



TC05920

Appeal number: TC/2014/04397

CORPORATION TAX – whether accounts in accordance with generally accepted accounting practice – FRS23 the applicable standard – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BALL UK HOLDINGS LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE Barbara Mosedale
Mr David Williams**

**Sitting in public at the Royal Courts of Justice, the Strand, London on 28
November - 2 December 2016 and 2-3 February 2017**

**Ms N Shaw, QC, instructed by Hogan Lovells International LLP, for the
Appellant**

**Mr J Henderson, Counsel, instructed by the General Counsel and Solicitor to
HM Revenue and Customs, for the Respondents**

DECISION

1. The parties were agreed that the issue for determination in this hearing was whether the accounts of the appellant company ('BUKH') for the year ended 31 December 2006 were prepared in accordance with UK generally accepted accounting practice ('UK GAAP'). HMRC's case is that they were not because they showed BUKH's functional currency as US dollars ('dollars') whereas, in HMRC's opinion, it was pounds sterling ('sterling').
2. S 85A Finance Act 1996 provided at the time in question:
- (1)...the amounts to be brought into account by a company for any period for the purposes of this Chapter are those that, in accordance with generally accepted accounting practice, are recognised in determining the company's profit or loss for the period
3. It was agreed that if the Y/E 2006 accounts were in accordance with UK GAAP, then BUKH was properly treated in its accounts and corporation tax return as having suffered a foreign exchange loss when its functional currency was changed to US dollars, its previous years' accounts having been shown in sterling. On the other hand, if the Y/E 2006 accounts were not in accordance with UK GAAP because they treated the functional currency as being dollars, then BUKH had improperly shown a foreign exchange loss in its accounts, and HMRC's amendment of its corporation tax return to remove the tax advantage which resulted from this reported foreign exchange loss (of about £24.6 million) was correct.
4. So the dispute was whether or not BUKH's accounts for Y/E 2006 were in accordance with UK GAAP in treating its functional currency as dollars rather than sterling.

Accounts in accordance with UK GAAP?

5. The question for the Tribunal was whether BUKH's 2006 accounts were:
- 'in accordance with generally accepted accounting practice'
- So what is 'generally accepted accounting practice'? We consider that it is generally accepted accounting practice to adopt an accounting standard permitted by the UK Accounting Standards Board ('UK ASB'). BUKH applied (or purported to apply) FRS 23 when adopting dollars as its functional currency, and FRS23 was an accounting standard permitted by the UK ASB at the time in issue.
6. So the question is whether BUKH actually applied FRS23 and that is a matter of fact, on which we had expert opinion evidence. Before dealing with that expert evidence, we deal with the appellant's case on whether it has to prove that it correctly applied FRS23 or whether it only has to prove that it applied a reasonable interpretation of FRS23. This submission was made by Ms Shaw in reliance on *Versteegh Ltd*.

Versteegh Ltd and others [2013] UKFTT 642 (TC)

7. We were referred to this case as one question in that appeal was whether the taxpayer's accounts were in conformity with GAAP as required by s 85(2) FA 1996. The FTT said:

5 “...the question is whether the accounting treatment adopted by [the taxpayer]...is authorised. For this purpose it will be authorised only if it is in conformity with GAAP: see 85(2) FA 1996.

10 [13] If [the taxpayer's] accounting method is in accordance with GAAP it will be authorised even if it is not the only, or even the best (or fairest), method that accords with GAAP. Thus, and this was common ground, if HMRC are to succeed on the accounting issue, we must find that the correct and only application of GAAP in the circumstances is [to do what the taxpayer did not do in that case]....

15 8. Ms Shaw's point was that, therefore, she did not have to show that HMRC's interpretation of FRS23 was wrong, merely that it was only a possible interpretation of FRS23 and that in particular the appellant had adopted a reasonable interpretation of FRS23.

20 9. The applicable accounting standard at issue in *Versteegh* was FRS 5 which required the entity to report the 'substance' of a transaction in its accounts. What was meant by that was also set out in the accounting standard and it included identifying whether a transaction had given rise to new assets or new liabilities or diminished or increased the entity's existing assets and liabilities.

25 10. The relevant facts were that the taxpayer (a holding company) had made a loan to a subco in return, not for interest, but an agreement by the subco to make a transfer of value to another subco within the same group owned by the taxpayer.

30 11. The disagreement between the experts was whether the transaction increased the value of an existing asset. The payment of interest by one subco to another decreased the value of one subco while increasing the value of the other subco. The Tribunal decided that the taxpayer's expert's evidence that ignoring the transaction was 'an acceptable[approach], such that the treatment actually adopted by [the taxpayer] is within GAAP [42]'.
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 [59]...we consider [taxpayer's expert] was right to consider the substantive effect on the group as a whole; FRS 5 is looking to substance to determine the correct accounting treatment of a particular company, and not to the accounting treatment of individual companies to determine substance. Looked at from the perspective of the group as a whole, the substantive analysis is that no new asset was created for group....

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 [67] What the expert evidence has shown is that there is scope for accountants to disagree on the result of an application of FRS 5 to a given set of circumstances. For the reasons we have given, we do not consider that [the taxpayer's expert's] analysis...was outside what was

permitted by the application of FRS 5. It is not necessary for us to make any findings as to [HMRC's expert's] analysis, except to say that we find that the accounting treatment he has concluded would be appropriate is not the only proper accounting treatment within GAAP.

5 [68] We should say, nevertheless, that if a choice between the conclusions reached by the experts had been required, we would have preferred the conclusions reached by [the taxpayer's expert] over those of [HMRC's expert]. We have referred earlier to our view that [the taxpayer's expert's] approach more closely followed the guidance in
10 FRS5. We were also unconvinced by [HMRC's expert's] analysis of the new asset being the [taxpayer's] return....

12. The FTT here clearly considered that both experts could be right: in other words that the experts' application of the standard to the same facts could lead to a different conclusion, both conclusions being in accordance with generally accepted accounting
15 practice. We do not take the FTT as meaning that the standard can have more than one meaning, just that the application of that meaning by two different accountants to the same facts in a borderline case could lead to a different outcome each of which is consistent with GAAP.

13. In her skeleton Ms Shaw justified her statement that the question is whether the
20 appellant's application of FRS 23 was reasonable by saying that was the same question as whether the conclusion the appellant reached was within the range of conclusions permitted by FRS 23. We consider that the question was whether the accounts were in accordance with UK GAAP, and specifically in accordance with FRS 23, and not whether the appellant reasonably thought they were in accordance
25 with FRS 23. We do accept, however that in borderline cases there may be a range of conclusions permitted by the application of FRS23. In other words, in borderline cases, two different accounting professionals, faced with identical facts and giving the standard the same and correct interpretation, might nevertheless reach different conclusions on its application. That was consistent with the expert evidence in this
30 case, it was consistent with what was said in *Versteegh*, and consistent with common sense.

14. Ms Shaw, however, considered all she had to show was that the appellant had
relied on a reasonable interpretation of FRS 23. She relied on one of the Big 4's
35 manuals on the standard (in particular PwC's example 3 discussed below at §§187-197) where the manual suggested that there were two different ways of reading the standard, albeit that either route led to the same answer. Ms Shaw's case was that this demonstrated that it was legitimate to have more than one interpretation of how the same standard should be applied.

15. However, our view is unaffected. Accounts must be in accordance with GAAP,
40 not merely reasonably thought to be in accordance with GAAP. While there might be a range of legitimate conclusions, particularly in borderline cases, which are in accordance with GAAP, the accounts must be shown to be in accordance with GAAP.

16. We consider it is clear that if an accounting standard is misapplied by an accountant, or even a number of accountants, that means the accounts are not in

accordance with generally accepted accounting practice. The generally accepted accounting practice is to apply the relevant standard: a misapplication of that standard is therefore not generally accepted accounting practice. To be GAAP-compliant, it must be a reasonable application of a correctly interpreted standard.

- 5 17. Ms Shaw's position was that FRS 23 must not be interpreted as if it were a statute; on the contrary it should be interpreted to be as it would reasonably be understood by accounting professionals. We consider that that is correct. The question is whether the company properly applied an accounting standard so that is a question of what the accounting standard would mean to accountants, as they are the persons who apply it.

10 **The facts**

18. There was no dispute on the applicable law which was as we have set out above. What was very much in dispute was the expert opinion evidence on UK GAAP. The facts were not really in dispute but they were relevant and we set out our findings below.

15 *The evidence*

19. The Tribunal had the benefit of an agreed statement of facts. The Tribunal also had the evidence of four witnesses of fact. Mr Bradford, who was a Vice President within Ball Corporation ('Ball') at the relevant time, had responsibility for the decision, referred to below, to change BUKH's functional currency from sterling to
20 dollars. The second witness of fact was Mr Hedley, who was a director of BUKH immediately before and then a long time after the planning referred to below, but not actually during the time it took place. The next witness of fact was Mr Robinson, who was a director of BUKH from August 2004 onwards and was therefore a director at the time of the relevant decisions. The last witness of fact was Mr Karsten
25 Schleicher who was employed by a German Ball group company, but was (at the time in question) European Director Accounting for Ball and his employment costs were recharged to Ball.

20. We accepted the factual evidence of all four witnesses of fact.

Findings of fact

30 21. Ball is a US publically listed company owning an international group of companies, involved in the manufacture of plastic and metal packaging for food, drinks and household products.

22. BUKH is a company registered and resident in England and Wales, incorporated in 2002. Ball is the ultimate parent of BUKH; its immediate parent company is Ball
35 European Holdings SARL, a company registered in Luxembourg.

23. BUKH was an investment holding company. It did not carry on any manufacturing activities itself. It was incorporated in order to hold the UK arm of the Schmalback-Lubeca European-based group of companies, acquired by the Ball

group in January 2003. Following the acquisition and via various subsidiary companies, BUKH owned the shares in the UK company carrying on the UK manufacturing activity previously carried on within the Schmalback-Lubecca group.

5 24. The initial money flow to achieve this acquisition was as follows. BUKH's original equity subscription was €130 million (from other intermediate holding companies in the Ball group) which it lent on short term loan to a German Ball-group company. The repayment to BUKH of this loan together with a loan to BUKH of €135 million from Ball Luxembourg was then loaned by BUKH in sterling to one of BUKH's subsidiaries (bar some £5 million which was used to subscribe for shares in
10 another subsidiary). The money was used to acquire the UK arm of the Schmalback-Lubecca group at the start of 2003.

25. At the end of 2003, the loans were re-financed. The details of the new loans and equity do not matter. The loans were denominated in sterling and carried interest payable in sterling.

15 26. There was a further re-financing in 2004, the major objective of which was to enable the payment of a large dividend to Ball in 2005 as, due to changes in US tax law, there was a window with a favourable rate of tax on dividends received by Ball. Because of this, Ball decided to bring as much cash as possible back to the US. The details of the new loans and equity do not matter. The loans were denominated in
20 sterling and carried interest payable in sterling.

27. In summary, as an investment holding company, BUKH's activities were limited. It made and received loans to and from its subsidiaries and other Ball-group companies which were re-financed on two or three occasions; it received dividends from its subsidiaries which permitted it to fund the interest on its borrowings; in 2005
25 it paid a dividend (of approximately £43 million) to its immediate parent, a European company. It undertook all of these activities in sterling with the exception of the short term loan in Euros in 2002 and the derivative which we mention below. The loans it made and received were not only in sterling but the interest rates were determined by UK prime rate or LIBOR.

30 *BUKH's accounts*

28. BUKH's accounts for its first four years, up to 31 December 2005, were all prepared with sterling as its functional currency. This was in accordance with SSAP
20 which was the accounting standard which applied at the time.

29. At the end of 2006, on advice from PwC, and with the intention of avoiding tax,
35 BUKH decided to implement a scheme which it considered would result in it being able to change its functional currency for the year end 2006 to dollars. The aim of the scheme was to trigger the right to move from the SSAP 20 accounting standard to the FRS 23 accounting standard.

30. To do this, the scheme required BUKH to enter into a derivative contract, which it
40 did with a group member just before the end of the year. Under accounting rules,

5 doing so gave it a choice as to whether to apply fair value accounting, which it chose to do. Applying fair value accounting triggered a requirement to comply with FRS 26, and also with FRS 23 (which determined functional currency). Triggering this requirement to change from SSAP 20 to FRS 23 was the reason why BUKH entered into the speculative investment of the derivative contract.

10 31. BUKH entered into the derivative transaction at the end of December 2006 in dollars. The derivative was worth about \$30,000. While both parties and the experts were agreed that entering into the derivative triggered the right to apply FRS23, they were also agreed that the derivative was not significant in amount to BUKH (the value of its subsidiaries being about half a billion dollars). Therefore, the experts were agreed that the derivative, while it had triggered the application of FRS23, was irrelevant to the determination of BUKH's functional currency under FRS23.

15 32. BUKH then applied – or purported to apply - FRS 23 to change its functional currency in its accounts for 2006 to dollars. That had the effect of generating, on paper at least, a FOREX loss as its assets and liabilities were revalued on the previous year when they had been shown in sterling. The 2006 accounts, including this FOREX loss, were audited by PwC who stated their view that they gave a true and fair view in accordance with UK GAAP.

Who made the decisions for BUKH?

