

**Tax Chamber**  
**First-tier Tribunal for Scotland**



[2026] FTSTC 2

Ref: FTS/TC/AP/25/0010

***Land and Buildings Transaction Tax - Additional Dwelling Supplement (ADS)  
- whether repayable - no - whether suitable for use as a dwelling - not a  
snapshot on effective date - residential or non-residential property - Mudan  
v HMRC, Court of Appeal, considered - residential property - appeal refused***

**DECISION NOTICE**

IN THE CASE OF

**Professor John Lambert**

First Appellant

and

**Dr Hirohito Nago**

Second Appellant

- and -

**Revenue Scotland**

Respondent

**TRIBUNAL: ANNE SCOTT, President  
CHARLOTTE BARBOUR, Member**

**The hearing took place in person at George House, Edinburgh on Wednesday  
7 January 2026**

**For the Appellants: The First Appellant**

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

## DECISION

### Introduction

1. This appeal relating to Land and Building Transaction Tax (“LBTT”) repayment claims relating to both LBTT and Additional Dwelling Supplement (“ADS”) arises from an unfortunate sequence of events which we summarise below before looking at the detail of the appeal.
2. We annex at Appendix 1 the relevant legislation for ADS from Schedule 2A LBTT Act 2013 (“LBTTA”).

### *Background*

3. The Appellants had purchased a property in Edinburgh (“the Second Property”) on 16 December 2022 (“the effective date”). Their solicitor filed the LBTT return on 16 December 2022 and because the First Appellant also co-owned with another individual a residential property in London (“the First Property”), LBTT in the sum of £76,070 and ADS in the sum of £39,240 (ie a total of £115,310) were paid on 19 December 2022.
4. The return narrated that:
  - (a) the transaction was a residential transaction,
  - (b) the two Appellants both resided at an address in Scotland,
  - (c) there was no intention to sell the First Property,
  - (d) the purchase price was £981,000, and
  - (e) ADS was payable.
5. On 23 May 2024, the solicitor submitted a claim for repayment of the ADS in terms of section 107 Revenue Scotland and Tax Powers (Scotland) Act 2014 (“RSTPA”) on the basis that the First Property had been sold.

### *The First Problem – incorrect advice from the Appellants’ solicitor*

6. In the period between 29 May and 13 December 2024 the solicitor and Revenue Scotland corresponded in relation to eligibility for repayment. That was fruitless since it is apparent that the solicitor had no understanding of ADS. He had simply advised the Appellants that the ADS would be repayable if the First Appellant sold his interest in the First Property. That was entirely incorrect advice. That is not a matter for the Tribunal.

### *The Second Problem - Revenue Scotland’s guidance*

7. On 10 January 2025, Revenue Scotland telephoned the First Appellant who confirmed that the solicitor was no longer acting in the matter. The First Appellant stated that:

(a) The Second Appellant had lived in the First Property but evidence to establish that might be an issue.

(b) Having been asked if they lived in the Second Property, he said that the Second Property had been uninhabitable at the point of purchase so they were renting a property in Fife.

(c) Planning permission for alterations to the property was being sought from Edinburgh Council.

8. Revenue Scotland pointed out that condition (c) for repayment of ADS (ie residence in the Second Property as an only or main residence) might be a problem. Revenue Scotland then advised the Appellants to check the Revenue Scotland website and their guidance LBTT4012 – Non-Residential transactions. The note of that telephone call records that Revenue Scotland did so because

“...if at the effective date the property was indeed uninhabitable then ADS may not have been payable at that point. Did not tell TP this as may have been construed as advice, just to check the guidance on our website to ensure whatever steps are taken next are the correct on (sic)”.

9. We annex at Appendix 2 extracts from that guidance. As can be seen, there is a focus on habitability. The Appellants have expended both time and money on arguments about habitability as at the effective date but that is not the statutory test which is to be found in section 59 LBTTA. We will revert to the status of guidance and the statutory test.

#### *The Third Problem – the Closure Notice*

10. There were a number of issues with the Closure Notice which was unfortunate since it was the decision being appealed and therefore was a key document.

11. At the outset of the hearing, we drew the parties' attention to the fact that the Closure Notice attached to the Notice of Appeal was dated 6 April 2025. Furthermore, although paragraph 1 of Revenue Scotland's Statement of Case stated that the Closure Notice was dated 6 May 2025 and was enclosed at Appendix 2, the Appendix was the same letter dated 6 April 2025.

12. Because the appeal was not filed timeously with the Tribunal (regardless of the actual date of the Closure Notice), the Tribunal had written to Revenue Scotland on 2 July 2025 pointing out that a Revenue Scotland letter attached to the Notice of Appeal was dated 10 April 2025 and the Notice of Appeal itself referred to a decision dated 6 May 2025. The Tribunal asked for clarification. Revenue Scotland responded that day stating that the Closure Notice had not been subject to a review and they enclosed a copy of the Closure Notice. That was the letter dated 6 April 2025.

13. Revenue Scotland stated that the Closure Notice had explained how to appeal the decision, which it did, and also that that information had been highlighted to the First Appellant in an email dated 16 June 2025 after the First Appellant had intimated to them that he wished to “protest” the decision.

14. That email was not produced by Revenue Scotland and nor was it in the Bundle but the First Appellant forwarded it to the Tribunal to support his application for a late appeal. That email was part of a chain and in that chain there were emails from Revenue Scotland to both Appellants which included:

(a) An email dated 10 April 2025 to the Second Appellant which referred to a letter of 10 April 2025 which was stated to be a full response to all the points that had been raised.

(b) An email dated 6 May 2025 to the First Appellant referring to an email of 23 April 2025 asking how to “take this claim to a higher level”. Revenue Scotland stated that they were now closing the enquiry and the Closure Notice was attached.

