

Tax Chamber
First-tier Tribunal for Scotland



[2025] FTSTC 12

Ref: FTS/TC/AP/25/0009

PROCEDURE – application to sist - refused

DECISION NOTICE

IN THE CASE OF

Valencia Waste Management Limited

Appellant

- and -

Revenue Scotland

Respondent

The hearing took place at George House, Edinburgh on Tuesday 28 October 2025

For the Appellant: Dr Christopher McNall of Counsel, instructed by Dyne Solicitors Limited

For the Respondent: Chris Nicholson WS, Deputy Head of Legal Services, Revenue Scotland

DECISION

INTRODUCTION

1. This was a Case Management Hearing to consider the Appellant's application ("the Application") for a sist of the proceedings contained in the Notice of Appeal dated 25 June 2025. The Application was for a sist of this appeal pending Revenue Scotland's conclusion of an open enquiry into the Appellant's operation of a landfill site at Dunbar ("the Site") during Quarter 3 of 2023/24 ("Q3 23/24").
2. The appeal is against an Information Notice ("Notice") which was issued under section 123 of the Revenue Scotland and Tax Powers Act 2014 ("RSTPA") on 7 January 2025 in relation to the Appellant's operation of the Site during Quarter 3 of 2024/25 ("Q3 24/25").
3. Revenue Scotland oppose the Application.
4. We had a hearing bundle extending to 83 pages and an authorities bundle extending to 109 pages. We had Skeleton Arguments for both parties and previous written submissions from Revenue Scotland dated 9 July 2025 and from the Appellant dated 15 July 2025.

Background facts

5. The Appellant purchased the established Site in April 2022. The Appellant is registered for Scottish Landfill Tax ("SLfT") and has filed quarterly tax returns.
6. On 30 July 2024, Revenue Scotland opened an enquiry, under section 85 RSTPA, into the Appellant's operation of the Site during Q3 23/24, ie 1 October 2023 to 31 December 2023. The enquiry was concerned only with waste described on the SLfT return for that quarter as "Qualifying Fines Less than 10% LOI". Revenue Scotland were concerned to check that the fines qualified for the lower rate of SLfT because the code (19 12 12) used by the Appellant was a broad waste code which encompasses many different waste types.
7. In the course of that enquiry, Revenue Scotland sought what the Appellant's agents described as "a broad swathe of information ... not just about the level of activity at the Dunbar site (which might change from quarter to quarter) but about our client's operational procedures and working practices (which would not ordinarily change from quarter to quarter)."
8. However, in 2024, the working practices did change insofar as the Appellant began using a Material Recovery Facility ("MRF"). Although we were given no explanation of an MRF, this is a specialist Tribunal and we are aware that an MRF is essentially a recycling and reprocessing centre designed to sort and process multiple waste streams received by a landfill operator. Typically they are bespoke. An MRF incorporates a number of mechanical processes (and sometimes manual processes) to separate out the constituent parts of the incoming waste streams, in order to recover recyclable components and other relatively non-compactable materials. An MRF is designed to reduce the amount of material sent to landfill and to produce qualifying lower rate fines.

Revenue Scotland's assertion in a letter dated 20 February 2025 (see paragraphs 22-26 below) that the Appellant's MRF treated the waste streams by means of shredding and trommels (large cylindrical revolving screens or sieves) appears to be unchallenged and is consistent with our understanding of the primary components of an MRF.

9. Prior to the introduction of the MRF, the Appellant simply accepted fines that had been produced off-site by external waste producers. They did not produce the fines themselves. They had pre-acceptance and sampling protocols and details were furnished to Revenue Scotland in the course of the enquiry.

10. The Site Diary records that since April 2022 Revenue Scotland had visited the Site on 14 occasions of which 10 were in 2024.