20 33. Mr Bradford's evidence was very detailed and it showed that from the outset in 2002 and throughout the re-financings of BUKH, and including the scheme to change functional currency at the end of 2006, all decisions of any importance relating to BUKH and its funding were taken by directors of Ball. Mr Hedley and Mr Robinson's evidence on this concurred with Mr Bradford's.

25 34. BUKH's board of directors, having first reassured themselves that the decisions were lawful, merely implemented the decisions already taken by persons acting on behalf of Ball. BUKH's board did not have any real input into BUKH's decision making process. BUKH's directors were also directors of the operational companies (BUKH's subsidiaries) and while they had discretion so far as the operational companies were concerned, their role as BUKH directors was largely passive, simply
30 assuring themselves that what Ball asked them to do was in accordance with applicable UK law and then signing off on pre-typed resolutions provided to them.

35 35. We find that the decision to enter into the derivative contract and then to adopt accounts which showed US dollars as BUKH's functional currency was made by BUKH directors passively implementing the instructions given to them by Mr Bradford, on behalf of Ball.

40 36. HMRC pointed out that the evidence was that PwC originally approached a Mr Schildgen, a board member of the European holding company, with the scheme which is the subject of this appeal. We do not see that that matters. The decision whether to implement the scheme was taken by Mr Bradford, albeit having listened to the advice

of various persons employed by various Ball subsidiaries, including the advice of Mr Schleicher,

37. While Ball left operational decisions to the directors of the various local companies, BUKH was an intermediate holding company and not an operational company, and decisions relating to investments, including any decisions about what BUKH was to do, were taken directly by Ball. We find decisions made by BUKH, although legally resolved upon by the company's board of directors, were decided upon by persons acting on behalf of Ball, its ultimate parent company.

Involvement of PwC audit team

38. In so far as HMRC suggested that the decision to implement the scheme and then to change functional currency to dollars was taken with advice from PwC's tax team but not their audit team, we reject that on the evidence. We accept Mr Bradford's evidence that the PwC audit team were involved with the implementation of the scheme.

Ball's consolidated accounts

39. Ball created consolidated accounts. In these, BUKH's functional currency under the applicable US accounting standard (FAS 52) had always been determined to be sterling. A change to a dollar functional currency for BUKH could have indirectly affected Ball's share price (by creating a loss) and for this reason was quite unacceptable to Mr Bradford. He would not have proceeded with the planning in 2006 if there was a risk that it could have led to a change of BUKH's functional currency in Ball's consolidated accounts (prepared under US GAAP).

40. Nevertheless, Mr Bradford took the view (and the experts agreed he was correct to do so) that the test under FAS 52 was not the same test as under FRS 23 so it was quite possible for a company to legitimately have dollars as its functional currency under FRS 23 and sterling under FAS 52. Mr Bradford took the view that BUKH's functional currency under FAS 52 was and remained sterling despite the planning that was intended to lead to a change in functional currency under UK GAAP. Mr Kraehnke, an expert in FAS, whose evidence we refer to below, agreed with Mr Bradford's view that BUKH's functional currency remained sterling under FAS and HMRC did not suggest that that view was wrong. We accept it was right.

The relevance of motive

41. The appellant made no secret that its motive behind entering into the derivative contract was to put BUKH in the position (as it saw it) to adopt FRS 23 and a dollar functional currency so that it would (on paper) make a loss and obtain tax relief. The scheme was promoted to it by PwC and was a disclosed tax avoidance scheme with a DOTAS number.

42. The appellant's position is that its motive was quite irrelevant to the issues which the Tribunal had to decide, and in particular whether its accounts to Y/E 2006 were in

accordance with UK GAAP. While Mr Henderson for HMRC certainly referred to the appellant's tax avoidance motive, he did not make out a case that it was relevant. We find that it was not relevant to the question in front of the Tribunal and we do not refer to it again.

5 *Did Mr Bradford consider it UK GAAP compliant to adopt US dollars as BUKH's functional currency?*

43. We accept that Mr Bradford considered that BUKH's 2006 accounts were UK GAAP compliant. In doing so, he was acting on advice. We find Mr Bradford's initial view, on reading FRS23 when the scheme was first suggested by PwC, was that
10 BUKH's functional currency was and would remain sterling under FRS23. He also accepted that BUKH was mainly exposed to sterling and that its primary economic environment, at least with the meaning given to it by SSAP20, remained sterling. Nevertheless, he was persuaded that it was right to analyse FRS 23 in a similar manner to that described to us by Mr Chandler (see below). In particular, he came to
15 the conclusion that BUKH's functional currency should be determined as dollars because BUKH was actively controlled by Ball, a company based in the US. Because he was persuaded this was the correct way to apply FRS23 to BUKH, Mr Bradford authorised the implementation of the scheme. We do not agree with his process of reasoning, as we explain below in respect of Mr Chandler's reasoning, but we do
20 accept that Mr Bradford considered it correct and for that reason he considered BUKH's 2006 accounts to be in accordance with UK GAAP.

44. Mr Henderson suggested that Mr Bradford had accepted that BUKH was taking a chance (a 'shot to nothing') on re-defining its functional currency as dollars as it had nothing to lose, but that is not our understanding of the evidence. While we do not
25 consider for the reasons given below that BUKH was correct to adopt dollars as its functional currency, we do find that Mr Bradford's decision to adopt dollars was because he was persuaded by the company's advisers that it was correct to do so.

The expert opinions

Mr Chandler

30 45. Mr Chandler is a partner in KPMG LLP, a firm in the UK, a fellow of ICAEW, since 2008 lead of KPMG's accounting advisory services team providing advice on UK GAAP and IFRS (International Financial Reporting Standards) to many companies including some FTSE 100 and 250 companies and has a great deal of experience in advising on the functional currency of group companies including
35 intermediate holding companies. His independence and expertise was not challenged by HMRC and is accepted by the Tribunal.

Mr Kraehnke

40 46. Mr Kraehnke is a partner in KPMG LLP in the US, a firm linked by a global network to KPMG in the UK. He is a qualified US accountant and most of his practice concerns US GAAP and the US accounting standards ('FAS'). Within

5 KPMG in the US, he is nominated as a SEC reviewing partner. His expertise in IFRS matters comes from two years as a practice fellow at the IASB headquarters (2008-2010) working on standard setting and from practical application of IAS (International Accounting Standards) in his work with KPMG which continues to date. He is also one of KPMG's accredited IFRS reviewing partners, which means he is authorised as the second partner to sign off on select IFRS engagements.

10 47. He did not put himself forward as an expert on UK GAAP, in which he is not qualified. He considered himself as much an expert in IRS as in FAS. We consider he was qualified to give relevant opinion evidence not only about FAS but also about IRS21, which was relevant to the main issue in the appeal, because FRS23 adopted IAS21.

48. His independence and expertise was not challenged by HMRC and is accepted by the Tribunal.

Mr Chopping

15 49. Mr Chopping was a partner in Moore Stephens LLP. He was head of that firm's Audit Technical Department and, as well as providing advice on IFRS and UK GAAP, he wrote and lectured on those subjects. He was chairman of the ICAEW's Technical and Practical Auditing Committee and had previously edited the UK Accounting Standards.

20 50. His independence and expertise was not challenged by the appellant and is accepted by the Tribunal.

Summary

25 51. It would be possible to nit-pick at any of the evidence of the three experts. For instance, when the various problems with his views was put to Mr Chandler in cross-examination, rather than give us an explanation of them which made sense, his frequent fall-back position was to simply to justify his view by saying it was the one adopted by all the 'Big 4' accounting firms (ie PwC, Deloitte, KPMG and Ernst & Young). Mr Kraehnke, at one point, did the same, although he later accepted that the Big 4 manuals did not in fact make it clear that his and Mr Chandler's view of the test was the correct.

30 52. But, at the end of the day, the reason we accepted Mr Chopping's evidence over Mr Chandler's and over Mr Kraehnke's (in so far as he gave evidence on IAS21) was because Mr Chopping's interpretation was consistent with the wording of and the notes to the relevant accounting standard, and we found that the appellant's experts' was not. We explain this in detail below.

Other peoples's views

53. All the experts said that their interpretation of FRS 23 was the interpretation that their colleagues and accountancy-trained acquaintances would put on FRS 23. We

put no weight on this evidence from any of the experts. In so far as these other persons were concerned, they were not in front of the Tribunal and their views could not be tested. We do not know if they really agreed with the various interpretations discussed below because we do not know what they were asked or what they said. So we ignore this evidence.

FRS 23 and IAS 21

54. The International Accounting Standards Board ('IASB') sets the International Accounting Standards ('IAS'). The Accounting Standards Board ('ASB') is the UK Board which set the 'Financial Reporting Standards' (FRS). FRS23 is the accounting standard with which the appeal was concerned; it adopted IAS21.

55. FRS23 was very long and we cite below only the parts which we consider relevant. It started with a few paragraphs of introduction by the ASB (largely reproduced below) and then a preface by the ASB. It then reproduced the IASB's introduction to IAS21. This is in the form of consecutive numbered introductory notes ('IN's). It then reproduced IAS21 itself which runs to 61 paragraphs, but the appeal was only concerned with paragraphs 8-13 and 17 (set out below). There were then a few amendments with which we are not concerned. Then followed notes ('N's) by the ASB on the application of FRS23 in the UK and Ireland; it then replicated the Basis for Conclusions (BCs) of IAS21 which are notes by the IASB which accompanied IAS21 but did not form a part of it. We refer to these separately.

FRS 23 (IAS 21) The effects of Changes in Foreign Exchange Rates

FRS 23 embodies IAS 21 'the effects of changes in foreign exchange rates' and some amendments to that standard adopted for entities subject to UK accounting standards.

The Statement of Standard Accounting Practice in FRS 23 is set out in paragraphs 1-62 and the appendix. All the paragraphs have equal authority. Paragraphs in bold type state the main principles.

Accompanying the Statement of Standard Accounting Practice is the basis for the conclusions reached in the Statement. This does not form part of the Statement.

The statement of Standard Accounting Practice should be read in the context of its objective as stated in paragraphs 1-2, the Basis for Conclusions set out in paragraphs BC1-BC32, and the Accounting Standards Board's 'Foreword to Accounting Standards' and 'Statement of Principles for Financial Reporting'.

....

Definitions

8 The following terms are used in this Standard with the meanings specified:

....

Foreign currency is a currency other than the functional currency of the entity

5 ***Foreign operation is an entity that is a subsidiary, associate, joint venture or branch of a reporting entity, the activities of which are based or conducted in a country or currency other than those of the reporting entity.***

Functional currency is the currency of the primary economic environment in which the entity operates.

....

10 ***Elaboration on the Definitions***

Functional Currency

15 **9** The primary economic environment in which an entity operates is normally the one in which it primarily generates and expends cash. An entity considers the following factors in determining its functional currency:

(a) the currency:

(i) that mainly influences sales prices for goods and service (this will often be the currency in which sales prices for its goods and services are denominated and settled); and

20 (ii) of the country whose competitive forces and regulations mainly determines the sales prices of its goods and services.

(b) the currency that mainly influences labour, material and other costs of providing goods or services (this will often be the currency in which such costs are denominated and settled).

25 **10** The following factors may also provide evidence of an entity's functional currency

(a) the currency in which funds from financing activities (ie issuing debt and equity instruments) are generated.

30 (b) the currency in which receipts from operating activities are usually retained.

35 **11** The following additional factors are considered in determining the functional currency of a foreign operation, and whether its functional currency is the same as that of the reporting entity (the reporting entity, in this context, being the entity that has the foreign operation as its subsidiary, branch, associate or joint venture):

40 (a) whether the activities of the foreign operation are carried out as an extension of the reporting entity, rather than being carried out with a significant degree of autonomy. An example of the former is when the foreign operation only sells goods imported from the reporting entity and remits the proceeds to it. An example of the latter is when the operation accumulates cash and other monetary items, incurs expenses, generates income and arranges borrowings, all substantially in its local currency.

(b)whether transactions with the reporting entity are a high or a low proportion of the foreign operation’s activities.

5

(c)whether cash flows from the activities of the foreign operation directly affect the cash flows of the reporting entity and are readily available for remittance to it.

(d)whether cash flows from the activities of the foreign operation are sufficient to service existing and normally expected debt obligations without funds being made available by the reporting entity.

10

12 when the above indicators are mixed and the function currency is not obvious, management uses its judgement to determine the functional currency that most faithfully represents the economic effects of the underlying transactions, events and conditions. As part of this approach, management gives priority to the primary indicators in paragraph 9 before considering the indicators in paragraphs 10 and 11, which are designed to provide additional supporting evidence to determine an entity’s functional currency.

15

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13 An entity’s functional currency reflects the underlying transactions, events and conditions that are relevant to it. Accordingly, once determined, the functional currency is not changed unless there is a change in those underlying transactions, events and conditions.

.....

Summary of the approach required by the standard

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17 In preparing financial statements, each entity – whether a stand-alone entity, an entity with foreign operations (such as a parent) or a foreign operation (such as a subsidiary or branch) – determines its functional currency in accordance with paragraphs 9-14....

Areas of agreement between experts

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56. There was agreement between the appellant’s experts and HMRC’s expert on some issues relating to how FRS23 should have been applied to BUKH’s accounts in 2006 and we summarise that agreement here:

35

(1) With one caveat dealt with below at §§62-63, §9 of FRS23 was not applicable here because BUKH was not an operational company: it did not trade. On the contrary it was a passive investment holding company.