The 16 June 2025 email stated that the Closure Notice was dated 6 May 2025.

15. The Closure Notice at pages 239 to 246 of the Hearing Bundle and described in the Index as being dated 6 May 2025 is, in fact, dated 6 April 2025 and within it refers to letters of 10 and 23 April 2025. The former is what amounts to a view of the matter letter from Revenue Scotland.

16. The latter is an email from the Appellants complaining about Revenue Scotland’s approach in this matter and their insistence on the Appellants having to prove that the Second Property was uninhabitable.

17. We also pointed out to the parties that the decision in the Closure Notice dealt only with the issue as to whether or not the Appellants’ purchase of the Second Property was the purchase of a residential property in terms of section 59 of the Act.

18. We did so because we had noted that in a lengthy email dated 22 January 2025 to the First Appellant, who was by then unrepresented, a Revenue Scotland officer had opened by stating that:

“I confirm that I am a tax specialist within the LBTT compliance team and have a vast knowledge and experience of LBTT and the ADS.”

19. The officer had then gone on to discuss the ADS repayment claim but stated that it was now claimed that the Second Property was “uninhabitable” which was a different issue. He stated that the “bar for a dwelling to be considered uninhabitable is set extremely high”. He stated that Revenue Scotland had “published specific guidance on derelict/uninhabitable properties which can be found in LBTT4012 - Non-Residential transactions”. He indicated that if, after considering the guidance, the Appellants believed that the transaction should not have been reported as a residential transaction, he was prepared to consider a repayment claim on the basis that there had been an overpayment of tax.

20. We articulated our concern that he had then offered the Appellants a stark binary choice in the following terms:

“I need you to confirm on what grounds you are seeking a repayment of LBTT and/or ADS. It cannot be the case that I can consider both as they are fundamentally different claims. Either your claim is on the basis that your purchase

of [the Second Property] was a residential transaction, ADS was payable and you are now making a repayment claim as your previous main residence was sold **OR** that your claim is on the basis that you have overpaid LBTT and ADS as your purchase of [the Second Property] was incorrectly reported as (sic) residential transaction”.

21. The Closure Notice narrated that correspondence and the fact that on both 7 and 11 February 2025 the officer had again told the Appellants that they had to choose the basis for the repayment claim. On 11 February 2025, the First Appellant replied to Revenue Scotland stating that when the Second Property had been purchased it had been student accommodation, being an HMO (House in Multiple Occupation). It was not in a state where a family could reasonably be expected to live and it had taken almost two years to get planning permission. Repairs were currently being undertaken.

22. Revenue Scotland responded on 17 February 2025 noting that the Appellants wished the repayment claim to proceed on the basis that the transaction had been incorrectly reported as being related to residential property, ie the original ADS repayment on the basis of the sale of the First Property was not being pursued.

23. We observed that a Revenue Scotland litigator had belatedly, on 24 September 2025, enquired about the ADS repayment claim which had prompted a reply from the First Appellant the following day asking for advice. That was in the Bundle. However, there appeared to have been no reply from Revenue Scotland and thus on 30 September 2025, the Appellants had filed with the Tribunal a formal reply to Revenue Scotland’s Statement of Case. That had not been copied to Revenue Scotland until it was noted by the Tribunal in previewing the case but Revenue Scotland received it two days before the hearing. The attachments were in the Bundle.

24. We granted Mr Nicholson an adjournment to enable him to take instructions and to confirm the statutory basis on which Revenue Scotland could state that only one basis for a repayment claim could be considered.

25. We pointed out that we had observed from the email chain to which we refer in paragraph 14 above, that the Appellants had expressed concern about what could be described as Revenue Scotland’s heavy handed approach to them. The email to which we refer at paragraphs 15 and 16 above also referenced that approach and the requirement to argue that the transaction was a non-residential transaction because the property was uninhabitable.

26. Following the adjournment, Mr Nicholson very properly confirmed that regrettable language had been used by Revenue Scotland on a number of occasions. He conceded that there were a number of errors that should have been identified before the hearing.

27. He agreed that the Tribunal was correct in stating that it was wrong for Revenue Scotland to have suggested that there was a binary choice of either pursuing an ADS repayment or claiming that there had been an overpayment of tax because it was a non-residential transaction.

28. He agreed that both issues were before the Tribunal. He also confirmed that the letter dated 6 April 2025 was the Closure Notice; it should have been dated 6 May 2025. That should have been noted when the Statement of Case was drafted.

29. He confirmed that he had had sight of the Appellants' response to the Statement of Case.

### ***Preliminary issues***

30. It was agreed that the appeal is against the decision by Revenue Scotland in the Closure Notice issued under Schedule 3 of RSTPA on 6 May 2025. That decision was to the effect that the claim for repayment of overpaid LBTT was refused on the basis that the transaction was the purchase of residential property. By implication, and we will revert to that, the claim for repayment of the ADS was also refused.

31. On 10 July 2025, Revenue Scotland had written to the Tribunal stating that, although the Closure Notice issued on 6 May 2025 had explained the timescale for appeal, Revenue Scotland would not oppose the late appeal to the Tribunal which was dated 21 June 2025 and had been received by the Tribunal on 30 June 2025. Accordingly, the appeal was admitted.

32. Revenue Scotland's very late application to lodge a number of items of SMS correspondence between Revenue Scotland and the then solicitor for the Appellants was granted at the hearing.

### ***The hearing***

33. We had a Hearing Bundle extending to 272 pages and an Authorities Bundle extending to 115 pages. We heard oral evidence from the First Appellant. Revenue Scotland did not call the Revenue Scotland officer as a witness, albeit his witness statement, was in the Bundle. The First Appellant was not in a position to agree the terms of that witness statement. The documentary evidence sufficed.

