Tax Chamber
First-tier Tribunal for Scotland

[2025] FTSTC 9

Ref: FTS/TC/AP/23/0005, 0006, 0013 and 0014

***LBTT* – Group relief – section 33 and Schedule 10 LBTTA – carelessness by agent – whether "on behalf of" – Group relief – whether further returns – payment date for penalties**

DECISION NOTICE

IN THE CASE OF

Abbotsford Property Group Limited
and
Mount Royal Property Group Ltd

Appellants

- and -

Revenue Scotland

Respondent

TRIBUNAL: ANNE SCOTT
CHARLOTTE BARBOUR

An in-person hearing took place at George House, Edinburgh on 9 and 10 December 2024

For the Appellants – Philip Simpson, KC instructed by DAC Beachcroft LLP

For the Respondent – Stephen Donnelly, Advocate, instructed by Revenue Scotland

DECISION

Introduction

1. Both Appellants are appealing

   (i) Notices of Assessment issued to them by Revenue Scotland under section 98 of the Revenue Scotland and Tax Powers Act 2014 ("RSTPA"),

   and

   (ii) penalty assessment notices under section 179 RSTPA issued on 22 February 2023 and varied on review on 2 June 2023.

2. In the case of the first appellant ("Abbotsford"), the Notice of Assessment was dated 21 April 2022 and assessed Abbotsford to Land and Buildings Transaction Tax ("LBTT") in the sum of £44,250 plus interest thereon relating to a transaction with an effective date of 31 May 2017; the LBTT return was filed late on 3 August 2018.

3. In the case of the second appellant ("Mount Royal"), the Notice of Assessment was dated 14 April 2022 and assessed Mount Royal to LBTT in the sum of £642,750 plus interest thereon relating to a transaction with an effective date of 21 April 2017; the LBTT return was filed on 24 April 2017.

4. In very brief summary:

   1. The assessments were raised because Saffery Champness LLP (now Saffery LLP) ("Saffery") for the Appellants had made a Voluntary Disclosure to Revenue Scotland on 25 February 2022 that two LBTT returns had been inaccurate; they filed "revised" returns on 23 February 2022. It had been discovered that group relief had been claimed in circumstances where it subsequently transpired that the eligibility criteria had not been met.

   2. The penalties were imposed for failure to make further returns in terms of section 33 Land and Buildings Transaction Tax Act 2013 ("LBTTA") and for failure to pay tax timeously.

   3. It was common ground that Saffery had been careless; that was conceded at the outset of the hearing, in witness statements and correspondence.

5. It is common ground that, in short, in the context of a restructuring of a group of companies the eligibility criteria for group relief had ceased to be met when, on 31 May 2017, the existing share capital of each of the Appellants had been subdivided and new shares allotted to persons other than the holding company. That diluted the holding company's stake in each of the Appellants to below the threshold for group relief.

6. It was also common ground that Revenue Scotland had correctly identified the issues in these appeals at paragraphs 10 and 11 of their Skeleton Argument. Those paragraphs read:

"10. As to the s. 98 assessments:

"(1) Did Safferys' carelessness bring about the appellants' claims for group relief?

(2) If so, were Safferys acting on the appellants' behalf in that regard?

(3) In any event, did the appellants fail to take reasonable steps to inform Revenue Scotland that inaccurate information had been provided to Revenue Scotland on their behalf?

11. As to penalties:

(1) Were the returns submitted in February 2022 'further returns' for the purposes of s. 33 of the Land and Buildings Transaction Tax (Scotland) Act 2013?

(2) In any event, should the 10% reduction made by Revenue Scotland on review in relation to telling be increased? (It said "timing" but that is clearly a typographical error.)

(3) When was the payment of LBTT due, so that time for late payment ran?

(4) In any event, should the penalties be cancelled on the basis of a reasonable excuse on the part of the appellants?"

We have modified these marginally for the purposes of this decision.

7. We had a Hearing Bundle extending to 1101 pages, an Authorities Bundle extending to 769 pages and a Supplementary Bundle of Authorities extending to 68 pages. On the second day of the hearing, of consent, Revenue Scotland lodged copies of three further Authorities.

8. In terms of Rule 5 of the First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017 ("the Rules") the Appellants' appeals had been conjoined. Of consent, counsel for all of the parties agreed that the appeals should be consolidated and only one decision issued.

9. We had one Skeleton Argument for the two Appellants and one Skeleton Argument for Revenue Scotland. We also had a Statement of Agreed Facts extending to 13 pages and 95 paragraphs.

10. For the Appellants we heard evidence from Ms Swift and Mr Langston, both partners in Saffery, and from Lord Douglas Miller ("RDM"). All of the other witness statements, both for the Appellants and for Revenue Scotland, were accepted as evidence-in-chief and there was no cross-examination in that regard.

11. We had the benefit of a transcript for judicial use only because, following on an accident and a period of ill health, I was only working part-time but days before the

hearing had been hospitalised. In the knowledge that a transcript would be available, having regard to Rule 2 of the Rules, and being very reluctant to lose the hearing date, I decided to proceed with the hearing. During the hearing, the parties were made aware that the decision would not be released within the usual time frame. Unfortunately, further delay in issuing this decision is attributable to a subsequent extended period of sickness leave.

12. Revenue Scotland bear the burden of proof in establishing that both the assessments and penalties were timeously and correctly raised. Thereafter the Appellants bear the burden of proof in regard to quantum.

The Facts

Dramatis Personae

13. Mr Douglas Miller (RDM), as he was at the relevant time, is a business man.

14. In or around May 2016, RDM was the sole director and sole shareholder of Moorfoot Capital Management Limited ("Moorfoot") and he remains the sole director.

15. From 5 April 2017 in the case of Abbotsford, and from 16 January 2017 in the case of Mount Royal, both companies were wholly owned subsidiaries of Moorfoot and part of a group of companies ("the Group"), all of which were wholly owned by Moorfoot.

16. The land transactions at the heart of these appeals were the acquisition, from other companies in the Group, of properties on 31 May 2017 by Abbotsford and 21 April 2017 by Mount Royal.

17. Dickson Minto WS ("DM"), Solicitors had been appointed as legal advisers to Moorfoot on 19 September 2005. Item 2 in the Engagement Letter dated that date read:-

> "Our Role
>
> We shall act as legal advisers to the Company and provide legal advice from time to time as required. We shall also provide Company secretarial services to the Company and its subsidiaries. We shall not advise the Company in relation to any taxation matters".

Item 3.1 in the Schedule to the Engagement Letter read:

> "As your agents, we can only act on the basis of information and instructions given to us by you and/or others authorised by you".

18. There was no specific engagement letter in relation to the transactions which are the subject matter of these appeals.

19. The relevant personnel in DM for the purposes of these appeals and whose witness statements were in the Bundle were:

(a) Jonathan Brindle who was Head of Scottish Property in the commercial property team.

(b) Colin MacNeill, a corporate partner, who was the client relationship partner for RDM.

(c) Michael Roberston who is now a partner in DM but at the relevant time he was one of the solicitors providing advice on the corporate law aspects of work for Moorfoot.

20. On 22 August 2014, Moorfoot engaged Saffery, a firm of chartered accountants, to provide professional services. The Engagement Letter made it clear at 2.3 a) that they were not responsible for "providing legal or other specialist advice outside the scope of the Engagement". Appendix 2 to the Engagement Letter set out their responsibilities in relation to "Company Taxation". That included at 1.3 the provision of "tax advisory services".

21. The relevant personnel in Saffery for the purposes of these appeals were:

(a) Ms Susie Swift, the client relationship partner since approximately 2005 for RDM, his family and his companies. She is based in Inverness. She is not a tax specialist and has no tax specific qualifications.

(b) Robert Langston is a tax partner and is National Tax Partner and a member of the Management Board. His role as a tax specialist included both corporate and private client tax matters including corporate restructuring. He was a "Red List Partner" which he described as being "a technical tax partner who is permitted to sign off on certain types of tax advice".

(c) David Adams was an employee until his departure at the end of 2017. He was latterly a Tax Director working in the Transactions Tax group in the London office. His background was in personal tax and until approximately 2015 he was a senior manager heading a compliance team dealing purely with personal tax.

(d) Rob Elliot was the former Managing Partner and latterly was a Consultant. He headed the small group who investigated the issues around the acknowledged carelessness on the part of Saffery.

Background

22. On 14 March 2016, RDM contacted Saffery by email and amongst other things indicated that he "was thinking of setting up some sleeper shares" in Moorfoot and he wished to discuss that and other matters with them. The idea of sleeper shares had not been suggested to him by Saffery. RDM had read a press article about them and wanted advice as to whether that might be a means of achieving his objectives in terms of succession planning.

23. At all material times RDM made it clear to Saffery that the Group should be maintained, so that tax reliefs for all relevant taxes would continue to be available. Saffery made it equally clear to him that they understood that and would arrange transactions

accordingly. Mr Langston confirmed that he knew that RDM would not want to undertake any restructuring which would give rise to tax charges. His evidence was "Anything more than a de minimis tax charge would have necessitated a discussion with the client". There was never any such discussion.

24. On 24 March 2016, RDM and Ms Swift met to discuss RDM's desire to review the Group, with a view to potential succession and Inheritance Tax planning.

25. On 6 May 2016, RDM, accompanied by one of his staff, met in Edinburgh with Ms Swift and Mr Langston. That meeting involved a very high-level discussion around a potential restructuring of the Group.

26. The minutes of that meeting include the following at 9.8 in relation to Abbotsford:

> "As it is an internal sale inside the group there is no immediate tax charge and as long as the company does not leave the group within three years there will be no LBTT charge and within six years there will be no corporation tax charge."

In evidence, Mr Langston confirmed that he had given that advice. His witness statement recorded that:

> "I always understood that [RDM] wanted to retain the group structure for tax purposes and did not want to incur any tax charges as part of any restructuring".

27. The outcome of that meeting was that it was agreed that, amongst other things, Saffery should draw up a plan for the restructuring of the Group which would be forwarded to the solicitors who would be DM. They would also draw up a step plan to be used by DM for implementing the plan.

28. Having considered the minutes of that meeting, which had been sent to him, RDM contacted Saffery on 26 May 2016. He noted that one of the actions was for Saffery to draw up a plan for the restructuring of the Group and to "take forward" with DM the detail of the ideas that Mr Langston had articulated. He asked for an estimate of costs.

29. Mr Langston delegated the work on the plan to Mr Adams who was concerned about his lack of relevant expertise "because I am not a corporate tax person". Although there was a personal tax element to the project it was principally a corporate restructuring. He emailed Mr Langston questioning why he should be involved. Mr Langston left the project with Mr Adams.

30. Mr Langston's description in his witness statement of what followed was:

> "When David became involved, my understanding was that I would not be involved in the day-to day-delivery of the advice but would be responsible for reviewing and approving it. This form of partner review was the usual practice at Saffery at that time. As such, I was never fully involved in the project; my role was to look at specific aspects of it, as I was never provided with a full overview. With the benefit of hindsight, I should have insisted on greater visibility of the detail. As will be apparent from the correspondence, there were a small number of specific occasions where I was asked to provide input, and although I was copied on other emails, given my

understanding of my role, I would not have reviewed these or the attachments. Although I have not seen the full file of correspondence, I expect there was a lot of correspondence which I did not see."

31. On 6 July 2016, Mr Adams sent an internal email to Mr Langston enclosing a copy of his first draft of the plan but raised a number of queries about the share structure, none of which related directly to group relief. However, the draft plan did include the statement that we quote at paragraph 34 below.

32. The matter progressed and on 25 July 2016, Ms Swift wrote to RDM, with copies to Mr Langston, enclosing the final report ("the Report") dated that day. It was entitled "R P Douglas Miller Corporate reorganisation - Succession planning". It set out the proposals for the reorganisation of Moorfoot and asked for RDM's comments on it. Ms Swift stated:-

"In the meantime, assuming you wish to go ahead, we will prepare step plans for the lawyers, based on our proposals."

33. The Report centred around the issue of certain shares in the Moorfoot group companies to a few individuals with the intention of passing future value in those companies to them in a tax efficient manner, whilst also retaining the existing Group for tax purposes (including LBTT).