11. The ongoing enquiry continued in 2024 and following a site visit on 23 October 2024, Ms Lauren Rosie, a Senior Tax Specialist & Manager in the Scottish Landfill Tax Team wrote to the Appellant on 28 October 2024 requesting the following information in relation to the period under enquiry, namely:

"1. Copies of the records of pre-acceptance checks for the waste producer Depot Hire carried out for waste described as "Qualifying Fines Less than 10% LOI" for the Quarter 3 2023/24 period. This should include:

1. Pre-acceptance questionnaire for the waste.
 2. Records of any pre-acceptance audits carried out by Valencia or a third party. If you do not have these records, please confirm this. If there are only partial records, please provide these and explain what you consider to be missing.
2. A copy of the process for fines sampling which was in place at Dunbar Landfill in the Quarter 3 2023/24 period.
 3. If not included in the above document, a copy of the written training for fines sampling which was in place at Dunbar Landfill in the Quarter 3 2023/24 period.
 4. A copy of the sampling records for the Quarter 3 2023/24 period (I understand these to be in the form of an excel spreadsheet and handwritten entries in a physical notebook).
 5. A copy of all emails and sample collection forms sent to [CEL] to request collection of fines samples in the Quarter 3 2023/24 period.
 6. Please confirm the names of the employees who sampled fines in the Quarter 3 2023/24 period.
 7. Please provide a copy of the relevant training record for the above employees to demonstrate that they had been signed off to sample fines."

12. She enclosed a copy of her notes of the site meeting and asked for confirmation that they were an accurate reflection of the visit. She said that she had previously asked for provision, by 11 November 2024, of some outstanding test reports and chemical assessments (or confirmation that the related samples had not been tested). She asked for a response on all of these matters by 27 November 2024.

13. On 27 November 2024, Officer Lois Robertson of Revenue Scotland wrote informally to the Appellant requesting various items of information and documents ("the

list”) in relation to Q3 24/25. On 11 December 2024, the Appellant emailed requesting an extension of time until mid-January to provide those items. On 12 December 2024, Officer Robertson wrote to the Appellant explaining that Revenue Scotland intended to issue an Information Notice.

14. On 7 January 2025, having reviewed what information or documents were, in Officer Robertson’s opinion, reasonably required to verify the Q3 24/25 SLfT return, she amended (by reducing) the list and issued the Notice which included the following Schedule of Documents and/or information that were required, namely:

- “1. A weighbridge report detailing all material and waste coming onto and leaving (sic) Dunbar landfill site.
2. An up-to-date NDA [Non-Disposal Area] record for all material entering and leaving the MRF (as it is being operated as an NDA).
3. A copy of all invoices issued by Valencia Waste Management Ltd for incoming and outgoing materials which include the total amount of gate fees and, if applicable, tax payable.
4. A copy of all sample results from 1 October 2024 – 31 December 2024, including sample results of lower-rated fines produced by Dunbar MRF.
5. Calibration records for the unmanned weighbridge used by dumper trucks leaving the MRF. Please ensure this includes the date(s) and time(s) of calibration.
6. Please confirm if fines produced via the MRF are subject to the same pre-acceptance and sampling protocols as other waste received on site. If there is a different approach in place for these fines, please provide the details of this.
7. Please advise why Dunbar landfill site was closed at 13:05 on 22 November 2024 and 08:27 on 3 December 2024.”

15. A response was requested by 6 February 2025.

16. On 6 February 2025, the Appellant’s agents wrote to Revenue Scotland requesting a review of the Notice. Leaving to one side the arguments advanced in relation to public law and therefore judicial review, as to which this Tribunal has no jurisdiction, we note that it was argued that:

- (a) The Schedule of documents and/or information had seven items and none of the seven items specified in the Schedule were “statutory records” within the meaning of RSTPA and, in any event, the production of them would be unduly onerous.
- (b) The Notice did not meet the “threshold requirement” in section 123 RSTPA.
- (c) Given that there was an open enquiry, it was neither reasonable nor proportionate to “ask for what – in effect – is identical information” in the Notice.
- (d) The Appellant had provided to Revenue Scotland “much” of the information requested in the enquiry. In that regard it was stated that the Appellant did not intend to provide any further response to Revenue Scotland in relation to the enquiry.

(e) The notes of the site meeting on 23 October 2024 were not agreed.

(f) The Appellant reserved the right to apply to the Tribunal for a Closure Notice and to bring a judicial review claim for declaratory and other relief including an Order quashing the Notice.

17. On 13 February 2025, Ms Rosie responded pointing out that the letter of 6 February 2025 discussed both the Notice issued by Officer Robertson and the open enquiry. She could deal only with the enquiry. She asked that, as previously requested in emails of 28 October 2024 and 31 January 2025, the Appellant should advise which sections of the notes of the meeting on 23 October 2024 were not agreed and why. She asked for suggested amendments.