(2) Both experts agreed that if §9 gave an obvious functional currency, there was no need to consider §10 and 11; but in the case of BUKH, §10 (secondary indicators) and §11 (additional indicators) had to be considered because the answer was not obvious from §9.

40

(3) §10(b) was not relevant to BUKH because, not being an operating company, BUKH did not have receipts from operating activities. (It did have receipts, mostly in the form of dividends from its subsidiaries, which it used to fund its interest payments on debt obligations. These receipts and payments were all in sterling but are taken account of under §10(a) and not 10(b)).

5 (4) That the answer to §10(a) was sterling because sterling was the currency in which funds from BUKH's financing activities (ie issuing debt and equity instruments) were generated. In other words, it received sterling dividends from its subsidiaries, and sterling interest payments from its subsidiaries.

(5) The §§11(b)-(d) indicators are all about cash flow and transactions and, so far as BUKH was concerned, the answer to all three was sterling.

10 (6) §12 was not engaged because the functional currency of BUKH was obvious. Needless to say, Mr Chandler thought the obvious answer was dollars; Mr Chopping that the obvious answer was sterling.

(7) They were also agreed, as we have already said, that nothing changed in how BUKH operated from 2003-2006 and the single derivative contract was not significant for the purposes of determining functional currency.

Areas of disagreement between the experts

15 57. We will take the areas of disagreement numerically, starting with the first relevant paragraph, §8.

Primacy of §8?

58. Paragraph 8 comprised, as partly set out above, a list of definitions in bold type face. The one the relevance of which was controversial was:

20 *Functional currency* is the currency of the primary economic environment in which the entity operates.

25 59. Mr Chandler's view was that the entire standard should be read as a whole; Mr Chopping thought primacy should be given to §8. As we have cited above (in §55, second indented paragraph under heading 'FRS23...'), all paragraphs have equal authority but those in bold type (ie §8) state the main principles.

30 60. We agree with Mr Chopping that that means the test for functional currency is intended to identify the primary economic environment in which the entity operates and all the paragraphs of the FRS should be read with that intention in mind. Ms Shaw was very critical of Mr Chopping's approach, suggesting he was simply applying SSAP20 (see below at §§147-150) and ignoring the words of FRS23, but we consider that criticism unfounded. The primary economic environment in which the entity operates is relevant because FRS23 is seeking to identify it.

35 61. What is 'the primary economic environment in which the entity operates'? Ms Shaw suggested that it was a phrase without a meaning, so what it means should be discerned by considering §9 onwards. And while we agree that §9 onwards does elaborate on what was meant by that phrase in §8, we did not agree the phrase is meaningless by itself. It indicates that the test is about the economic environment of a company and not, for instance, actual or legal control of a company. We agree with Mr Chopping that a reader of §§9-14 should interpret those paragraphs with §8 in

mind. Certainly an interpretation of §§9-14 that flew in the face of §8 would be a wrong interpretation.

Relevance of §9

5 62. As we have said, all experts were agreed that all, bar the first sentence of, §9 only applied to trading companies because its questions were concerned with sales receipts and production costs. The caveat was that Mr Chopping considered that the first sentence of §9 was relevant to all companies applying FRS23 as it was a general statement of universal application. Its effect was to reiterate §8 that the question was primary economic environment, and that meant looking at the inflows and outflows of
10 money. The appellant's case was that §9 was wholly irrelevant to non-trading companies.

63. While only a minor point, we agree with Mr Chopping. He appears right on the plain wording of §9 and what it said was consistent with all the other paragraphs of FRS23 such as §8, §§10-11, as we explain below.

15 *Meaning of test in §11(a)*

64. The crux of the case was the meaning to be attributed to §11(a). That paragraph splits into two, (1) the rule, and (2) examples of the application of the rule. We deal with the rule itself first and that is:

20 (a) whether the activities of the foreign operation are carried out as an extension of the reporting entity, rather than being carried out with a significant degree of autonomy.

65. The experts and counsel all seemed agreed, as we are, that this provision intended to set out opposites, or antonyms. At the one extreme is an entity which carries out its activities as an extension of 'the reporting entity' (in this context, it was agreed that
25 that meant its parent or ultimate parent). At the opposite extreme is an entity which carries out its activities with a significant degree of autonomy.

66. Mr Chandler's approach was in effect to substitute a possible dictionary definition of 'autonomy' for the word autonomy, which gave the meaning:

30 'the ability to make your own decisions without being controlled by anybody, or freedom of choice'

It was his evidence that he would look for the meaning of 'autonomy' in a dictionary and he considered that that was the correct approach to the FRSs and that any accountant would adopt that approach. Moreover, he considered the words 'an extension of' the parent had to be read as the opposite of autonomy (taking the above
35 dictionary meaning), so that 'an extension of' meant 'controlled by'. In other words, his view of §11(a) was that it looked solely at whether or not the entity was controlled by its ultimate parent. This was referred to in the hearing as the 'autonomy of decision-making' test and that is what we mean when we use that phrase in this decision notice.

5 67. The outcome of that approach suggested that, applying the first sentence of §11(a), BUKH's functional currency was dollars because BUKH's decision making was controlled by Ball and BUKH did not have autonomy in the sense of the ability to make its own decisions. The evidence was quite clear that BUKH's directors did what Ball told them to do.

10 68. Mr Chopping's approach was very different. He accepted that the word 'autonomy' in dictionaries had the main meaning given to it by Mr Chandler, and that dictionary definitions were relevant. Nevertheless, he considered the word 'autonomy' in FRS23 would take its meaning from the context in which it was used within §11. As it was clearly intended as the opposite of 'an extension of' the parent, 'autonomy' was intended to mean that the entity was not the extension of its parent. 'Autonomy' in this context, therefore, appeared to have a wider meaning than merely freedom from control, and such a meaning was not inconsistent with the dictionary, as 'autonomy' in a dictionary could have such wider meaning. In particular, while one meaning of 'autonomy' given by the OED Online was 'liberty to follow one's own will; control over one's own affairs; freedom from external influence' another meaning was 'the fact or quality of being unrelated to anything else, self-containedness; independence from external influence or control.' In other words, while he accepted 'autonomy' included free decision making, he considered that in the context in which it used in FRS 23 it had a wider meaning more akin to economic or functional independence from the company's parent.

Meaning of examples in §11(a)

25 69. We agree with Mr Chopping that the two phrases are not obvious antonyms and that is probably why the IASB went on to give examples within §11(a) to explain what they meant. Those examples were:

30 An example of the former is when the foreign operation only sells goods imported from the reporting entity and remits the proceeds to it. An example of the latter is when the operation accumulates cash and other monetary items, incurs expenses, generates income and arranges borrowings, all substantially in its local currency.

35 Mr Chopping's approach was to treat the first example in §11(a) as an example of an entity which is 'an extension of' its parent, and the second as an example of its opposite, an entity which has a significant degree of autonomy. We found this approach to be entirely logical and completely in accordance with the wording of the examples which said:

“An example of the former isAn example of the latter is....”

40 where the previous sentence read 'an extension of the reporting entity, rather than... a significant degree of autonomy.' It could not, in our view, be clearer. We find, however, Mr Chandler, did not take that approach and his failure to do so is one of many reasons why we did not consider his opinions were ones on which it would be appropriate for us to rely.

70. Mr Chopping's approach was to take a company which 'only sells goods imported from [the parent] and remits the proceeds to it' as an example of what the IAS meant by 'an extension of' its parent. It follows that a company which did not do this was not an extension of its parent. He then took a company which 'accumulates cash and other monetary items, incurs expenses, generates income and arranges borrowings, all substantially in its local currency' as an example of what the IAS meant by a company acting with 'a significant degree of autonomy'. This was an entirely logical approach and clearly intended by §11(a) on its face.

71. As BUKH did all of those things in the second example, and did none of the things in the first example, Mr Chopping considered BUKH acted with a significant degree of autonomy, and that therefore the §11(a) indicator pointed to sterling (as BUKH's local currency).

72. Mr Chopping's approach to the examples confirmed his approach to the test itself. 'Autonomy' in this context did not mean that the company made its own decisions (or at least that was only a part of its meaning): 'autonomy' included economic independence within its meaning. §11(a) was asking whether the entity was merely an economic conduit for its parent or was it autonomous in the sense of having economic activities on its own account. Mr Chopping also noted that his interpretation was consistent with §8 which referred to primary economic environment. Economics was more important than control.

73. We consider this approach logical and consistent with the meaning that IAS intended the standard to have in so far as it can be deduced from the wording of §8 and §11(a).

74. Mr Chandler's approach was quite different. Having decided that the test in §11(a) was about who made the decisions, he then decided that it was implicit in the examples that the company in example 1 had its decisions made for it by its parent and the company in example 2 reached its own decisions.

75. We find this approach lacks logic and is inconsistent with the meaning given by the drafters of the standard. It meant reading into the examples a qualification that was not there. With reference to the second example in §11(a), the authors of the standard quite clearly meant:

“...An example of [activities being carried out with a significant degree of autonomy] is when the operation accumulates cash and other monetary items, incurs expenses, generates income and arranges borrowings, all substantially in its local currency.

However, Mr Chandler's opinion was that the second example was only an example of activities being carried out with a significant degree of autonomy if in fact the company made its own decisions. If Mr Chandler was right, this required reading into the examples a crucial qualification which the drafters had inexplicably omitted: it would mean that the examples, so far from being helpful, were actually misleading. Indeed, if Mr Chandler was right, it meant that a company similar to BUKH which 'accumulates cash and other monetary items, incurs expenses, generates income and

arranges borrowings, all substantially in its local currency' but which, like BUKH, did so at the behest of its ultimate parent, although it would appear to fall within the second example, actually fell on the other side of the dividing line.

5 76. Mr Kraehnke's opinion was much the same as Mr Chandler's although his opinion was given in respect of IAS21 and not FRS23. We have already explained that these standards are virtually identical. He said §11(a) was looking at whether the entity was 'brain-dead', a succinct if colourful summary of the concept of whether the entity makes its own decisions or has them made for it.

10 77. The opinions of these two experts made no sense to us. If the critical factor in §11(a) was who made the decisions, the examples would have made this clear. Instead, they do not mention decision making at all. Mr Chandler's views meant that the examples gave no information to the reader at all: indeed, if Mr Chandler's and Mr Kraehnke's view of the test in §11(a) was correct, the examples were positively misleading. The appellant's experts' interpretation was also inconsistent with §8
15 which, as we have said, made it clear that the test overall was about primary economic environment.

78. Mr Chandler also suggested that the examples were only really relevant to operating rather than to intermediate holding companies. Again, we do not consider this correct. While the company in example 1 is an operating company, that is not
20 necessarily true of the company in example 2, and the better view is that §11(a) is aimed at the more difficult situations such as intermediate holding companies. §9 dealt with operating companies.

79. We much preferred Mr Chopping's view. And that was that the examples in §11(a) were self-evidently there to explain what was meant by the first sentence of
25 §11(a). The IASB had included them because they did not consider the first sentence, which comprised the test, entirely clear by itself. So example 2 explained the meaning of 'autonomy' and that was economic autonomy. It was not to do with who made the decisions.

80. We agree with Mr Chopping that it is not possible to read §11(a) in the manner
30 contended by the appellant's counsel and experts. Because it was clear 'autonomy' was meant as the antonym of 'an extension of' we think it clear 'autonomy' was not used in the narrow sense of whether the entity is in control of its own decision making; but if there were any doubt about that, the examples made it crystal clear that autonomy is not intended to have that narrow meaning in this context. 'Autonomy' in
35 §11(a) carries a wider meaning, something along the lines of Mr Henderson's term of 'functional independence' or economic independence. Such a meaning is consistent with §8.

81. We find, for BUKH, the application of §11(a) indicates its functional currency is
40 sterling. This is because its activities were carried on with a significant degree of autonomy (in the sense of economic independence) from its parent and ultimate parent: it was not a mere conduit. Its cash flows were not readily available for its parent: on the contrary, dividends from its subsidiaries were largely used to fund its

debt obligations. Another way of putting this is that Ball was not exposed to sterling risk on BUKH's gross position: its only exposure to FOREX risk was on BUKH's net position (ie the profits paid up in dividends). In the sense intended by §11(a), BUKH was autonomous, and not a mere extension, of Ball.

5 *'Trumping' effect of §11(a)?*

82. The experts were agreed that the only tests other than §11(a) applicable to BUKH's circumstances were §10(a) and §11(b)-(d). They were also agreed that the application of these tests all pointed to sterling: see §56(4) and (5). This was because its investments were in UK companies paying sterling dividends (§10(a)), BUKH's transactions with Ball were not a significant proportion of its overall activities (§11(b)), cash flows from BUKH's activities were not readily available for remittance to Ball (on the contrary they were used to fund its debt liabilities) (§11(c)), and BUKH's cash flows were sufficient to fund its debt obligations without funds from Ball (§11(d)).

15 83. Mr Chopping's point was that even if the appellant was right that test §11(a) pointed to dollars, because tests §10(a) and §11(b)-(d) pointed to sterling, in any event the conclusion should be that BUKH's functional currency was sterling. (It was of course his opinion, which we adopt for the reasons given above, that §11(a) also pointed to sterling.)

