Press Summary

27 July 2026

AXA Insurance UK PLC and another (Appellants) *v* Commissioners of Inland Revenue and another (Respondents)

[2026] UKSC 24

On appeal from: [2024] EWCA Civ 1430

Justices: Lord Hodge (Deputy President), Lord Hamblen, Lord Leggatt, Lady Rose and Lord Richards

Background to the Appeal

A group litigation order ("GLO") is made by a court where a large number of claimants bring separate proceedings raising the same or similar issues. One or more claims within a GLO can be chosen as a test case in which specified common issues are decided by the court. A judgment or order given in a test case which decides one or more of the common issues is binding on all other claims within that GLO at the time of the judgment or order "unless the court orders otherwise", as stated in the Civil Procedure Rules rule 19.23(1)(a) ("CPR 19.23(1)(a)"). This appeal concerns the circumstances in which a court should exercise its discretion under CPR 19.23(1)(a) to "order otherwise" so that the judgment in the test case does not apply to the other cases in the GLO.

The Controlled Foreign Companies and Dividend Group was formed by the making of a GLO order in July 2003. The claims within this GLO allege that the claimants paid tax under statutory provisions which are now accepted to have been incompatible with European Union law. The appellants' claims were included in the GLO.

AXAIUK's claim relates to corporation tax it paid on dividends it received from its minority shareholdings in non-UK resident companies. Its claim extends back to the accounting period ending 31 December 1995. Because AXAIUK issued its claim on 8 April 2003, payments of tax in respect of that early accounting period fall outside the applicable six-year limitation period and so would ordinarily be barred. However, AXAIUK relies on section 32(1)(c) of the Limitation Act 1980, which postpones the date on which the limitation period will start to run in an action for relief from the consequences of a mistake until the claimant could with reasonable diligence have discovered the mistake. The issue in AXAIUK's appeal is when the limitation period starts to run for the purposes of section 32(1)(c) ("the Limitation Issue").

GREA's claim relates to advance corporation tax ("ACT") it paid on the dividends it declared and paid to its shareholders. Some of the unlawfully demanded ACT it paid to the Revenue was then used to offset a lawfully incurred liability for mainstream corporation tax ("MCT") which arose in a later accounting period. The issue is whether GREA has a common law claim for interest to compensate it for the loss suffered by in effect paying the ACT prematurely ("the Set-Off Issue"). GREA's claim also raises the same Limitation Issue as AXAIUK's claim.

If the Set-Off Issue and the Limitation Issue were to come before the Court for determination now outside the context of the GLO, both issues would be decided against the claimants **[36], [99] – [103]**. GREA would not have a claim at common law for compensation for the loss suffered by in effect paying the ACT prematurely (applying *Test Claimants in the FII Group Litigation v Revenue and Customs Comrs* [2021] UKSC 31 ("*FII SC 3*")) **[84] – [89]**. Furthermore, the limitation period for the purposes of section 32(1)(c) would run from the date on which the appellants could reasonably have realised they had a worthwhile claim (applying *Test Claimants in the FII Group Litigation v Revenue and Customs Comrs* [2020] UKSC 47 ("*FII SC 2*") **[96].**

However, the appellants argue that one of the GLO test cases that was brought by companies in the Prudential group headed by Prudential Assurance Co Ltd plc ("the *Prudential* test case") determined both the Set-Off Issue and the Limitation Issue in favour of the taxpayers and that those determinations are binding on their claims in accordance with the GLO regime.

HMRC argue that the court should exercise its discretion under CPR 19.23(1)(a) to order that the *Prudential* test case decision on the Set-Off Issue should not bind GREA's claim. HMRC further submit that the *Prudential* test case did not in fact determine the Limitation Issue as a common GLO issue. Accordingly, the appellants' claims should be determined by applying the law as it currently stands.

The Court of Appeal decided in favour of HMRC. It exercised its discretion to order that the decision in the *Prudential* test case decision on the Set-Off Issue was not binding on the appellants' claims. It also held that the *Prudential* test case had not determined the start date of the limitation period for any claims other than Prudential's.

Judgment

The Supreme Court unanimously dismisses the appeal. Lady Rose and Lord Richards give the judgment, with which Lord Hodge and Lord Hamblen agree. Lord Leggatt gives a concurring judgment.

