TC02619

Appeal number: TC/2011/04902

CAPITAL GAINS TAX – section 35 TCGA 1992 – whether asset held on 31 March 1982 – nature of asset – alleged interest in land by way of estoppel – series of licences to extract sand – in the alternative, reliance on section 43 TCGA 1992 – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

P & J McCANN (TOOMEBRIDGE) LIMITED **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE JONATHAN CANNAN
MS CELINE CORRIGAN FCA

Sitting in public in Belfast on 6 February 2013

Mr Mark Orr QC instructed by Grant Thornton UK LLP Chartered Accountants for the Appellant

Mr John Corbett of HM Revenue & Customs for the Respondents

DECISION

Background

1. The McCann family have traded as sand merchants since 1935, extracting sand from the bed of Lough Neagh. The business was at some stage incorporated and the appellant company came into being. In 1998 the business was sold to RMC Quarries (Ulster) Limited ("RMC"). This appeal concerns the liability of the appellant to capital gains tax ("CGT") on disposal of the business. In particular the sum to be deducted from the disposal proceeds by reference to the value of the assets disposed of as at 31 March 1982.

2. In the early 1960s the Shaftesbury Estate established title to the bed of Lough Neagh. At that time it granted licences to 9 existing businesses to extract sand. Those businesses together formed the Lough Neagh Sand Traders Association, Northern Ireland Limited ("the Sand Traders Association"). The purpose of the Sand Traders Association was to represent the interests of its members in their dealings with the Shaftesbury Estate. The first licence granted to the McCann family was dated 18 October 1965. We set out below the terms of that and subsequent licences.

3. One of the assets disposed of by the appellant in 1998 was the right to extract sand from Lough Neagh. We are concerned in this appeal with whether the asset disposed of in 1998 existed as such in March 1982. Put briefly Mr Orr QC, who appears on behalf of the appellant, says that the appellant has had a right to extract sand since well before 1982. It is this right he says which was one of the assets disposed of in 1998 and which falls to be valued as at March 1982 in calculating the CGT liability on disposal.

4. Mr Orr's principal submission is that the appellant's right to extract sand arose not simply by virtue of the continuous licences which had been in existence since 1965, but as an interest arising by way of estoppel against the Shaftesbury Estate. He submitted that the right to extract sand arose by way of a proprietary estoppel or alternatively an estoppel by convention.

5. Mr Corbett, who appears on behalf of the respondent, says that the asset disposed of in 1998 was the benefit of a licence which had been granted in September 1998 shortly before the disposal. A licence had been granted initially in 1965 and renewed on various dates thereafter. However he submitted that for the purposes of the CGT computation the interest under the 1998 licence did not exist in March 1982. He further submitted that the facts did not support the appellant's claim to proprietary estoppel or an estoppel by convention.

6. We set out below our findings of fact relevant to the issues which arise on this appeal. Those findings are based on the oral evidence of Mr Peter McCann, who is a director of the appellant, together with the documentary evidence presented to us. Apart from some limited correspondence which was before us we have not heard any evidence as to the position of the Shaftesbury Estate in relation to the claims made by

the appellant. Our findings on this appeal will not in any way affect the interests of the Shaftesbury Estate or RMC.

7. Having set out our findings of fact we consider the matters of law addressed to us by the parties, and in the light of that consideration we reach our decision on the appeal.

Findings of Fact

8. There was no real dispute as to Mr McCann's evidence. The focus of the parties was on the significance of that evidence, and in particular whether it is sufficient to establish the interests which the appellant submits arise by way of estoppel.

9. Mr McCann is 63 years of age and has been involved in the family business of extracting sand from the bed of Lough Neagh throughout his life. The business was originally started by his father and uncle who shovelled sand on to the back of a lorry. As time passed the business grew and they used more and more plant and machinery in the business.

10. In the early 1960s, when the Shaftesbury Estate established its right to the bed of Lough Neagh, the business received a demand for royalties from the Shaftesbury Estate for the right to extract sand. There were then 9 businesses extracting sand and together they formed the Sand Traders Association. The first licence was granted by the Shaftesbury Estate in 1965. We shall refer to this as "the 1965 Licence" and to the later licences in similar terms depending on the year they were granted. All licences were expressed to be by way of deed.