20 84. Mr Chandler did not agree that the analysis above was correct: he considered that the various questions in §11 carried different weighting and because §11(a) was (in his opinion) about whether BUKH made its own decisions, it followed that tests which looked at matters which were the outcome of decisions made for it were not relevant. As an example, test §11(b) looked at what proportion of the entity's transactions were with its parent: the appellant's experts thought the answer to that question was of little significance to a brain-dead company, because it was the ultimate parent which decided with whom the brain-dead company transacted.

85. We do not find this reasoning convincing and we reject it as a reliable opinion.

30 86. Firstly, it made no sense for §11(b)-(d) to be a part of the test if the answers to them were to be discounted.

35 87. Secondly, even if we should understand Mr Chandler and Mr Kraehnke to be saying §11(b)-(d) were only an irrelevance to non-autonomous companies, that view meant seeing test §11(a) as integral to the §11(b)-(d) tests; instead of being individual tests, it meant reading §11 more as a flow-chart, where questions (b)-(d) were only relevant to the companies on the 'autonomous' side of the line in the §11a test. If that was intended, it would have been expressed.

40 88. Thirdly, it meant reading into the standard words that were not there. Tests §10(a) and §11(b)-(d) were not qualified by reference to the word autonomy or the concept of independent decision making. There was no reason to read in such a qualification. There was certainly nothing in the rest of the standard to indicate anything of the sort.

89. Fourthly, as explained in more detail elsewhere, it was not consistent with the spirit and purpose of FRS23 nor the terms of FRS23 which was attempting to identify ‘primary economic environment’ and not who had de facto control of decision making.

5 90. In the hearing, Mr Chandler’s view that the answers to §10(a) and §11(b)-(d) were of little importance compared to the answer to §11(a) because Ball made the decisions for BUKH, was described as ‘trumping’. Whether or not this card-playing analogy is accurate, we adopt it as a convenient short-hand for the concept described at §84.

10 91. Mr Kraehnke left us unclear about what his views were on this trumping. In reply to a question about whether he might find it difficult to disagree with another KPMG partner in public, he said he would have no difficulty in disagreeing, and that he did disagree to some extent with what Mr Chandler had said about §11(b)-(d) being subservient to §11(a). Nevertheless, a few moments later he changed his mind on this and appeared to adopt Mr Chandler’s trumping reasoning. Then he seemed to back-
15 track on this and his final position seemed to be a half-way house in that he considered §11(b)-(d) had some relevance and §11(a) should not have ‘extreme’ focus.

192. This left us uncertain whether Mr Kraehnke’s view was that under IRS21 BUKH would have sterling or dollars as its functional currency. Indeed, his final acceptance
20 that (b)-(d) (which all indicated sterling) had some relevance and that (a) (which Mr Kraehnke said indicated dollars) should not have extreme focus, might indicate that his final conclusion was that the functional currency was sterling.

93. We consider his ambivalence towards this question of ‘trumping’ reflects a well-founded unease he felt with departing so far from the words of the standard. We
25 found Mr Chandler’s views impossible to reconcile with the wording of FRS23. §9-11 contained the ‘indicators’ of functional currency. Reading them through, they refer to transactions, cash-flows, debts, expenses, income and so on, all of which are economic factors. The only word which could be taken to indicate that control of decision making was relevant was the word ‘autonomy’ in one of the four additional
30 indicators. Mr Chandler’s reading of FRS 23, however, meant decision-making was elevated to being almost the only relevant indicator at least for a non-trading company. This was not a reasonable nor even possible interpretation of FRS23.

94. Mr Chopping did not agree that there was any kind of trumping effect. We adopt Mr Chopping’s views on this as they make sense and are consistent with FRS23. We
35 reject this notion of trumping for the reasons given above.

Effect of §10(a) and §11(b)-(d)

95. Mr Chopping’s view, which we adopt, is that the answers to §11(b)-(d) and §10(a) indicated sterling, so sterling was BUKH’s functional currency even if (which it wasn’t) the answer to §11(a) was dollars. It was not a borderline case; it was the
40 answers to the questions within FRS23 that mattered and not the fact Ball made the decisions which led to the answers being what they were.

96. Ms Shaw suggested to Mr Chopping that little weight should be put on the answer to indicator §10(a) because the introduction to the indicators said:

“The following factors may also provide evidence....”

5 She suggested the ‘may’ meant that the answers to the indicators should not in some cases have any effect on functional currency whatsoever. Mr Chopping disagreed. He considered the ‘may’ was used in the sense that the indicators may not help with determination because they may not be applicable, but that where applicable, they should be used as indicators. We consider, although it is a minor point, that Mr Chopping’s opinion on this is correct. There was no answer to indicator §10(b) because it was inapplicable to BUKH’s circumstances and therefore irrelevant to the determination of BUKH’s functional currency; but there was an answer to the indicator §10(a) because it was applicable to BUKH’s circumstances and so that answer (sterling) was relevant to the determination of BUKH’s functional currency.

15 97. Mr Chandler accepted that BUKH’s functional currency would be sterling but for his ‘trumping’ effect. In other words, even if he was right to say the answer to §11(a) was dollars, because the answer to §10(a) and §11(b)-(d) was sterling, BUKH’s functional currency should have been sterling were it not for the trumping effect which (he said) required him to put little or no weight on the answers to those questions.

20 98. As we reject his ‘trumping’ as well as his interpretation of ‘autonomy’ in the context of FRS23, we find that all the answers to the only relevant questions (being §10(a) and §11(a)-(d)) were sterling: there were therefore no mixed factors. BUKH’s functional currency under FRS 23 was sterling. We do nevertheless go on below to consider how mixed answers should be dealt with.

25 *Relevance of §12*

99. Of the five relevant questions (§10(a) and §§11(a)-(d)), Mr Chopping considered that the answer to all of them was sterling and so the indicators were not mixed. Mr Chandler considered that four of the indicators would (but for his ‘trumping’) point to sterling and only one pointed to dollars. Both experts were agreed that where indicators were mixed, determination of functional currency was not merely a matter of counting up the number of indicators each way, but performing some kind of weighting exercise.

100. Mr Chopping considered that that weighting exercise was set out in §12 of the FRS which provided as follows:

35 When the [indicators in §9-11] are mixed and the functional currency is not obvious, management uses its judgement to determine the functional currency that most faithfully represents the economic effects of the underlying transactions, events and conditions. As part of this approach, management gives priority to the primary indicators in paragraph 9 before considering the indicators in paragraphs 10 and 11,

40

which are designed to provide additional supporting evidence to determine an entity's functional currency.

101. Mr Chandler accepted, however, that he ignored §12 in giving the Tribunal his expert opinion. His opinion was that §12 was not relevant because the indicators from §9-11 were not mixed but clearly indicated dollars. In other words, his weighting exercise was his trumping exercise already discussed. So, as we have rejected his trumping exercise as even a possible reading of FRS23, we reject his evidence that §12 was irrelevant. Far from it, a 'sense' check of his trumping exercise against §12 should have indicated to any reasonable reader of FRS23 that functional currency was the currency which 'most faithfully represents the economic effects of the underlying transactions, events and conditions' and that was therefore not necessarily the functional currency of the company which made the decisions.

102. We accept Mr Chopping's view that even if there were mixed indicators, in other words that the answer to §11(a) was dollars while the other four indicators were sterling, that BUKH's functional currency would still be sterling because §12 looked to the 'economic effects of the underlying transactions, events and conditions' and for BUKH that was sterling. We accept that that view is right as it accords with the evidence and we have rejected Mr Chandler's view that FRS23 required or permitted functional currency to be determined by reference to who controlled the company.

20 *Relevance of §13*

103. §13 provided:

An entity's functional currency reflects the underlying transactions, events and conditions that are relevant to it. Accordingly, once determined, the functional currency is not changed unless there is a change in those underlying transactions, events and conditions.

104. Mr Chandler accepted that he ignored §13 as well as §12 in giving his expert opinion, on the basis that, in his expert opinion, it was not relevant. We preferred the view of Mr Chopping that, even if §13 was not directly relevant to the determination of BUKH's functional currency, it was yet one more indicator that FRS23 as a whole was looking at economic factors in determining functional currency, and in particular, 'underlying transactions, events and conditions'. Indeed, it is our view that Mr Chandler's failure to read FRS 23 as a whole meant that he overlooked indications in both §12 and §13 that the test for functional currency was intended to be (largely) about economic factors.

35 *Spirit and purpose*

105. That brings us to a discussion of the spirit and purpose of FRS 23. Both experts agreed that accounting standards should be applied with their spirit and purpose in mind.

106. But Mr Chandler somewhat contradicted himself on this as it was his view which he repeated a number of times that that applying the literal meaning of FRS 23 meant that one would necessarily be applying the spirit and purpose of FRS, implying that

he did not think it necessary to test his interpretation against the spirit and purpose of FRS23. It seemed to us that, having come to his reading of §11(a) that autonomy of decision-making was key to determine functional currency and ‘trumped’ other factors pointing to a different functional currency, he was not then prepared to test the validity of his interpretation against the spirit and purpose of FRS23 as shown by the provisions as a whole. This is yet another reason why we considered his expert view unreliable.

107.His view, on the contrary, was that, because (he said) a literal reading of FRS 23 was that autonomy of decision-making was key, therefore the authors of FRS 23 must have intended that, and that was therefore the spirit and purpose of FRS23. It was put to Mr Chandler that there was little sense in in having a test of autonomy of decision making when the objective (as all accepted) was to achieve accounts which gave a true and fair view of the company’s financial situation. It was put to him that the functional currency of a company was to intended to be a currency which minimised the FOREX risk in the presentation of the accounts by being the currency to which the company had greatest economic exposure. Largely his reply was simply to state that he was achieving a true and fair view by applying FRS23, a reply which simply begged the question; at first, he appeared at a loss to say why, in FRS 23 as compared to SSAP20, autonomy in the decision-making sense was, as he put it, elevated in importance, but when pressed, he suggested (although this was not in his expert report) that the purpose of FRS23 in introducing (in his view) an ‘autonomy of decision-making is key’ test was to achieve consistency.

108.He explained this by saying that whether a company had autonomy of decision making was unlikely to change year on year and therefore, if autonomy of decision making was the test for functional currency, it would mean functional currency would not change year on year. We reject this explanation as irrational for two reasons.

109.Firstly, we accept Mr Chopping’s view that the ultimate object of all accounting standards was to achieve accounts which showed a true and fair view of the entity’s financial position, and while consistency might well be important in achieving a true and fair view, it was not an ultimate aim in itself. So FRS 23 would not embody a test which led to consistency but not necessarily to a true and fair view. In other words, it would be more important that that the functional currency was one which minimised the FOREX risk in the presentation of the accounts by being the currency to which the company had greatest economic exposure than one which was merely consistent year on year. This was clear from §13 in any event, which stated that functional currency would change if there was a change in ‘underlying transactions events and conditions’. So consistency year on year was clearly not the driving force behind FRS23.

110.Secondly, the premise of Mr Chandler’s statement was wrong. That premise was that his ‘autonomy of decision-making’ led to a more consistent year on year functional currency than Mr Chopping’s interpretation. In particular, he said, Mr Chopping’s test meant functional currency would change depending on whether or not the intermediate holding company paid a dividend to its parent or not. But that is not the test as put forward by Mr Chopping. While it is true that FRS23 would likely

determine an intermediate holding company's functional currency to be its parent's if it was a mere conduit passing up all profits in the form of dividends, in the case of an economically independent intermediate holding company (like BUKH) which made occasional and irregular payments of dividends and in particular did not pass up all its profits, it would not have to change its functional currency depending on whether or not it made a dividend payment that year or not. So neither Mr Chopping's nor Mr Chandler's interpretation of the standard would seem clearly to lead to more or less consistency year on year.

111. Mr Henderson made the point that it might not always be possible to identify a single company as being the ultimate decision maker, and was reluctant to accept that the key decision makers for BUKH were all directors of Ball. We agree that there is artificiality in applying a test of key decision making as, ultimately, any person making the key decisions for an intermediate holding company or other subsidiary company does so only on the authority of the ultimate parent company. This is however a small point, albeit we agree it is one that also points to the wrongness of Mr Chandler's interpretation.

112. Ms Shaw suggested that Mr Chopping's interpretation of FRS23 could lead to a situation where functional currency could be manipulated. She pointed out that a company could change the denomination of its loans year to year. Mr Chopping, however, pointed out that the question in §11(a) is the currency in which loans were generated. In any event, at root §10-11 were seeking to identify the currency in which the intermediate holding company had its greatest exposure. We do not accept that Mr Chopping's interpretation of FRS23 was more likely to lead to manipulation than the appellants'.

113. Mr Chandler's insistence that applying the standard (as interpreted by him) by definition had to lead to a true and fair view, rather than give us an explanation that made sense to us of *why* it led to a true and fair view, indicated to us that his interpretation of the standard was incorrect. We reject his views as unreliable. We do not think they were a reasonable or possible interpretation of FRS 23.