### **The issues**

34. As can be seen, although, under pressure, the issue of repayment of ADS had appeared to have been conceded in correspondence, it was still a live issue in the Grounds of Appeal and rightly so.

35. However, the dominant issue was whether or not the Second Property was residential property for the purposes of LBTT. If it was not, then, as the Appellants rightly argued in their Response, ADS was never chargeable and fell to be repaid together with the higher rate of LBTT as the Appellants would have overpaid LBTT.

### **The facts**

36. The facts are largely uncontentious.

37. The First Property was co-owned with another individual and consisted of three rooms. Two rooms were rented out and, since approximately 2019 or 2020, both Appellants used the third room as their base when in London.

38. They had access to a number of other properties and a peripatetic lifestyle because of their work commitments and family. In the relevant period, they spent approximately less than 10% of their time in London, 40% in Edinburgh and 50% in Dublin. The First

Appellant has clinics in both Edinburgh and Dublin. They kept possessions in all of the properties to which they had access.

39. They had rented a property in Edinburgh for 18 months from the summer of 2021 and, in the autumn of 2022, they had looked at the Second Property.

40. Having purchased the Second Property on 16 December 2022, they lived in a property in Fife owned by a company controlled by one or both of them; we do not have the details.

41. The Second Property was in Council Tax band G, was a listed building and was in a Conservation Area. It is not known when it was converted to an HMO.

42. They applied for planning permission and building warrant in the earlier part of 2023; we do not have the details beyond being aware that it was for renovation. That was granted in late 2024 and work commenced.

43. The Appellants moved into the property on 9 August 2025, once all the internal repairs had been completed. Those repairs had included knocking down internal walls, reinforcing ceilings and extensive other work. In the course of that renovation three ceilings collapsed.

44. On completion, the basement comprised a separate apartment with two bedrooms and two bathrooms and a living/dining/kitchen room.

45. On the first and second floors there are now five bedrooms, four bathrooms, a family room, a kitchen and a living/dining room. The Appellants and their children live in the first and second floors.

### *The External Reports*

#### *The Home Report*

46. The Home Report, prepared by Shepherd, Chartered Surveyors, for the sellers of the Second Property was dated 10 August 2022 and followed a site visit on 22 June 2022. It described the property as being a detached villa which was approximately 200 years old. At basement level there were three bedrooms, a bathroom with WC and utility room. On the ground floor there was an entrance hall, living room, family room, dining room, kitchen/dining room, bathroom and WC. On the first floor there were six bedrooms, a bathroom with WC and a WC compartment. There was a small outhouse in the rear garden and there was garden ground to the front, side and rear of the property. There was a car driveway.

47. The sanitary fittings were described as “dated” and the property had three gas fire boilers servicing the central heating system and hot water supply.

48. The Home Report included a summary of the condition of the property divided into three categories, namely:

- a. Category 3 which reads “Urgent repairs or replacement are needed now. Failure to deal with them may cause problems to other parties of the property or cause a safety hazard. Estimates for repairs or replacement are needed now”.
- b. Category 2 which reads: “Repairs or replacement requiring future attention, the estimates are still advised.”
- c. Category 1 which reads: “No immediate action or repair is needed”.

49. Drainage and gas fell into Category 1. The outside areas and boundaries fell into Category 3 but every other aspect of the building fell into Category 2.

50. The caveat was that the existence of Category 2 or Category 3 repairs could have an adverse effect on marketability value and the sale price.

51. However, the valuation read:

“Having considered matters, taking account of our general observations on site, we are of the opinion that the Market Value of the subjects in their present condition and with the benefit of vacant possession may be fairly stated in the sum of £1,000,000 (One Million Pounds Sterling). We have taken into consideration the Japanese Knotweed, Dampness and Structural engineers (sic) report when arriving at our figure.”.

#### *The Mortgage Valuation Report*

52. This report was also prepared by Shepherd and stated that:

“The property would benefit from redecoration, upgrading and modernisation throughout and estimates for a comprehensive upgrading programme should be obtained prior to purchase.”.

53. It confirmed the valuation at £1 million and that the reports on Japanese Knotweed, Damp and Timber and the Structural Engineer’s Report had all been taken into consideration before arriving at that valuation.

#### *The Structural Engineer’s Report*

54. The Structural Engineer’s Report was contained in correspondence to the seller dated 23 January 2017 and 13 July 2022 from Buildings Investigation Centre. The second report had quoted all of the first report in full and stated that no remedial works had been carried out between the two inspections. It concluded that:

“There is no appreciable deterioration in the cracking evident between the 2017 and the 2022 inspections”

and that therefore the conclusions and advice in the earlier report still applied.

55. The first report had stated that the Second Property was a detached stone villa constructed before 1900, was in current use as an “HMO letting house” and consisted of “ten bedrooms, along with public rooms, kitchens, bathrooms etc.”.

56. It identified widespread cracking, some of which was the result of differential settlement because in properties of that age external walls were likely to settle to a greater degree than internal walls. Other cracking was the result of a failure of the original lath and plaster and posed a risk of the plaster ceiling falling into rooms. The recommendation was that that defect “should be addressed as a matter of urgency”.

57. The second report identified the fact that notwithstanding that, and the other recommendations, nothing had been done in the intervening five and a half years.

#### *The Damp and Timber Report*

58. Apex Property Care Limited had inspected the property on 28 June 2022 in order to provide a quotation for “remedial works”.

59. It described the Second Property as being a “Detached House with a Basement” and suggested that the estimated cost of repairs would be of the order of £60,000 plus VAT.