11. The 1965 Licence was made between The Shaftesbury Estate of Lough Neagh Limited, The Sand Traders Association and Mr McCann's father and uncle. Licences in identical terms were granted to the other members of the Sand Traders Association. It was common ground that at all times since 1965 a licence to extract sand has been in place and each of the businesses operating on Lough Neagh has extracted sand on the same terms as the other businesses.

12. The 1965 Licence granted to each licensee the right to win, work and get sand from Lough Neagh. Clause 2(2) included the right to:

> "*enter upon … Lough Neagh and to use such buildings engines machinery plant or equipment of the Licencees now existing or hereafter to be constructed or installed with the consent in writing of the Owner such consent not to be unreasonably withheld as may be necessary or convenient for the purposes aforesaid.*"

13. The 1965 Licence was effective from 1 May 1964 for a term of 10 years. The licensees also had an option to continue the licence for a further period of 10 years. No premium was payable on the granting of the licence, or indeed on the granting of any of the subsequent licences. The licensees were required to pay an annual sum of £100 together with a royalty of 3d for every ton of sand won. In the event that the licensees exercised their option to extend the licence the sum payable as a royalty was

either 3d per ton or, at the option of the owner, 1/50th of the price per ton for which the sand was sold. In any event no royalty was payable on the first 8,000 tons of sand won in the first or any subsequent year.

14. By a deed of rectification entered into in October 1965 the area of Lough Neagh over which the rights were granted was further defined and restricted. The Shaftesbury Estate also covenanted not to grant a licence to anyone who was not a member of the Sand Traders Association save with the consent of that association.

15. By 1974 the appellant operated a single 80 tonne barge on Lough Neagh for the purpose of extracting sand.

16. It is not clear whether the option for a 10 year extension contained in the 1965 licence was exercised, or a new licence was granted. It has not been possible to obtain the relevant documentation. In any event both parties were agreed that a licence was in place throughout the period from 1965 to 1998.

17. In or about 1991 the business purchased a further 4 acres of land adjoining the shore of Lough Neagh in order to expand. At this time the land owned by the business included a dwelling house, a garage for maintenance of plant and equipment and various buildings housing "classification plant" for manufacturing different grades of sand. This process involved blending the fine sand extracted from Lough Neagh with coarser sand purchased from elsewhere. By 1991 the business used 4 barges on Lough Neagh, the smallest of which was 350 tonnes.

18. On 30 April 1993 the 1993 Licence was granted. The parties to the 1993 Licence were the Shaftesbury Estate, the Sand Traders Association and P & J McCann Limited. It was in similar terms to the 1965 Licence as rectified save that it was effective from 1 November 1992 for a period of 20 years. Clause 2(2) of the 1965 Licence as set out above was repeated.

19. The sums payable under the 1993 Licence were set for 5 year periods. In the first 5 years the sums payable were £500 per year plus 6½p per ton of sand won over and above 3,846 tons in any half year. In the next 5 years the sums payable were £600 per year plus 8½p per ton of sand won over and above 3,530 tons in any year. In the next 5 years the sums payable were £700 per year plus 10½p per ton of sand won over and above 3,334 tons in any year. In the last 5 years the sums payable were £800 per year plus 12½p per ton of sand won over and above 3,200 tons in any year.

20. The 1993 Licence contained a covenant against assignment by the licensee and a covenant by the licensor not to grant a licence to anyone who was not a member of the Sand Traders Association.

21. On 10 May 1996 a deed was executed excluding from the 1993 Licence an area of Lough Neagh known as Kinnego Bay which the Shaftesbury Estate had agreed to sell to a third party.

22. On 14 September 1998 the 1998 Licence was granted. This took the place of the 1993 Licence because the Sand Traders Association, which had been a party to the

previous licences, had ceased to exist. Again the 1998 Licence was in similar terms to the 1965 Licence as rectified save that it was effective from 1 November 1997 for a period of 49 years. Clause 2(2) of the 1965 Licence as set out above was repeated. The sums payable under the 1998 Licence were the same as would have been payable if the 1993 Licence had continued for its full term. For the 5 yearly periods after 1 November 2012 the sums payable were a yearly licence fee of £500 which was a minimum payment on account of royalties. The royalty was to be a sum agreed between the parties. In default of agreement a surveyor was to be appointed as an expert to determine the royalties which would be payable between a willing licensor and a willing licensee on the open market.

23. The 1998 Licence contained a covenant against assignment by the licensee and a covenant by the licensor not to grant more than 7 licences to extract sand from the Lough. In the period of time since 1965 the number of businesses extracting sand had reduced to 7.