34. Of note, it did not include any information about the proposed shareholdings, albeit it indicated that new shares would be issued. It stated at 5.5 in relation to Abbotsford that:

"As the disposal of the Abbotsford property is an internal sale inside the group, there should be no immediate tax charge. As long as the company does not leave the group within three years there will be no LBTT charge and so long as the company does not leave the group within six years there will be no corporation tax charge."

35. At 7.2 under the heading "Potential Issues" there was a reference to a potential loss of group reliefs (including for LBTT) if there were to be an introduction of new classes of shares. The clear evidence of Ms Swift in relation to this was that, given that retention of group relief was crucial, she assumed that the planning by Saffery would be done in a way which would avoid any such problem. As the Report was part of a bigger and long term tax planning exercise that had been discussed with Ms Swift, RDM understood that it was simply highlighting a possible risk (which should be avoided) in the future.

36. On 15 August 2016, RDM confirmed that he wished Ms Swift to go ahead with the step plans based on the proposals in the Report.

37. On 19 August 2016, RDM provided Jonathan Brindle of DM with a copy of the Report.

38. On 16 September 2016, RDM was sent a version of the step plan (it incorporated a number of step plans) for review. It was described as "Corporate Reorganisation Step Plan V3" hereinafter referred to as "the First Step Plan". It outlined the steps to be taken to implement the Report. There was no reference therein to tax being payable or group relief being lost; indeed it clearly stated what needed to be done to ensure that there would be no immediate tax charge and that was in the same terms as we have noted in

paragraph 34 above. Ms Swift indicated that if RDM was content then "we can then start to fill it in and forward to the lawyers".

39. On 21 September 2016, there was email correspondence between Ms Swift and Mr Adams, copied to Mr Langston, about a possible variation in the restructuring plan and thus the Report and the First Step Plan. On 22 September 2016, Mr Adams sent Ms Swift a draft email to be sent to RDM outlining an alternative plan in relation to part of the Report. That was immediately forwarded to RDM.

40. On 27 September 2016, RDM sent to DM what he described as "the latest draft of the Company restructuring".

41. On 27 October 2016, RDM, Ms Swift and DM met to review the First Step Plan as part of the overall succession planning. It was decided that Mount Royal should be incorporated and added to the restructuring (which was the variation that had been proposed).

42. Before issuing the minutes of the meeting to RDM on 9 November 2016, Ms Swift discussed her draft minutes with Messrs Langston and Adams who made various suggestions including altering the First Step Plan. Paragraph 3.6 of the minutes states: "It was noted that for the new companies [the appellants] there was a time delay in order to ensure that the group relief for LBTT and CGT was maintained".

43. On 2 November 2016, DM had prepared a "Documents List" setting out the responsibilities for those involved with the preparation of the various documents required to effect the restructuring exercise and implement the First Step Plan.

44. On 16 November 2016, Mr Adams sent Ms Swift (copied to Mr Langston) the revised Second Step Plan (to introduce Mount Royal). As had been the case with the First Step Plan it confirmed that neither appellant should leave the Group within three years to avoid a charge to LBTT.

45. Throughout November and December 2016, DM liaised with Saffery on various issues. DM sought advice, and Saffery provided their views, on a variety of tax issues.

46. On 6 December 2016, at DM's request, Saffery liaised directly with the Royal Bank of Scotland, by email, to provide information relating to the tax reasons for carrying out the reorganisation.

47. On 20 December 2016, Saffery updated RDM and DM directly by email to confirm that the financing was in order. By the same email, Ms Swift sent to RDM and Mr Langston and others, a copy of the Second Step Plan. In oral evidence, RDM confirmed that he had reviewed all of the versions. That email was viewed as being a reminder as to what was to happen next in the restructuring exercise.

48. On 16 January 2017, Moorcroft became a person with significant control in a shelf company earlier incorporated by DM's corporate services vehicle. That corporate services vehicle ceased to be a person with significant control on 16 January 2017. RDM was appointed as a director on that date and on 17 January 2017 that company's name was changed to Mount Royal.

49. On 24 March 2017, DM emailed Saffery, copied to RDM in relation to a transfer of a property to Mount Royal at a specific value. DM asked if that worked "from a tax perspective" stating:

> "I presume that this does not affect the LBTT analysis and so your conclusion is that the transfer will qualify for group grief but should be grateful if you would confirm."

50. Ms Swift then emailed Mr Langston and Mr Adams asking "Can you confirm that nothing has changed per the step plan".

51. On 30 March 2017, Mr Adams responded stating: "I have re-read the latest version of the step plan (attached). I do not think anything has changed in the meantime that would mean we need to revise the plan. However, I am sure Robert [Langston] would like the opportunity to confirm this point (or otherwise)…".

52. It appears that Mr Langston did not comment or respond.

53. On 29 March 2017, DM were making arrangements internally for the necessary steps to complete matters including the preparation of the LBTT return. In an email on that day, DM noted that Saffery were still to confirm the position in relation to group relief.

54. Saffery did not reply to DM's query of 24 March 2017 regarding the LBTT analysis and the application of group relief.

55. On 31 March 2017, DM wrote to RDM, copied to Ms Swift, and referred to their query of 24 March about LBTT stating at point 3: "Susie… Are you comfortable that this applies?". (There was an erroneous reference to VAT but that was promptly changed to LBTT) when she queried it.

56. Saffery have been unable to trace any response.

57. On 5 April 2017, Moorfoot became a person with significant control in another company earlier incorporated by DM. RDM was appointed as a director on the same date and the company name was changed to Abbotsford on 6 April 2017.

58. On 10 April 2017, Saffery wrote to RDM enclosing engagement letters as accountancy and taxation agents for compliance work for Mount Royal and Abbotsford dated 7 and 10 April 2017 respectively.

59. On the same day, DM sought input and instruction from Saffery on various matters surrounding the restructuring. Those matters included powers of attorney, valuations, future growth, voting rights and the number of new shares required. Saffery responded on the same day in relation to some of those matters. On 13 April 2017, Mr Adams emailed Ms Swift and DM with a copy to Mr Langston stating that he did not have strong views regarding the number of shares to be issued, agreeing that having just one share might be problematic at times and suggesting that "100 new £1 shares might be a simple option, unless Robert [Langston] has any alternative thoughts on this".

60. On 12 April 2017, Ms Swift emailed RDM and Michael Robertson of DM stating:

"We are happy that the group option is now in place so the transaction can go ahead".

61. That was the transaction involving Mount Royal whereby it purchased a property from a company in the Group. The effective date of the transaction was 21 April 2017.

62. DM submitted an LBTT return on Mount Royal's behalf on 24 April 2017. The return detailed the purchase price as £14,500,000. Full group relief was claimed in the return. The result was that the amount of LBTT payable according to the return as submitted by DM was reduced from £638,250 to nil. The figure of £638,250 was inaccurate. The actual value of the group relief claim should have been £642,750. At the time of the transaction both the buyer and the seller were members of the same group of companies being 100% subsidiaries of Moorfoot.

63. In oral evidence, RDM confirmed that he authorised the transaction since, on the advice of Saffery, he believed that his objectives in terms of group structure, effective tax planning and succession would be achieved. He had given Saffery instructions about a very specific set of outcomes that he wished to achieve. At the time he believed that they had devised the Report and the Second Step Plan to achieve that.

64. At the request of DM, RDM had signed the LBTT return having been told by them that "There is of course no tax payable but a return must be submitted nevertheless" (DM having been told that in the First Step Plan).

65. On 3 May 2017, Mr Robertson of DM emailed Ms Swift setting out the proposed share rights which had been discussed. Saffery were asked to consider and respond to certain questions such as HMRC's approach to valuation and other matters. At Item 4, DM sought confirmation as to the number of shares to be issued. In essence, DM were seeking advice about taxation aspects. Ms Swift then sought assistance from Mr Langston and Mr Adams culminating in an email from her to both of them, which specifically identified a need to know whether there would be 100 shares, asking Mr Langston to look at the issues and let her know if another partner should have a look at it.

66. On 11 May 2017, Mr Robertson of DM emailed RDM and Ms Swift stating amongst other things: "As discussed, the next step to advance matters is for our questions on share rights/valuation to be addressed by Sefferys". Ms Swift immediately forwarded that to Messrs Adams and Langston.

67. A finalised version of the note reflecting Saffery's comments was then issued to RDM by DM on 19 May 2017. (No version of that was in the Bundle but the issue of a finalized note was an agreed fact.)

68. On the same day DM emailed the LBTT return, in relation to the transfer to Abbotsford, to RDM together with the disposition for signature and return. At that stage the effective date was planned as being 26 May 2017. DM said that "There is of course no tax payable but a return must be submitted nevertheless".

69. On 23 May 2017, DM again reverted to Saffery for direction about dividend rights in the new shares and Saffery responded on 24 May 2017.

70. On 30 May 2017, DM wrote to Saffery enclosing draft articles of association for Mount Royal for review and comment and those were amended following comment from Saffery. Thereafter on the same day the corporate documents designed to implement the restructuring in relation to Mount Royal were forwarded by DM to Saffery for review. The email was sent at 22:25 and a response was requested by the following day. The corporate documents provided for the property transfer to have occurred and be ratified prior to the allotment of the new shares. One of the documents was the application for allotment. DM's intention was to replicate the documents produced for Mount Royal once agreed for the purposes of Abbotsford. (In the interests of clarity we observe that this paragraph was paragraph 48 from the Statement of Agreed Facts but the property transfer to Mount Royal had occurred on 21 April 2017. It was the Abbotsford property transfer that had to occur prior to the allotment of the new shares.)

71. On 31 May 2017, Abbotsford purchased a property from another company in the Group.

72. On the same day the existing share capital in both Appellants was subdivided and 100 new shares were allotted to persons other than Moorfoot. The result was that Moorfoot was left with a holding of only 50% of the share capital of each appellant, ie the group structure had been altered such that group relief was no longer available.

73. By 17 July 2018 the disposition for the transfer in favour of Abbotsford had not yet been registered. As at that date, no LBTT return had been filed in relation to the transaction. It transpired that the disposition had not been registered because there had been extensive liaison with HMRC in relation to a VAT Option to Tax.

74. On that date, DM emailed RDM and Ms Swift proposing that RDM sign a fresh disposition with a new date of entry as at 31 July 2018. The purpose was to avoid the risk of any late submission penalty. RDM had no difficulty with the proposed course of action. Ms Swift sought advice from Mr Langston whose response included:

> "Are we still in time anyway to claim LBTT group relief if the return was not submitted within 30 days of the transaction? The law says that the relief must be claimed on the return but I don't know how this is affected by late returns…".

Advice internally in Saffery was to the effect that the delay did not affect the group relief position. The decision was taken by RDM to pay the penalties and file the return as that was less expensive than executing a new disposition and amending the accounts.

75. DM submitted the LBTT return to Revenue Scotland for the Abbotsford transaction on 3 August 2018. The return detailed the purchase price and full group relief was claimed in the return. The result was that the amount of LBTT payable in accordance with the return was reduced from £44,250 to nil. Penalties were levied and paid.

76. In or around October 2020, one of the tax directors in Saffery, who was investigating another issue decided to carry out a wider review so that she could fully understand the

Group affairs. She raised a concern that group relief should not have been available. The matter was escalated internally and a detailed investigation carried out.

77. DAC Beachcroft LLP were retained to advise Saffery in relation to mitigation strategies and any potential professional liabilities that might arise. As can be seen they have conduct of these appeals.

78. In the late afternoon of 23 December 2020, Mr Elliot of Saffery, who had been drafted in internally to "manage the problem", wrote to RDM with a copy to Ms Swift. He stated that he had been asked to oversee the investigation of some issues that "may have arisen" and he wished to explain the concerns and agree a way forward given the imminent filing deadline for the 2019 accounts. In part, the email read:

> "… we have identified that there may be an issue with regards to the availability of group relief. In summary, we have some concern that [Mount Royal, Abbotsford and another company] may have inadvertently left the group for the purposes of claiming tax reliefs earlier than anticipated… our initial assessment is that this could give rise to tax on capital gains, LBTT and corporation tax liabilities in the region of £2.4m.
>
> We are continuing to investigate this potential issue, with a view to ascertaining (a) whether it is indeed an issue that we need to be concerned about, and (b) if so, whether there are any steps that can be taken to either extinguish or mitigate its effects… It may well be the case that, if there is an issue, the relevant transactions can be set aside extinguishing any liabilities, but whether that is possible and quite how that might look are matters that we are looking into."