114. Mr Kraehnke (and to some extent Mr Chandler) accepted that because BUKH was economically distinct from Ball, Ball was not exposed to FOREX risk on BUKH's investments and liabilities which were all in sterling, but only on its own net investment in BUKH. Therefore, it seemed to us that a more true and fair view of BUKH's accounts was to show them in sterling rather than dollars: BUKH's primary economic environment was sterling. It seemed to us that Mr Chopping's interpretation of FRS23 was far more in keeping with the spirit and purpose of FRS23 because it would lead to the entity's functional currency being the one of its primary economic environment, thereby reducing the risk of the entity's actual financial position being obscured by currency movements. And its parent's economic environment was only the entity's economic environment if it was a conduit for its parent, or, put another way, where the parent was exposed to FOREX risk on the entity's investments and liabilities. We reject Mr Chandler's and Mr Kraehnke's view that their interpretation of FRS23 was consistent with the spirit and purpose of

FRS23: we do not think it was. We consider that Mr Chopping's interpretation was the right one as it was consistent with the spirit and purpose of FRS23.

115. Miss Shaw made some issue of the fact that BUKH's funding might be said to derive from Ball: BUKH's capital derived in part from borrowings made by Ball in the US and part from borrowings made by intermediate holding companies in Europe, but guaranteed by Ball. However, the ultimate source of the entity's funds was no more the test in FRS23 than it was a test of who the ultimate decision maker was.

Basis of Conclusions

General

116. FRS23 incorporated IAS21, including its 'Basis of Conclusions' ('BC's) which were the IASB's commentary on its standard. As we have already cited, the ASB's introduction stated:

...Accompanying the Statement of Standard Accounting Practice is the basis for the conclusions reached in the Statement. This does not form part of the Statement.

The statement of Standard Accounting Practice should be read in the context of its objective as stated in paragraphs 1-2, the Basis for Conclusions set out in paragraphs BC1-BC32....

In other words, the BCs were not a part of the standard but were there to put the standard in context.

117. HMRC's case was that there was a lot in the BCs which helped interpret the standard. Mr Chandler thought the only relevant BC was BC9. We agree with HMRC for the following reasons.

Basis of Conclusions 3

118. BC3 was very general, as follows:

BC1 This Basis for Conclusions summarises the International Accounting Standards Board's considerations in reaching its conclusions on revising IAS 21.....

BC3 Because the Board's intention was not to reconsider the fundamental approach to accounting for the effects of changes in foreign exchange rates established by IAS 21, this Basis for Conclusions does not discuss requirements in IAS 21 that the Board has not reconsidered.

119. Mr Chopping's case was that BC3 meant that the old IAS was relevant in order to understand the new IAS. Mr Chandler did not agree with this. Mr Kraehnke's view was closer to HMRC's as he agreed that BC3 meant that the IASB was not fundamentally changing its approach from the 1993 standard but would highlight the

parts that were changed. We agree with Mr Chopping and Mr Kraehnke's views on this.

Basis of Conclusions 5

5 The board noted a concern that the guidance in SIC-19 on determining
a measurement currency could permit entities to choose one of several
currencies....some believed that SIC-19 placed too much emphasis on
the currency in which transactions are denominated....To meet these
concerns, the Board defined functional currency as 'the currency of the
primary economic environment in which the entity operates'....This
10 guidance draws heavily on SIC-19 and equivalent guidance in UK and
other national standards, but also reflects the Board's decision that
some factors merit greater emphasis than others.

120.This BC again emphasised that there was some change in approach from the
earlier standard but that the test was one of primary economic environment. Mr
15 Kraehnke accepted that there was nothing in this BC about decision making being
relevant to determine functional currency.

Basis of Conclusions 6

20 **BC6** the Board also discussed whether a foreign operation that is
integral to the reporting entity (as described in the previous version of
AS 21) could have a functional currency that is different from that of
its 'parent'(*). The Board decided that the functional currencies will
always be the same, because it would be contradictory for an integral
foreign operation that 'carries on business as if it were an extension of
the reporting enterprise's operations'[†] to operate in a primary
25 economic environment different from its parent.

† IAS 21 (1993) §24

121.Therefore, by means of the footnote †, BC6 directly referred back to §24 of the
1993 standard. §24 of the 1993 standard was agreed by the experts to be the
paragraph which gave examples of functional interrelationship between two
30 companies (and to which control of decision making was irrelevant). Mr Chopping's
position was that that meant that the old 1993 examples were relevant to interpretation
of FRS23 and that those examples looked to functional (or economic) relationships
between parent and intermediate holding company and not to control of decision
making. Mr Kraehnke agreed that if read in isolation BC6 imported from the old IAS
35 the concept that a business which carries on as if it were a functional extension of its
parent's operation would have the same currency. He did not that it agree should be
read in isolation.

122.Mr Chandler's view was that a BC was not itself a part of the standard and should
not be relied on when interpreting the standard. It was pointed out to him that this was
40 inconsistent with his view that BC9 was relevant. His explanation, which we do not
find logical and do not accept, is that BC9 was relevant to interpretation because it
was concerned with the current IAS21; BC6 was not relevant as referring to an old
IAS21. It seems to us that either all BCs are relevant or none are; and as they were

included as an aid to interpretation of the standard, then to that extent they were all relevant. And while the old IAS21 was not a part of the 2003 standard, it was valid to interpret the new IAS21 by looking to see what the IASB said had changed from the earlier standard.

5 123. And on that basis, we accept Mr Chopping's view that BC6 suggested that the
new IAS21 was concerned with functional rather than decision making independence;
while we also accept Mr Kraehnke's view that BC6 could not be considered in
isolation, we find it was yet one more clear indication that §11(a) was not a test of
10 autonomy of decision making but that §11(a) was intended as a test of functional or
economic independence.

Basis of Conclusions 9

124. Mr Chandler's evidence was that he considered BC9 supported his views on how
§11 should be interpreted; specifically, it was his opinion that BC9 demonstrated that
§10 and 11 did not look at primary economic environment but brought in additional
15 factors. BC 9 read as follows:

BC 9

The Board agreed that the indicators in paragraph 9 are the primary
indicators for determining the functional currency and that paragraphs
10 and 11 are secondary. This is because the indicators in paragraphs
20 10 and 11 are not linked to the primary economic environment in
which the entity operates but provide additional supporting evidence to
determine an entity's functional currency.

125. At first glance, there would appear to be force in what Mr Chandler said about BC
9. It stated in terms that §10 and 11 'are not linked to the primary economic
25 environment in which the entity operates.....'.

126. However, we accept what Mr Chopping says about BC9 which is that that
sentence cannot be taken at face value. Mr Chopping demonstrated this by taking the
definition of functional currency in §8 and substituting it for 'functional currency'
into BC9 which led to this result:

30 '...the indicators in paragraphs 10 and 11 are not linked to the primary
economic environment in which the entity operates but provide
additional supporting evidence to determine [the] **currency of the
primary economic environment in which the entity operates**'

127. In other words, this led to a nonsense result, demonstrating Mr Chopping's point
35 that the IASB cannot have meant that §§10-11 were not linked to the entity's
economic environment. As §8 stated that functional currency was the currency of the
primary economic environment in which the entity operated, then §§10-11 had to be
about determining the primary economic environment in which the entity operated
and BC9 could not be read as suggesting otherwise. This was particularly the case
40 when §8, 10 and 11 were a part of the standard and BC9 was not.

128.The explanation must be that the second sentence of BC9 was merely badly worded, and ought to be read as a (badly worded) explanation of what the first sentence of BC9 was saying. The first sentence of BC9 was explaining that §9 contained the primary indicators for primary economic environment and §10-11 merely secondary indicators for primary economic environment, to be used only where there were no primary indicators.

129.In any event, BC9 could not sensibly be read as suggesting §10-11 were nothing to do with economic factors when on their face they clearly were. §10(a) referred to financing activities; §10(b) to operating activities; §11(a) to expenses and borrowings; §10(b) to activities; §10(c) to cash flows and §10(d) to cash flows and debt obligations.

130.Moreover, there was nothing in BC9 which specifically supported Mr Chandler's reading of §11(a) as being entirely to do with autonomy of decision-making let alone his reading that lack of autonomy of decision-making made the answers to §11(b)-(d) irrelevant (his trumping).

131.Ms Shaw suggested that, in so far as §11 was about primary economic environment at all, it was about the primary economic environment of the ultimate parent. Not only was this submission extremely difficult to understand on the plain wording of §11, as Mr Chopping said, §11 was about ascertaining whether the primary economic environment of the ultimate parent was the primary economic environment of the entity preparing its accounts.

132.We reject the appellant's reading of BC9. Whatever BC9 meant, it did not mean that the test of primary economic environment set out in §8 was 'less apt' to intermediate holding companies. The standard was the standard and the standard said that the test of functional currency for all companies was one of primary economic environment. BC9 could not overrule the standard and should not be read as if it attempted to do so. It had to be understood in its context.

Introduction to FRS 23

133.We were referred in the hearing to the IASB's introduction to IRS21, which was fully incorporated by the UK's ASB into FRS23. The relevant parts were:

ASB note: The IASB's Introduction to IAS21 is set out in full below. It should be noted that the discussion focusses on the changes that the IASB made in December 2003 to the previous version of IAS21....

.....

IN4 The main changes from the previous version of IAS21 are described below.

.....

Definitions – functional currency

IN7 ...The new material on functional currency incorporates some of the guidance previously included in SIC19 on how to determine a

measurement currency. However, the Standard gives greater emphasis than SIC-19 gave to the currency of the economy that determines the pricing of transactions, as opposed to the currency in which transactions are denominated.

5 **IN8** As a result of these changes and the incorporation of guidance previously in SIC-19:

●an entity...does not have a free choice of functional currency.

.....

10 134. So far as IN4 was concerned, none of the INs mentioned any new emphasis on autonomy of decision-making, let alone that autonomy of decision making had become key. The absence of such a statement in the INs, when IN4 had said the main changes were listed and when it was accepted that no such test existed in IAS21 (1993), is significant. It clearly suggests that we are correct to conclude that Mr Chandler's interpretation of FRS23 was wrong. We think it should also have given
15 Mr Chandler pause for thought.

Notes on the standard's application in the UK

135. Reference was also made to the ASB's notes on the application of IAS21/FRS23 in the UK.

Note 3

20 136. Note 3 was discussed:

N2 In 2001 the IASB announced that it would be reviewing a number of existing standard, including IAS 21. The revised IAS 21 was issued in December 2003.

25 **N3** The main changes made are summarised in the IASB's Introduction to the standard; and the rationale behind the changes made is set out in the Basis for Conclusions material that the IASB prepared to accompany the standard.

30 Again, we consider N3 should have given Mr Chandler pause for thought. There is nothing in the IASB's introduction nor in the Basis for Conclusions about a new test of autonomy of decision making.

137. As elsewhere when challenged on why their new test of autonomy of decision making was not mentioned as a 'main change' the appellant's experts' explanation was that the change was incremental and/or relatively insignificant because it was relevant only to intermediate holding companies. We reject that explanation for the
35 reasons given at §§154-156.

Note 21

138. Note 21 was also referred to and it provided:

N21 As already mentioned, SSAP 20 and IAS 21 were developed together and, as a result, their main requirements are similar.....The main differences between FRS 23 and SSAP 20 are described in the following paragraphs.

5 Nowhere in FRS23 or IAS21 is a change to the importance of autonomy of decision-making mentioned. Mr Chandler was asked for an explanation of this and his answer was that it wasn't mentioned because it wasn't a big change because 'autonomy' was a word used in the old standard. We found Mr Chandler's evidence on this unconvincing: while on the one hand it was his evidence that the old IAS 21 (1993)
10 was irrelevant because the 2003 IAS21 was different and in particular autonomy of decision-making was a new factor to be considered, on the other hand his explanation for the new IAS21's failure to mention this new factor in its list of changes from the old IAS was that it was only a small change (impliedly not worth mentioning). We reject his views on this for the reasons given at §§154-156. He accepted that not only
15 did he give his expert opinion without referring to the old IAS21, he had never advised on the old IAS21; we do not accept therefore that he was in any position to offer an expert opinion on its meaning. Mr Kraehnke similarly said that while autonomy of decision-making was the key test for FRS23/IAS2003 whereas it had not been before, it was an incremental change such that it was not surprising to him that it
20 was not specifically noted as a change. Again, for the same reasons discussed at §§152-156, we found this evidence unconvincing.

Notes 26 and 27

139. We found that Notes 26 and 27 were also relevant. Those notes dealt with method to be used when consolidating accounts of a group which includes a foreign
25 operation; in doing so the notes gave an explanation of a foreign entity which was an integral part of the investing company:

30 ...ie the affairs of a foreign entity are so closely interlinked with those of the investing company that its results are regarded as being more dependent on the economic environment of the investing company's currency than on that of its own currency....

140. Then in a footnote to the notes:

35 'put another way, the net investment method is used under SSAP 20 when a foreign operation is largely self-contained and is not dependent upon the economic environment of the investing company's functional currency. In such circumstances, the foreign currency exposure that the investing company has relates to its net investment in the foreign operation, rather than in the individual assets and liabilities of the foreign operation. The net investment method reflects this by translating the net investment at the closing rate of exchange. The
40 temporal method treats the foreign operation's transactions as if they had been entered into by the investing company itself in its own currency.

141. In summary, we understand these notes to mean that that SSAP had two methods of consolidating group accounts, the net investment method and the temporal method,

5 whereas the FRS only has the net investment method. However, as the SSAP only allowed integral foreign entities (ie overseas subsidiaries) to use the temporal method, N21 is saying that there is no real difference with FRS23 because under FRS23 an integral foreign entity's functional currency will always be its investing company's functional currency.

