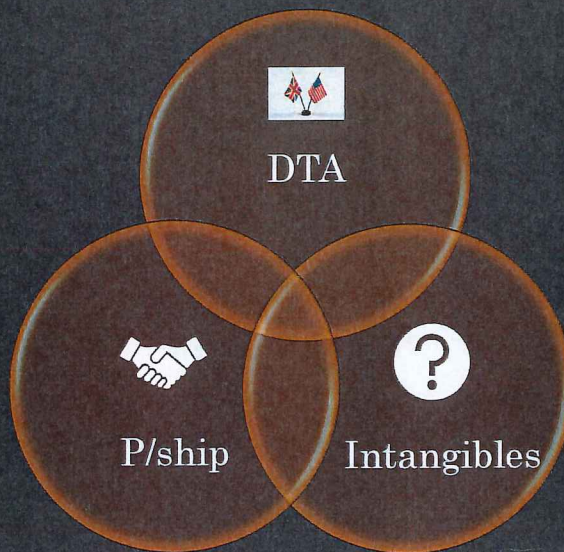


BLOOMBERG V REVENUE

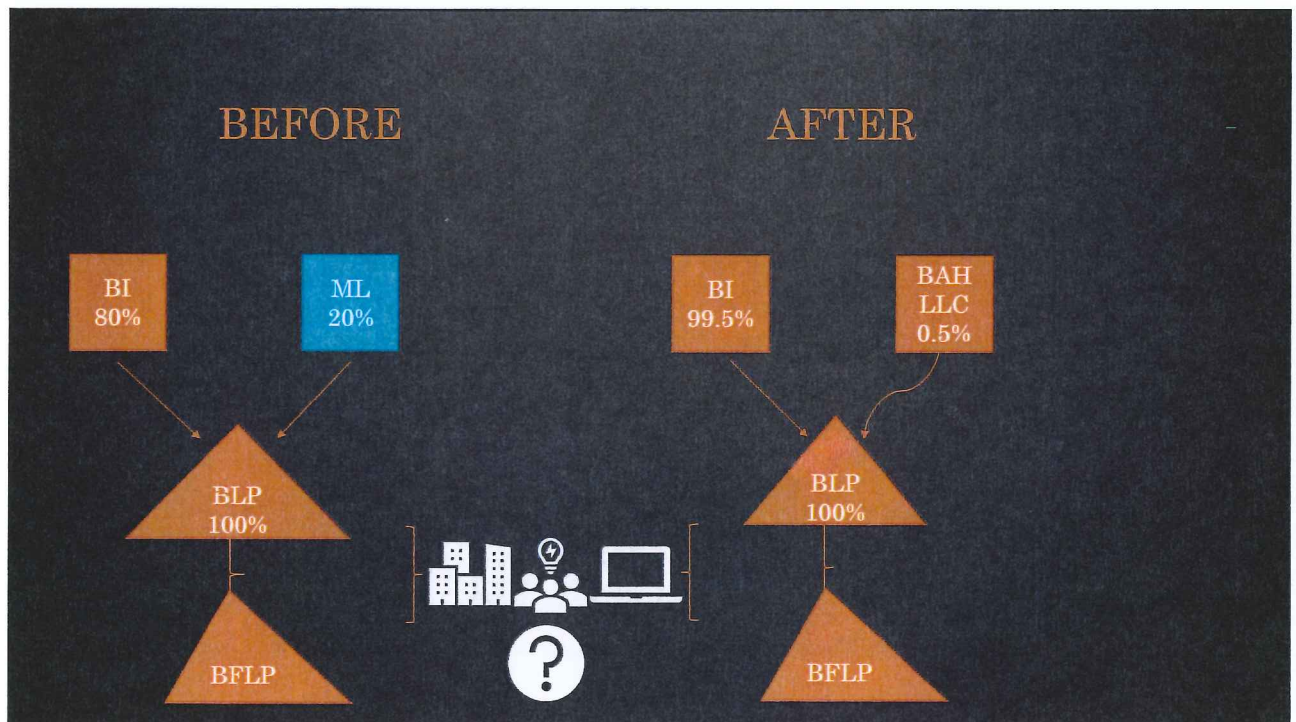
(1) BLOOMBERG INC. (UK PE) (2) BLP ACQUISITION HOLDINGS LLC (UK PE) V COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS [2018] UKFTT 205 (TC)



