Muller and the notional company: the limits of tax fiction

Large Corporate

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The Court of Appeal confirmed that LLP profit calculations cannot ignore real ownership relationships, limiting tax relief for related-party transfers of intangible assets.

Key Points

What is the issue?

When computing the profits of a corporate member of an LLP, the hypothetical company used by CTA 2009 s 1259 may need to be treated as having the LLP's real-world ownership and control arrangements when applying the Part 8 intangible fixed assets related-party gateway.

What does it mean to me?

The case is important for groups that have transferred goodwill, brands or other intangible fixed assets into LLPs. It confirms that the notional company used in the corporation tax computation is not a blank slate divorced from commercial reality.

What can I take away?

For acquisitions before 1 July 2020, the related-party gateway in CTA 2009 s 882 can still deny Part 8 relief where assets are transferred into an LLP owned by related companies. For later acquisitions, different rules apply, but the practical outcome may often be similar.

The Court of Appeal has confirmed that, when computing the profits of a corporate member of a limited liability partnership (LLP), the statutory fiction that a UK-resident company carries on the LLP's trade does not require the LLP's real-world ownership and control arrangements to be ignored.

In *Muller UK and Ireland Group LLP and others v HMRC* [2026] EWCA Civ 248, that conclusion was enough to deny amortisation relief for goodwill and other intangible fixed assets transferred into an LLP by group companies. All section references are to Corporation Tax Act 2009, unless otherwise specified.

At the time of writing, the case may not be the last word on the issue, as the appellants have lodged an application for permission to appeal to the Supreme Court.

The case concerned an attempt to obtain amortisation relief on goodwill and other intangible assets transferred into an LLP by companies that owned it. The taxpayers argued that the hypothetical company used to calculate the LLP's profits should be treated as independent of those companies. The Court of Appeal disagreed.

The dispute centred on the interaction between two provisions in CTA 2009. Under CTA 2009 s 1259, the profits of an LLP attributable to a corporate member are computed as if the LLP's trade were carried on by a UK-resident company. The question was whether that hypothetical company should be treated as having the same ownership and control arrangements as the LLP itself. The answer determined whether the related-party rules in CTA 2009 s 882 prevented relief for the amortisation of the transferred assets.

The transaction

The appellants were three UK-resident companies in the Muller multinational dairy group, together with an LLP that they incorporated in May 2013.

The three companies, referred to in the judgment as the corporate members, owned all the membership units in the LLP. On 1 July 2013, they transferred their respective trades, together with brands, licences, software and goodwill, to the LLP in exchange for membership units.

The brands, licences and software were agreed to be intangible fixed assets within CTA 2009 s 712, and goodwill was treated in the same way under s 715. The assets were valued and recorded in the LLP's accounts at fair value and were amortised over five years on a straight-line basis. The accounts, the fair values and the amortisation calculations were not in dispute.

The issue in question was determining whether that amortisation gave rise to deductions for corporation tax purposes. In computing the LLP's profits for inclusion in the corporate members' corporation tax returns for accounting periods ending between 31 December 2013 and 31 December 2018, deductions were taken for the amortisation of the transferred assets. HMRC challenged those deductions and issued closure notices. The taxpayers appealed.

The statutory setting

The dispute arose because the rules for LLPs and the rules for intangible fixed assets interact in an unusual way.

Part 17 of CTA 2009 contains the corporation tax rules for partnerships and LLPs. Under s 1273, an LLP carrying on a trade or business with a view to profit is treated as transparent for corporation tax purposes. Broadly, the LLP's activities and property are treated as those of its members.

Where one or more partners are within the charge to corporation tax, s 1259 requires the LLP's profits to be determined as if its trade were carried out by a UK-resident company. The resulting profits are then allocated to the corporate members for corporation tax purposes.

That deemed company computation requires consideration of CTA 2009 Part 8, which governs the corporation tax treatment of intangible fixed assets. Part 8 generally follows the accounts, allowing relief where amortisation of an intangible fixed asset is recognised in the accounts (s 729(1)). However, an asset must first fall within the Part 8 regime. For the 2013 transfer in *Muller*, the key question was whether the assets satisfied the conditions in s 882.

The related-party gateway

The availability of Part 8 relief depended on s 882, which determines whether an intangible fixed asset falls within Part 8. At the time of the transfer, s 882(1) provided that Part 8 applied only to intangible fixed assets of a company which were:

- created by the company on or after 1 April 2002 (s 882(1)(a));
- acquired on or after that date from a person who was not a related party at the time of acquisition (s 882(1)(b)); or
- acquired on or after that date from a related party, but only in certain limited circumstances (s 882(1)(c)).

The first route was not relevant because the assets had not been created by the notional company. The critical question was therefore whether the notional company was treated as acquiring the assets from related parties. If it was not, the assets could enter Part 8 under s 882(1)(b). If it was, relief was available only if one of the exceptions in s 882(1)(c) (Cases A to C) applied.

It was common ground that none of the exceptions in s 882(1)(c) applied in *Muller*. The dispute therefore came down to whether the corporate members were related parties in relation to the notional company.

If they were, the s 882(1)(b) gateway was closed and Part 8 amortisation relief was unavailable.

The taxpayers’ argument

The taxpayers argued that s 1259(3) required only one assumption: that the LLP’s trade was carried on by a UK-resident company. On that basis, the profits of the

LLP’s trade should be computed as if it were carried on by a UK-resident company, but without treating that hypothetical company as having the same ownership and control arrangements as the LLP.