79. He went on to say that amongst other things, Saffery intended to obtain the advice of senior tax counsel and they hoped to be in a position to share that advice before the end of January. He explained that the immediate problem was that if there were indeed tax liabilities then that would have to be reflected in the accounts of the companies. He proposed that filing of the accounts should be deferred until 31 January 2021 so that senior tax counsel could advise on whether the companies had left the Group. The accounts were filed on or about that date.

80. On 4 March 2021, Saffery emailed Revenue Scotland a letter dated 3 March 2021 ("the March Letter"), which did not carry any transaction references. It simply read: –

> "During the course of finalising the accounts of the above-named companies for the accounting year ended 31 December 2019, which accounts have recently been filed with the Registrar of Companies, it came to our attention that there may have been underpayments of land and buildings transaction tax ('LBTT') in earlier years.
>
> We are still reviewing these matters but the issues seem to be:
>
> - APG and MRPG are subsidiaries of a single parent company. As part of a wider reorganisation, Scottish land interests were transferred to these companies in May 2017, and group relief was claimed.
>
> - We are concerned that these group relief claims may have been incorrect.

> We are still seeking to resolve the above matters and are consulting with legal counsel. Once we have completed this consultation, we will be able to write to you with our findings and conclusions and we will provide calculations of any taxes due."

81. That letter was inaccurate since the transfer to Mount Royal took place on 21 April 2017.

82. On 4 March 2021, Revenue Scotland responded requesting the full address of the properties and the names of those involved so that they could trace the relevant transactions. That was provided on 13 April 2021. On 15 April 2021, Revenue Scotland asked for confirmation that Saffery had authority to act for Mount Royal and Abbotsford and that was provided on 20 May 2021.

83. On 23 February 2022, DM filed with the LBTT mailbox what purported to be substitute or revised LBTT returns indicating that the total tax payable was the £642,750 and £44,250 respectively and there were no claims for group relief. The effective date of the Mount Royal transaction was reported as being 20 April 2017, which was inaccurate, and the effective date for the Abbotsford transaction was reported as being 31 May 2017.

84. On 25 February 2022, Saffery emailed Revenue Scotland attaching what they described as a Voluntary Disclosure letter for "Withdrawal of group relief claim from LBTT".

85. They enclosed a further copy of the March Letter, stating that they had consulted with legal counsel and confirming that the group relief claims in the original LBTT returns were incorrect. They also enclosed copies of what they described as "revised LBTT returns" ("the February Returns").

86. We observe that Saffery repeated the error about the effective date of the Mount Royal transaction. They also stated that "Shortly after the Transactions had taken place, on 31 May 2017" new shares were issued in both Appellants and disclosed that the result was that Moorfoot's holding had fallen to 50% in each company. Of course, the issue of the shares in Abbotsford had taken place on the same day as that transaction.

87. They quoted the definition of a group in paragraph 43 of Schedule 10 LBTTA, recognised that paragraph 44 of that Schedule should be read with the Upper Tribunal decision in *HMRC v McQuilla*n [2017] UKUT 344 (TCC) in mind and stated:

> "The original group relief claims have been reviewed and, based on the above [law] and since the issues (sic) of the shares were planned for prior to the Transactions, the group relief claims by the acquiring companies fail".

88. They enclosed a calculation of the LBTT which "will…fall due" as a result of the revised returns having been filed.

89. On 3 March 2022, Revenue Scotland replied pointing out that taxpayers can only amend returns within 12 months of the filing date. Accordingly, the options were:-

> (a) Ignore the revised or new returns and issue section 98 RSTPA assessments amending the original returns. In that event, tax and interest would be due, or

(b) Ignore the original returns, accept the new returns and impose late filing and late payment penalties which would amount to in excess of £250,000.

Revenue Scotland proposed that the first option be adopted and, if that were agreed, Revenue Scotland would consider whether inaccuracy penalties should apply but the voluntary disclosure would be a mitigating factor.

90. On 11 March 2022, Revenue Scotland wrote to Saffery posing a number of detailed questions. That was followed by a telephone call on 14 March 2022 when amongst other matters Revenue Scotland asked why there had been such a delay in informing them. Saffery undertook to investigate. They were also asked why the February Returns had been filed and Revenue Scotland's notes of that call record that Saffery indicated that there was no specific reason, but they had just wanted to provide the details of the transactions and "He said that they didn't have anyone with LBTT knowledge".

91. Following that telephone call, Revenue Scotland emailed Saffery on 14 March 2022 indicating that three options in relation to the resolution of the case were under consideration. Those included

(a) assessments under section 98 RSTPA,
(b) a contract settlement under section 118 RSTPA, and
(c) the opening of enquiries into the returns submitted under section 33 LBTTA withdrawing group relief.

The outcome was noted as being dependent on the responses to the questions posed in the earlier email of 11 March 2022. The email also confirmed that a response to those queries was requested by 18 March 2022.

92. There was no response so on 22 March 2022 Revenue Scotland emailed Saffery asking if anyone was dealing with matters during sickness absence of the partner who had participated in the telephone call and were told that his colleagues would be in contact. They were not and on 24 March 2022, Revenue Scotland emailed again pointing out that they had "tight timescales with regards to issuing assessments". The original partner responded that day stating that he would provide a response by the following day. He did not.

93. On 5 April 2022 having heard nothing further, Revenue Scotland again emailed Saffery asking for a response by 8 April 2022. The reply on 11 April confirmed *inter alia* that:

(a) "Once a valid assessment is raised our client intends to pay the tax".
(b) HMRC were aware of the issue of group relief, that having been intimated to them on 3 March 2021 and 23 February 2022.
(c) The appellants had relied on written advice from Saffery and Saffery had not advised that the share issue would dilute the ownership such that the appellants would no longer be 75% subsidiaries; that had been identified as a part of a review of another matter in late 2020.
(d) A full review then ensued but that took a considerable time because the paper files had been difficult to access and the issues were complex.

(e) In early 2021 the files had been retrieved and the position reviewed with the assistance of legal advice.
(f) Remote working had contributed to delay in finalising matters earlier.

94. It was explained that:

> "Since those early stages [late 2020] it has been necessary to take extensive advice from solicitors and Leading Tax and Chancery Counsel to ensure that our understanding of the issues and potential resolutions was correct. A number of legal avenues were explored with Counsel to determine whether the tax was in fact due, whether there (sic) any action which could be taken to resolve the position, which took some time, although ultimately it was concluded not to pursue these further."

95. In relation to assessments, it is common ground that:

1. On 14 April 2022, a Notice of Assessment was issued to Mount Royal in terms of sections 98 and 102 RSTPA by a designated officer of Revenue Scotland. The notice assessed Mount Royal to LBTT in the sum of £642,750 together with interest in the sum of £91,758. The total amount due was £734,508. The full amount was payable within 30 days of the notice.

2. On 21 April 2022, Revenue Scotland issued a Notice of Assessment to Abbotsford in terms of sections 98 and 102 RSTPA. The Notice of Assessment assessed Abbotsford to LBTT in the sum of £44,250 together with interest in the sum of £6,211. The total sum due was £50,461. That sum was payable within 30 days of the notice.

3. The assessments issued in respect of both Appellants founded upon carelessness on their part, or someone acting on their behalf, in claiming group relief in circumstances where that was unjustified and/or in the alternative, in failing to take appropriate action to withdraw group relief within a reasonable time the circumstances having altered such that it was no longer available. Further, Revenue Scotland relied upon sections 104(3) and (4) of RSTPA in relation to carelessness.

4. On 28 April 2022, Saffery had emailed Revenue Scotland on behalf of both Appellants to enquire about penalties for late payment of the sums due. Revenue Scotland replied by email on the same date with information regarding penalties for late payment.

5. On 11 May 2022, Revenue Scotland received payment of the LBTT and interest assessed in the section 98 assessments.

6. On 12 May 2022, Revenue Scotland received a request for a review of the earlier assessment from Saffery acting on behalf of Mount Royal.

7. On 16 May 2022, Revenue Scotland received a request for a review of the earlier assessment from Saffery acting on behalf of Abbotsford.

8. Revenue Scotland issued its View of the Matter letter in respect of each review on 19 August 2022. Revenue Scotland's view of the matter in each case was that the assessments ought to be upheld.

9. Further information was received from Saffery on 30 September 2022.

10. The reviews were concluded by letters dated 3 March 2023. The conclusion in respect of each review was that the assessments ought to be upheld.

96. Whilst the preceding paragraph is derived from the Statement of Agreed Facts, a number of points arise in relation thereto.

97. In the covering letters for the Notices of Assessment, Revenue Scotland argued that

(a) paragraph 5(b) of Schedule 10 LBTTA meant that group relief should never have been claimed since it was known that the shareholding would be diluted.

(b) The Upper Tribunal decision in *McQuillan* had been published on 6 September 2017 so, even if it had been believed that group relief was available (based on the FTT decision which was then overturned) the appellant would have been in time to amend the LBTT return. It had not done so.

(c) Furthermore, even if it was argued that group relief was available, paragraphs 13 to 15 of Schedule 10 meant that the group relief had to be withdrawn since the relevant appellant was no longer a 75% subsidiary and therefore that triggered section 33 LBTTA. Returns should have been filed within 30 days of the issue of the shares.

(d) The under-declaration of LBTT was brought about carelessly by the Appellants or someone acting on their behalf.

98. In the letters requesting a review, Saffery agreed with Revenue Scotland's conclusion that group relief should not have been claimed in the original returns. However, they argued that because group relief was never applicable, paragraphs 13-15 of Schedule 10 were not relevant.

99. They argued that the assessments were not valid because in order to be valid the under-declaration must have been brought about carelessly by the taxpayer or someone acting on their behalf; DM had acted for both Appellants in filing the returns.

100. They relied on Revenue Scotland's guidance RSTP3025 and a number of UK Tribunal decisions on carelessness including in particular *HMRC v Hicks* [2020] UKUT 0012 (TCC) ("Hicks"). They argued that although the returns had been filed based on their advice, they were filed by the taxpayer and its agent.

101. They argued that the disclosure in the March Letter had complied with the requirements of section 104(3) RSTPA in that it represented "reasonable steps to inform Revenue Scotland" and Revenue Scotland had not taken any action. Even if that letter had not been compliant, when taken together with the letter of 25 February 2022, it was "certainly enough to fulfil the 'reasonable steps' requirement and arguably went beyond what the wording of the legislation requires".

102. Lastly, there was no timescale in the legislation for the provision of information in this context and Revenue Scotland had had enough time to investigate and raise the assessments.

103. Revenue Scotland's View of the Matter letters rebutted Saffery's arguments and in relation to *Hicks* argued that Saffery had represented the Appellants and their involvement had "surpassed that of a mere adviser*".* Therefore, Saffery had acted on behalf of the Appellants. Further, it was suggested that both the Appellants and DM had acted carelessly.

104. The reply from Saffery on 30 September 2022 extended to five pages with a lengthy analysis of *Hicks* and a rebuttal of Revenue Scotland's other arguments.

105. The Review Conclusion letters revisited all of the previous arguments that had been advanced by the parties and cited further UK authorities.

106. In relation to the application of section 33 LBTTA, and penalties, it is common ground that:

1. On 31 May 2022, Revenue Scotland wrote to the Appellants, separately. The letters dealt with the application of section 33 and Part 3 of Schedule 10 LBTTA. In each case, Revenue Scotland set out its view that Part 3 of Schedule 10 applied to the circumstances of each appellant. That was so notwithstanding that group relief ought not to have been claimed in the first place by the Appellants in relation to their respective transactions. In its letters Revenue Scotland referred to the issue of the section 98 assessments. The letters made it clear that the assessments were protective and issued as an alternative basis for collection of the tax in issue and Revenue Scotland did not seek to tax the transaction twice.

2. On 23 September 2022, a without prejudice call took place between Revenue Scotland and Saffery.

3. On 28 September 2022, Revenue Scotland emailed Saffery with an explanation of its planned approach to the assessment of penalties arising following the submission by the Appellants of the further returns under section 33 LBTTA.