10 142.The significance to this note is that it indicates that Mr Chandler's analysis is wrong. Mr Chandler's analysis gives the 'foreign entity' the functional currency of its ultimate parent (the investing company) if that parent is the decision maker for the 'foreign entity' and irrespective of whether the foreign entity is or is not integral or dependant on the economic environment of the ultimate parent. Mr Chandler's analysis would allow a 'foreign entity' which is not integral in an economic sense to take the functional currency of its parent; it would take the functional currency of its parent even if its parent's FOREX exposure was only on its net investment. That is quite inconsistent with the explanation in the above footnote.

15 143.The analysis in the footnote only makes sense if it is understood that the test in FRS23, like that in SSAP20, looked at the overseas subsidiary's 'economic environment' and whether that is 'self-contained' or, in the alternative, 'dependent upon the economic environment of' its parent. It is not concerned with autonomy of decision making.

20 144.We find that this is yet one more indicator that Mr Chandler's reading of FRS23 was inconsistent with the reading which the UK's ASB intended it to have. These notes reiterated all the other indicators above referred to that FRS23 was about determining the functional currency of BUKH's economic environment and not about whether it had autonomy of decision making from its ultimate parent.

25 **SSAP 20**

30 145.Under SSAP 20, which was the accounting standard which applied to BUKH's accounts up to and including Y/E 2005, BUKH's functional currency was sterling. All the experts were agreed that nothing changed in BUKH's economic position at any time but that nevertheless the adoption of a different accounting standard (FRS23) could lead to a change in functional currency. So the fact that BUKH's functional currency was sterling up to and including 2005 when BUKH used SSAP20 did not of itself mean that its functional currency under FRS23 was not dollars. FRS23 was a different test to SSAP 20 and could lead to a different outcome.

146.SSAP20 provided:

35 A company's local currency is the currency of the primary economic environment in which it operates and generates net cash flows

It was, as can be seen by a comparison to FRS23 a much shorter test: it was also one which focussed on cash flows and again in that it differed from FRS 23.

40 147.Apart from the above referral to SSAP in the UK's ASB's notes to FRS23 (see §140), SSAP20 was not directly relevant to FRS23. It was a different standard. Mr

Chandler was not an expert in SSAP and was unable to give an opinion on it; Mr Chopping was an expert and able to give evidence on it. He accepted that the application of FRS23 could give a different outcome to the application of SSAP20 to the same facts.

5 148.Ms Shaw criticised Mr Chopping for suggesting in his report that SSAP20 and
FRS23 were so similar that unless there was a change in circumstances it should not
lead to a change in functional currency ‘in nearly all cases’ and Mr Chopping
appeared to agree that he may have put this too strongly. We see nothing here to cause
us to be concerned with his evidence: at the headline level both SSAP20 and FRS
10 were concerned with the entity’s primary economic environment, and while FRS was
considerably more detailed than SSAP20 we accept Mr Chopping’s view that
nevertheless in many cases adoption of FRS23 would not lead to a different functional
currency to that under SSAP20. However, that states the general position and gives
no guidance to BUKH’s particular position.

15 **1993 version of IAS 21**

149.FRS23 implemented the 2003 version of IAS21. The previous version of IAS21
(the 1993 version) was not implemented in the UK. It provided as follows:

20 [24] A foreign operation that is integral to the operations of the
reporting enterprise carries on its business as if it were an extension of
the reporting enterprise’s operations. For example, such a foreign
operation might only sell goods imported from the reporting enterprise
and remit the proceeds to the reporting enterprise, In such cases, a
change in the exchange rate between the reporting currency and the
currency in the country of foreign operation has an almost immediate
25 effect on the reporting enterprise’s cash flow from operations.
Therefore, the change in the exchange rate affects the individual
monetary items held by the foreign operation rather than the reporting
enterprise net investment in that operation.

30 [25] In contrast, a foreign entity accumulates cash and other monetary
items, incurs expenses, generates income and perhaps arranges
borrowings, all substantially in its local currency. It may also enter
into transactions in foreign currencies, including transactions in the
reporting currency. When there is a change in the exchange rate
between the reporting currency and the local currency, there is little or
35 no direct effect on the present and future cash flows from operations of
either the foreign entity or the reporting enterprise. The change in the
exchange rate affects the reporting enterprise’s net investment in the
foreign entity rather than the individual monetary and non-monetary
items held by the foreign entity.

40 [26] The following are indications that a foreign operation is a foreign
entity rather than a foreign operation that is integral to the operations
of the reporting enterprise:

45 (a) while the reporting enterprise may control the foreign operation, the
activities of the foreign operation are carried out with a significant
degree of autonomy from those of the reporting enterprise;

(b) transactions with the reporting enterprise are not a high proportion of the foreign operations activities;

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(c) the activities of the foreign operation are financed mainly from its own operations or local borrowings rather than from the reporting enterprise;

(d) costs of labour, material and other components of the foreign operation's products or services are primarily paid or settled in the local currency rather than in the reporting currency;

10

(e) the foreign operation's sales are mainly in currencies other than the reporting currency; and

(f) cash flows of the reporting enterprise are insulated from the day to day activities of the foreign operation rather than being directly affected by the activities of the foreign operation.

15 150. Neither Mr Chandler nor Mr Chopping looked at IAS21(1993) when giving their expert reports. Mr Chandler's view was that it was dangerous to look at older, superseded standards when interpreting a current standard. While Mr Chopping appeared to agree with this in principle, his view was more nuanced in that he said he would consider the Basis of Conclusions in the current standard, and if they referred to the old standard, then to that extent he would consider the old standard. In other words, we find that the old standard was relevant (and only relevant) to the extent that it was stated to be relevant in the standard being applied. It was not normally appropriate to interpret a new standard by reference to an old standard. But IAS21(1993) was relevant to IAS21 (2003) to the extent that the IASB had quite clearly stated in IN4 (§133) to IAS21(2003) that they had specified in those notes the main changes from the old standard.

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151. So it is relevant for us to consider what the old standard was and therefore to what extent it was significantly different to IAS21 (2003).

152. Consideration of the old standard was also instructive as we found it showed that Mr Chandler's opinion was internally inconsistent: on the one hand he accepted that there was no fundamental change between IAS21 (1993) and IAS21(2003), while on the other hand he considered IAS21(2003) introduced a new free-standing test of autonomy of decision making. When asked to explain this, he reverted to saying that there was not much of a change between the two standards because IAS21(1993) had also referred to autonomy, although he later agreed there was no free-standing test of autonomy of decision making in old IAS21 (1993). It seemed to us that Mr Chandler wanted it both ways and we considered this further evidence that his opinion was unreliable. Apart from the inconsistency in Mr Chandler's views, we consider his view that there was no significant change between the old IAS21 and his interpretation of the new IAS21 to be flawed. In particular, we reject Mr Chandler's suggestion that autonomy of decision making was relevant to IAS21(1993). While the word 'autonomy' was used in the old test, we note that the context in which it was used makes it obvious that it was not used in the context of autonomy of decision making, as §26(a) of IAS21(1993) anticipates 'control' of the company being consistent with that company having a 'significant degree of autonomy', making it clear the authors envisaged that a subsidiary could be controlled by its parent yet

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remain autonomous in the sense intended by IAS21 (1993). Mr Chandler’s view of the new IAS was that the test of lack of decision-making autonomy trumped any other factors: yet there is absolutely nothing about that in old IAS21 (1993) which Mr Kraehnke and Mr Chopping (the only experts on old IAS21) agreed was a cash-flow based test and so the change, if it existed, would have been very significant and would have been noted in the INs and BCs. It was not.

153. Ms Shaw suggested to Mr Chopping that the reason the BCs made no mention of the (alleged) new free-standing test of autonomy of decision-making identified by Mr Chandler was because that test only affected intermediate holding companies and so was not a significant change to the IAS as far as most companies were concerned. Mr Chopping disagreed with her and we accept his view on this as it makes sense: it would have been a very significant change for intermediate holding companies and the IASB would have been well aware of this and would have mentioned such a change in the INs and BCs.

154. We consider that there was no really significant difference between the old IAS21 and a proper interpretation of IAS21 (2003). While we agree with Mr Chandler that the examples in [24-25] of IAS21 (1993) were more detailed than those in §11(a) of IAS21 (2003), we consider they were intended to make the same point or a very similar point about economic independence. Mr Chopping pointed out that the examples in IAS21 (1993) were pared down for the new IAS by removal of references to cash flow, but the cash flow test was mentioned in §11(c) of IAS21 (2003) so it was a question of the text being shuffled around rather than fundamentally changed. We accept that explanation.

155. Ms Shaw did not agree; she suggested to Mr Chopping that there was a sea-change between IAS21(1993) and IAS21(2003). She suggested that IAS21(1993) was an economic test and §11 of IAS21 (2003) was not. She said that while §26(b)-(f) of old IAS looked at economic factors, they had not been replicated in IAS21(2003), but simply replaced by §11(a). Mr Chopping did not agree with this and we accept his opinion. He pointed out what seems fairly obvious to us that it was (largely) a formatting change: §26(a) broadly became §11(a), §26(b) broadly became §11(b), §26(c) broadly became §11(d), §26(d) broadly became §9(b), §26(e) broadly became §11(c).

156. We accept Mr Chopping’s evidence that it was largely a change in format and we note that this was explained in IN9 (one of the IASB’s information notes – we refer to others at §133 above).

157. But because it was a significant change in format, Mr Chopping said the Basis of Conclusions had to be consulted for the explanation of what changes in substance were intended and we considered that a reasonable view. And we have already dealt with what the BCs showed: we find they did not show that ‘decision-making of autonomy’ was a free-standing test, let alone that it ‘trumped’ all of the other tests.

158. In summary, the old IAS21 had no test of decision-making autonomy; the INs, BCs and other notes to the new IAS21 make no mention of the introduction of such a

test: this is a strong indicator that no such test was introduced into the new IAS21 and entirely consistent with our conclusions above on how FRS23 should naturally be read. It is entirely consistent with our conclusion that had such a major change been intended, it would have been mentioned in the notes. It was not.

5 **Big 4 Guidance**

Relevance of Big 4 manuals to FRS

159. The appellant's case is that the Big 4 manuals were significant: they showed what generally accepted accounting practice was. Accounts which were in accordance with the Big 4 manuals were in accordance with GAAP.

10 160. Mr Chopping did not agree. His view was that UK GAAP does not itself really refer to secondary sources although the IAS permits recourse to secondary materials such as accounting manuals as a last resort. Mr Chopping accepted that, nevertheless, it would be commonplace for accountants to look at the Big 4 manuals to elucidate the standard. But it was in no way an application of UK GAAP for the manuals to take
15 precedence over the standard itself.

161. Our view is that where the meaning of an aspect of an FRS is unclear, the generally accepted interpretation of that part of the FRS may be apparent from the Big 4 manuals, particularly if they are consistent with each other on the point. Nevertheless, where the FRS is clear, the Big 4 manuals do not override it. On the
20 facts of this case, however, the issue does not arise. We do not consider that the Big 4 manuals did contradict the clear meaning of the FRS.

162. After the hearing, the appellant referred us to *Smith and Nephew Overseas Ltd and others* [2017] UKFTT 151 (TC) where at §30 the Tribunal referred to the Big Four guidance as follows:

25 [30]...as [the expert for the appellant accepted], while [the Big Four] guidance is 'not authoritative' it does 'describe what many accountants in those larger firms see as practice on a day-to-day basis.'

HMRC dismiss this as merely repeating an expert's opinion; to us it seems that the Tribunal in that case adopted the expert's opinion as its own, as it was entitled to do.
30 Nevertheless, either way, it does not seem to give the Big Four guidance any more importance than that we have ascribed to it in §161 above. Indeed, it seems to give it less, as it says the guidance is not authoritative, when we accept that the guidance may have some relevance where the FRS is unclear.

Relevance of Big 4 manuals to this case

35 163. Mr Chopping said he did not refer to Big 4 guidance in this case because FRS23 was clear and did not need elucidation. He said he accepted that BC9 (§124-132) was not clear but it was not a part of standard. While he accepted that the first sentence of §11(a) was not clear by itself, his view, which we have accepted above at §69-73, was that its meaning was made plain by the examples in the second sentence of §11(a).

164. Mr Chandler repeatedly said he would interpret 'autonomy' by the dictionary, ignoring the old IAS and ignoring other paragraphs of the current IAS, and would then look at Big 4 guidance and be quickly reassured he was on the right lines.

5 165. Ms Shaw's case was that Mr Chopping accepted in his joint report that the E&Y and Deloitte guidance were concerned with independence of decision making: Mr Chopping's oral evidence was that he had meant no more than he accepted that that was the meaning those firm's guidance attributed to the word in isolation but not that it was their guidance that that was the test in FRS23. It was also his evidence that he agreed with the outcomes posited in all the Big 4 manuals' examples on FRS23 but
10 that (in his view) none of them were on all fours with BUKH.