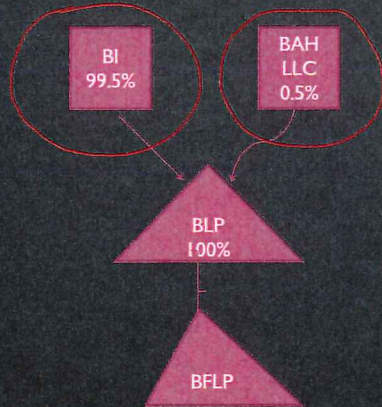
INTRODUCTION

Transaction:

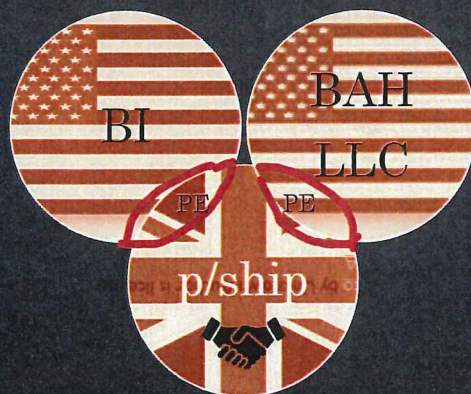
- US corporates in partnership carrying on trade in UK with UK PEs increased holdings in partnership
- Claimed deduction in relation to increased intangible fixed assets
- Perspective? Did taxpayers' PEs acquire intangible fixed assets or was transaction a sale of partnership units?



THE APPELLANTS



PARTNERSHIP & UK PE



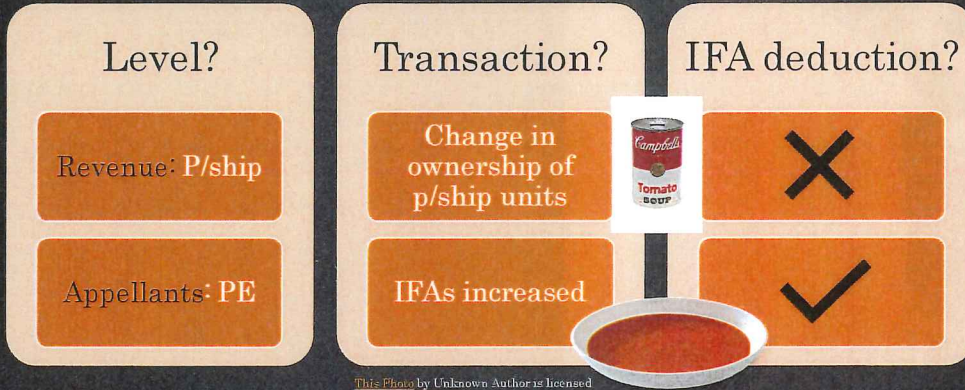
LEGAL BACKDROP

- UK intangible assets deduction
- UK/US DTA provisions on permanent establishment (imagine if PE were “distinct and separate enterprise engaged in the same or similar conditions and dealing wholly independently with the enterprise of which it is a PE”)
- UK taxation of non-resident companies carrying on a trade in partnership

WHAT APPELLANTS DID

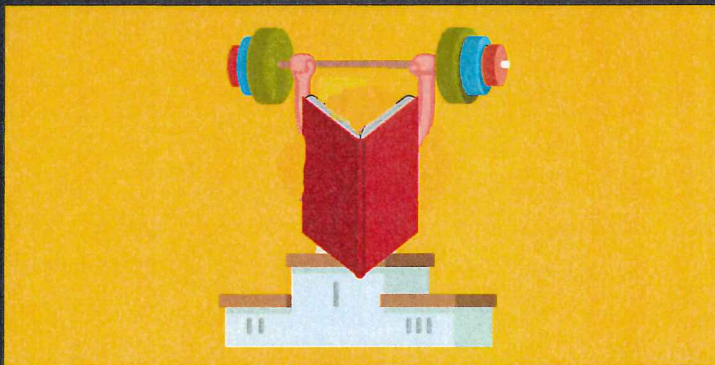
- Consolidated financial statements for BI and BAH LLC listed assets which included intangible fixed assets (IFAs)
- BI and BAH LLC claimed deduction in respect of IFAs on assumption PEs acquired proportion of value of reported IFAs (calculated using proportion used to calculate profits attributable to PEs)