18. She noted that the agents had said that no further information would be provided in relation to the enquiry and she said that she considered that to be “unfortunate” because where co-operation was withdrawn she would only be able to consider the information and documents gathered up until that point.

19. She explained that SLfT is a self-assessed tax and thus the burden of proof is on the taxpayer to demonstrate that the return is complete and correct. In the absence of co-operation she might be forced to amend the return to reflect her “best judgement” of the tax position. She asked that the Appellant provide any further information in relation to the enquiry by 28 February 2025.

20. She undertook to tell the Appellant by 17 March 2025 whether or not she believed that she had reasonable grounds for not providing a Closure Notice.

21. On 20 February 2025, having not received a mandate authorising the Appellant’s agents to act, Officer Robertson wrote to the Appellant referring to the letter of 6 February 2025, confirming that in Revenue Scotland’s view, the weighbridge report, NDA records, invoices and sample results were all statutory records. Reference was made to Revenue Scotland guidance RSTP2030 – Meaning of “statutory records” and SLfT8001 – keeping and preserving records. It was also explained that the Notice had been issued.

22. Specifically, Officer Robertson explained that:-

(1) The weighbridge report was required because, in terms of Regulation 36A Scottish Landfill Tax (Administration) Regulations 2015 (“the Regulations”), a working weighbridge must be used to weigh all disposals and the information must be recorded and maintained for five years in order to enable the operator to make a correct and complete tax return in terms of section 74 RSTPA. Those records were reasonably required to enable the tonnages and descriptions of materials coming into and out of the site to be checked.

(2) Regulation 12(4) of the Regulations requires an operator to maintain a record in relation to the NDA of the weight and description of all material deposited there, the intended destination or use of such material and, where any materials being removed or used, the actual destination or use of that material and the weight and description of any such material sorted or removed. That information must

be provided to Revenue Scotland or to one of its officers if requested. The NDA records are reasonably required by Revenue Scotland because that would enable a distinction to be made between those activities on site which constitute a taxable disposal and those that are a non-taxable use of waste.

- (3) The invoices were required because Regulation 34 of the Regulations makes provision for what should be included in those invoices such as the weight of the material brought into landfill, the description of the material disposed of and the rate of tax chargeable. Revenue Scotland wished sight of those invoices in order to reconcile that with other documents such as the weighbridge reports.
- (4) The sample results were required because SLfT2006 is given the force of law by Article 4 of The Scottish Landfill Tax (Qualifying Material) Order 2016 and sample results fall within the records required by that guidance. They were also reasonably required in order to check the composition of the fines and the frequency with which testing was undertaken.
- (5) The calibration records from the weighbridge were required in order to reconcile the tax return to the material that had been processed on the Site and material that had been processed elsewhere.
- (6) Confirmation of the pre-acceptance and sampling protocols is required because in terms of SLfT2006, the same processes must be carried out for fines produced on the Site as for those produced elsewhere. Revenue Scotland already held the information for off-site processing (from the enquiry).
- (7) The information about closure of the Site was required because on those two occasions, and again on 30 January 2025, upon Revenue Scotland's arrival on Site, the operator closed all operations without explanation. Revenue Scotland have to make site inspections and they wished to minimise ineffective visits.

23. Officer Robertson made it explicit that she did not consider that the information required in the Notice and the information provided in terms of the enquiry were "identical". The level of activity at the Site varies from quarter to quarter and the tax rate is calculated based on the specific tonnages and waste materials disposed of within a particular quarter. The NDA records, invoices and calibration records had not been requested or provided as part of the enquiry.

24. The MRF was a new process and the Officer considered that to be "a significant operational change that had taken place after the period under enquiry, and that it is reasonable to seek information and documents relating to this".

25. She stated that she had taken into account information provided during the enquiry which is why, in respect of item 6, she had requested confirmation as to whether the fines produced by the MRF were subject to the same processes as other waste received on the Site.

26. On 6 March 2025, the agents wrote to Officer Robertson in reply. Again, we do not narrate their arguments on public law and potential judicial review aspects. They argued that Revenue Scotland had failed to establish that the records sought fell within the

meaning of statutory records in section 122 RSTPA. They argued that none of the information sought was “reasonably required”. They argued that there had to be a rational connection between the information sought and the underlying investigation and they did not know the purpose of the Q3 24/25 investigation. They commented in more detail on Officer Robertson’s explanations in her letter.