166. We consider the manuals in detail and then reach our conclusions on them in §§204-206.

E&Y

15 167. The section relied on by the appellant was under the heading of 'intermediate holding companies or finance subsidiaries' and under the sub-heading of a particular example. It went on to state that a variety of factors had to be considered and that §9 of FRS23 was not directly relevant to intermediate holding companies. The example went on to say:

20 Paragraphs 10 and 11 set out a number of factors to consider in determining the functional currency of a foreign operation. The theme running through these factors is the extent to which the activities and cash flows of the foreign operation are independent of those of the reporting entity.

25 In the case of an [intermediate holding company] or finance subsidiary the acid-test question to consider is whether [the intermediate holding company] is an extension of the parent, and performing the functions of the parent – ie whether its role is simply to hold the investment in, or provide finance to, the foreign operation on behalf of the parent company or whether its functions are essentially an extension of a local
30 operation (eg performing selling, payroll or similar activities for that operation) or indeed it is undertaking activities on its own account.

35 This means that subsidiaries that do nothing but hold investments or borrow money on behalf of the parent will normally have the functional currency of the parent. The borrowings of such companies are frequently guaranteed by the parent, which is itself likely to be a relevant factor. In other words, on whose credit is the lender relying? If the lender is looking to the ultimate parent, then the functional currency is likely to that of the ultimate parent. However, if the lender is looking to the sub-group, then the functional currency of the
40 companies in the sub-group will be relevant. Accordingly any analysis that such a company has a functional currency other than that of the parent will require careful consideration of the features of the entity which give rise to that conclusion. Complex situations are likely to

require the application of careful management judgement as indicated by the standard.

As for other entities within the group, each entity should be reviewed for its particular circumstances against the indicators and factors set out in the standard. This review requires management to use its judgement in determining the functional currency that most faithfully represents the economic effects of the underlying transactions, events and conditions applicable to that entity.

(the underlining is our emphasis)

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10 168.To what extent does this support either of Mr Chandler’s opinions that FRS23 has a free-standing test of autonomy of decision-making and that the answer to that test ‘trumps’ the answer to the other tests contained within FRS23?

15 169.The appellant relies on the underlined part of the E&Y manual that intermediate holding companies will ‘normally’ have their parent’s functional currency. However, we agree with Mr Chopping that it does not support Mr Chandler’s interpretation. Most intermediate holding companies will be of the conduit kind and will take their ultimate parent’s functional currency: but E&Y recognises that not all intermediate holding companies will do so.

20 170.Ms Shaw says that the E&Y manual shows that functional currency is not dependant on denomination of assets and liabilities. Again, while that is true, Mr Chopping did not suggest that denomination was by itself determinative. And E&Y certainly do not suggest the test is whether the intermediate holding company is permitted to make its own decisions.

25 171.The E&Y manual also says that the theme of §10-11 is ‘independence’ but it does not define independence as being autonomy of decision-making and is (in our view) more consistent with the view that it is economic independence to which it is referring.

30 172.Moving on to the question of trumping, Ms Shaw suggested that this extract did support Mr Chandler’s views on trumping because the underlined sentence referred back to the previous paragraph, which appears to be considering §11a. By implication, she says, that means E&Y thought §11(b)-(d) were not relevant. Mr Chopping did not agree that that meant E&Y did not consider §11(b)-(d) relevant. We accept Mr Chopping’s view. E&Y clearly did consider them relevant as they mention them (first paragraph of extract). Nowhere do E&Y state that they are not
35 relevant, or are overridden by §11a.

40 173.In conclusion, we consider that there is nothing in the E&Y guidance which gives a free-standing test of autonomy of decision making nor that elevates that test so that the other tests in §10 and 11 have almost no relevance. While what E&Y says is very general, so that it could be said that it did not actually contradict Mr Chandler’s view, no one could reasonably read it as supporting Mr Chandler’s view: in reality it was closer to Mr Chopping’s view that the whole of §10-11 had to be considered.

Deloitte

174. Section 3.2 of Deloitte's guidance dealt with FRS23. Under successive sub-headings it set out the full text of §9-12 of the FRS. In a greyed-out box within the sub-heading applicable to §12 of FRS23 it added comment as follows:

- 5 Consideration of the following additional factors, based on the nature
of the foreign operation, may assist in the determination of functional
currency:
- Where an intermediate holding company carries out duties
relating to the sub-group it holds investments in (for example,
10 when the company has separate directors/employees from the
ultimate parent entity, has its own reporting responsibilities
and produces consolidated accounts including the sub-group,
and actively manages a series of operations in a geographic
area and, therefore, incurs costs in a local currency) this would
15 indicate that the functional currency of the company is not the
same as that of the ultimate parent. Where the intermediate
holding company exists solely in order for the ultimate parent
entity to obtain a tax, regulatory, jurisdictional or legal type of
benefit it would not otherwise receive, this indicates that it is
20 an extension of its parent.
 -not relevant

175. Neither party suggested that any of the bullet points were relevant apart from the first one set out above. Mr Chandler's evidence on that was that it contrasted active management by the intermediate holding company with no active management by the
25 intermediate holding company and that felt to him 'a bit like autonomy of decision making'.

176. We reject his opinion on the basis it is unreliable. Firstly, the question whether the intermediate holding company actively manages its own subsidiaries is a different question to whether the intermediate holding company itself is actively managed by
30 its ultimate parent. Secondly, if the test were autonomy of decision making it would be stated and not left to be inferred.

177. Mr Chandler went on to say that the second example in that bullet point (the company which existed solely to enable its parent to obtain a tax regulatory or legal advantage) was like BUKH and for that reason also BUKH's functional currency was
35 dollars. Again, we reject this reasoning. Firstly, we agree with Mr Chopping that that was not a good description of BUKH as it did not act as a mere conduit for its parent (for reasons given at §81) so it did not 'merely' exist to obtain a tax, regulatory or legal advantage. Secondly, Mr Chandler's premise was that dollars were BUKH's functional currency because the test was autonomy of decision-making, and this
40 example did nothing to support that test, but amounted to the introduction of a new test to support Mr Chandler's conclusion, and one that was not in his report.

178. Ms Shaw suggested to Mr Chopping that this bullet point did not seem to consider §11(b)-(d) as relevant and Mr Chopping agreed that it seemed only to consider §11(a), although, unlike Mr Chandler, Deloitte's interpretation of §11(a) did not look at

autonomy of decision making. He also pointed out that in his opinion the second example in the bullet point was wrong if it was to be read as meaning that the purpose for which an intermediate holding company was set up was determinative rather than what actually happened in practice.

5 179. Our conclusion is that there is nothing in the Deloitte manuals which could be read as contradicting FRS23 itself: on the contrary, the largest part of the relevant section was given over to setting FRS23 out in full. Only one of the 3 bullet points of Deloitte's own interpretation of the FRS23 was relevant. That did not state in terms or by implication that any part of FRS23 comprised a free-standing test of autonomy
10 of decision making nor that such a test would have precedence over (or trump) the other tests in FRS23 and it could not reasonably have been read as doing so. Again the examples were brief and neither could be reliably identified with BUKH. It offered no support for Mr Chandler's interpretation of FRS23 or the appellant's decision in 2006 that its functional currency was dollars.

15 *PwC*

180. The PWC manual is considerably more detailed than the above two. After a fairly lengthy introduction on which neither party really relied, it set out FRS 23 §9-11 with some commentary.

181. The commentary on §11A stated that the 'indicator' was 'degree of autonomy'. It
20 explained that this would lead to an intermediate holding company having a different functional currency to its parent where:

Activities are carried out with a significant degree of autonomy. An example is where the operation accumulates cash and other monetary items, incurs expenses, generates income and arranges borrowings, all
25 substantially in its local currency.

182. But to having the same functional currency as its parent where:

No significant degree of autonomy – activities are carried out as an extension of the reporting entity. An example is when the foreign operation only sells goods imported from the reporting entity and remits the proceeds to it. It follows that such an entity (which would be regarded an integral foreign operation in the previous version of IAS 21) must have the same currency as the reporting entity. This is because it would be contradictory for an integral foreign operation that 'carries on business as if it were an extension of the reporting entity's operation' to operate in a primary economic environment different
30 from its parent
35

183. After a description of these provisions, on which neither party relied, the manual proceeded to give detailed examples.

PwC – example 3

184. We will deal with the examples in the order in which they were mentioned which was not chronological. ‘IP’ is the intermediate holding company.

5 Example 3

...IP undertakes no operating or financing activities. Its key cash inflows are dividends from [its subsidiaries] which it remits up directly to its parent P....

10 ...IP undertakes no operating or financing activities. Any investing activity that is undertaken by IP is not carried out as a separate stand-alone activity, but at the behest of its parent.

15 185. Having described the example, PwC then looked at the indicators in §§9-11. §9(a) it describes as the sales and cash inflow indicator which it says is not relevant and the experts in this case would agree on that. §9(b) it described as the expenses and cash flow outflow indicator and says it might be relevant in that IP might incur local costs but it was not likely to be significant by itself.

186. It then looked at the secondary indicators (§10) and said they do not indicate a local functional currency as IP only raises finance from its parent (or from sources in the locality of parent) and it remits all funds back to parent.

20 187. It went on to consider the additional indicators (§11) and said:

Consideration of all the additional factors [ie §11(a)-(d)] also points to the fact that [the IP’s local currency] is not the currency that most faithfully represents IP’s activities of receiving dividend income from [subco’s] in [local currency] and remitting the same to its parent.

25 It then concluded:

It follows that IP is simply a device or a shell corporation for holding investments that could readily have been done by P itself. Hence, the functional currency of IP is the same as its parent....

30 188. PwC’s example then went on to suggest that some accountants might read the standard differently and, in particular, would say that the primary indicators (ie §9) were relevant because IP should be seen as operating in same economic environment as its subcos as the subcos were the source of its dividend income. Those primary indicators suggest the local currency should be the functional currency. However, consideration of the secondary factors would not support this conclusion for the reasons given when considering §10 in the first analysis of this example (§189).

35 189. The additional indicators, said PwC’s alternative analysis, also suggested a local currency as functional currency as the twice yearly payment of dividends to parent was unlikely to impact cash flows. Nevertheless, it went on to consider §12 because of the mixed indicators and concluded that because IP is doing nothing but holding investments and paying the occasional dividend, a function which parent could have done itself, its functional currency should be that of its parent.

190. In conclusion, either route led to the same outcome in PwC's example.

191. Mr Chandler relied on this worked example as supporting his analysis of FRS23. It is difficult to see why. He accepted that there was nothing in it to suggest that the answer to §11(a) was of greater weight than the answers to §11(b)-(d), and accepted that the example given was not on all fours with BUKH, and that the analysis did not focus on decision making. His reliance on this example seemed to be because BUKH was passive in the sense that it did not have autonomy of decision making and he equated that as similar to the example which was passive in the sense that it was a pure conduit.

192. Mr Chopping's view was that on the stated facts for example 3, §11(a) gave the IP its parent's functional currency and §11(b)-(d) had a 'nil' answer so overall the answer to §11 was that IP had its parent's functional currency and he would agree with PwC's conclusion on that. His point was, of course, that that was not true of BUKH.

193. We reject Mr Chandler's view and accept Mr Chopping's. There was nothing concrete in example 3 to support either Mr Chandler's contention that §11(a) related to autonomy of decision making or that §11(a) trumped the tests in §11(b)-(d). While both BUKH and the company in example 3 could be described as passive, it was for different reasons and passivity was not in any event the test. The test was FRS23. The example supported Mr Chopping's view that FRS23 looked at what the intermediate holding company did and not who told it what to do.

194. Moreover we found Mr Chandler's evidence unconvincing as it was circular and logically flawed: he reasoned the company in the example was the same as BUKH if it was controlled by its ultimate parent, and therefore that BUKH was the same sort of company as the one in the example. In fact PwC did not make it clear whether or not the company in the example had autonomy of decision making, only going to support Mr Chopping's view that autonomy of decision making was not the test.

PWC - Example 2

195. In summary, PwC's second example was that the middle company (IP) was located in the same jurisdiction as the operating subsidiaries (subcos), and a different jurisdiction to the ultimate parent manufacturing company (P). P invested its local currency in IP; IP's only function was to manage the subcos. It has a management team and carried out head office functions on behalf of P, such as payroll and cash management for subcos. Dividends from the subcos were remitted to P; IP's cash inflows and outflows were in its local currency.

196. Having considered paragraphs 9 and 10, the example goes on to say:

Looking to the additional factors in paragraph 11...:

- The IP does have a significant degree of autonomy here – it has its own management team and staff. It has a budget for

which it is responsible and has discretion over its head office functions.

- It has a number of transactions with parties outside the group.
- The cash flows of the IP do not directly affect the parent, that is, IP is not merely acting as a conduit here.

5

197.PwC said §11(d) was not relevant. PwC’s conclusion was that IP was ‘not merely... a conduit/cashbox for P’, it did have a significant degree of autonomy and was structured this way for operational as well as tax reasons. Its functional currency should be its local currency and not P’s local currency.

10

198.Mr Chandler’s point was that the first bullet point related to the test in §11(a) and that PwC appeared to see that test as one of autonomy of decision making.

15

199.Mr Chopping agreed that the first bullet point related to the test in §11(a) and even that PwC seemed primarily concerned with autonomy of decision making. However, he pointed out that none of the PwC examples actually turned on autonomy of decision making and he accepted that the meaning of ‘autonomy’ in FRS §11a included, but was not limited to, decision-making autonomy.

