Press Summary

17 June 2026

Commissioners for His Majesty's Revenue and Customs (Appellant) *v* HFFX LLP (Respondent); Atkins and others (Appellants) *v* Commissioners for His Majesty's Revenue and Customs (Respondent)

[2026] UKSC 17

On appeal from: [2024] EWCA Civ 813

Justices: Lord Sales, Lord Lloyd-Jones, Lord Hamblen, Lord Burrows, Lady Rose

Background to the Appeal

HFFX is a limited liability partnership which has generated significant income by trading in the foreign exchange market. HFFX was established in 2010 within a pre-existing investment management business known as GSA.

The Managing Member of HFFX was Mr Alexander Gerko. HFFX also had a number of individual members. These individual members designed and implemented software used by GSA funds for high-frequency foreign exchange trading. In addition, HFFX had two corporate members, one of which was GSA Member Limited (**"GSAM**").

This appeal concerns the taxation of profits which were made by HFFX and then retained by GSAM before being reallocated to individual team members under a deferred remuneration arrangement. That arrangement involved a Capital Allocation Plan ("**CAP**"), the elaborate legal arrangements for which were set out in HFFX's limited liability partnership deed ("**the LLP deed**").

Under the CAP, a portion of the individual members' remuneration was retained by GSAM and invested in GSA funds. Over the course of three years, GSAM would sell those investments and contribute the net proceeds to HFFX as 'Special Capital'. The Special Capital would then be reallocated to individual members, who were able to withdraw it. Mr Gerko would write to GSAM with recommendations as to how the Special Capital should be reallocated amongst the team members, but GSAM was given an absolute discretion as to whether or not to make those reallocations. In exercising its discretion, it could take into account various matters including losses caused to GSA by HFFX, whether the individual member continued to abide by the terms of the membership agreement with HFFX and changes in the recommendations made to

it by Mr Gerko. GSAM's discretion was subject to an implied duty according to the principles set out by the Supreme Court in *Braganza v BP Shipping Ltd* [2015] UKSC 17 ("***Braganza"***), meaning that GSAM had to exercise its discretion rationally and for the purposes for which it was conferred.

Individual team members would receive an indicative letter informing them that a recommendation had been made to GSAM for them to receive an award under the arrangement. The indicative letter explained that any award would be granted over a period of three years, that the recommendations made to GSAM could be amended to take into account matters related to the individual's performance or conduct or the performance of HFFX, and that the individual could only be reallocated Special Capital if they remained a member on the vesting date.

The discretion to vary the actual allocation of Special Capital to individual members from that set out in the indicative letters to them was a real discretion which was in fact exercised in some circumstances, even though rarely.

The intention of this arrangement was that (in addition to incentivising the individual team members), GSAM would be taxed at corporation tax rates on the amounts it retained and the subsequent reallocation of Special Capital would not give rise to tax for the individual members.

HMRC sought to tax the individual members in relation to the indicative allocations of Special Capital as received by them under section 850 of the Income Tax (Trading and Other Income) Act 2005 ("**ITTOIA**")**.** Section 850 deals with profit-sharing arrangements, and provides that "*for any period of account a partner's share of a profit or loss of a trade carried on by a firm is determined for income tax purposes in accordance with the firm's profit-sharing arrangements during that period."* HFFX and the individual members challenged HMRC's assessment that section 850 applied to the indicative allocations of Special Capital. The First-tier Tribunal, Upper Tribunal and Court of Appeal all held that s850 did not apply to the indicative allocations of Special Capital. HMRC appeals that decision to the Supreme Court ("**HMRC's appeal**"). The issue for determination by the Supreme Court in HMRC's appeal is whether the profit shares that were allocated to GSAM are to be regarded as the individual members' profit shares in accordance with HFFX's 'profit-sharing arrangements' under section 850 ITTOIA.

In the alternative, HMRC assessed that section 687 ITTOIA applied in relation to the deferred renumeration sums which were in fact received by the individual members. Section 687 concerns miscellaneous income, and provides that "*income tax is charged under this Chapter on income from any source that is not charged to income tax under or as a result of any other provision of this Act or any other Act."* HFFX and the individual members challenged HMRC's assessment that Special Capital received by individual members from GSAM should be taxed as miscellaneous income under section 687. The individual members argued that for section 687 to apply, the income had to be from a 'source', and that a purely voluntary payment (such as the payment under the CAP scheme of Special Capital to individual members) could not constitute a 'source' within the meaning of section 687. The individual members were unsuccessful in this argument before the First-tier Tribunal, Upper Tribunal and Court of Appeal. The individual members now appeal to the Supreme Court ("**the individual members' appeal**"). The principal issue which arises for determination by the Supreme Court in the individual members' appeal is whether the Special Capital which they received under the deferred renumeration arrangement is income from a 'source' within the meaning of section 687 ITTOIA.

Judgment

The Supreme Court unanimously dismisses HMRC's appeal and the individual members' appeal. Lord Sales delivers the judgment, with which Lord Lloyd Jones, Lord Hamblen, Lord Burrows and Lady Rose agree.

Reasons for the Judgment

HMRC's appeal

It is implicit in section 850(1) ITTOIA (which states that for any period of account, a partner's share of a profit or loss of a trade carried on by a firm is determined for income tax purposes "*in accordance with the firm's profit-sharing arrangements during that period,"*) that it must be possible to tell from the profit-sharing arrangements in place in the firm in the relevant period whether any part of the profit or loss of the firm's trading in that period is definitively attributable to the individual, and if so in what amount. The Supreme Court holds that this means that the arrangements have to include a contractual right for the partner to receive (or suffer) the part of the firm's profit (or loss) which is to be treated as his/ her income under section 850 in that period **[71]**. The reference in section 850 to rights of the partners to share in the profits "*during that period"* is to rights which exist during the relevant period of account **[72].**

Applying section 850, properly construed, to the present case means that the profits of HFFX in the relevant period of account are translated into income of the individual members in that period of account only to the extent that they had a contractual right in that period to share in those profits (that is, a contractual right subsisting in that period to have a share of HFFX's profits paid to them, even if the right was satisfied by a payment in fact made after the end of that period) **[74]**. The amounts in the indicative allocation letters were therefore not profit shares within the scope of section 850, because the individual member had no contractual right subsisting in the relevant period to receive that sum of money **[74]**.

Consequently, the Supreme Court dismisses HMRC's appeal in relation to section 850, and finds that the profit shares that were allocated to GSAM were *not* to be regarded as individual members' profit shares in accordance with HFFX's profit-sharing arrangements under section 850 ITTOIA.

The individual members' appeal

In order for section 687 to apply there must be a relevant 'source' of the income in question. A 'source of income' for the purpose of section 687 may exist so long as there is some relevant and sufficient factor connecting the income to the recipient **[116].** The word 'source' is to be given its natural meaning. An activity may qualify as a source. In the context of this case, the decision-making process of Mr Gerko and GSAM in implementing the CAP (subject to the *Braganza* obligations) is the source of the deferred income received by the individual members **[119]**.

Consequently, the individual members' rights under the LLP Deed, combined with decisions taken in their favour to reallocate Special Capital, amounted to a source from which the receipt of the Special Capital pursuant to those decisions was derived **[120]**. The Special Capital received by the individual members under the CAP is therefore income charged to income tax under section 687 ITTOIA.

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: Decided cases - The Supreme Court