27. On 24 March 2025, Ms Rosie wrote to the agents confirming that Officer Robertson continued to deal with the Notice but she had noted that the agents had stated that Revenue Scotland was undertaking “an unjustified and unreasonable ‘rolling’ enquiry (sic)”.

28. Ms Rosie provided a seven page detailed explanation as to why the Q3 23/24 enquiry had been opened and why Revenue Scotland would not be issuing a Closure Notice at that juncture.

29. In brief summary, she pointed out that:

1. She had opened the enquiry because fines samples taken by Revenue Scotland in that quarter had tested as hazardous.
2. Whilst some information had been provided there appeared to be discrepancies between that information and the records that had been provided.
3. Other items that had been requested had not been provided and were still outstanding. Whilst that was outstanding, she was not in a position to confirm that the return was complete and correct.
4. She explained that throughout the enquiry she had referred to Revenue Scotland’s guidance SLfT2006-Qualifying materials containing a small amount of non-qualifying material. That guidance amounted to a direction issued by Revenue Scotland in terms of section 14 Landfill Tax (Scotland) Act 2014 and was clearly identified as such; it therefore has the force of law. In particular it includes the following two paragraphs:

“You may need to justify your decision to classify fines as qualifying for the lower rate of SLfT to us. You must therefore keep and provide sufficient evidence to substantiate applying the lower rate of SLfT to any particular disposal of fines.

You must produce and retain appropriate records to show that fines disposed of at your landfill site are eligible for the lower rate of SLfT for a period of 5 years.”

5. She then identified a number of discrepancies in the records and asked for explanations.
6. She stated that the discrepancies between the records and the explanation of the sampling and testing processes that had been given to her were a matter of concern because the records, when taken together, should provide an audit trail to support that waste loads were sampled and tested at the intervals required by SLfT2006.
7. She stated that the inconsistencies raised concerns that waste loads were not sampled or tested at the required intervals and that those concerns were

exacerbated by the fact that she had not been provided with access to a number of pieces of information that she had requested.

8. In particular, she was concerned that she had asked for access to a spiral bound notebook updated by the site manager at the time that a sample was taken and it was used to record the details of the sampled load, the sample date and the sample ID as written on the sample tubs. Six scanned pages had been provided and on four of the pages the entries were not in date order. On five of the pages the ID numbers were sequential but two entries were not. There were no entries for four samples that had been identified by the laboratory.
9. Of the 32 samples taken as part of the normal testing process, only four were received by the laboratory within seven days of the sample being taken (five were received between 77 and 81 days later).
10. In an attempt to resolve matters she invited the Appellant to provide:
 - a. the outstanding items listed in her email of 31 January 2025 or alternatively to confirm if any or all of those items were not in the Appellant's possession,
 - b. an explanation as to why entries in the notebook are not in date order,
 - c. an explanation as to why some sample IDs are not sequential,
 - d. an explanation as to why the majority of samples took over seven days to be received by the lab for testing.

11. She asked for a reply by 24 April 2025.

30. Having sought an extension of time until 15 May 2025 the Appellant then replied to that letter on that day. A brief explanation for a number of the queries raised by Revenue Scotland was offered.

31. In particular, it was conceded that:

- (a) one page of the notebook had been inadvertently omitted and a scanned copy was furnished. A scanned copy of what was described as being "all the relevant pages of the original notebook during this period" was provided on the basis that the notebook had also included references to samples not related to the qualifying fines testing procedure, and
- (b) the submission of samples other than on a weekly basis was "down to administrative error. This issue has been identified and corrected following an independent audit conducted by us internally".

32. On 29 May 2025, Revenue Scotland issued a Review Conclusion letter in relation to the Notice. That letter narrated the undisputed facts about the SLfT return for Q3 24/25 namely:

- "
- The return was received on 12 February 2025
 - Standard rate tonnage (net) - 3951
 - Lower rate tonnage (net) – 29274
 - Exempt tonnage -13423
 - Total tax - £506,322
 - Total tax paid - £506,322"

33. The Review Officer argued that the test in section 123 RSTPA was met, ie that the information sought was reasonably required for the purpose of checking the Appellant's tax position and it was reasonable for the Appellant to be required to provide the information or produce the documents.