60. It identified the cause of damp as being a result of rising damp, lateral penetrating damp, plaster being in contact with solid floors and hygroscopic wall plaster.

#### *Measurement and Planning*

61. Prior to the purchase on 16 December 2022, the Appellants employed Clive Evans Design Consultants (“the Consultant”) to visit the Second Property and undertake a measurement survey.

62. The Consultant stated in an undated report that was produced for the repayment claim that, having visited the site in October 2022, his view was that:

(a) By early 2023 a proposed scheme had been developed and that was submitted as a planning application. Prior to purchase, the property had been used for multiple occupation by students (the last of whom had moved out in May 2022) and the planning permission was sought to return it to being a single family house with improvements to the basement and an expansion of the rear entrance porch.

(b) “It appeared to me, that the house was a substantial structure and although there were minor signs of settlement in various locations, the building was generally

in a sound structural condition when considering its age. However, some structural work would need to be undertaken including roof repairs, renewing windows, re-plastering, new joinery and damp proofing.

It was unlikely that the existing electrical circuits would obtain a certificate under current regulations, so complete rewiring would be required. The plumbing and heating systems were un-serviceable and would also require complete renewal to suit the updated layout. Upgraded thermal insulation would also be essential.”

(c) He had had sight of the Home Report, a Building Surveyors Report (presumably the Buildings Investigation Centre report) dated July 2022 and a Habitability Report from City Architecture Office dated 24 March 2025. He stated that he agreed with the information supplied in those documents.

(d) His opinion was that “...the house would not be suitable for a dwelling on the effective date”.

### *The Habitability Report*

63. The Habitability Report was dated 24 March 2025 and was produced for the Appellants by City Architecture Office. It referred to their appointment by the Appellants on 2 July 2023. They wrote a further letter to the Appellants on 10 September 2025 confirming that they had been retained to provide services for “proposed renovation works” at the Second Property and that no work had commenced prior to their appointment.

64. The report referred to the Scottish Government guidance on “the Tolerable Standard” for housing and argued that eight of the ten criteria were not met. Apart from the roof, windows, damp, cracking and electrical issues that were identified in the other reports it argued that the property was not habitable because there was a lack of insulation, ventilation in some areas was sub-optimal, the mains water supply was a mixture of lead, copper and plastic pipes and there were no carbon monoxide detectors.

### *The Procedural History (other than as narrated previously)*

65. On 15 January 2025, Revenue Scotland issued both Appellants with a Notice of Enquiry under Schedule 3 RSTPA. That enquiry stated that it related to the repayment claim for ADS submitted by the agent. The matters canvassed included:

1. Revenue Scotland pointed out that to be eligible for repayment of ADS the criteria in paragraph 8(1) Schedule 2A of LBTTA had to be met.
2. They said that the First Property must have been owned by both Appellants.
3. They went on to consider the amendment to the LBTT legislation (wrongly referred to as “Paragraph 8a”) but he referred only to Revenue Scotland’s guidance and did not produce the legislation. There was a reference to a requirement that the Second Property should have been the main residence of both Appellants. We enclose the text of all of the relevant legislation at Appendix 1.

66. On the same day the First Appellant emailed Revenue Scotland stating that he had been told by a third party that, in terms of the legislation, in order to qualify for a refund of ADS, both Appellants were required to reside in the Second Property. However, that had not been possible since it had taken the Council 18 months to grant planning permission and building warrant. The requirement for residence was “unreasonable” and “makes no sense”.

67. He also confirmed that the Second Appellant had lived in the First Property as “an interim measure before moving to Scotland” and there was no evidence in that regard.

68. As we have indicated at paragraphs 18 and 19 above, the Revenue Scotland officer responded on 22 January 2025. In addition to that which we have already narrated, in summary, he stated that since neither the First nor the Second Property had been the main residence of both Appellants, neither condition (b) nor condition (c) was met so ADS could not be repaid.

69. In relation to whether the Second Property was residential property, or not, he pointed out that LBTT was a self-assessed tax and the LBTT return had stated that it was residential property. The Appellants were again referred to Revenue Scotland’s guidance LBTT4012 and advised that it was possible, albeit there was a very high bar, to make a repayment claim on the basis that there had been an overpayment of LBTT.

70. The Appellants were asked to confirm the basis for their repayment claim and on 31 January 2025 the First Appellant confirmed that the claim was on the basis that they could not comply with the requirement to reside “...in an uninhabitable building in order to qualify for this refund”. The First Appellant enclosed a number of undated photographs of the Second Property whilst being repaired.

71. As we have indicated at paragraph 21 above, on 7 and 11 February 2025, Revenue Scotland replied stating that at the effective date the Second Property was either residential property or it was not. If it was, then ADS was payable and to qualify for a refund the statutory criteria would have to be met. Revenue Scotland stated explicitly that the Appellants would have to choose the basis for their repayment claim.

72. On 20 February 2025, the First Appellant formally reiterated the repayment claim on the basis that the Second Property was non-residential property and enclosed copies of the Building Investigation Centre Report, the Home Report, the Apex Property Care Report, a letter from Edinburgh Council granting permission for tree removal and pictures of the trees.

73. He argued that at the effective date:

(a) There were multiple structural, environmental and safety defects which rendered the property uninhabitable; substantial remedial work was required before occupation was possible.

(b) The property did not meet the minimum standards for habitability under the Building (Scotland) Regulations 2004 and in summary and in particular:

(i) There was historical settlement giving rise to cracking and the rear outshot was pulling away from the main building.

(ii) There was “Severe Dampness & Timber Decay” so there was not compliance with moisture protection regulations.