20

200.Our reading of example 2 is that it does not provide any support for Mr Chandler’s view that there is a free-standing test of autonomy of decision making, let alone one that ‘trumps’ the other tests contained in §11, and therefore it does not support the conclusion that BUKH’s functional currency was dollars. It does perhaps suggest that PwC considered that autonomy of decision making was a significant part of the test in §11a, a view which we do not think is supported by the FRS itself. But, as we have said, even if the answer to §11(a) for BUKH was dollars, it would not lead to a functional currency of dollars (§95).

25

PwC – example 7

201.Mr Chandler also relied on PwC’s Example 7, which concerned a parent and subsidiary. It read, where P is the parent company:

30

“If the ‘autonomy’ indicator suggests that the foreign subsidiary is simply acting as an agent for its UK parent by selling parent produced goods to customers [in subco’s location], collecting the proceeds and remitting the same to [P located in a different jurisdiction], the functional currency would be [P’s local currency].....

35

However, if the [subco’s] operations were carried out with a significant degree of autonomy (that is, local management has a significant degree of authority and responsibility, such as to borrow loans, invest excess cash, modify prices or grant discounts, hire and fire staff), the functional currency would need to be determined independently from the parent.....

40

PwC’s conclusion was that the example led to mixed indicators but the primary indicators in §9 would lead to a conclusion that subco’s functional currency was the local currency.

202. Mr Chandler's view was that this example, although not directly relevant to the facts in BUKH's case, showed that FRS23 was all about autonomy of decision making and not economic or functional independence.

5 203. We do not agree. The first paragraph is clearly considering functional dependence rather than decision making dependence; the second paragraph does refer to decision-making independence ('...local management has a significant degree of authority...') but does not really distinguish between decision-making and functional independence as it goes on to refer to economic activities such as borrowing and investing. In other words, it is very far from a statement that §11a is all about decision-making autonomy
10 let alone that decision-making autonomy is the overriding or trumping question for FRS23.

Conclusion on the Big 4 Manuals

15 204. We accept Mr Chopping's view on the Big 4 manuals for the reasons given above. Although the appellant referred to them in detail, we found on examination no support for Mr Chandler's view that the Big 4 interpreted §11(a) to be a test of autonomy of decision making, and absolutely no support for his interpretation that §11(a) was to be read as 'trumping' the answers to §11(b)-(d).

20 205. As we have said (§51), when challenged in cross examination on the grounds that his interpretation of FRS 23 did not appear to bear much relation to the words used in the standard, Mr Chandler's oft repeated statement was that his reading was borne out by Big 4 manuals. We have found that not to be the case at all. On the contrary, the manuals supported Mr Chopping's view of how FRS 23 should be read. And while we note that the manuals considered that the 'autonomy' test of §11(a) did include autonomy of decision making, Mr Chopping had agreed that that was an element of
25 the test (§§72 and 199).

Deloitte Report

206. A report was written by Deloitte LLP. The person who wrote it supported BUKH's use of dollars as its functional currency in its accounts.

30 207. However, the appellant did not call the person who wrote the report as an expert witness in this appeal and we choose in those circumstances not to put any weight on it. This is particularly the case where, as is clear from the above, the appellant's expert has not been able to give us a reliable explanation for his views where those views appear both inconsistent with the words of the FRS itself and unsupported by the Big 4 manuals. We put no weight on the opinion of someone who shared that
35 view but has not offered us an acceptable explanation of it.

208. In so far as the appellant relied on the report to show simply that another accountant took the same position, we comment that the test is whether BUKH's accounts reflect a generally accepted accounting practice. One accountant's report does not make a generally accepted accounting practice.

HMRC guidance

209. The appellant's position was that HMRC's guidance supported their position. The guidance read as follows:

Overview

5 A UK investment company that has adopted IAS21/FRS23 is likely to have less flexibility over which functional currency is used than under UK GAAP. Under IAS21/FRS23 an investment company's functional currency is likely to be that of its immediate parent company. This can create exchange rate volatility where the investment company's assets and liabilities are different to that of its functional currency.

.....

17.1 Functional/presentational currency

...

15 However, in contrast to SSAP 20, FRS 102 also specifically requires consideration of the influence of the parent on the company's operations and activities.

210. FRS 102 was the successor to FRS23 and HMRC stated at (17) that transition from one to the other was not expected to result in significant changes. But, as cited above at 17.1, HMRC do state that FRS 102 (and therefore impliedly FRS23) did require consideration of the influence of the parent on the subsidiary.

211. We do not accept, that even if this was correctly understood as supporting Mr Chandler's expert opinion on the interpretation of FRS23, that it would support the appellant's position. The question is whether BUKH's accounts were drawn up in accordance with generally accepted accounting practice. HMRC is a tax collecting body, not a body of accountants, and its views of accounting standards do not amount to generally accepted accounting practice.

212. However, we do not in any event accept that HMRC's guidance does support the appellant's expert's opinion. The section from the 'Overview' cited above says no more than that an investment company is 'likely' to have its parent's functional currency. This has echoes of E&Y's statement that subsidiaries which hold investments and borrow money on behalf of their parents 'normally' have the functional currency of their parents (§167). Mr Chopping does not suggest that the statement is wrong nor does it seem to us to be inconsistent with his interpretation of FRS23. If most intermediate holding companies are mere conduits for their parents, they will have their parent's functional currency. (We were not told what BUKH's immediate parent's functional currency was: BUKH's 2006 accounts determined it to have the functional currency of its ultimate parent, Ball).

213. The second part of HMRC's publication relied on by the appellant was, as cited above, the statement that the parent's influence on the subsidiaries' operations and activities was relevant to FRS102 (and by implication to FRS23). However, we consider this consistent with Mr Chopping's evidence and somewhat inconsistent with Mr Chandler's opinion.

214. Firstly, it is not a clear statement that decision-making autonomy is the key question: the statement refers to ‘influence’ on ‘operations and activities’ and seems to us to convey a general concept more consistent with Mr Chopping’s view that the word ‘autonomy’ in §11(a) encompassed economic autonomy including decision-making autonomy, and one which was less consistent with Mr Chandler’s view that the word ‘autonomy’ in §11(a) only encompassed decision-making autonomy.

215. Secondly, HMRC’s guidance said that the parent’s influence only ‘requires consideration’. There was no suggestion it was the only or even the most important thing to be considered: again that is more consistent with Mr Chopping’s view that §11(a) was a single test by itself of no greater weight than the other tests in §10 and §11.

216. For these reasons, we do not find that HMRC’s published guidance assists the appellant’s case.

Relevance of US GAAP position

217. As we have discussed at §§39-40, BUKH’s functional currency under US GAAP (FAS 52) was determined to be pounds sterling for Ball’s consolidated accounts for all years. Since and including 2006, BUKH’s own accounts have shown dollars as BUKH’s functional currency. As we have said all experts agreed that because the test under US GAAP (FAS 52) was not identical to the test under UK GAAP (FRS23) it was quite possible to have a situation where a company’s functional currency under FRS 23 differed to its functional currency under FAS 52. The fact that under US rules BUKH’s functional currency was sterling did not by itself mean that under UK rules BUKH’s functional currency could not be dollars. We accept the experts’ opinions on this as they were all agreed and the explanation they gave made sense.

218. Mr Chopping’s view was that the similarity between FAS52 and IAS21/FRS23 should have given the appellant pause for thought before determining BUKH’s functional currency under FRS23 to be dollars whereas it was sterling under FAS52, but, as we have said, he did accept it was possible for the dichotomy to arise in certain circumstances as the tests were not identical. Ms Shaw said Mr Chopping’s written evidence was that FRS23 would lead to the same result as FAS51 and that was wrong: we don’t accept that is how his evidence should be read, although we agree that if he had said that it would have been wrong.

FAS 52

219. FAS52 was the US accounting standard on functional currency. Mr Kraehnke was an expert in it and we accept his evidence on it. In particular, it was his evidence that it was focussed on the economic impacts of corporate relationships and did not consider decision making autonomy.

220. We accept his evidence that under FAS52 BUKH’s functional currency was and always had been sterling. This was because he considered BUKH to be ‘relatively

self-contained and integrated within the UK’ and not ‘a direct and integral component or extension of Ball Corp’s operations’ for FAS 52.

221.It was also his evidence that FAS52 was not the same as IAS21 and could lead to a different outcome. As we have said, we also accept that evidence. We note that he
5 accepted that there was commonality of language between FAS52 and IAS21. That was because there had been a project to harmonise the two standards on functional currency but, as we have said, we accept that they were not fully harmonised and in particular that FAS52 was not identical with IAS21.

222.While we accept his evidence that decision-making autonomy had some relevance
10 to IAS21 and none to FAS52, we do not accept his evidence on the extent to which he said decision-making autonomy was relevant to IAS21 for the reasons given at length in our decision above.

Conclusion

223.The question for the Tribunal was whether or not BUKH’s accounts for Y/E 2006
15 were in accordance with UK GAAP in treating its functional currency as dollars rather than sterling. It was UK GAAP to apply appropriate accounting standards. It was accepted that the applicable accounting standard was FRS23. So the question was whether the appellant had properly applied FRS23 when it determined its functional currency was dollars.

20 224.The appellant’s UK expert’s evidence was that FRS23 properly applied to the appellant’s circumstances led to the conclusion that its functional currency was dollars. Mr Kraehnke gave very similar evidence in respect of the identical international standard (IAS21) although, as we have said, his stance was more ambivalent (§§91-92).

25 225.As it apparent from our above decision, we did not accept Mr Chandler’s nor Mr Kraehnke’s opinion on this. We consider Mr Chandler’s approach to FRS 23 flawed; it was an approach that was neither a correct nor a reasonable interpretation of FRS23. In summary, he took one word (‘autonomy’), which did indeed have as its main
30 dictionary definition the one he ascribed to it, and he then elevated that one word to a paramount test. In doing so, his interpretation took the word ‘autonomy’ out of the context in which it was used and ignored the possibility that ‘autonomy’ was given a secondary, wider meaning of independence; it meant he ignored its antonym as an aid to its construction; he then ignored the examples given by the standard to explain the meaning of the two opposites; he ignored the overall context of FRS 23 and in
35 particular that its main principle was stated to be a search for primary economic environment, all of which would have supported the wider meaning of autonomy. He justified ignoring all the other relevant tests (§10(a) and §11(b)-(d)) in the standard by inventing the concept of ‘trumping’, a concept for which there was no basis in the standard. His interpretation failed to engage with the fact that, if correct, it was a
40 major change to the previous version of the standard and yet was not listed in the notes as a major change. He did all this without being able to give a coherent explanation of why his interpretation led to a true and fair view being presented by the

accounts, which, fundamentally, was the objective of the standard. Lastly, Mr Chandler frequently stated that his view of FRS23 was the view taken by the Big 4 in their guidance manuals but we have found that that is not the case: on the contrary the manuals were consistent with Mr Chopping's view and neither treated §11(a) as being
5 solely a test of autonomy of decision making nor permitted the answer to the §11(a) test to trump the answers to the other tests.

226. Mr Kraehnke substantially agreed with Mr Chandler so for the same reasons we reject his opinion.

227. Reverting to the discussion at §§5-16 at the outset, it is largely irrelevant. Even if
10 Ms Shaw was right to say all she had to show was that the appellant's accounts were in accordance with a reasonable interpretation of GAAP, then she has failed to do this. The appellant's and Mr Chandler's interpretation of FRS23 was not a reasonable nor possible interpretation: the only reasonable and possible interpretation of FRS23 on the facts of this appeal in relation to BUKH was that its functional currency was
15 sterling. In any event, we think she had to show that the accounts were in accordance with GAAP, and she has most certainly failed to do that. FRS23 was obviously not intended to be read in the manner for which the appellant contends; no accountant could reasonably have read FRS 23 in that manner.

228. We accept that a number of accountants have read FRS23 in the manner
20 contended for by the appellant: they were Mr Bradford, Mr Schleicher, Mr Chandler, Mr Kraehnke, the person who signed the PwC audit report on BUKH's accounts, and the author of the Deloitte report referred to at §§209-211 above. But as we have said, the fact a number of accountants have misapplied an accounting standard does not mean that the accounts are in accordance with UK generally accepted accounting
25 practice, because generally accepted accounting practice is to apply the standard.

229. And the appellant's determination that its functional currency was dollars was a misapplication of FRS 23. In particular, the word 'autonomy' in §11(a) had to be read as taking its meaning from the context in which it was used (as the antonym of
30 'an extension of [its parent]') and from the examples, where a company with autonomy was one which accumulates cash and other monetary items, incurs expenses, generates income and arranges borrowings, all substantially in its local currency. While autonomy of decision making might be relevant in a borderline case, this was no such a case. BUKH clearly had autonomy in the meaning intended by §11(a).

230. In any event, all the other relevant factors (§10(a) and §11(c)-(d)) also pointed to
35 sterling as functional currency. As all relevant factors pointed to sterling, the only possible conclusion in accordance with UK GAAP was that BUKH's functional currency was sterling. It was irrelevant that the decisions which caused all those answers to point to sterling were ultimately taken by Ball and not BUKH, as FRS 23
40 was not about who made the decisions.

231. The appeal against the assessment is dismissed.

232. 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.

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**BARBARA MOSEDALE
TRIBUNAL JUDGE**

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