34. The information was required because the Appellant had begun using an MRF in 2024 which was "a change to existing procedures".

35. The Review Officer upheld the Notice on the basis that the information and documents sought were reasonably required in order to check the Appellant's records both to ensure accuracy and that the correct tax liability had been declared.

36. On 25 June 2025, the Notice of Appeal was lodged with the Tribunal. The Grounds of Appeal were:

- (a) Revenue Scotland were required to prove that the Notice was validly issued and its terms are within the statutory provisions.
- (b) The documents or classes of documents specified in the Schedule were not "statutory records" within the meaning of RSTPA.
- (c) None of the documents and or information specified in the Schedule is "reasonably required" by Revenue Scotland and it is not reasonable for the Appellant to be required to produce them.
- (d) Revenue Scotland have failed to demonstrate any rational connection between the documents and information sought and the underlying investigation.
- (e) The giving of the Notice and/or its terms are oppressive (and a judicial review argument).

37. On 10 July 2025, in relation to the enquiry, Ms Rosie replied to the Appellant's email of 15 May 2025 in a detailed four-page letter accepting some of the explanations but rejecting others. She pointed out that the notebook was "a key point in the audit trail of your fines sampling process as it is the only document which links a specific [laboratory report] to a specific waste load and waste producer". Her particular concerns in that regard were that:

- (a) It seemed that the six pages that had originally been produced were not scans of the original notebook. That had only become clear in the 15 May 2025 email.
- (b) In order to provide "all the relevant information" the Appellant said that that had been produced by "extracting the relevant sampling records attributable to the testing of qualified fines" and scanning them. Ms Rosie had interpreted that to mean that the Appellant had reviewed the original notebook and transcribed the entries that were deemed to be "relevant" into a separate notebook and then provided scanned copies to Revenue Scotland creating a new record.
- (c) It was difficult to verify the authenticity of some records when provided in digital form.

38. She explained that the records should provide confidence that waste loads were sampled and tested at the required intervals but given the lack of access to the physical notebook, the delayed submission of samples to the laboratory and the fact that samples were submitted to the laboratory out of date order, she could not be assured that the

samples submitted to the laboratory were taken from the stated loads or at the stated times.

39. In summary, there was not a robust sampling record. That being the case she intended to issue a third party Information Notice to the laboratory in terms of section 125 RSTPA; in the absence of agreement to that course of action from the Appellant she would seek approval from the Tribunal. She asked for a response by 11 August 2025.

40. On 11 August 2025, the agents replied stating that they did not agree to the issue of the third party Information Notice not least because the Notice had been appealed to the Tribunal and the opposed Application was due to be adjudicated upon at a hearing. Public law issues were again aired.

41. On 4 September 2025, Ms Rosie emailed the Appellant requesting a reply to her email of 10 July 2025.

42. On 5 September 2025, the agents replied referring to their letter of 11 August 2025 and stated: "Our client is not going to give RS any further information or documents until its appeal is finally determined."

The Legal Framework

43. The Order issued by the Tribunal on 1 August 2025 explained that there is no jurisprudence in this Tribunal relating to an opposed application for a sist but the explanatory notes to RSTPA state:

"The effect of [the legislation] is that the jurisprudence concerning the proper bounds of the tax authority's role is imported into the devolved tax system. This jurisprudence includes not only case law from the UK jurisdictions but other English-speaking jurisdictions."

44. In their Skeleton Argument, Revenue Scotland confirmed that they did not oppose the Appellant's approach which was to adopt the approach taken in the UK Tribunals because the first instance cases cited "are consistent with leading Scottish authorities and the principles contained therein are well understood".

45. It is not disputed that the onus, the burden, lies with the Appellant who is seeking the sist.

The First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017 ("the Rules")

46. It is common ground that in terms of Rule 5(3)(k) of the Rules, the Tribunal has the case management power to sist proceedings. It is also common ground that when exercising, or not, that discretion, the Tribunal must always have in mind Rule 2 of the Rules which reads:

"Overriding objective and parties' obligations to co-operate with the First-tier Tribunal

2.—(1) The overriding objective of these Rules is to enable the First-tier Tribunal to deal with cases fairly and justly.

(2) Dealing with a case in accordance with the overriding objective includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated expenses and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the First-tier Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The First-tier Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

(4) Parties must, insofar as reasonably possible—

- (a) help the First-tier Tribunal to further the overriding objective; and
- (b) co-operate with the First-tier Tribunal generally.”