4. On 14 October 2022, Revenue Scotland emailed Saffery setting out its position in relation to the application of section 33 and Part 3 of Schedule 10 LBTTA. Revenue Scotland explained that it maintained that group relief ought not to have been claimed and acknowledged that assessments under section 98 RSTPA had been issued as a result. Revenue Scotland considered, however, that the section 33 returns offered an alternative basis upon which to collect the tax in issue. That was because the conditions of paragraphs 2, 13, 14 and 15 of Schedule 10 LBTTA were satisfied in respect of the transactions. Revenue Scotland again made clear in its correspondence that it did not seek to tax the transactions twice.

5. On 5 December 2022, Saffery issued its replies, on behalf of the Appellants, to the emails of 28 September 2022 regarding penalties, and 14 October 2022 regarding section 33 LBTTA. Saffery, on behalf of the Appellants, disputed the views of Revenue Scotland on both matters.

6. On 22 February 2023, Revenue Scotland issued penalty notices to Abbotsford and Mount Royal.

7. In respect of Abbotsford, Revenue Scotland issued a penalty notice for failure to make a return and failure to pay tax in terms of sections 159 to 163 and 168 to

169 RSTPA. The total amount due inclusive of interest on unpaid tax was £18,347.

8. In respect of Mount Royal, Revenue Scotland issued a penalty notice for failure to make a return and thereafter for failure to pay tax in terms of sections 159 to 163 and 168 to 169 RSTPA. The total amount due inclusive of interest on unpaid tax was £253,007.

9. On 22 March 2023, on behalf of both of the Appellants, Saffery sought a review of the penalty notice decisions.

10. On 20 April 2023, Revenue Scotland issued its View of the Matter letter in respect of each review.

11. On 2 June 2023, Revenue Scotland concluded both reviews. The conclusion reached in respect of each review was that the earlier decisions should be varied in respect of the amount of penalty charged for the failure to make a return. The original decisions were otherwise upheld.

12. On 11 May 2022, the Appellants paid the tax and interest arising from the section 98 assessments. A further amount was paid on 29 June 2023 in relation to penalties for late filing and payment.

107. As with the assessments, whilst the preceding paragraph is derived from the Statement of Agreed Facts, a number of points arise in relation thereto.

108. In its letters of 31 May 2022, Revenue Scotland said that:

(a) The assessments had been issued as an alternative basis for collection of the tax because Part 3 of Schedule 10 applied.

(b) They had been issued on a protective basis before the statutory time limit for making an assessment due to careless behaviour expired.

(c) If the assessments were accepted and the tax paid, then Part 3 of Schedule 10 would not apply.

(d) However, in the absence of agreement or if the assessments were invalid then Part 3 applied to withdraw the relief.

109. The Revenue Scotland email of 14 October 2022 cited case law supporting its argument that there was no requirement for there to have been a valid claim for group relief for section 33 LBTTA to apply. Furthermore, Saffery's Voluntary Disclosure of 25 February 2022 had had a heading stating "Withdrawal of group relief claim from LBTT".

110. The email of 5 December 2022 from Saffery analysed section 33 LBTTA and argued that the February Returns did not amount to further returns within the meaning of that section. It also argued that paragraph 14 of Schedule 10 referred to transactions that were exempt from charge because of group relief and not to circumstances where a claim for group relief had been made ie the transactions in question had never been exempt so the Schedule could not apply and relief could not be withdrawn.

111. The 22 March 2023 request for a review reiterated previous arguments. It was now argued that as the February Returns were not further returns, their function had been an attempt to amend the original returns. As far as penalties were concerned, it was argued that the due date for payment of tax was the date that the returns were filed, namely 23 February 2022 and payment was made on 11 May 2022, so only section 169(2) RSTPA would apply, ie only the first late payment penalty. They stated that "…all information required by Revenue Scotland has been supplied promptly and in full".

112. Revenue Scotland's View of the Matter letter dated 20 April 2023 argued that section 40 LBTTA requires payment to be made at the same time as a return but section 29 requires the return to be made within 30 days of the effective date. Reading the Act as a whole, the due date is the date the return is made if it is filed timeously and, if not, then it is the date 30 days after the effective date. Therefore, the relevant date for the purposes of section 168 RSTPA is 30 days after the effective date.

113. It would appear that Saffery replied on 24 May 2023 making further representations but that reply has not been produced, albeit Revenue Scotland referred to that letter in the Review Conclusion letters and said that they had addressed whatever it had said. In those letters, Revenue Scotland upheld the penalties reiterating the arguments previously advanced but varied the penalties in terms of section 175 RSTPA.

114. That was on the basis that the disclosure had been unprompted and a 70% reduction was appropriate.

115. The maximum reduction of 30% was granted for allowing access to records (section 175(2)(c)).

116. A 30% reduction out of a possible 40% was granted for giving reasonable help in quantifying the tax (section 175(2)(b)). The maximum was not granted because of the delay in responding in March and April 2022 (see paragraphs 90 to 94 above).

117. Lastly, a reduction of 10% out of a possible 30% was granted in respect of the actual disclosure. That was on the basis that:

(a) there should have been disclosure when the "de-grouping" took place,
(b) the initial disclosure in March 2021 was made one month after the statutory accounts had been filed,
(c) during preparation of the 2019 accounts an adjustment was made for HMRC liabilities (which were substantial) but not for LBTT.

The Legislation

118. Since the references to legislation are extensive, we have set out the full text of the relevant legislation as an Appendix.

Discussion

119. In his Skeleton Argument, Mr Donnelly stated that Revenue Scotland has accepted that the erroneous claims for group relief were not brought about by carelessness on the

part of DM or by the Appellants' own "actual" as opposed to "deemed" carelessness. On the facts that we have found, we agree.

120. In the amended Grounds of Appeal and in the Skeleton Argument for the Appellants, there was what Revenue Scotland described as a "somewhat convoluted argument" based on reliance on the decision in *McQuillan v HMRC* [2016] UKFTT 305 (TC) ("McQuillan"). We do not have to address that argument since, in cross-examination, Mr Langston said unequivocally that he would not have relied on *McQuillan* because not only was it a FTT decision and therefore not binding but it was very odd and there was another decision that was in conflict with it. It was not raised for the Appellants in oral submissions and, in his submissions, Mr Donnelly founded on the fact that the Appellants had only raised the argument in the Amended Grounds of Appeal and then departed from it only during the hearing. Revenue Scotland had always argued that it was irrelevant since the Upper Tribunal decision reversing it had been published long before the Abbotsford LBTT return was filed. We agree.

121. We were surprised by the argument for the Appellants that on the one hand the Appellants who were entirely innocent should not suffer loss because of carelessness on the part of their professional advisors and on the other hand nor should Revenue Scotland have the benefit of what was described as a windfall because of Saffery's carelessness. That is simply not a tenable argument.

122. The Tribunal is a creature of statute, and its role is to find the facts and apply the relevant law. Firstly, the law is explicit and there will be deemed carelessness, in terms of section 104(4) RSTPA, on the part of the Appellants, if we find that Saffery were acting on their behalf. Secondly, it is trite law that the Tribunal has no jurisdiction to consider whether the law is fair or not.

123. There is no question of a windfall. It is for taxpayers and their advisers to choose how to structure transactions. If, as here, that results in tax payable in a situation where none would have been if they had chosen a different mechanism, then that is simply the application of the relevant law.

124. In summary, that argument is not a matter we can take into account. Ultimately, as the case law has made clear (eg *Ryan v HMRC* [2012] UKUT 9 (TCC) and *HMRC v Katib* [2019] UKUT189 (TCC)), the Appellants' remedy is to pursue Saffery.

The effective dates of the transactions and the LBTT returns

125. When writing this decision, we had some difficulty with the LBTT returns themselves. In the course of the hearing, the only "return" to which we were taken was the document at page 688 of the Bundle relating to Abbotsford and we were taken only to the tax calculation at page 690. It was described in the index to the Bundle as being a draft LBTT return dated 26 May 2017. We discuss that document at paragraphs 173 *et seq* below.

126. The problem is firstly that it is not an LBTT return and secondly, that it states that the effective date of the transaction is 26 May 2017. The unsigned version of the disposition states that the date of entry is 26 May 2017.

127. To our surprise, having ascertained that the LBTT return was not filed until 3 August 2018, on closer examination of the Bundle we found what was described as a LBTT return dated 3 August 2018. It was the same type of document but this time bore a Transaction
Reference which is also the reference on the "Acknowledgement of validated LBTT Return" from Revenue Scotland. There is no copy of the actual return for Abbotsford in the Bundle.

128. We find that the first document was never filed with Revenue Scotland and that the effective date was 31 May 2017.

129. We raise this because the equivalent document for Mount Royal (page 634 of the Bundle) gives the effective date for that transaction as being 19 April 2017 but it has no Transaction reference.

130. There is then included what purports to be the original LBTT return for Mount Royal but it is evident that that is "Version 1" and the "status" is "draft". It gives an effective date of 20 April 2017 and tax due before group relief of £642,750. The return reference on that document is not the same as the reference in the "Acknowledgement of validated LBTT Return" and that states that the effective date is 21 April 2017.

131. Paragraph 62 above is based on paragraph 44 of the Statement of Agreed Facts and it can be seen that the LBTT return that was submitted for Mount Royal notified an effective date of 21 April 2017 and an incorrect tax figure of £638,250. We do not have a copy of that return either.

132. As we indicate at paragraph 83 above, the February Return for Mount Royal notified the correct tax but an inaccurate effective date.

The Assessments

133. The first point that we make is that, where Revenue Scotland have not opened an enquiry, section 83 RSTPA only allows amendments to tax returns by taxpayers within 12 months of the filing date. Accordingly, by the time the error was discovered in 2020 the Appellants were out of time to amend their returns and their repeated assertions that the February Returns were filed to revise or correct the original returns, are simply incorrect.

134. That was appropriately recognised in their Skeleton Argument, albeit as an aside.

135. It is common ground that Revenue Scotland only has power to make an assessment to LBTT on a taxpayer in terms of sections 98(1) and 102 RSTPA in a situation where a loss of tax has been brought about carelessly or deliberately by a taxpayer or a person acting on behalf of the taxpayer. Section 104(3) and (4) RSTPA provide that a loss of tax will be treated as having been brought about carelessly if information that is subsequently found to be inaccurate is provided to Revenue Scotland and the person who provided it, or on whose behalf it was provided, fails to take reasonable steps to inform Revenue Scotland.

136. In terms of section 103 RSTPA any such assessment must be raised within five years. In this case that time limit is not in issue. However, it is relevant since, as the Appellants conceded in their letter of 16 May 2022 when seeking a review of the assessments, their letter of 25 February 2022 had been sent "some two months prior to the deadline for a s98 assessment to be raised…". They went on to argue that that had "proved to be ample time….". We revert to that assertion at paragraphs 228 and 229 below.

137. In summary, the Appellants argue that Saffery never acted on their behalf so Revenue Scotland had no power to assess the Appellants and even if they did have such a power then the Appellants had taken reasonable steps to notify Revenue Scotland of the inaccuracies in the returns.

The First Issue - Did Saffery's carelessness bring about the Appellants' claims for group relief?

138. Turning first to the inaccuracy. The issue of shares in the Appellants was always part of the planning. However, it is common ground that, as we have recorded at paragraph 65 above, as at 3 May 2017, there was still uncertainty as to how many shares would be issued. We do know that the documents for the restructuring, including the application for allotment of shares were sent to Saffery late at night on 30 May 2017 (see paragraph 70 above).

139. In his witness statement Mr Langston said in relation to that that:-

> "I received a further email from Susie at 07:03 on 31 May 2017 asking 'I know this is a bit tight for a 10 o'clock meeting but could someone look at this for me'. I do not recall considering the group relief position at this time. This was partly due to the late delivery of the documentation and the limited time that I was given to review and consider it. With the benefit of hindsight, I should have insisted on having more time to review the documents and the advice, which may have led to me identifying the group relief issue before the restructuring was put into effect."

140. We find that the references to late at night and early morning are not an excuse for lack of oversight. It is very common in the corporate departments of many law and accountancy firms for numerous staff to work late at night and early in the morning and indeed through the night to ensure that a merger, acquisition or reconstruction can be achieved for a specified deadline.