(iii) Whilst it was conceded that “the reports do not explicitly state a risk of roof collapse, the requirements for pre-purchase inspections, repair estimates, and weatherproofing interventions” demonstrated that it did not meet habitability standards.

(iv) As the Home Report had indicated that the boundary walls were Category 3 that meant that it was a serious structural issue and presented a safety issue.

(v) A tree exceeding 10 metres in the front garden posed a structural and safety risk.

(vi) There were recommendations to upgrade the heating, plumbing and electrical systems; they were not in full working order.

74. Revenue Scotland responded on 5 March 2025 accepting that some structural work was required but argued that the structural integrity was not so compromised as to render the property unsuitable for use as a dwelling. Accordingly, he rejected the claim. He relied upon section 59 LBTTA, Revenue Scotland’s guidance and the decision of the Upper Tribunal in *Mudan v HMRC* [2024] UKUT 307 (TCC) (“Mudan UT”).

75. In summary, his view was that the required works amounted to “normal repair and refurbishment” and the property was suitable for use as a dwelling. In particular he pointed out that *Mudan UT* was authority for the proposition that the focus should be on the fundamental characteristics of a building rather than a snapshot of habitability at the effective date.

76. The First Appellant replied the following day requesting a review; he focused on habitability as at the effective date. He complained about Revenue Scotland’s approach.

77. Correspondence ensued and the Appellants instructed the Habitability Report which was forwarded to Revenue Scotland on 28 March 2025 in support of the argument that *Mudan UT* could be distinguished because the problems in the Second Property regarded cumulatively were so wide ranging that the remedial works went well beyond “normal” renovation or repairs.

78. Revenue Scotland responded on 10 April 2025 confirming that their view of the matter remained unchanged. In summary, it was argued that *Mudan UT* was authority for the proposition that a property that had previously been used as a dwelling would not be deemed to be suitable for use as a dwelling if the damage to the building was such that parts of or all of the building required demolition or that the damage was not “fixable”, ie repair or renovation was precluded.

79. Revenue Scotland relied upon *Patel v HMRC* [2025] UKFTT 373 where Judge McKeevor and Dr Mann, relying upon paragraphs 50 and 54 of *Mudan UT*, drew a distinction between “use” and “occupation” of a dwelling.

80. Revenue Scotland repeatedly stressed that “habitability is not the test”.

81. Correspondence ensued in relation to the Appellants' complaint about Revenue Scotland's stance. That culminated in the issue of the Closure Notice on 6 May 2025.

82. The Closure Notice narrated the detail of the correspondence including the binary choice of the basis for the repayment claim. Regrettably, on three occasions the LBTT is stated to be £77,760 but it was £76,070. The conclusion was stated to be that:-

"I confirm that my enquiry is concluded on the basis that I disagree with your view that on the effective date:

- [the property] was not suitable for use as a dwelling
- [the property] should be considered non-residential for LBTT
- You have made an overpayment of tax totalling £77,760.

83. Revenue Scotland went on to explain in five short paragraphs that the decision was based on the seven key points identified in *Mudan UT* and that the Closure Notice should be read in conjunction with the letter before stating:

"To summarise, I confirm my enquiry is concluded on the following basis:

- The current information reported in your tax return is accurate
- Your transaction has been correctly reported as residential
- The total LBTT payable is £76,070
- The total ADS payable is £39,240
- You have not made any overpayment of tax

The above has the effect of reducing your claim for overpaid tax to £0."

84. The Closure Notice then went on to explain that Revenue Scotland did not propose to levy a penalty of 30% in relation to the potential lost tax of £77,760.

85. The First Appellant appealed to the Tribunal on 21 June 2025.

86. The Grounds of Appeal were:

- (a) It was not understood why the ADS could not be repaid.
- (b) Revenue Scotland had told him that he could apply for repayment if the Second Property was "uninhabitable" but Revenue Scotland had decided that it was "inhabitable".
- (c) He requested repayment of the ADS.
- (d) The "arbitrary and illogical conditions made by Revenue Scotland is (sic) not the way "law" should be practiced (sic)".

87. In preparation for this hearing, a Revenue Scotland solicitor wrote to the First Appellant on 24 September 2025 asking to revisit the ADS repayment conditions. She had recognised that if the Tribunal decided that the Second Property was residential then repayment of ADS, or not, would have to be considered.

88. She explained the statutory conditions and posed the relevant questions. The First Appellant replied the following day arguing that the requirement for both Appellants to have lived in the First Property made no sense.

### **The Law in relation to residential property**

89. The relevant provisions are sections 59(1) and (2) of LBTTA which read:-

#### **“59 Meaning of ‘residential property’**

(1) In this Act ‘residential property’ means—

(a) a building that is used or is suitable for use as a dwelling, or is in the process of being constructed or adapted for such use,

(b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or other structure on such land), or

(c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b).

(2) Accordingly, ‘non-residential property’ means any property that is not residential property.”

90. Those provisions are identical to the Stamp Duty Land Tax (“SDLT”) provisions at section 116 of the Finance Act 2003.