Discussion

47. We have narrated the facts of both the Notice and the enquiry at such length since the parties’ respective positions are decidedly polarised. That being the case, regardless of our decision on this case management and preliminary issue, we draw the parties’ attention to the provisions of Rule 3 of the Rules, ie mediation or Alternative Dispute Resolution and commend that approach to them.

48. It was argued for the Appellant that Revenue Scotland’s pleadings (being the written submission and the Skeleton Argument) were lacking in detail and not supported by, for example, witness statements. That is true. However, we do not accept the suggestion that we should infer from that that Revenue Scotland are choosing not to tell the Tribunal why the Q3 23/24 enquiry is still open.

49. As can be seen from our findings in fact and, in particular, paragraphs 37 to 39 above, we do understand precisely why Revenue Scotland have not issued a Closure Notice. Revenue Scotland are very clear that, in their view, for the reasons given, the information thus far provided does not suffice to provide an adequate, let alone a robust, audit trail. They have made it clear that SLfT is a self-assessed tax and it is for the Appellant to maintain and produce the requisite records. The Appellant has declined to do so until the issue of the Notice has been resolved.

50. It was also argued by the Appellant that, at paragraph 2 in their written submission, Revenue Scotland had simply indicated that the enquiry and Notice related to different

periods, the tax position varies between quarters and there would not be identical quantities in each quarter, ie the sole ground of opposition to the sist was effectively that there would be differing quantities. Whilst that was not disputed, again, it was argued that there was no evidence. That point was made in the Appellant's Skeleton Argument which was lodged prior to that for Revenue Scotland.

51. In their Skeleton Argument, at paragraphs 18 and 19, Revenue Scotland pointed out that in Q3 23/24 the qualifying fines had been processed offsite by external waste producers before being brought on site for disposal. It was argued that Q3 24/25 was "manifestly different from Q3 23/24" because the Appellant had begun to operate the MRF.

52. Again, it is argued by the Appellant that Revenue Scotland have not produced witness statements about the MRF and are relying on a bare assertion about the MRF.

53. Because the Application was included in the Notice of Appeal, this appeal is at a very early stage indeed. No Statement of Case has been directed to be lodged. Whilst of course, Revenue Scotland could have chosen to lodge witness statements, they have not been directed to do so.

54. Regrettably, Revenue Scotland's pleadings, particularly the written submissions, could be viewed as being lacking in detail and that is certainly the Appellant's argument. However, it is clear from the correspondence in the Bundle (that was ordered to be produced by the Appellant) that it is not disputed that the Appellant had installed an MRF after Q3 23/24. As we have indicated at paragraphs 8 and 9 above, we do know what an MRF is and does and, as we have explained, we know that it was a material change in the Appellant's working practices.

55. We have had regard to Rule 2 of the Rules and find that the information furnished in the Bundle suffices for case management purposes at this juncture and we are in a position to find the relevant facts. We are not deciding the substantive issue which is the validity or otherwise of the Notice. We must simply determine whether or not a sist should be granted at this stage.

56. It is common ground that the grant, or not, of a sist is an exercise of the Tribunal's discretion. In general, there was no material dispute between the parties about the extent of the Tribunal's discretion, which is wide. We do not propose to address the details of the arguments advanced on the authorities that were cited to us since there is no case law that is directly in point.

57. Both parties invited us to articulate the bounds of the Tribunal's discretion.

58. In the written submissions for the Appellant, Dr McNall referred to, and relied on the decision in *Gap Group Ltd v HMRC* [2022] UKFTT 397 (TC) ("Gap") where, at paragraph 52 that Tribunal approved and adopted Lord Deas at *Connell v Grierson* (1865) 3M 1166 ("Connell") where he had stated:

"Prima facie it is a matter of right to either party to insist upon the cause going on, and the onus lies on him who wishes to stop".

59. Dr McNall very properly referred the Tribunal to MacPhail's Sheriff Court Practice where, under the heading "Exercise of discretion" it reads:

"A sist of process is a serious interference with the orderly progress of procedure, and the onus is on the party moving for it to satisfy the court that it is in the interests of justice that the proceedings should not be allowed to continue."

The footnote references *Connell*.