141. Saffery should have identified the group relief problem before the restructuring and allocation of shares but the fact is that the inaccuracy in the Abbotsford return was not helped because everything had happened on the same day. Moreover, by the time that the LBTT return for Abbotsford was filed, it appears that no one had checked whether it was accurate or inaccurate since Abbotsford had exited the Group more than a year previously.

142. As far as Mount Royal is concerned, where the LBTT return was filed on 24 April 2017, it is more nebulous because the restructuring of the Group and allocation of shares only happened on 31 May 2017. Given the uncertainty on 3 May 2017 and the belief of all of those involved that nothing would be done to damage the Group, we find

that group relief was available at the point of filing the return and the return was *ex facie* correct. However, it became incorrect on 31 May 2017.

143. Although the return was correct when filed, we find that the failure to amend the return timeously was caused by carelessness on the part of Saffery.

144. To be fair, at every stage the Saffery personnel have been very frank in admitting that it was their failures that led to the loss of group relief. For example, in her witness statement and in oral evidence, Ms Swift very fairly confirmed that in relation to the lack of responses narrated at paragraphs 49, 54 and 55 above, she was frustrated that "…this opportunity was missed to identify that LBTT group relief was in fact not available and consider that the responsibility for this rests with Saffery as tax advisers". At paragraph 44 of her witness statement she said:

> "Neither Robbie nor Dickson Minto can be responsible for the failure for Saffery to identify and advise that group relief for the purposes of LBTT was not available at the time that the LBTT returns were submitted to Revenue Scotland. Both relied on our advice as experienced tax advisers."

145. Mr Langston was equally frank. Quite apart from the quotations from his witness statement narrated at paragraphs 30 and 139 above. He also said that "This type of reorganisation is not uncommon, and can be done without incurring tax charges."

146. In cross-examination he confirmed unequivocally that he had always known that a key feature of the corporate reconstruction was the retention of the Group for a number of years and thus entitlement to group relief. He said that Saffery had "fallen short". He accepted that he should have done more.

147. We have no hesitation in finding that it was Saffery's shortcomings, on more than one front, that brought about the departure of the Appellants from the Group and thus the loss of group relief and loss of tax to Revenue Scotland.

148. In that regard, we also find that there was a continuing failure since, even when the February Returns were filed, there was no attempt to pay the tax. That was only paid on 11 May 2023 and only after further delay on the part of Saffery. Although one partner had Covid, there was a team involved in "managing the problem". It is an obvious example of Saffery failing to take reasonable care to avoid bringing about an insufficiency of tax.

149. The answer to the question posed by the First Issue is that Saffery's carelessness did bring about the appellants' claims for group relief.

The Second Issue - Were Saffery acting on the Appellants' behalf and did their carelessness when doing so cause the inaccurate claims for group relief?

150. Both parties relied on *Hicks* at paragraph 122 arguing that it supported their respective stances. Both cannot be wholly correct! It reads:

> "122. There is an issue in the present case as to the application of the phrase 'a person acting on his behalf' in section 29. The FTT considered the decisions in *Trustees of the Bessie Taube Trust v Revenue & Customs* [2010] UKFTT 473 (TC)

(Judge Berner and Mrs Stalker) and *Atherton v HMRC* [2017] UKFTT 831 (TC) (Judge Mosedale and Mr Barrett). Earlier in our decision, we have described the approach of the FTT in relation to these two cases. We agree with the FTT that the legal test to be applied is the test stated in *Bessie Taube* at [93]:

> 'In our view, the expression "person acting on … behalf" is not apt to describe a mere adviser who only provides advice to the taxpayer or to someone who is acting on the taxpayer's behalf. In our judgment the expression connotes a person who takes steps that the taxpayer himself could take, or would otherwise be responsible for taking. Such steps will commonly include steps involving third parties, but will not necessarily do so. Examples would in our view include completing a return, filing a return, entering into correspondence with HMRC, providing documents and information to HMRC and seeking external advice as to the legal and tax position of the taxpayer. The person must represent, and not merely provide advice to, the taxpayer.'"

151. That quotation does not stand in isolation and should be read in context. The explanation of the FTT's approach to *Bessie Taube* and *Atherton* is to be found at paragraph 53 of *Hicks and reads:*

> "53. The FTT at [134] disagreed with the FTT's interpretation in *Atherton* of the FTT's decision in *Bessie Taube*. The FTT said:
>
> > '135. Construing the statute purposively in this way leads me to a similar conclusion to that reached in *Bessie Taube*. A third party acts on behalf of the taxpayer in this context if he acts as the taxpayer's proxy or representative - a role described in *Mariner v HMRC* [2013] UKFTT 657, at [25] as "a mere agent, administrator or functionary". In that role their carelessness is the taxpayer's carelessness if it brings about "the situation mentioned in subsection (1)".
> >
> > 136. I agree with the conclusion in *Bessie Taube*, at [193] as follows: "…The person must represent, and not merely provide advice to, the taxpayer"'.

152. In their letter to Revenue Scotland of 30 September 2022, having analysed *Hicks*, and pointed out that Montpelier, the adviser in that case, had been found not to have acted on behalf of Mr Hicks, Saffery stated that:

> "Like Montpelier, we devised and advised on a series of transactions and, like the advice provided by Montpelier, our advice did not work and gave rise to tax liabilities that were not expected".

153. However, at paragraph 155 of *Hicks* to which Saffery did not refer, the Upper Tribunal went on to look at whether, in providing information, Montpelier, had crossed the line into acting on behalf of the taxpayer and stated that that was a difficult issue. That case turned on whether or not certain transactions had actually taken place.

154. In submissions, Mr Simpson argued that in this instance we are not in a similar area of uncertainty. We are not persuaded by that argument because, crucially, the Upper Tribunal stated:

> "…If the question of the role of Montpelier were to be decisive of this case, we feel that we would need to investigate more thoroughly what precisely Montpelier did in relation to the completion of the tax returns. We might also need to consider whether there could be circumstances in which a third party who carelessly provides inaccurate information to a taxpayer … could be regarded as acting on behalf of the taxpayer … In view of the fact that these points are not necessary for a decision, in the light of our earlier conclusions, we do not think it appropriate for us to go further".

Unsurprisingly, Mr Donnelly relied on that paragraph.

155. It is for that reason that we have recorded in such detail what it was that Saffery did, and did not, do.

156. The Saffery witnesses are witnesses as to fact only, so their opinions that they did not act for the Appellants do not assist.

157. The Appellants argue that Saffery was "a mere adviser" and at no stage had Saffery represented the Appellants in any way. They simply performed their obligation to provide advice to the Appellants by communicating that advice to DM.

158. Revenue Scotland argue that at all times DM, who made the claims in the returns, did so based on the information and instructions given by Saffery who had been authorised to instruct them by RDM. That was in accordance with the terms of their Engagement Letter (see paragraph 17 above) and in particular Item 3.1 in the Schedule; Saffery had been authorised by RDM to give DM information and instructions upon which they had then acted.

159. Mr Brindle's witness statement made it clear that DM were not engaged to comment on whether RDM's objectives were met by the Report or the Step Plans. Their role was simply to implement the instructions in those documents. DM placed "full reliance" on the Report. He went on to say that: "Where we sought clarification from Saffery during the implementation of the steps described in the Report, I would have placed full reliance on their responses and advice".

160. Mr MacNeill said explicitly that: "I did not review the LBTT returns myself, but if I had, I would not have expected any LBTT to have been payable. This is because I understood from Saffery that group relief was available."

161. We had difficulty with the argument that Saffery had been given no authority to give instructions to DM.

162. In his witness statement RDM confirmed that he had seen key documents but that he had reviewed them to check that what was proposed met his objectives. In oral evidence he confirmed that he had relied upon Saffery as advisers to say what was and was not possible in order to achieve his objectives. He had seen some of the emails between DM and Saffery but not all of them. As we have recorded at paragraph 28, on 26 May 2016 RDM asked Saffery to expand upon Mr Langston's ideas and to "take forward" matters with DM and that is what they did.

163. Paragraph 42 of the Statement of Agreed Facts is incorporated in our paragraph 59 and, as can be seen, that states explicitly that DM sought and received instruction from Saffery. Similarly, paragraph 32 of the Statement of Agreed Facts is included at our paragraph 45 and paragraph 48 at our paragraph 70. DM were not evaluating what Saffery told them. They were acting on and implementing not only the Report and Step Plans but also the further advice and instructions from Saffery such as the number of shares to be allotted and the voting rights.

164. Of course, RDM had ultimate control and took decisions at a high level but the reality is that Saffery did take matters forward with DM at his behest.

165. Mr Simpson argued that there was nothing in Saffery's original engagement letter stating that they were authorised to represent the Appellants or any of RDM's companies. That is true but does not assist. As we have said, this is a specialist tribunal. Best practice would be for a separate engagement letter to be issued for each piece of work which was not routine compliance. That did not happen in this case and the corporate reconstruction and succession planning are not routine compliance.

166. Undoubtedly, RDM could have instructed DM directly based on the advice received from Saffery. However, in large part Saffery were asked to, and did, assume that role and were acting on his, and his companies', behalf in giving instruction to DM.

167. In our view the giving of instructions goes well beyond the giving of advice. The giving of instructions was by no means restricted to the group relief claims. In particular, Saffery were entirely culpable in relation to the instructions for, and subsequent lack of review of, the share allocations.

168. The answer to the question posed by the Second Issue is that Saffery were acting on the Appellants' behalf and their carelessness when doing so caused the inaccurate claims for group relief.

The Third Issue - In any event, did the Appellants fail to take reasonable steps to inform Revenue Scotland that inaccurate information had been provided to Revenue Scotland on their behalf?

169. It was accepted for the Appellants that, given the terms of section 104 RSTPA, if a taxpayer discovers inaccurate information has been provided to Revenue Scotland then the taxpayer should tell Revenue Scotland about the inaccuracy.

170. Having established that there were inaccuracies in the LBTT returns, the first issue is the question "what is information?" since the Appellants argue that the claims are not information.

171. LBTT is a self-assessed tax. In layman's terms, what that means is that the onus is on the taxpayer to provide sufficient information to Revenue Scotland to enable the correct amount of tax to be paid.

172. The documents for both Appellants to which we have referred at paragraphs 125 - 129 above were on Revenue Scotland headed paper and there was a heading in bold which read:

> "The information contained in this document does not substitute the Tax Return and is intended for informational use only."

173. Under the heading "Tax Calculation" the answer to the question "Are you claiming Reliefs or Repayment" was "Yes". Then in a (presumably drop down) box headed "Relief: 03: Group Relief" it specified that the type of relief was group relief and the "Tax amount" was quantified.

174. It is argued for the Appellants that those entries are simply a claim and are not "information [which] is provided to Revenue Scotland" within the meaning of those words in section 104(3)(a) of RSTPA. We simply do not accept that. Firstly, as we have pointed out these were not the returns. Secondly, the heading on the document speaks for itself; it is information and it was provided to Revenue Scotland.

175. The logical sequitur to making the claims in the returns, and it is what happened, is that group relief was thought to be available and was given to the Appellants. The Appellants accessed, and used, the group relief.

176. Furthermore, we note that at paragraph 119 of *Hicks* the Upper Tribunal stated that:

> "The insufficiency in the assessment must be 'brought about', that is, caused by the relevant carelessness. If the assessment to tax (as contained in the self-assessment tax return) states the wrong figure as to the tax payable and the wrong figure is stated as a result of carelessness, then the insufficiency in the assessment to tax is brought about by that carelessness."

In our view, that makes the position clear; the returns and these other documents were inaccurate in stating that group relief was available and being claimed and the tax calculation was incorrect as a result.

177. Lastly, in this context it is argued for the Appellants that section 104 LBTTA is directed at the provision of factual information and that would not encompass a claim. We have considerable difficulty with that argument and do not accept it.

178. We find that the entries that we have described are the provision of factual information. Specifically, the entries tell Revenue Scotland that the Appellants fall within the definition of a group for the purposes of LBTT and that they are entitled to group relief.

179. We turn now to whether the Appellants took reasonable steps to intimate the inaccuracy. One of the submissions for the Appellants was that: "It doesn't matter how long the taxpayer takes to tell Revenue Scotland, in particular if the taxpayer isn't sure about it, wants to research matters, take advice, and so on…." .