COMPETING PERSPECTIVES

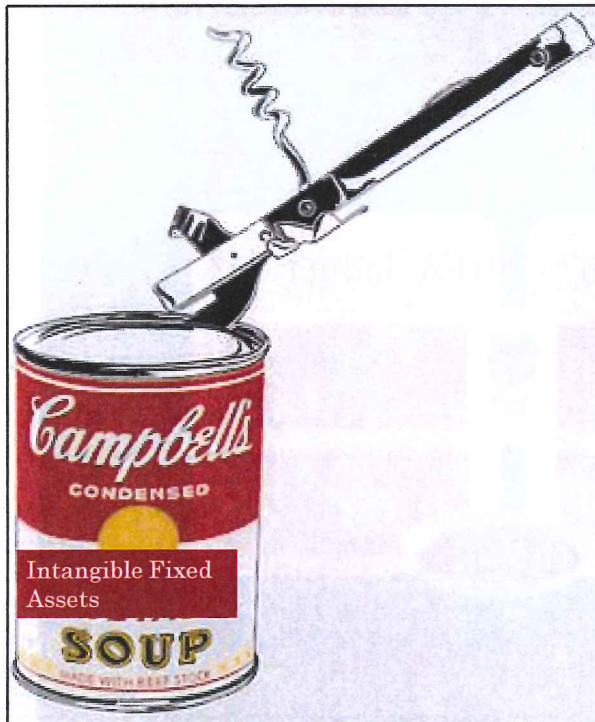


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PE = "STRONG FICTION"



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PE Fiction requires transaction to be viewed as asset transfer rather than transfer of partnership units?

DECISION IN CONTEXT

- Agreed Facts
- Burden lay on appellants
- Question of perspective = question of tax law. Expert accountants agreed how accounts to be drawn once tax law question determined.
- No determination on figures - decision one of principle. Revenue's alternative arguments not considered in detail as they won primary argument.
- First-level appeal, not appealed, persuasive not binding effect

TRIBUNAL'S REASONING

- DTAs are about allocation of taxing rights
- Scope of factual and functional analysis in relation to PE did not *require* transaction to be treated as assets transfer, scope of economic approach / look-through
- Fact partnership was a “legal construct” did not prevent it counting as a “similar condition” under DTA
- Domestic case-law on partnership taxation helpful background but not ultimately relevant to issue

CONCLUSION

- Transaction was sale of partnership units
- Accounts constructed accordingly would not show acquisition of IFAs
- No IFA deduction allowed

“Truth is stranger than Fiction.....because
Fiction is obliged to stick to possibilities; Truth
isn't”

Mark Twain: Following the Equator: A Journey Around the World

Outline presentation

A Question of Perspective:

Bloomberg Inc (UK Permanent Establishment) and BLP Acquisition Holding LLC (UK Permanent Establishment) v Commissioners for Her Majesty's Revenue and Customs

Issue: Summary of facts – transaction in which taxpayers increased holdings in partnerships – did taxpayers' PEs acquire intangible fixed assets (in respect of which a deduction could be claimed?). From what perspective should the transaction in issue be looked at – that of the permanent establishment in which case it was a transfer of assets or from that of the partnership in which case it was sale of partnership units?

Areas covered: interaction between UK's partnership taxation provisions as applied to non-UK companies and UK/US Double Taxation Treaty provisions in particular the principle that PEs are treated as separate and distinct

Decision in context: First-level appeal, not appealed, persuasive not binding. Made on the basis of agreed facts. Burden lay on appellants. Question turned on tax law point as to which perspective accounts had to be drawn up. Once that question determined, accounting evidence as to the appropriate accounts to be drawn up was agreed. No determination on figures - decision one of principle. Tax authority's alternative arguments not considered in any detail as they won on their first argument.

Brief summary of underlying legal provisions: UK intangible assets deduction, UK taxation of non-resident companies carrying on a trade in partnership, UK/US DTA provisions on permanent establishment (imagining if PE were "distinct and separate enterprise engaged in the same or similar conditions and dealing wholly independently with the enterprise of which it is a PE")

The appellant's case: strength of separate enterprise principle required transaction to be looked at from perspective of PE – the transaction was an assets transfer.

Propositions emerging from reasoning rejection appellant's case

- DTAs are about allocation of taxing rights
- Scope of factual and functional analysis in relation to PE did not *require* transaction to be treated as assets transfer, scope of economic approach / look-through
- Fact partnership was a legal construct did not prevent it counting as a "similar condition" under DTA
- Domestic case-law on partnership taxation helpful background but not ultimately relevant to issue