60. Revenue Scotland rely on that and argue that, having issued the Notice, that should either be litigated or enforced.

61. In *Gap*, at paragraph 50, the Tribunal had also stated:

"I agree with Judge O'Connor in *Ticket Master UK Limited v The Information Commissioners* [2021] UKFTT 83 (GRC) who stated that '... the dual considerations of material assistance and expediency, identified in *RBS [Revenue and Customs Commissioners v RBS Deutschland Holdings GmbH* [2006] SSIH 10], are simply a rewrapping of the overriding objective ... The phraseology of 'material assistance' and 'expediency' logically reflect those matters to which due weight should be attached, but, ultimately, the Tribunal must ensure that the case is dealt with fairly and justly'".

62. We agree with that analysis, as did Judge McNall in *Barclays Services Limited and Another v HMRC* [2021] UKFTT 151 (TC) ("Barclays"), where, at paragraph 25 he went on to say that ultimately the task of the Tribunal:

"is to look at whether the case management decision is consistent with the overriding objective of the FtT Rules to deal with cases fairly and justly, including dealing with the case in ways that are proportionate to the complexity of the issues, and avoiding delay so far as compatible with proper consideration of the issues."

63. We agree. That is the process that we have adopted, since unlike any of the cases cited to us, we are not here dealing with a sist which is dependent on the outcome of other litigation.

64. We must consider the unique background facts in this specific litigation. The enquiry is not, and may never become, a litigation here or elsewhere because the Closure Notice, when issued, may conclude matters in relation to Q3 23/24.

65. What then of the facts in this litigation?

66. We do accept the argument for the Appellant that, in respect of both Q3 23/24 and Q3 24/25, Revenue Scotland are seeking to verify the classification of the fines. What we do not accept is the proposition that Revenue Scotland are seeking identical information or that the Appellant has provided all of the information requested.

67. As can be seen from a comparison of the contents of the Notice (see paragraph 14 above) and the questions asked in the enquiry (see, in particular, paragraphs 11 and 37 to 39 above) although the information sought in relation to both Q3 23/24 and Q3 24/25

relates to the fines, the detail is very different and by no means everything sought in the enquiry has been produced. The Appellant has also bluntly refused to provide any further information to Revenue Scotland until the Tribunal determines this Appeal.

68. The introduction of the MRF is seminal. Revenue Scotland have always made it explicit that, in popular parlance, it is a “game changer”. We agree. The Appellant had changed its *modus operandi* in 2024. We also agree with Mr Nicholson’s oral submission that with the introduction of the MRF, the Appellant had become a producer of waste rather than just filling the Site. That is indeed the crux of the matter.

69. The appellant has, throughout, ignored the implications of the introduction of the MRF, notwithstanding Officer Robertson pointing out to the Appellant that its introduction was “a significant operational change” (see paragraph 24 above) and the Review Officer pointing out that it was a “change to existing procedures” (see paragraph 34 above).

70. We attach little weight to the argument for the Appellant that because “it is tolerably plain that the outcome of the enquiry....will have a bearing on Revenue Scotland’s approach to the Appellant’s operation” of the Site in respect of Q3 24/25 the sist should be granted. Of course, it might have a bearing but Revenue Scotland’s primary focus in terms of the operation of the Site in that quarter, and therefore the primary focus of the Notice is the MRF. None of that information is, or could be, available in relation to the period under enquiry.

71. We have set out at paragraph 36 above, the Grounds of Appeal against the Notice and we have set out the relevant provisions of RSTPA in the Appendix hereto. One of the key issues is whether the Notice requires the delivery of statutory records. It is common ground that, to the extent, if any, that they are such records, then there can be no appeal against the Notice.

72. Revenue Scotland have issued the Notice in order to verify the Appellant’s tax return, and therefore tax position, in Q3 24/25.

73. The issue of a Closure Notice in the enquiry would not resolve the question of what is, or is not, a statutory record in relation to the MRF in terms of RSTPA. Were we to grant the sist, there would be a delay before that issue could be addressed.

74. The same would apply to the issue of the validity, or not, of the Notice.

75. Dr McNall was right to refer to paragraph 47 of *Barclays* which reads:

“47. Plainly, my decision as to a stay will lead to delay, and I remind myself that the overriding objective mandates me to avoid delay, but only “insofar as compatible with proper consideration of the issues”: Rule 2(2)(e). The rider is important. There is no general prohibition of delay, and delay may itself, on occasion, nonetheless serve the core overriding objective of dealing with a case fairly and justly: Rule 2(1).”

