay. As long as that obligation to repay subsists the exemption from tax likewise subsists. If the obligation to repay should come to an end by payment of the debt then clearly there should be no tax charge; the distribution would be nullified by the repayment. If on the other hand it should come to an end by release so that the obligation is terminated without repayment, a balancing charge or payment of the deferred charge on the distribution should be raised. That is the essential relationship

between s 287(1) and the other provisions relating to participators in close companies and distributions to them.

43. Nourse LJ addressed the underlying purpose of the predecessor to section 415 in the following terms (at 749):

The Crown's basic proposition, with which I agree, is that 'release' does not include any transaction which either consists of or amounts to a repayment of the loan, even if the transaction, when viewed in isolation, might be said to have the effect of releasing the debtor from his obligation to repay the loan. The reason for that limitation is that the repayment of the loan, or the acceptance by the company of something equivalent to it, effectively enables it to recover its money, in which event there is no justification for imposing a liability to tax on the participator.

44. Mr Redpath submits that in fact the purpose of section 415 is to tax close company participators on particular extractions of value in non-dividend form, namely loans which are released or written off without being repaid. That may fairly describe the factual position in *Collins*. However, in this appeal, if one looks at the arrangements as a whole, the position following their implementation is that Thermoline remains owed an amount equal to Mr Powell's loan, and Mr Powell remains liable for an amount equal to that loan. Is it inconsistent with a purposive construction of section 415 to tax Mr Powell in this circumstance?

45. We have concluded that it is not, for a number of reasons.

46. First, and importantly, while for our part we understand the logic of Mr Redpath's approach to the purpose of section 415, we agree with Mr Bradley that neither the High Court nor the Court of Appeal in *Collins* adopted the same approach. Taxing an extraction of value by a close company participator was not seen in *Collins* as the, or an, underlying purpose of the legislation. While it was acknowledged that section 415 is focussed on the position of the participator and not the company (in the words of Millett J), that focus is not on the extent to which the participator extracts value from the company, but on whether the participator's legal obligation has been released (per Millett J) and whether the company is enabled to recover its money (per Nourse LJ). Viewing the purpose of section 415 in this way, the principles in *Collins* which we have identified and applied need not be confined to a situation where some value has been obtained by the participator from the arrangements.

47. Second, the Court of Appeal rejected unequivocally any implicit restriction to section 415 which would require some element of gratuity to arise in relation to the release. It seems to us that this is more consistent with an approach to legislative purpose which does not focus on, or turn on, any resultant benefit to the participator.

48. Third, although we do not rely on this in reaching our decision, both the High Court and Court of Appeal saw sections 415 and 458 operating in tandem, and the application of section 415 to Mr Powell in this case produces a result which is consistent with Thermoline's tax position under section 458. We do not rely on this because section 458 is, of course, not confined to a release, in that it includes a situation where the loan is written off or repaid. In this case, the FTT's conclusion on that issue (at [45]) was as follows:

...in reaching our conclusion we have placed no reliance on the language used by Hazelwoods LLP in their letter of 10 February 2022 making the claim for relief in respect of the s455 CTA charge. However, had we needed to have done so, whilst we accept that Hazelwoods LLP may have been incorrect in their view, we consider the precise language used by them, limiting the basis for relief to a release when section 458 CTA applies to either release or repayment, is at least indicative that the parties considered or were at least advised that the Novation Deed gave rise to a release and not a repayment.

49. In the absence of the decisions in *Collins*, we would have had some residual concern in relation to the issue raised by Ground 3. Viewed through the lens of the current approach to statutory construction, and in particular the need to apply the statutory provisions to the facts viewed realistically², it is possible to see the approach in *Collins* as relatively legalistic or linguistic. The approach in *Collins* focusses on the position as between the close company and the participator rather than the arrangements as a whole, which in this case resulted in Thermoline being owed the same amount as the loan (by PHSW) and in Mr Powell continuing to owe a loan of that amount (to PHSW). However, we are bound by the Court of Appeal decision, and, as we have explained, applying the principles and the approach to the purpose of section 415 derived from that case, as between Thermoline and Mr Powell there was a release of the full amount of the loan.

50. **Ground 4** is that the FTT was obliged to find that there was no release within section 415 because of its finding that there was “valuable consideration” for the release of Mr Powell’s debt to Thermoline. That argument is unsustainable in light of the clear pronouncements in *Collins* that a taxable release is not confined to situations in which there is no or insufficient consideration for the release. The provision of valuable consideration for a release does not necessitate the conclusion that there has been a repayment of the debt.

51. **Ground 5** is that the FTT erred in law at [42] by relying for its decision on the fact that the PHSW debt to Thermoline was “in consequence of an associated transaction from which the Appellant was released”. That is the position, said Mr Redpath, with every creditor-to-creditor novation.

52. When [42] and [43] are considered in their entirety and in context, we think that what the FTT was intending to do in these paragraphs was to paraphrase what we have set out at paragraph 30 above as principles (5) and (6) derived from the decisions in *Collins*, and then to explain why it regarded those principles as applicable in this appeal notwithstanding the factual differences, particularly the substitution of creditor. That approach gave rise to no error of law. Insofar as the FTT intended to go any further than this in these passages, that would not be justified (on the basis of the principles in *Collins* or otherwise), but any such error would not have been material because we have concluded that for the reasons set out above the FTT reached the right conclusion on the issue in the appeal.

53. Mr Redpath raised a number of subsidiary points, which have not caused us to change our conclusion. We can deal with them briefly:

(1) We do not consider that the FTT decision in *Esprit* adds anything to the Appellant’s case. The reasoning in that case directly follows *Collins*, as it was bound to, and concerns an application of that reasoning in a different factual situation to that in this appeal.

(2) Mr Redpath’s submissions as to the legal effect of a novation do not alter our conclusion. The release in this appeal occurred by means of a novation, and the question of whether a novation amounts to a repayment such as to fall outside section 415 is determined by *Collins*.

(3) Reference to HMRC guidance does not assist in the question of statutory interpretation which determines this appeal.

CONCLUSION AND DISPOSITION

54. On the binding authority of *Collins*, the FTT reached the right decision. The appeal is dismissed.

² See, for example, *R (PACCAR Inc) v Competition Appeal Tribunal* [2023] UKSC 28.

OFFICIAL

**JUDGE THOMAS SCOTT
JUDGE GUY BRANNAN**

Release date: 28 October 2026

OFFICIAL