180. Whilst it is correct to say that section 104 RSTPA includes no time limits, timing is undoubtedly one of the factors to be weighed in the balance when deciding, as we must, whether the Appellants took reasonable steps to inform Revenue Scotland.

181. We find that, as can be seen from paragraph 80 above, the March Letter could at best be described as being less than informative given the repeated use of the word

"may". It did not even identify the transactions and it was inaccurate in stating that both transactions were in May 2017.

182. The reasons stated for the delay between discovering the error and the March Letter were allegedly the legal complexity of the issue, the need to retrieve hard copy files and remote working. We agree with Revenue Scotland's argument that the question of group relief was not legally complex. That question had to be determined by reference to the extent of the shareholding of Moorfoot at the material time. Since it had fallen below 75% as a result of the issuing of shares in the Appellants, then group relief ought not to have been claimed. That ought to have been readily verifiable. It is a simple point. What was undoubtedly complex, and ultimately was not solved, was trying to find a solution to the problem that had been created by Saffery.

183. In the Review Conclusion Letters dated 2 June 2023, Revenue Scotland made the point that the Appellants' 2019 accounts had been filed one month before the March Letter. The problem for the Appellants is that, as Mr Elliot had explained to RDM, Saffery's advice had been to delay filing the accounts (thereby incurring penalties) until it had been established by tax counsel that the companies had left the Group. Clearly that had been achieved by the end of January 2021 as the accounts were filed and relevant provisions made (certainly in regard to reserved taxes but we have not seen the accounts).

184. No explanation has been proffered as to why there was a further delay of a month in contacting Revenue Scotland (and HMRC) and, more pertinently, why the March Letter said that "the group relief claims may have been incorrect". Saffery knew that they were incorrect.

185. As can be seen from paragraph 82 above, on receipt of the March Letter, Revenue Scotland immediately asked for details of the properties and the names of those involved so that they could trace the transactions. It took Saffery more than a month to reply and a further month to furnish Revenue Scotland with authorisation for them to act for the appellants. Nothing further was intimated to Revenue Scotland until February 2022.

186. Whilst we accept the explanation from Saffery, which we have quoted at paragraph 94 above, that the reason for the delay until February 2022 was because there had been extensive consultations with solicitors and counsel, we do not find that that was reasonable in terms of the need to disclose the inaccuracies in the LBTT returns.

187. If counsel had advised that the Appellants had left the Group and the accounts had been prepared on that basis, making provision for some potential liabilities, then that information should have been intimated to Revenue Scotland, and HMRC, when the accounts were finalised and filed.

188. The very clear evidence was that Saffery's focus from February 2021 until February 2022 was, as Mr Elliot said, to ascertain whether there were "any steps that could be taken to either extinguish or mitigate" the effects of leaving the Group.

189. Ms Swift was asked about the statements in her witness statement to the effect that DAC Beachcroft had been instructed to advise "in relation to mitigation strategies" and counsel had been instructed to "advise on both technical tax matters and the possibility

of rescinding the underlying transactions in equity". She could not confirm the timing but said that a team in Saffery had not only been exploring whether a solution was possible without going to Revenue Scotland or HMRC, but also trying to find a solution that would work for all parties. Tax was not the only issue. It had been a long and frustrating process and not assisted by Covid.

190. The quotation from Saffery's email of 11 April 2022 at paragraph 94 above also indicates that Saffery were looking at possible avenues to try and "resolve the position".

191. The simple fact is that when the 2019 accounts were filed in or about January 2021, if not some time before, the Appellants knew that they had not qualified for group relief. The two Step Plans and the Report had made it explicit that if they left the Group within three years they would not qualify. That is not complicated to ascertain. It may be that the solicitors and counsel had lit upon an argument based on *McQuillan* and were exploring that or other avenues but since the Upper Tribunal decision overturning it had been published on 6 September 2017, that cannot be an explanation for delay in 2021.

192. The remaining issue was what could be done, if anything, by way of mitigation. On the balance of probability, that is what absorbed the next year until, as Saffery indicated on 11 April 2023, it was ultimately decided not to pursue that any further.

193. Whilst it is understandable that, as Ms Swift states, Saffery wished to find a solution that would avoid making full disclosure to Revenue Scotland and HMRC, that is not reasonable in the context of a self-assessed tax where the professional advisers should have known that it was too late to amend the returns and there were time limits within which the revenue authorities could make discovery assessments.

194. Given the paucity of information in the March Letter and the undertaking to revert, we simply do not accept the argument that the onus was on Revenue Scotland to open an enquiry. The onus was on the Appellants, who had provided inaccurate information which had led to a loss of tax, to rectify that promptly.

195. It was also argued for the Appellants that Revenue Scotland cannot succeed in their argument that the Appellants had failed to take reasonable steps because they have not proved the date on which it became clear that the group relief claims were not justified.

196. We do not accept that it is for Revenue Scotland to prove what was, at the relevant time, only known to the Appellants and those advising them. In any event, as we have indicated, Revenue Scotland established in the Review Conclusion Letters that by no later than January 2021 the Appellants knew that they had left the Group and the group relief claims were not justified.

197. As we have said, that should have been notified to Revenue Scotland at that time. We also find that the loss of tax could, and should, have been quantified at that time.

198. Lastly, we do not accept the argument that from approximately April 2021 when the original transactions were identified, Revenue Scotland would have been aware that there was a possible inaccuracy and they should have opened an enquiry or exercised their information powers. It is true that they did not but it does not assist the Appellants

or make the inaction on their part reasonable. On the contrary, the onus was never on Revenue Scotland.

199. The answer to the question posed by the Third Issue is that for the reasons given the Appellants failed to take reasonable steps to inform Revenue Scotland that inaccurate information had been provided to Revenue Scotland on their behalf.

200. Accordingly, section 104 RSTPA applies and the Appellants are deemed to have been careless.

Overview of the assessments

201. Revenue Scotland have discharged the burden of proof and we find that the assessments were both validly and timeously made in terms of the relevant legislation.

202. For the avoidance of doubt, Revenue Scotland were entitled to raise the assessments and to argue in the alternative, as they have done throughout, that the February Returns were further returns within section 33 LBTTA.

The Penalties

203. As can be seen, it is common ground that the issue of the shares in the Appellants on 31 May 2017 caused the Appellants to leave the Group.

204. Mr Simpson characterised the dispute between the parties as being: Were the transactions effected in pursuance of, or in connection with, arrangements under which the shares in the Appellants were issued?

205. The Appellants argue that the penalties for failure to make a return are invalid because a "further return" is only required by section 33(1)(d) LBTTA where group relief has been withdrawn to any extent and group relief was not withdrawn at any time; it was simply never available as the transactions were never exempt.

206. Section 33 and Schedule 10 depend on a transaction being exempt because of group relief rather than on a claim having been made.

The First Issue - Were the returns submitted in February 2022 'further returns' for the purposes of section 33 LBTTA?

207. The Appellants accept that if group relief had been available initially and was withdrawn then paragraphs 14 and 15 Schedule 10 LBTTA apply. In those circumstances, section 33 LBTTA applies imposing the requirement to lodge a further return where relief has been withdrawn.

208. If it is withdrawn then the return must be made within 30 days of the "relevant event" which, in the case of group relief (section 33(4)(d), is "the buyer ceasing to be a member of the same group as the seller" within the meaning of Schedule 10.

209. However, they argue that if group relief had **not** been available initially then section 33 would not be engaged.

210. Paragraph 2 of Schedule 10 provides that a transaction is exempt from charge where the buyer and seller are companies within the same group at the effective date of the transaction. They were.

211. However, group relief is not available where paragraphs 3 or 5(b) of Schedule 10 apply. Paragraph 3 does not apply. The Appellants argue that paragraph 5(b) is crucial since Revenue Scotland have accepted that the share allotment had always been contemplated as a complement to the property transactions because both steps were an integral part of RDM's succession planning. The Appellants argue that must mean that there were arrangements in place in terms of paragraph 5(b).

212. We agree with Revenue Scotland that the allotment of shares was an integral part of the Report and the two Step Plans and we also agree that that therefore falls within the wide definition of arrangements in paragraph 49 Schedule 10 LBTTA.

213. Paragraph 13 of Schedule 10 provides that group relief is "withdrawn" where both paragraphs 14 and 15 of that Schedule apply. Paragraph 14 applies where the buyer "is exempt from charge by virtue of this schedule".

214. We find that both at the effective date of the transaction and as at the date that the LBTT return was filed for Mount Royal, group relief was available. At that juncture, no decision had been taken as to even how many shares would be allotted in Mount Royal. Everyone understood that Mount Royal would remain in the Group and that matters would be arranged accordingly.

215. There were no "arrangements" in place at that time which would have triggered the operation of paragraph 5(b) of Schedule 10 in relation to the Mount Royal transaction.

216. Mount Royal was exempt from charge by virtue of paragraph 2 and therefore paragraphs 14 and 15 of Schedule 10 apply. That being the case section 33 LBTTA applies imposing the requirement to make a further return. Accordingly, the February Return for Mount Royal was a further return for the purposes of that section.

217. We find that it is a different matter as far as Abbotsford is concerned. At the time that that transaction was effected, being the wording in paragraph 5 of Schedule 10, although the transaction itself took place before the allotment of the shares later that day, the "arrangements" that were in place included the allotment of the shares that took Abbotsford out of the Group. Therefore, group relief was not available and paragraph 5(b) of Schedule 10 does apply.

218. We agree that with Abbotsford therefore paragraphs 14 and 15 of Schedule 10 do not apply and in consequence nor does section 33 LBTTA. Accordingly, the February Return for Abbotsford was not a further return.

219. The answer to the question posed by the First Issue is that in the case of Mount Royal the February Return was a further return for the purposes of section 33 LBTTA but the February Return for Abbotsford was not a further return for the purposes of that section.

220. The consequences of that are that Mount Royal is liable for penalties relating to late filing and late payment and Abbotsford is not.

221. In case we are wrong about Abbotsford and further returns, we continue to refer to both Appellants.

The Second Issue - In any event, should the 10% reduction made by Revenue Scotland on review in relation to telling be increased?

222. The provisions relating to reduction of penalties for disclosure and cooperation are to be found at section 175 RSTPA. In the Review Conclusion Letters, Revenue Scotland had reduced the penalties for late filing by 70%.

223. The argument for the Appellants is very simple. They say that having told Revenue Scotland about a potential inaccuracy in the March Letter and Revenue Scotland having done nothing about it, had it not been for the February Returns, Revenue Scotland's "opportunity to charge any LBTT may well have been lost entirely". In those circumstances the maximum reduction for "telling" should be offered.

224. Unsurprisingly, Revenue Scotland disagree.

225. Whilst, of course, in the absence of any disclosure the tax may have been lost entirely, that is a reason for giving the 10% reduction but no more. As we have said repeatedly, this is a self-assessed tax and the onus is on the taxpayer to ensure that the correct tax is paid.

226. As we have found as fact at paragraph 111, in their letter of 22 March 2023, Saffery had argued that "all information required by Revenue Scotland has been supplied promptly and in full". That is not our view. It is not just a question of what Revenue Scotland "required" but rather a question of the level of disclosure. We have explained our finding that the March Letter was not an adequate disclosure and that it was also later than it should have been. We have also found that the Appellants did not take reasonable steps to inform Revenue Scotland about the inaccuracies.

227. As the Appellants themselves have stated (see paragraph 136 above), the February Returns had been filed only approximately two months before the deadline by which Revenue Scotland would have had to have raised assessments to recover the tax. We do not agree with the Appellants that that gave Revenue Scotland ample time.

228. Revenue Scotland did raise protective assessments in that timescale but, as can be seen from paragraphs 90 - 93 above, despite repeated prompting, it took Saffery a full month to answer the questions that would determine whether assessments should be raised or alternative options adopted. In that context, in colloquial terms that was really "pushing matters to the wire".

229. For all these reasons we do not accept that there should be the maximum reduction.

230. The answer to the question posed by the Second Issue is that the 10% reduction made by Revenue Scotland on review in relation to telling should not be increased.

The Third Issue - When was the payment of LBTT due, so that time for late payment ran?