76. We agree. Although it deals with an application for adjournment and we were not referred to the case, as is made clear in *Transport for London v O’Cathail* [2013] EWCA Civ 21, at paragraph 42, “the overarching fairness factor must be taken into account in

assessing the effect of the decision on *both* sides.” Both parties are entitled to have the appeal dealt with fairly and justly. The Appellant does not have a monopoly of the fairness factors.

77. We agree with Revenue Scotland that any further delay causes prejudice to Revenue Scotland. The Notice was issued in order to expedite their verification exercise for Q3 24/25. A sist, if granted, would further delay the completion of the enquiry given the Appellant’s stance on providing no further information until the issue of the Notice is resolved (see paragraph 42 above).

78. Of course, we have noted that Revenue Scotland have not issued an Information Notice in the enquiry but that is not a matter for this Tribunal. As we have found as fact, the key issue in Q3 24/25, being the operation of the MRF, is not an issue in the enquiry and so the information sought, in the Notice, is not a duplication of what is sought in the enquiry albeit there may be some limited overlap. We agree with Revenue Scotland that it would be disproportionate to delay verification of Q3 24/25 pending the outcome of the verification of Q3 23/24 where the *modus operandi* was very different.

Decision

79. We have had regard to the provisions of Rule 2 of the Rules. We agree with Sheriff Principal Stephen when she stated at paragraph 34 of *Royal Bank of Scotland PLC v Wilcox* [2012] ScotSC 61 that, when considering whether or not to grant or refuse a sist, having looked “at all the relevant material considerations... Nevertheless it is necessary to look at the individual factors....and then look at the balancing exercise in the round”.

80. We have weighed in the balance all of the factors that have been drawn to our attention, both individually and in the round. For the reasons set out above, we do not find that the Appellant has shown sufficient grounds for the grant of a sist in the circumstances of this case; the grant of a sist at this juncture is not in the interests of justice.

81. The application for a sist, of any duration, is refused.

82. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has the right to apply for permission to appeal on a point of law pursuant to Rule 38 of the First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017. In terms of Regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016, any such application must be received by this Tribunal within 30 days from the date this decision is sent to that party.

ANNE SCOTT
President

Release date: 28 November 2025

RSTPA

Section 120 reads:

Meaning of “tax position”

- (1) In this Part unless otherwise stated “tax position”, in relation to a person, means the person’s position as regards any devolved tax, including the person’s position as regards—
- (a) past, present and future liability to pay any devolved tax,
 - (b) penalties and other amounts that have been paid, or are or may be payable, by or to the person in connection with any devolved tax, and
 - (c) claims, elections, applications and notices that have been or may be made or given in connection with the person’s liability to pay any devolved tax,
- (and references to a person’s position as regards a particular tax (however expressed) are to be interpreted accordingly).
- (2) ...
- (3) References in this Part to a person’s tax position are to the person’s tax position at any time or in relation to any period, unless otherwise stated.
- (4) References to checking a person’s tax position include carrying out an investigation or enquiry of any kind.

Section 122 reads:

Meaning of “statutory records”

- (1) For the purposes of this Part information or a document forms part of a person’s statutory records if it is information or a document which the person is required to keep and preserve by or under this Act, subject to subsections (2) and (3).
- (2) To the extent that any information or document that is required to be kept and preserved by or under this Act—
- (a) does not relate to the carrying on of a business, and
 - (b) is not also required to be kept or preserved by or under any other enactment relating to devolved tax,

it forms part of a person’s statutory records only to the extent that any accounting period or periods to which it relates has or have ended.

- (3) Information and documents cease to form part of a person's statutory records, when the period for which they are required to be preserved by or under this Act has expired.

Section 123 reads:

Power to obtain information and documents from taxpayer

- (1) If the condition in subsection (2) is met, a designated officer may by notice require a person ("the taxpayer")—
- (a) to provide information, or
 - (b) to produce a document.
- (2) That condition is that—
- (a) the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position, and
 - (b) it is reasonable for the taxpayer to be required to provide the information or to produce the document.
- (3) In this Part "taxpayer notice" means a notice under this section.