91. We say that because both parties have relied on the jurisprudence relating to SDLT and, as the Tribunal indicated at paragraph 30 in *Straid Farms Limited v Revenue Scotland* [2017] FTSTC 2:

“...the Explanatory Notes to RSTPA state:

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

92. At paragraph 54 of *Mudan v HMRC* [2025] EWCA Civ 799 (“Mudan CA”) Lord Justice Lewison referred to *Mudan UT* and stated that the Upper Tribunal had “...summarised their conclusions in a lengthy passage at [58] which deserves quotation in full:

“In our opinion, the following points should be considered in determining the impact of works needed to a building on its suitability for use as a dwelling:

(1) In assessing the impact of the works needed to a building in the context of determining suitability for use as a dwelling, a helpful starting point is to establish

whether the building has previously been used as a dwelling. That is relevant for two reasons. First, as we said in *Fiander UT* [2021] STC 1482, previous use as a single dwelling is relevant in determining whether an alteration needed to a building would be a repair or renovation (because of prior use as a dwelling) or, alternatively, an adaptation or alteration, changing the building's characteristics by making it usable as a single dwelling for the first time. Second, actual use as a dwelling is a very strong indication that the building has possessed the fundamental characteristics of a dwelling, and has previously been suitable for use as a dwelling. An assessment of the repairs and renovations needed can then be made against that backdrop and by reference to the state of the building during its actual use as a dwelling. Previous use is, of course, fact sensitive, and factors such as the length of time between the previous use as a dwelling and the effective date will be relevant. The fact of previous use as a dwelling does not mean that a building remains suitable for use as a dwelling regardless of what happens to the building and regardless of the effluxion of time. Equally, to state the obvious, the fact that there has been no previous use as a dwelling does not mean that a building is not suitable for use at the effective date. However, previous use is a highly relevant factor in the evaluation of suitability.

(2) Looking at the building as at the effective date, an assessment must be made of the extent to which it has the fundamental characteristics of a dwelling, including the extent to which it is structurally sound. Is it, for instance, a desirable house which has become dilapidated and requires updating, or is it an empty shell with no main roof? Subject to the points which follow, in principle the former is likely to be suitable for use as a dwelling and the latter is not.

(3) The necessary works should be identified, and their impact on suitability for use should be considered collectively. A distinction must be drawn between works needed to render a building habitable and works to be carried out to make the property 'a pleasant place to live', in the words used by the FTT at FTT [30] (such as painting and decorating). The latter do not affect suitability for use as a dwelling.

(4) An assessment should be made of whether the defects in the building which require works are capable of remedy (in colloquial terms, are fixable). That assessment should take into account whether the works would be so dangerous or hazardous as to prejudice their viability (as in *Bewley* [2019] UKFTT 65 (TC)). If they would, then the building is unlikely to be (or remain) suitable for use as a dwelling. It should also take into account whether the works could be carried out without prejudicing the structural integrity of the building (because, for instance, the walls might collapse). If they could not, the building is unlikely to be suitable for use as a dwelling.

(5) If occupation at the effective date would be unsafe or dangerous to some degree (for instance, because the building requires rewiring), then that would be a relevant factor, but would not of itself render the building unsuitable for use as a dwelling.

(6) The question of whether a repair would be a "minor repair" is not irrelevant, but nor is it particularly informative in assessing suitability. While certain repairs were described as 'minor' in *Fiander FTT*, that classification was not a reason for the

decision in *Fiander UT*. It is too vague and abstract to form a principled basis for the overall determination of the impact of the need for repair on suitability. For the same reason, an approach which seeks to establish whether the necessary works are 'fundamental' is acceptable if it is effectively shorthand for the approach we describe above, but as a free-standing test it is not particularly informative.

(7) Applying the principles we have set out, the question for determination is then whether the works of repair and renovation needed to the building have the result that the building does not have the characteristics of a dwelling at the effective date, so it is no longer residential property."

93. Lord Justice Lewison then went on to confirm that in the Court's view:

(1) Given the wording in the section in the legislation, the test that must be applied is to consider both use and suitability for use [56].

(2) That is a matter of statutory interpretation and therefore regard must be had to the purpose of the legislation and the context within which the language is used [57].

(3) The context is the levying of tax on land transactions; therefore that "militates against restricting the assessment whether the property satisfies the definition to a snapshot on a particular date" [58]. Because the definition of a building includes a building in the process of construction or adaptation that is looking to the future and thus again the assessment is not confined to a "snapshot" [61].

(4) The definition of "residential property" is concerned with "land use rather than occupation as such" [60]. He explicitly rejected the argument that the property in question should be suitable for immediate use [66] and in that context he stated that a Tribunal is entitled to consider the past history of a building and whether it retains its identity. In other words, does it lose its character as a residential property.

(5) The objective characteristics of the building should be considered and so property which is used as a dwelling notwithstanding dilapidation etc is residential property [62].

(6) Some concentration on the structure of the building is appropriate as it is consideration of a building as opposed to internal fit out [63]. It is the building which must be suitable for use as a dwelling.

(7) Consideration should be given as to whether in the course of building work a building which had been a dwelling has "lost its identity" and therefore had the "fundamental characteristics of a dwelling"; attention should be given to the past history of the building and whether it retains its identity [64-66].

(8) At paragraph 68 he stated:

"The ordinary speaker of English would, in my view, characterise property as 'residential property' if it was the sort of property that people live in. If property previously used as a dwelling was undergoing extensive refurbishment such that it could not be lived in for the time being, but would be once the work was complete, I would be very surprised if the ordinary speaker of English would

remove that property from the category of 'residential property'. As Mr Mudan himself accepted, the property "was still residential in character" at the time of the purchase. If, as a matter of ordinary language, it was not residential property: what was it?"

## Discussion

### *Fairness*

94. As we pointed out in the hearing, the ADS conditions and the definition of residential property are set out in statute. At the heart of the Appellants' case was the argument that the conditions for repayment, on any basis, were unfair.

95. In *Dr Colin Goudie & Dr Amelia Sheldon v Revenue Scotland* [2018] FTSTC 3, having quoted from the Upper Tribunal in *HMRC v Hok* 2012 UKUT 363 (TCC), the Tribunal stated at paragraph 67 that "The Tribunal does not have jurisdiction to consider either fairness or Revenue Scotland's conduct" and at paragraph 69 "In summary, whilst this Tribunal has a wide jurisdiction it is confined to the powers conferred by statute". The Tribunal can only find the facts and apply the relevant law.