24. We accept Mr McCann's evidence that there was never any difficulty in agreeing the 1965 Licence or the subsequent licences. When a licence was due to be renewed the Shaftesbury Estate would send a draft licence to The Sand Traders Association and there was very little negotiation involved. The royalties required by the Shaftesbury Estate were never excessive, indeed the Shaftesbury Estate was more concerned with aspects of health and safety on the Lough.

25. By 1998 there was plant and machinery used in the business with a cost price of about £1.2 million. A schedule attached to the contract of sale to RMC suggested that this was purchased in the period between 1970 and 1998. It comprised mobile plant such as diggers, trailers and mixers; static plant such as classification systems; vehicles such as tippers and trailers; and barges.

26. We are satisfied that the Shaftesbury Estate was aware that the McCann's business was making a significant investment over the years in order to extract sand from Lough Neagh. We were not specifically referred to Clause 2(2) set out above. There was no evidence of any express consent from the Shaftesbury Estate, however as we read it the provision refers to things constructed or installed on land belonging to the Shaftesbury Estate rather than land belonging to the business. In any event the respondents did not suggest that the Shaftesbury Estate was unaware of expenditure by the business on plant and machinery or that it objected in any way to such expenditure.

27. There was no direct evidence before us from the Shaftesbury Estate. There was however some correspondence in 2010 between the appellant's representative and the Shaftesbury Estate in relation to the respondents' enquiry into the tax position. The appellant was seeking copies of the licence agreements, and also an understanding of the way in which licences were renewed. They asked "*…whether the renewal process was automatic … and whether in the Estate's view each licence holder could, with the agreement of [The Sand Traders Association], continue to extract sand over a prolonged period and that the licence really was there as a method of regulation should the need arise*".

28. The Shaftesbury Estate responded in a letter dated 7 October 2010 which stated "*There is no clause relating to automatic renewal however the majority of traders continue dredging with consent from the Estate*".

29. We were not referred to any other evidence or documents which shed any light on the position of the Shaftesbury Estate with regard to the appellant's claim that it had established an interest to extract sand by way of proprietary estoppel or estoppel by convention. We note from our consideration of the bundle following the hearing that there were some telephone conversations in October 2010 and January 2011 between both Grant Thornton and HMRC with the secretary of the Shaftesbury Estate. These appear to show conflicting responses as to whether the Shaftesbury Estate accepted that the sand traders had any right to extract sand over and above the rights contained in the licences. Given this conflict and the absence of any direct evidence from the Shaftesbury Estate we attach no weight to this material in considering the issues before us.

30. The disposal giving rise to a chargeable gain was to RMC. The evidence included the written sale agreement ("the Contract") dated 26 November 1998. The parties to the Contract included the appellant, Mr Peter McCann, Carmel McCann and RMC. The way in which the disposal was structured was that the appellant sold the business which it was carrying on and the assets used in the business. Most of the assets including goodwill were owned by the appellant. Certain land was owned by Mr McCann and Carmel McCann and the Contract also dealt with that land. The 1998 Licence Agreement was in the name of P & J McCann Limited. The shares in that company ("the Shares") were held as to 99% by Peter McCann and 1% by Carmel McCann. The Contract included a sale of the Shares to RMC.

31. The total consideration payable under the Contract was £2,315,000 together with the value of certain stock and £1 for the Shares. The consideration of £2,315,000 was apportioned in a schedule to the Contract so as to include £1,192,000 for plant, machinery and equipment. The value of the right to extract sand was not included in the value of the Shares, rather it was included in the value of goodwill which was put at £1,002,997. The reason why the right to extract sand was treated as an asset of the appellant and not as part of the value of the Shares was not explored in evidence. There is some suggestion in the papers that whilst P & J McCann Limited held the license the beneficial interest lay with the appellant. However that is not a matter we need concern ourselves with.

Consideration of the Law

32. Mr Orr's primary submission was that the appellant had disposed of a right to extract sand which had been established by way of a proprietary estoppel or an estoppel by convention prior to 1982. In the alternative he submitted that if the asset disposed of was an interest under the 1998 Licence then for CGT purposes that asset was not a new asset but was to be treated as having existed in 1982. On each basis he submitted that the CGT computation should include credit for the 1982 market value.