Reasons for the Judgment

<u>The discretion to "order otherwise": in general</u>

The avoidance of injustice is the principle which must guide the court in the exercise of its power to order otherwise, as it guides any exercise of discretion. That does not mean, however, that the rule confers a discretion with a wide ambit on the judge exercising it. The overall purpose of the GLO regime is to facilitate the economic and efficient disposal of claims raising the same issues, and thereby to facilitate access to justice **[14] - [21].** To ensure this purpose is not undermined, there will need to be some exceptional quality about the circumstances before it becomes appropriate for the court to consider whether to exercise its discretion to order otherwise **[116]**.

In cases in which one party challenges the binding nature of the test case judgment because the legal basis of the reasoning in that judgment has been shown to be wrong, the court must balance the need to protect the beneficial purpose of a GLO against the injustice that will be caused if a claim is determined otherwise than in accordance with the correct legal rules **[123] – [127]**.

Although it is ordinarily unjust and contrary to the rule of law to make orders which determine right or impose liabilities on a basis which is known to be wrong in law, the court must still consider whether, in the particular circumstance of the GLO proceedings in question, it would nonetheless be unjust not to apply the test case decision. Relevant factors to which the court must have regard include: (i) whether the result of disapplying the test case judgment will be to impose on the party relying on it further lengthy and costly proceedings, (ii) whether there is any particular unfairness to claimants arising from the fact that they were not chosen to be the test case in this particular GLO, and (iii) whether a party made a tactical decision in respect of an issue in the test case (such as conceding a point or not pursuing a point on appeal) on which they rely in later arguing that it should not be binding **[128] – [133].**

The Set-Off Issue

The Court holds that the Court of Appeal was right to exercise its discretion under CPR 19.23(1)(a) to order that the determination of the Set-Off Issue in the *Prudential* test case should not bind GREA's claim.

The circumstances that have arisen in this GLO are unusual, primarily because there have been extraordinary developments in the law in the 20 years since the GLO was formed. For many years it was settled law that there was no cause of action for compensation for the loss of the use of money when the debt had been paid before the start of proceedings. In 2007 the House of Lords decided in *Sempra Metals Ltd v Inland Revenue Comrs* [2007] UKHL 34 that such a cause of action did exist **[53] – [62], [137] - [138].** That was the law the judge applied to the Set-Off Issue in the *Prudential* test case.

However, after the Set-Off Issue in the *Prudential* test case was decided, *Sempra Metals* was overturned by the Supreme Court. In 2021, the Supreme Court held in *FII SC 3* that there is no restitutionary claim for the recovery of money paid under a mistake of law **[138] – [139].** The Set-Off Issue in the *Prudential* test case was therefore determined on the basis of a legal authority now known to be wrong.

It would be a serious injustice for the Revenue if they had to meet the appellants' claims valued at many millions of pounds when there is no legal basis for those claims **[145]**. There are no factors in this case which weigh against applying the correct law to the appellants' claims **[141] – [150]**. Accordingly, it is appropriate in the circumstances of this case to exercise the discretion to order that the decision in *Prudential* in respect of the Set-Off Issue is not binding in GREA's claim. It follows that GREA's claim must be determined in accordance with *FII SC 3*, which held that a claim in respect of set-off ACT does not give rise to a cause of action for recovery of money paid under a mistake of law. Instead GREA has a claim to simple interest under a statutory provision enacted specifically to provide a remedy in situations like this. That is sufficient to vindicate GREA's EU law rights.

The Limitation Issue

The Court holds that the *Prudential* test case did not determine the date on which the limitation period starts to run as a common GLO issue. Accordingly, there is no judgment or order in a test case in respect of the Limitation Issue which binds AXAIUK's claim.

Although the start of the limitation period was important for the assessment of the claim in this GLO, there appears to have been an underlying assumption, presumably based on the law as it then stood, that for the purposes of section 32(1)(c), the Prudential claimants could not have been aware of their mistake in paying ACT before the decision of the European Court of Justice in *Test Claimants in the FII Group Litigation v Inland Revenue Comrs* (Case C-446/04). It was that decision which established that the relevant UK tax provisions were incompatible with EU law. The date of discoverability for the purposes of section 32(1)(c) was simply not an issue which was addressed or decided in the *Prudential* test case **[170].**

It follows that AXAIUK's claim should be determined in accordance with the law as established in the later decision *FII SC 2*, in which the Supreme Court unanimously held that the limitation period started to run for the purposes of section 32(1)(c) at a much earlier stage, namely when the taxpayers could reasonably have realised that they had a worthwhile claim that the regime was unlawful **[96], [172].**

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