96. One of the arguments advanced for the Appellants was that, whilst it was accepted that what was said in that case was correct, nevertheless, the Tribunal could consider fairness if it was anchored to objective Scottish legal standards such as the Tolerable Standard or electrical safety certification. We are afraid that that is quite simply inaccurate.

### *Repayment of ADS*

97. Although Revenue Scotland did briefly address the issue of repayment of the ADS in the Statement of Case, that was only on the basis that it was mentioned in the Grounds of Appeal. However, at every stage Revenue Scotland should have recognised that the Appellants were challenging the refusal of the claim for repayment of ADS and that the question of whether the Second Property was residential property or not was simply an alternative argument.

98. As the Tribunal has made clear in a number of other cases, it was the Scottish Parliament's intention that ADS is repayable in only the very limited circumstances set out in the legislation and all of the conditions must be met. The first condition is that the First Property must have been sold within 18 months of the effective date (paragraph 8(1)(a) LBTTA). However, the second condition is that the First Property was the "only or main residence" in the 18 months before the effective date (paragraph 8(1)(b) LBTTA).

99. Shortly put, the claim for repayment of ADS could never have succeeded because the First Property was never the First Appellant's only or main residence, let alone that of the Second Appellant. Furthermore, the Second Property was not their main residence within the statutory timescale.

100. Given the issues with Revenue Scotland forcing the Appellants to choose one basis of claim only, did the Closure Notice actually refuse the claim for repayment of ADS?

101. We have quoted the conclusions from the Closure Notice at length because we would not describe it as a model of clarity. There are no explanations in the decision relating to ADS. Although that was a problem for the Appellants that is not ultimately a problem for Revenue Scotland because the Upper Tribunal in *Shinlock v HMRC* [2023] UKUT 107 (TCC) pointed out at paragraph 63 that there is a distinction between:

“the conclusion in a closure notice and the reasons for that conclusion and the distinction between a right of appeal against a conclusion and the amendments to give effect to it.”

102. The conclusion that we have narrated at paragraph 82 above makes no reference to the ADS and restricts itself to quoting the wrong amount of LBTT. It is only by mentioning the ADS, as we have narrated in paragraph 83 above, and going on to say that the repayment is £0 that it is understood that Revenue Scotland will not repay the ADS.

103. Accordingly, if the Second Property is residential property then the ADS is not repayable. The appeal is dismissed in respect of that Ground of Appeal.

104. Lastly, for completeness, we turn to the issue as to whether or not the Appellants were poorly advised. Revenue Scotland relied on the fact that the solicitor had made the LBTT return on the basis that the Second Property was a residential property. It is clear from the SMS correspondence that the solicitor patently did not understand ADS or the conditions for repayment. He simply thought that ADS had been payable because the First Appellant had owned another property when the Second Property was purchased and that in order to obtain repayment of the ADS all that was required was for the First Appellant to sell the First Property within 18 months. It transpired that that was the advice that he had given the Appellants. Obviously, that is incorrect but that is not a matter for this Tribunal.

105. The Upper Tribunal in *Ryan v HMRC* [2012] UKUT 9 (TCC) made it clear, albeit in the context of a statutory time limit, that if a taxpayer believes that (s)he has been let down by a solicitor then the remedy is to take the matter up with the solicitor.

*Revenue Scotland’s guidance LBTT4012-Non-Residential transactions.*

106. It was unsurprising that the unrepresented Appellants took the approach that they did and focused on whether the property was “habitable” given that, in the Revenue Scotland email of 22 January 2025 (see paragraph 19 above) the Appellants had been referred to the guidance in the context of whether or not the Second Property was uninhabitable.

107. As can be seen from the extracts from that guidance at Appendix 2 the focus is on whether or not a property is derelict or uninhabitable. Clearly, the Second Property was never derelict so the focus was on habitability. In fact, Revenue Scotland was entirely correct, latterly, to say that it is not the test (see paragraph 80 above).

108. The Tribunal has previously explained in a number of cases but, in this context, in *Professor Richard Ball and Dr Sigrid Torkoroff v Revenue Scotland* [2024] FTSTC 6 at paragraph 116 that, like HMRC’s guidance, unless stated to have the force of law, Revenue Scotland’s guidance is simply their view of the law and it is for the Tribunal to interpret the law.

109. In any event, it is only the heading which refers to habitability and it is trite law that even in legislation the heading is not the law itself.

110. Although Revenue Scotland had directed the Appellants to the guidance, they were correct to primarily focus on the wording of section 59 of the Act and on *Mudan UT*; that is the law.

111. We certainly accept that the heading is misleading and unfortunate but it is not the law and one word in the guidance does not suffice to found a claim of legitimate expectation. However, we have sympathy with the Appellants in that they kept reverting to habitability.

#### *Residential Property or not?*

112. As can be seen from paragraph 89 above, section 59 LBTTA is very concise in its terms. For the Appellants to succeed they must establish that at the effective date the Property was not:

- (a) Used as a dwelling;
- (b) Suitable for use as a dwelling;
- (c) In the process of being constructed; or
- (d) In the process of being adapted for such use.

113. The parties have primarily, if not exclusively, focused on whether the Second Property was suitable for use as a dwelling.

114. We place no weight on the opinion of the Consultant (see paragraph 62 above) to the effect that he did not consider that the house was suitable for a dwelling on the effective date. We say that because at paragraph 48 in *Mudan UT* the Upper Tribunal stated that the issue of suitability for use as a dwelling was a question of law. That was confirmed in *Mudan CA*.