33. It is convenient when considering the law to refer firstly to the relevant sections of the Taxation of Chargeable Gains Act 1992 ("TCGA 1992"). It is against the background of these provisions that Mr Orr makes his submissions.

34. *Section 35 TCGA 1992* has the effect that it is only gains made since 1982 that are chargeable to CGT. It provides as follows:

> " *(1) This section applies to a disposal of an asset which was held on 31st March 1982 by the person making the disposal.*
>
> *(2) Subject to the following provisions of this section, in computing for the purpose of this Act the gain or loss accruing on the disposal it shall be assumed that the asset was on 31st March 1982 sold by the person making the disposal, and immediately reacquired by him, at its market value on that date.*"

35. For present purposes we are concerned with the deemed re-acquisition on 31 March 1982 at the market value as at that date. By *section 38(1)(a) TCGA 1992* the acquisition cost of an asset is deductible in computing the gain on disposal. The deduction only arises where the asset disposed of was held on 31 March 1982.

36. *Section 43 TCGA 1992* makes provision for the situation where assets are derived from other assets. It provides as follows:

> " *If and so far as, in a case where assets have been merged or divided or have changed their nature or rights or interests in or over assets have been created or extinguished, the value of an asset is derived from any other asset in the same ownership, an appropriate proportion of the sums allowable as a deduction in the computation of a gain in respect of the other asset under paragraphs (a) and (b) of section 38(1) shall, both for the purpose of the computation of a gain accruing on the disposal of the first-mentioned asset and, if the other asset remains in existence, on a disposal of that other asset, be attributed to the first-mentioned asset.*"

37. The broad effect if not the language of section 43 is clear. Where the value of an asset disposed of is derived from another asset the sums allowable as a deduction in computing the gain on disposal of the first asset include an appropriate proportion of the sums which would be allowable on a disposal of the other asset.

38. The section was considered by Browne-Wilkinson J in *Bayley v Rogers [1980] STC 544*. That case concerned a new tenancy under the Landlord and Tenant Act 1954. In particular whether what is now section 43 had the effect that on disposal of the new lease under the 1954 Act the 1965 time apportionment provisions should apply by reference to the original lease. He stated as follows:

> "*… the Crown submits, and in my judgment rightly, one has to ascertain the nature of the lease, and whether one lease is part of another or is a separate asset, by reference to the status of the lease under general law.*
>
> …

I cannot say that I find [section 43] altogether easy, but it seems to me that in the present case the conditions for the application of [section 43] cannot be said to have occurred. It cannot be said that the 1960 lease had been merged; nor has it been divided; nor has it changed its nature. Then, can it be said that 'rights or interests in or over assets have been created or extinguished'? Again, I cannot see that any right or interest in or over the 1960 lease has been created or extinguished. All that has happened is that the 1960 lease has expired."

39. The Landlord and Tenant Act 1954 has never applied in Northern Ireland. In any event the right to extract sand is a mining lease which would not have protection under the 1954 Act or the equivalent legislation in Northern Ireland. However that distinction is not relevant for present purposes because we accept the submission of both parties that it is the principled approach set out in Bayley v Rogers which must be applied to the facts of this appeal and that involves ascertaining the nature of the relevant interests as a matter of general law.

40. Mr Corbett also referred us to *Inland Revenue Commissioners v Gray [1994] STC 360* and *Holt v Inland Revenue Commissioners [1953] 2 All ER 1499*. These were both cases on valuation for the purposes of capital transfer tax and estate duty and do not assist in resolving the issue on this appeal which is one of identifying the asset disposed of. In any event the proposition Mr Corbett sought to derive from these cases was that the asset disposed of must exist as at March 1982 either as a matter of fact or by virtue of section 43. Mr Orr did not dispute that proposition.

41. Mr Orr's primary submission was that the facts supported the existence of an interest to extract sand apart from the licences. In this regard he relied upon either a proprietary estoppel or an estoppel by convention. This submission did not rely on section 43. Mr Orr's secondary submission was that even if there was no proprietary estoppel or estoppel by convention then section 43 would apply to treat the 1998 Licence as having been derived from the licences pre-dating March 1982.