That argument, if correct, would have given the taxpayers exactly what they needed. The notional company would have acquired the assets but would not have shared the LLP’s ownership or control arrangements. The corporate members would therefore not be related parties in relation to it, and the requirement in s 882(1)(b) that the acquisition be from a non-related party would be satisfied.

The difficulty with the taxpayers’ argument was that this would mean that requirement would always be satisfied in this context. The taxpayers accepted that consequence, arguing that Parliament had not expressly provided for the notional company to inherit the LLP’s ownership and control arrangements.

The Court of Appeal’s answer

The Court of Appeal rejected the taxpayers’ argument. It began by considering the purpose of s 1259, which is to calculate the profits of the LLP’s trade, and then divide those profits between the corporate members, on the basis that the trade is carried on by a UK-resident company.

The court emphasised that this exercise could not be carried out ‘in a vacuum’. The trade being analysed was the LLP’s actual trade, carried on through the corporate members that owned and controlled it. The court therefore considered that the real-world facts and circumstances surrounding that trade should also be reflected in the hypothetical company unless the legislation required otherwise.

In effect, the court held that the hypothetical company could not be treated as a blank slate divorced from the LLP’s real ownership structure.

The difficulty for the taxpayers was that they wanted to rely on Part 8 while ignoring the ownership and control relationship between the LLP and the corporate members. The court found no basis for doing so. Those ownership and control arrangements were relevant to determining whether the related-party rules applied and therefore whether Part 8 relief was available.

The court therefore held that, at least for the purposes of applying s 882, the hypothetical UK-resident company should be treated as having the same ownership and control arrangements as the LLP. Once that was the case, the corporate members were related parties in relation to the notional company. The gateway in s 882(1)(b) was not satisfied and, because none of the related-party exceptions in s 882(1)(c) applied, the amortisation debits were unavailable.

What would happen under the current legislation?

The legislation has changed since the transactions in *Muller*. Finance Act 2020 amended CTA 2009 s 882 with effect from 1 July 2020. For acquisitions between 1 April 2002 and 30 June 2020, s 882(1B) broadly preserves the previous rules. The 2013 acquisition in *Muller* would therefore still fall under that framework. Applying the court's reasoning, the acquisition would be treated as having been made from related parties and none of the exceptions would apply.

For acquisitions on or after 1 July 2020, s 882(1C) allows some related-party acquisitions to fall within Part 8. The key question then becomes whether the restricted asset rules in CTA 2009 Chapter 16A apply.

For a *Muller*-style transfer of historic intangible value between related parties, ss 900B and 900E are the provisions most likely to matter. If the assets were restricted assets, Part 8 would treat the acquiring company as having acquired them at no cost. The analysis is therefore different under the current rules, but the practical outcome may be much the same: no amortisation relief on the fair-value acquisition cost recorded by the LLP.

Practical lessons

Muller is a warning against treating statutory fictions as commercially empty constructs. Where a notional company is used to compute the profits of a real partnership or LLP trade, the factual circumstances of that real trade may need to be carried across into the hypothetical computation.

For groups, the immediate lesson is that LLPs do not provide a simple route around the related-party limits in the pre-1 July 2020 Part 8 regime. If group companies transfer goodwill or intangible fixed assets into an LLP that they own and control, the

notional company computation under CTA 2009 s 1259 does not necessarily eliminate that relationship for tax purposes.

For current transactions, the analysis must start with the acquisition date. Assets acquired before 1 July 2020 remain subject to the s 882(1B) structure. Assets acquired on or after that date may enter Part 8 under s 882(1C), but CTA 2009 Chapter 16A must be considered carefully, especially for assets with pre-FA 2002 history or related-party provenance.

Taxpayers and their advisers should therefore review the history of the asset, considering whether:

- it was created or acquired before or after 1 April 2002;
- it has ever been a chargeable intangible asset;
- any acquisition was from an unrelated party;
- a relieving acquisition has occurred; and
- the participation condition or other related-party rules apply.

Final remarks

Muller is a technical decision, but the underlying point is straightforward. The corporation tax computation for a corporate member of an LLP is a computation of a real trade, not an abstract exercise carried out in a factual vacuum. The statutory hypothesis in CTA 2009 s 1259 requires the court to imagine a UK-resident company carrying on the LLP's trade, but it does not require the court to ignore the ownership and control relationships that formed part of that trade's real commercial setting.

A similar issue arose in *Tower One St George Wharf Ltd v HMRC* [2025] EWCA Civ 1588, where the Court of Appeal considered the purpose of transactions when applying group relief restrictions to the notional land transaction deemed by Finance Act 2003 s 75A. The court held that the actual circumstances in which the parties acted, including their tax avoidance purpose at the effective date of the notional transaction, were not stripped away merely because Finance Act 2003 s 75A required certain land transactions to be disregarded.

Both cases illustrate the same broader principle: statutory fictions must be interpreted in light of their purpose, and the courts will not disregard real-world facts where they are needed to make the legislation operate coherently (see also *Fowler v*

HMRC [2020] UKSC 22 and *Rossendale Borough Council v Hurstwood Properties (A) Ltd* [2021] UKSC 16).

In *Muller*, that conclusion closed the old CTA 2009 s 882 gateway and denied the amortisation deductions. Under the current legislation, the route may be different for post-1 July 2020 transfers, but Chapter 16A means that related-party transfers of historic intangible value remain heavily constrained.

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