231. It is common ground that section 159 RSTPA provides that a penalty is payable by a person where the person fails to make a land transaction return under *inter alia* section 33 LBTTA on or before the filing date. Sections 162 to 163 RSTPA provide for the penalty to be of various amounts depending on how late the return in question is filed, ie the first late payment penalty and the 3, 6 and 12 month penalties.

232. Section 159(4) provides that for the purposes of sections 160 to 167 the "penalty date" in relation to a return is the day after the filing date; in this case 1 July 2017.

233. Section 168 RSTPA provides that a penalty is payable where a person fails to pay an amount of tax due under section 40 LBTTA on or before the date falling 30 days after the date by which the amount must be paid.

234. Section 40(2)(c) LBTTA provides that where "a return is to be made" under section 33 LBTTA the tax "must be paid at the same time as the return is made".

235. We narrate the history of the imposition of the penalties because the line of argument in the View of the Matter Letters and the Review Conclusion Letters is not that adopted in the hearing.

236. In their Review Conclusion Letters Revenue Scotland argued that section 29 LBTTA, must be read into section 40 LBTTA.

237. Section 29 LBTTA provides that where there is a duty to make a return, the return must include an assessment of the tax that is due in accordance with the return and the return "must be made before the end of the period of 30 days beginning with the day after the effective date of the transaction".

238. The effective date of the Mount Royal transaction was given as 20 April 2017 in the February Return (it should have been 21 April 2017) and for Abbotsford it was 31 May 2017.

239. The Review Officer's argument was that if the Acts are read as a whole, ie the interaction of sections 168 RSTPA and sections 40 and 29 LBTTA, the relevant date is the earlier of the date that the return is made if it is on time, or early, or where it is late, the date 30 days after the effective date of the transaction.

240. Confusingly, and inaccurately, in the case of Mount Royal, the Review Conclusion Letter argues that the effective date was 31 May 2017 rather than 21 April 2017 or even 20 April 2017. There is no other explanation therein as to how they calculated the penalties based on that date but see paragraph 244 below. The Review Officer's witness statement was of no assistance and did not address the detail.

241. All that is relevant that is said in the amended Statements of Case is that "The payment date provided for in section 40 is the date upon which the tax should have been paid if the return had been lodged on or before the filing date." It is then argued that a purposive approach must be taken to the interpretation of section 40.

242. In Revenue Scotland's Skeleton Argument, the argument is that the due date for payment was 30 July 2017 because:

(a) The focus of section 168 is the taxpayer's obligation to pay.

(b) Section 40 means that it must be at the same time as the return under section 33 is made but section 33(3) provides that the return must be made before the end of 30 days beginning with the day after the date that the relevant event occurred.

(c) Section 33(4)(d) provides that the relevant event in relation to group relief is when the buyer and seller are no longer in the same group.

243. Notwithstanding the Review Officer's arguments, on the balance of probability, we find that Revenue Scotland calculated the late payment penalties on the basis that the last date for filing a further return under section 33 LBTTA was 30 June 2017 because the share issue was on 31 May 2017. Therefore, if payment was not made, liability for penalties arose on 30 July 2017 because payment should have been made on 30 June 2017.

244. Unsurprisingly, the appellant's Skeleton Argument primarily addressed the arguments originally advanced by Revenue Scotland. We do not propose to do so in any detail because apart from the inaccuracies around the effective date, as can be seen, the thinking in that regard is somewhat muddled. The Skeleton Argument is to be preferred.

245. The Appellants' position is quite simply that:

(a) The obligation to pay depends on the return being made because that is what section 40 LBTTA says.

(b) Until the return is filed the legislation provides for late filing payment penalties which can only arise thereafter.

246. Further, it was argued that if the return is not filed there cannot be late payment penalties because payment presupposes an assessment particularising liability. Reliance for that proposition was said to be Lord Dunedin in *Whitney v Commissioners of Inland Revenue* [1925] UKHL TC 10 88 ("Whitney") to the effect that:

> "…there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, *ex hypothesi*, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."

247. We do not agree with that proposition. Both Revenue Scotland and the Appellants knew, or could have known, exactly how much tax would be due because it had been self-assessed in the original returns before group relief was claimed. We do not disagree with Lord Dunedin but he was not talking about a self-assessed tax where the tax had been assessed and then relieved by a claim.

248. The appellant argues that it is only the first late payment penalty that is due as the due date for payment was the date that the return was submitted. That date was 23 February 2022 and payment was made in full on 11 May 2022.

249. Section 40 is not to be read in isolation. At paragraph 9, the Supreme Court in *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16 quoted from, and endorsed, paragraph 29 of the judgment given by Lord Hodge DPSC in *R(O) v Secretary of State for the Home Department* [2022] UKSC 3 where in the context of statutory interpretation he said: "A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections".

250. What the Appellants are asking the Tribunal to do is to give a literal interpretation to part of section 40 LBTTA read in isolation and that is simply not appropriate.

251. At paragraph 10 the Supreme Court went on to cite with approval Lord Bingham of Cornhill in *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13 where he said:

> "The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

252. As we pointed out in *Straid*, the Policy Memorandum relating to RSTPA makes it clear that the purpose of penalties is "… to promote compliance and deter non-compliance".

253. It would not achieve the Scottish Parliament's purpose if the legislation were to be read in such a way as to encourage late filing because late payment penalties would not be triggered.

254. Having due regard to the principles of interpretation reiterated by the Supreme Court in *For Women,* we find that the analysis of the legislation by Mr Donnelly in his Skeleton Argument, which we have summarised at paragraph 243 above, is correct. Accordingly, the due date for payment was indeed 30 July 2017.

255. The answer to the question posed by the Third Issue is that the payment of the LBTT was due on 30 June 2017 so the time for the late payment penalties ran from that date.

The Fourth Issue - In any event, should the penalties be cancelled on the basis of a reasonable excuse on the part of the Appellants?"

256. Section 178 RSTPA provides that liability to a penalty will not arise if there is a reasonable excuse for the failure to make a return or pay tax but Section 178(3) specifies that where a taxpayer relies on a third party to do anything, that is not a reasonable excuse unless the taxpayer took reasonable care to avoid the failure.

257. It is common ground that the burden of proof rests with the Appellants.

258. The Appellants' Skeleton Argument rightly argues that this Tribunal considered the law on reasonable excuse in *Straid Farms Limited v Revenue Scotland* [2017] FTSTC 2 ("Straid"). In summary, we concluded that it is incumbent upon the Tribunal to look objectively at an appellant's individual circumstances and at the underlying cause. We have done so in this instance.

259. The argument on reasonable excuse in the Appellants' Skeleton Argument proceeded in part on reliance on *McQuillan.* Rightly that has not been pursued.

260. After Mr Langston had effectively demolished the *McQuillan* argument in the hearing, it was argued that we should accept that if the problem with the issue of the shares had been addressed by Saffery there would have been at least one easy solution so no tax would have been payable in any event. That argument was presaged in the Skeleton Argument.

261. We see no reason to address that in any detail because Saffery never suggested any other solution. It is mere speculation to suggest that the Appellants would have structured the reconstruction differently; they never had the choice to do so given Saffery's failures. Even if we accepted that argument, we do not accept that it could be a reason for failing to file the further return or to pay the tax.

262. We also do not accept the other argument that the reasonable excuse for both the failure to file on time and to pay on time was because of reliance on Saffery.

263. When the accounts were filed in January 2021, the Appellants knew that group relief had not been available. The accounts had been amended to reflect at least the potential HMRC liabilities. We have no explanation as to why LBTT was apparently not included and it may have been yet another oversight.

264. RDM signed the accounts. We attribute no fault to him personally; he acted on the advice of Saffery but as we have indicated at paragraph 124 above, reliance on an incompetent adviser does not amount to a reasonable excuse (*Ryan* and *Katib*).

265. For the avoidance of doubt, in *Ryan,* Judge Bishopp, in relation to an appeal against the imposition of a penalty for the late filing of a return, said at paragraph 6 that:

> "The plain purpose of the legislation is to encourage the prompt submission of returns by imposing penalties on those who submit them late. The penalty is imposed on the person concerned, and not upon his solicitor or any other representative. The purpose of the legislation would be defeated if a penalty could be escaped by the expedient of placing the blame on a dilatory solicitor. If Mr Ryan believes he has been let down by his solicitor, his remedy is to take the matter up with the solicitor."

266. In *Katib,* the Upper Tribunal, albeit dealing with different circumstances, made it clear at paragraph 58 that:

> "It cannot be the case that a greater degree of adviser incompetence improves one's chances of an appeal, either by enabling the client to distance himself from the activity or otherwise."

267. The February Returns were described as “Withdrawal of Group Relief”. Although Saffery subsequently backtracked from that, by their own admission they were advised by the solicitors instructed in a potential negligence claim, DAC Beachcroft, and had the advice of senior counsel, when drafting that letter so it was scarcely a typographical error. If that is what they thought, or had been advised, tax should have been paid when the returns were filed.

268. Objectively considered, at a basic minimum, when the February Returns were filed the quantum of the unpaid tax was both known and notified to Revenue Scotland. No explanation has been given as to why it was not paid when the returns were filed or why Saffery insisted on delaying payment until after the assessments (which they knew that they were going to argue were invalid) were issued.

269. We have found that the Appellants did not take reasonable steps to inform Revenue Scotland of the loss of tax and for similar reasons, quite apart from *Ryan* and *Katib*, we do not find that reasonable care was taken by the Appellants to avoid the failures to notify Revenue Scotland or to pay the tax.

270. Specifically, we find that even if there had been a reasonable excuse at any point in terms of section 178(3)(c) of RSTPA there was an unreasonable delay from February 2022.

271. We find that the Appellants have failed to establish a reasonable excuse.

272. For completeness we have considered whether there were special circumstances which would permit a reduction in the penalties in terms of section 177 RSTPA. It was argued for Revenue Scotland that that had not been raised on appeal and should not be considered, whereas the Appellants argued that it should be considered.

273. This Tribunal set out the law on special circumstances *in Straid* and we do not propose to repeat it all again here. However, as we pointed out in that decision at paragraphs 61 and 65 respectively:

> (a) it must be something out of the ordinary or uncommon, and
>
> (b) we agreed that “…special circumstances must relate to matters which cannot be taken into account in the reductions set out in the statute, and go to the events underlying the understatement [of tax]”.

274. In their Skeleton Argument the Appellants argued that the special circumstances were reliance on Saffery and *McQuillan* (on the basis that the state of case law at the time was confused). Rightly*, McQuillan* is no longer an issue. For all the reasons given, we have not found that that reliance on Saffery amounts to a reasonable excuse and it is certainly not a special circumstance.

275. A great many Appellants coming to this Tribunal and to the UK Tax Tribunal argue that they were “let down” by their advisers. Sadly, it is far from uncommon. There is nothing in the underlying events that is remarkable; Saffery were negligent in not giving accurate advice on something that Mr Langston freely admitted was capable of an “easy

solution". Saffery failed to achieve that easy solution and the cost to the Appellants has been high. That is regrettable on many fronts but is not anything special.

276. The answer to the question posed by the Fourth Issue is that the Appellants have failed to establish that the penalties should be cancelled on the basis of a reasonable excuse on the part of the Appellants.

Overview of the penalties

277. The appeal succeeds in relation to both the late filing and the late payment penalties for Abbotsford and in terms of section 244 RSTPA they are cancelled.

278. Both the late filing and the late payment penalties issued to Mount Royal and varied on review are upheld in terms of section 244 RSTPA.

Decision

Abbotsford

279. The Appeal number 0005 lodged with the Tribunal by Abbotsford relating to the section 98 LBTTA assessment is dismissed and the assessment dated 21 April 2022 is upheld .

280. The Appeal number 0013 lodged with the Tribunal by Abbotsford relating to the late filing and late payment penalties is allowed and the penalties are cancelled.

Mount Royal

281. The Appeals numbered 0005 and 0014 are dismissed. The assessment dated 14 April 2022 and the late filing and late payment penalties, as varied on review are upheld.

282. 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: 8 July 2025

Appendix

The relevant legislative provisions

RSTPA

83 Amendment of return by taxpayer

(1) A person (the "taxpayer") who has made a tax return may amend the return by notice to Revenue Scotland.

(2) An amendment under this section must be made by the end of the period of 12 months beginning with the relevant date (the "amendment period").