42. There was no real dispute between the parties as to what was required in order to establish an interest by way of proprietary estoppel. Both parties relied on a decision of the Court of Appeal in *Suggitt v Suggitt [2012] EWCA Civ 1140*. That was a case involving an unconditional promise by a farmer to his son that on his death the farm would be his. We were referred to a short description of proprietary estoppel by Arden LJ at [19]:

" *As is well known, there are four requirements for proprietary estoppel. There must be an assurance, reliance and detriment. In addition, the relief granted by the court must be the minimum necessary to satisfy the equity.*"

43. The relief granted by the High Court in that case, with which the Court of Appeal did not interfere, was to grant the claimant an interest in the farmland.

44. Put simply, Mr Orr submits that all those elements are present in the relationship between the appellant and the Shaftesbury Estate such that by March 1982 the appellant would have been able to obtain a declaration of the court that it was entitled

to a proprietary interest in the land. That, he said, was the asset or one of the assets disposed of by the appellant in 1998.

45. Alternatively Mr Orr submits that in 1982 the appellant was entitled to a right to extract sand from Lough Neagh by virtue of an estoppel by convention. Again both parties relied on a description of governing principles given by the Court of Appeal in *ING Bank NV v Ros Roca SA [2011] EWCA 353*. That case concerned the entitlement of ING to a fee for the provision of financial services. There was an issue as to the construction of the contract between ING and Ros Roca. Ros Roca succeeded in the High Court. ING was successful on appeal on the point of construction but Ros Roca argued that in any event ING was precluded by estoppel from relying on that construction. At [57] Carnwarth LJ adopted and applied the statement of principle of Lord Steyn in *Republic of India v India Steamship Co [1998] AC 878*:

> " *It is settled that an estoppel by convention may arise where parties to a transaction act on an assumed state of facts or law, the assumption being either shared by them both or made by one and acquiesced in by the other. The effect of an estoppel by convention is to preclude a party from denying the assumed facts or law if it would be unjust to allow him to go back on the assumption: The August Leonhardt [1985] 2 Lloyd's Rep. 28; The Vistafjord [1988] 2 Lloyd's Rep. 343; Treitel, Law of Contracts, 9th ed., at 112-113. It is not enough that each of the two parties acts on an assumption not communicated to the other. But it was rightly accepted by counsel for both parties that a concluded agreement is not a requirement for an estoppel by convention.*"

46. It does not seem to us that the distinction between proprietary estoppel on the one hand and estoppel by convention on the other hand is material for the purposes of this appeal. It is a requirement of both forms of estoppel that it should be unjust or unconscionable for Shaftesbury Estate to resile from an assurance or from their acquiescence in an assumption made by the appellant or its predecessors in title.

47. Both parties were agreed that whichever form or estoppel was being considered the injustice or unconscionable circumstances giving rise to the relief must have arisen by March 1982.

Reasons for Decision

48. Mr Orr's case on estoppel was based on an assurance from the Shaftesbury Estate prior to 1982 that the appellant would be entitled to continue extracting sand from Lough Neagh notwithstanding the fact that the licences were expressed to be for certain terms of years. Alternatively that was an assumption made by the appellant which was acquiesced in by the Shaftesbury Estate.

49. Both parties agreed that the burden was on the appellant to establish the facts necessary to support its case. Our findings of fact set out above are made on the balance of probabilities. The question which now arises is whether we are satisfied on the balance of probabilities that the Shaftesbury Estate expressly or impliedly gave

such assurances to the Appellant. Alternatively that the appellant assumed such a state of affairs and the Shaftesbury Estate acquiesced in that assumption.

50. Mr Orr relied in particular on the following facts and matters:

(1) The appellant never had any difficulty in obtaining the 1965 licence or in renewing subsequent licences.

(2) No premium was ever paid by the appellant for the grant of a licence.

(3) Considerable sums of money were invested in the business to the knowledge of the Shaftesbury Estate and without objection.

51. The appellant's case faces formidable difficulties based on the evidence before us. Not least because it must establish the factual and legal position in March 1982 and we certainly do not have a complete picture of all the relevant circumstances as at that date. The documentary evidence we have in the form of the various licences dated before and after March 1982 sets out the basis of a commercial relationship between the appellant and the Shaftesbury Estate. The actions of the appellant in conducting its business are all readily explicable by reference to the licences. On the face of it the appellant, the Shaftesbury Estate and the Sand Traders Association were content for their commercial relationship to be defined by the licences.

52. There is no documentary evidence that the terms of those licences did not reflect the commercial terms on which the parties dealt with one another. All parties, in particular the Shaftesbury Estate, were astute to ensure that on the expiry of a licence it was replaced with another licence on similar terms save that the royalties increased over time. The fact that there was no difficulty in negotiating new licences is not a factor to which we attach much weight. It is consistent with the appellant's case, but it is also consistent with a cordial commercial relationship.

53. The fact that no premium was paid for any licence is not in our view indicative that the appellant had any interest over and above what was defined by the licences. It could equally reflect the fact that the appellant was over time making a significant investment in its business which would be reflected by greater royalties payable to the Shaftesbury Estate. There is no evidence that the royalty payments were any more or less than a freely negotiated commercial rate. Indeed the 1998 Licence made provision for royalties after 2012 to be fixed by reference to what would be payable between a willing licensor and a willing licensee on the open market.

54. We do not consider that knowledge of capital expenditure by the appellant and acquiescence in that expenditure on the part of the Shaftesbury Estate gives rise to any injustice or that it would be otherwise unconscionable for the appellant's interest to be limited to that expressly granted by the licences. The appellant incurred expenditure knowing the terms of its agreement with the Shaftesbury Estate. The appellant no doubt hoped when it made that expenditure that the various licences would be renewed at the end of their terms. However we are not satisfied that when the expenditure was incurred the Shaftesbury Estate had given any assurance that the licences would be renewed. There was no evidence of any express assurance, and the

evidence of the circumstances is not sufficient for us to be satisfied that there was any implied assurance that the licences would be renewed.

55. Even if there had been reliance by the appellant on an assurance by the Shaftesbury Estate, the appellant has to establish that such reliance was detrimental. The expenditure was all capital expenditure on plant and machinery which enabled the appellant to derive an income from the extraction of sand. We had no evidence as to the profits realised by the appellant from the extraction of sand over the years up to 1982, or indeed in subsequent years. We do not know the level of capital expenditure on assets employed in the business as at March 1982. Even if by that time there had been no overall return on the investment, the appellant still had the assets which no doubt had some value either on a piecemeal disposal or on a sale of the business. In those circumstances we cannot be satisfied that the appellant's reliance was detrimental.

56. Mr Orr submitted that the relevant assurance or assumption was that a licence would be granted by the Shaftesbury Estate for a nominal rent and annual royalty for as long as the appellant wished to extract sand from Lough Neagh. We do not consider that the evidence supports the existence of such an assurance by the Shaftesbury Estate. Nor indeed do we accept that the appellant made such a wide-ranging assumption. The reality is that the appellant merely hoped that the licence would continue to be renewed.

57. In terms of proprietary estoppel, we are not satisfied that there was any assurance or detrimental reliance by the appellant. In any event we are not satisfied that the minimum relief necessary in 1982 would have involved the grant of an interest to extract sand.

58. In terms of estoppel by convention we are not satisfied that there was a common assumption that the appellant had any interest in land going beyond that granted by the various licences. Nor are we satisfied that the Shaftesbury Estate acquiesced in such an assumption by the appellant.

59. The licence agreements undoubtedly confer an interest in land in the form of a profit à prendre, the right to extract sand, together with a right to enter upon the land for the purpose of exploiting that interest. Mr Orr's alternative argument was that the licences were continuous and the benefit of the licence disposed of in 1998 was by virtue of section 43 to be treated as the same asset as that held in March 1982. We adopt the same approach to this argument as that adopted by Browne-Wilkinson J as he then was in Bayley v Rogers. We ask ourselves whether the conditions set out in that section have occurred?

60. Mr Orr did not suggest that the licences had "merged". In land law that describes the situation where an interest in land becomes held be the same person who is entitled to a superior interest; nor has any licence been divided; nor has it changed its nature; nor has any right or interest in a licence been created or extinguished. All that can be said is that the pre-1982 licence came to an end and a new licence was created.

In our view the conditions required to engage section 43 have not been satisfied on the facts of the present appeal.

Decision

61. For the reasons given above we consider that the asset disposed of by the appellant in 1998 was the right to extract sand pursuant to the 1998 licence. We are not satisfied that there was any further interest by way of estoppel. Nor do we consider that section 43 TCGA 1992 operates on the facts of the present case to treat the asset disposed of as being derived from a right to extract sand arising under pre-1982 licences. In the circumstances we must dismiss the appeal.

62. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JONATHAN CANNAN
TRIBUNAL JUDGE

RELEASE DATE: 28 March 2013