(3) The relevant date is—

(a) the filing date, or

(b) such other date as the Scottish Ministers may by order prescribe.

(4) This section is subject to sections 87(3) and 93(4).

98 Assessment where loss of tax

(1) This section applies if a designated officer comes to the view honestly and reasonably that—

(a) an amount of devolved tax that ought to have been assessed as tax chargeable on a person has not been assessed,

(b) an assessment of the tax chargeable on a person is or has become insufficient, or

(c) relief has been claimed or given that is or has become excessive.

(2) The designated officer may make an assessment of the amount, or additional amount, that ought in the officer's opinion to be charged in order to make good to the Crown the loss of tax.

102 Conditions for making Revenue Scotland assessments

(1) A Revenue Scotland assessment may be made only where the situation mentioned in section 98(1) or 99(1) was brought about carelessly or deliberately by—

(a) the taxpayer,

(b) a person acting on the taxpayer's behalf, or

(c) a person who was a partner of the taxpayer.

(2) But no Revenue Scotland assessment may be made if—

(a) the situation mentioned in section 98(1) or 99(1) is attributable to a mistake in the return as to the basis on which the tax liability ought to have been calculated, and

(b) the return was in fact made on the basis prevailing, or in accordance with the practice generally prevailing, at the time it was made.

103 Time limits for Revenue Scotland assessments

(1) The general rule is that no Revenue Scotland assessment may be made more than 5 years after the relevant date.

104 Losses brought about carelessly or deliberately

(1) This section applies for the purposes of sections 102 and 103.

(2) A loss of tax or a situation is brought about carelessly by a person if the person fails to take reasonable care to avoid bringing about that loss or situation.

(3) Subsection (4) applies where—

(a) information is provided to Revenue Scotland,

(b) the person who provided the information, or the person on whose behalf the information was provided, discovers some time later that the information was inaccurate, and

(c) that person fails to take reasonable steps to inform Revenue Scotland.

(4) Any loss of tax or situation brought about by the inaccuracy is to be treated as having been brought about carelessly by that person.

(5) References to a loss of tax or to a situation brought about deliberately by a person include a loss of tax or situation brought about as a result of a deliberate inaccuracy in a document given to Revenue Scotland by or on behalf of that person.

118 Contract settlements

(1) In sections 107(1)(a) and 108(1)(a) the reference to an amount paid by a person by way of tax includes an amount paid by a person under a contract settlement in connection with tax believed to be due.

(2) Subsections (3) to (7) apply if the person who paid the amount under the contract settlement (“the payer”) and the person from whom the tax was due (“the taxpayer”) are not the same person.

(3) In relation to a claim under section 107 in respect of that amount—

(a) the references to the claimant in section 113(5), (6) and (8) (Cases D, E and F) have effect as if they included the taxpayer,
(b) the reference to the claimant in section 113(9) (Case G) has effect as if it were a reference to the taxpayer, and
(c) the reference to the claimant in section 117(1)(b) has effect as if it were a reference to the taxpayer.

(4) In relation to a claim under section 107 or 108 in respect of that amount, references to tax in schedule 3 (as it applies to a claim under section 107 or 108) include the amount paid under the contract settlement.

(5) Subsection (6) applies where the grounds for giving effect to a claim by the payer in respect of the amount also provide grounds for a Revenue Scotland assessment on the taxpayer in respect of the tax.

(6) Revenue Scotland may set any amount repayable to the payer as a result of the claim against any amount payable by the taxpayer as a result of the assessment.

(7) The obligations of Revenue Scotland the taxpayer are discharged to the extent of any set-off under subsection (6).

(8) "Contract settlement" means an agreement made in connection with any person's liability to make a payment to Revenue Scotland by or under this Act or any other enactment.

159 Penalty for failure to make returns

(1) A penalty is payable by a person ("P") where P fails to make a tax return specified in the table below on or before the filing date (see section 82).

	Tax to which return relates	*Return*
1.	Land and buildings transaction tax	(a) Return under section 29, 31, 33 or 34 of the LBTT(S) Act 2013. (b) Return under paragraph 10, 11, 20, 22 or 30 of Schedule 19 to the LBTT(S) Act 2013.
2.	Scottish landfill tax	Return under regulations made under section 25 of the LT(S) Act 2013.

(2) If P's failure falls within more than one provision of this section or of sections 160 to 167, P is liable to a penalty under each of those provisions.

(3) But where P is liable for a penalty under more than one provision of this section or of sections 160 to 167 which is determined by reference to a liability to tax, the aggregate of the amounts of those penalties must not exceed 100% of the liability to tax.

(4) In sections 160 to 167 “penalty date”, in relation to a return, means the day after the filing date.

(5) Sections 160 to 163 apply in the case of a return falling within item 1 of the table.

(6) Sections 164 to 167 apply in the case of a return falling within item 2 of the table.

160 Land and buildings transaction tax: first penalty for failure to make return

(1) This section applies in the case of a failure to make a return falling within item 1 of the table in section 159.

(2) P is liable to a penalty under this section of £100.

161 Land and buildings transaction tax: 3 month penalty for failure to make return

(1) P is liable to a penalty under this section if (and only if)—

(a) P’s failure continues after the end of the period of 3 months beginning with the penalty date,

(b) Revenue Scotland decides that such a penalty should be payable, an

(c) Revenue Scotland gives notice to P specifying the date from which the penalty is payable.

(2) The penalty under this section is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under subsection (1)(c).

(3) The date specified in the notice under subsection(1)(c)—

(a) may be earlier than the date on which the notice is given, but

(b) may not be earlier than the end of the period mentioned in subsection (1)(a).

162 Land and buildings transaction tax: 6 month penalty for failure to make return

(1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this section is the greater of—

(a) 5% of any liability to tax which would have been shown in the return in question, and

(b) £300.

163 Land and buildings transaction tax: 12 month penalty for failure to make return

(1) P is liable to a penalty under this section if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P deliberately withholds information which would enable or assist Revenue Scotland to assess P's liability to tax, the penalty under this section is the greater of—

(a) 100%^ of any liability to tax which would have been shown in the return in question, and

(b) £300.

(3) In any case not falling within subsection (2), the penalty under this section is the greater of—

(a) 5% of any liability to tax which would have been shown in the return in question, and

(b) £300.

168(1) Penalty for failure to pay tax

(1) A penalty is payable by a person ("P") where P fails to pay an amount of tax mentioned in column 3 of the following table on or before the date mentioned in column 4 of the table.

	Tax to which payment relates	*Amount of tax payable*	*Date after which penalty incurred*
1.	Land and buildings transaction tax	(a) Amount payable under section 40 of the LBTT(S) Act 2013.	(a), (d) and (f) The date falling 30 days after the date by which the amount must be paid.

…

(4) Section 169 applies in the case of a payment falling within item 1 of the table.

169 — Land and buildings transaction tax: amounts of penalties for failure to pay tax

(1) This section applies in the case of a payment of tax falling within item 1 of the table in section 168.

(2) P is liable to a penalty of 5% of the unpaid tax.

(3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

(4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

175 Reduction in penalty under sections 159 to 167 for disclosure

(1) Revenue Scotland may reduce a penalty under sections 159 to 167 where P discloses information which has been withheld by a failure to make a return ("relevant information").

(2) P discloses relevant information by—

(a) telling Revenue Scotland about it,

(b) giving Revenue Scotland reasonable help in quantifying any tax unpaid by reason of its having been withheld, and

(c) allowing Revenue Scotland access to records for the purpose of checking how much tax is so unpaid.

(3) Reductions under this section may reflect—

(a) whether the disclosure was prompted or unprompted, and

(b) the quality of the disclosure.

(4) Disclosure of relevant information—

(a) is "unprompted" if made at a time when P has no reason to believe that Revenue Scotland has discovered or is about to discover the relevant information, and

(b) otherwise, is "prompted".

(5) In relation to disclosure, "quality" includes timing, nature and extent.

177 Special reduction in penalty under Chapter 2

(1) Revenue Scotland may reduce a penalty under this Chapter if it thinks it right to do so because of special circumstances.

(2) In subsection (1) “special circumstances” does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In subsection (1) the reference to reducing a penalty includes a reference to—

(a) remitting a penalty entirely,

(b) suspending a penalty, and

(c) agreeing a compromise in relation to proceedings for a penalty.

(4) In this section references to a penalty include references to any interest in relation to the penalty.

(5) The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

178 Reasonable excuse for failure to make return or pay tax

(1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a return, liability to a penalty under sections 159 to 167 does not arise in relation to that failure.

(2) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a payment, liability to a penalty under sections 168 to 173 does not arise in relation to that failure.

(3) For the purposes of subsections (1) and (2)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

179 Assessment of penalties under Chapter 2

(1) Where P becomes liable to a penalty under this Chapter, Revenue Scotland must—

(a) assess the penalty,

(b) notify the person, and

(c) state in the notice the period, or the transaction, in respect of which the penalty is assessed.

(2) A penalty under this Chapter must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) An assessment of a penalty under this Chapter—

(a) is to be treated for enforcement purposes as an assessment of tax, and

(b) may be combined with an assessment to tax.

(4) In relation to penalties under sections 159 to 167—

(a) a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an overestimate of the liability to tax which would have been shown in a return,

(b) a replacement assessment may be made in respect of a penalty if an earlier assessment operated by reference to an overestimate of the liability to tax which would have been shown in a return.

(5) In relation to penalties under sections 168 to 173—

(a) a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of an amount of tax which was owing,

(b) if an assessment in respect of a penalty is based on an amount of tax owing that is found by Revenue Scotland to be excessive, Revenue Scotland may by notice to P amend the assessment so that it is based on the correct amount.

(6) An amendment made under subsection (5)(b)—

(a) does not affect when the penalty must be paid,

(b) may be made after the last day on which the assessment in question could have been made under section 180.

Land and Buildings Transaction Tax (Scotland) Act 2013

The relevant sections:

29 Duty to make return

(1) The buyer in a notifiable transaction must make a return to the Tax Authority.

(2) If the transaction is a chargeable transaction, the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.

(3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the transaction.

33 Further return where relief withdrawn

(1) The buyer in a land transaction must make a further return to the Tax Authority if relief is withdrawn to any extent under—

…
(d) Part 3 of schedule 10 (group relief).
…

(2) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable.

(3) The return must be made before the end of the period of 30 days beginning with the day after the date on which the relevant event occurred.

(4) The relevant event is—

…
(d) in relation to the withdrawal of group relief, the buyer ceasing to be a member of the same group as the seller within the meaning of schedule 10,
…

40 (2) Where a return is to be made under any of the following provisions, the tax or additional tax payable must be paid at the same time as the return is made—

…
(c) section 33 (further return where relief withdrawn),
…

49 In this schedule—

"arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable."

Schedule 10 – Group relief

2 A land transaction is exempt from charge if the seller and buyer are companies that at the effective date of the transaction are members of the same group.

3 Relief under this schedule is not available if at the effective date of the transaction there are arrangements in existence by virtue of which, at that or some later time, a person has or could obtain, or any persons together have or could obtain, control of the buyer but not of the seller.

5 Relief under this schedule is not available if the transaction is effected in pursuance of, or in connection with, arrangements under which—

(a) the consideration, or any part of the consideration, for the transaction is to be provided or received (directly or indirectly) by a person other than a group company, or

(b) the seller and the buyer are to cease to be members of the same group by reason of the buyer ceasing to be a 75% subsidiary of the seller or a third company.

Withdrawal of relief

13 Relief under this schedule is withdrawn or partially withdrawn where paragraphs 14 and 15 apply.

14 This paragraph applies where the buyer in the transaction which is exempt from charge by virtue of this schedule ("the relevant transaction") ceases to be a member of the same group as the seller—

(a) before the end of the period of 3 years beginning with the effective date of the transaction, or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

15 This paragraph applies where, at the time the buyer ceases to be a member of the same group as the seller ("the relevant time"), it or a relevant associated company holds a chargeable interest—

(a) that was acquired by the buyer under the relevant transaction, or

(b) that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction for which relief under this schedule was available but not claimed.

29.— Duty to make return

(1) The buyer in a notifiable transaction must make a return to the Tax Authority.

(2) If the transaction is a chargeable transaction, the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.

(3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the transaction.