115. Furthermore, the quotation that we have included at paragraph 62(b) above does not support the arguments to the effect that there were very serious structural problems etc. On the contrary he said that “the building was generally in a sound structural condition” albeit that he observed that “some structural work would need to be undertaken”. That work included the work on the roof, damp proofing, and electrical work etc that had been noted in the other reports and crucially he had had sight of, and agreed with, those reports. We also noted that the renewal (as opposed to repair) of the plumbing and heating systems were “to suit the updated layout”.

116. In a similar vein, whilst we noted the argument that the need for removal of at least one tree rendered the building unsuitable for use as a dwelling, we cannot accept that. The decision notice from Edinburgh City Council was very short and was explicit in its terms and stated that the “removal of the two trees will prevent **future** damage or distress occurring to adjacent buildings...” (emphasis added). Furthermore, it stated that if the work was not done within two years a new application would have to be made. (An

application was necessary in terms of section 172 of the Town and Country Planning (Scotland) Act because it was in a Conservation Area.) That connotes no urgency.

117. Although the Home Report said that the repairs to a boundary wall fell into Category 3, firstly what was required was a repair and, secondly, the wall in question was not part of the building. It did not impact on the dwelling itself. It could have been fenced off but, in any event, again it was a repair.

118. Lord Justice Lewison made it clear at paragraph 63 of *Mudan CA* that it is the building that must be suitable for use as a dwelling.

119. So turning to the question of suitability for use as a dwelling, that is a question of statutory interpretation as Lord Justice Lewison said (see paragraph 93(2) above) and we must look at the purpose of the legislation and the context.

120. In *Mudan UT* at paragraph 36 the Upper Tribunal found that the purpose of the legislation is:

“...to tax transactions relating to residential property at a higher rate than non-residential property, and for transactions in relation to residential property by....second homeowners to be taxed more highly than a dwelling in which people live as their primary home. It is therefore right to construe the phrase ‘suitable for use as a ... dwelling’ by reference to that statutory purpose...”.

121. As we have indicated at paragraphs 93(3) and (4) above, Lord Justice Lewison described the context as being the levying of tax on land transactions and made it clear that the Tribunal:

- (a) cannot consider a snapshot as at a particular date,
- (b) cannot consider immediate use,
- (c) must look at land use rather than occupation,
- (d) is entitled to consider the history of the building and whether it retains its identity.

122. In summary, habitability on the effective date is not the test.

123. The building was constructed as a detached home on three floors and was no doubt occupied as such for very many decades, if not for more than a century. It was certainly occupied as an HMO for at least 20 years. Undoubtedly, it was not occupied between May 2022 when the last student moved out until August 2025 when the Appellants moved in with their young family.

124. We have not seen the sales particulars but, given that there was a Home Report it must have been marketed as a dwelling house, and, even allowing for the extensive work that had been identified as being required for renovation, it was valued at £1 million.

125. We agree with the Upper Tribunal in *HMRC v Ridgway* [2024] UKUT 00036 (TC) (“*Ridgway*”) at paragraph 32 that the test for whether a building is suitable for use as a dwelling is an objective test so any intention on the part of the purchaser is irrelevant. However, the Appellants did instruct the Consultant so that planning permission for

alterations could be applied for and obtained. Although we were not addressed on the issue of planning permission, we observe that, albeit in the context of planning restrictions, at paragraph 64, the Upper Tribunal in *Ridgway* stated that it would be an error of law not to take into account the planning position. It is not a matter of any great significance in this appeal but it is relevant.

126. Although in his oral evidence the First Appellant stated that the Appellants and their family lived only on the ground and first floors, there was no cross-examination. Therefore, we do not know the position in relation to the basement. Thus we rely on the Consultant's statement that the planning permission was to restore the building to its previous status as a "single family house" (see paragraph 62(a) above). So residential use was in contemplation at all times.

127. The Appellants did undertake extensive refurbishment to achieve a family house.

128. The issue for us is whether, in the course of that refurbishment, the building lost its identity as a dwelling. We have considered all of the facts and circumstances that have been drawn to our attention and weighed them in the balance. For the avoidance of doubt, as was made clear in *Mudan UT* it is a multi-factorial evaluative assessment and no one factor such as the need for repairs is determinative [57 et seq].

129. In their Reply to Revenue Scotland's Statement of Case, referencing Revenue Scotland's reliance on *Mudan CA*, the Appellants have focused on safe, practical and lawful occupation of the Second Property. They argue that because, in their view, those tests could not be met then the Second Property no longer had "the very attributes of a dwelling". Unfortunately for the Appellants such occupation is not the test as can be seen from paragraph 93(4) above.

130. We point out that at paragraph 61 of *Mudan CA* Lord Justice Lewison, when stating that a snapshot was not appropriate, used the example of a building which required rewiring, replumbing and the renewal of a kitchen and bathroom and yet would be residential property. In this case there was no Electrical Danger Notice condemning the electricians. What the seller had provided and was confirmed by the Consultant was a list of recommended repairs.

131. We accept, as did Revenue Scotland, that structural work was required, not least because of the settlement issues. We also accept that in the course of the renovations (and that was the word used by the City Architecture Office) three ceilings collapsed. However, we observe that although that was identified as being a high risk needing urgent attention in 2017, that did not happen in the following six years or more.

132. As we have indicated, however, we also accept the Consultant's assessment that the building was structurally sound considering its age.

133. It is clear from the external reports that all of the defects were "fixable". The estimated costs were high but that is in the context of a valuation of £1 million allowing for those costs and potentially others. We are aware that the total costs ended up being very significantly higher, but we also know that that was in part due to the significant delay in getting planning permission etc.

134. Paragraphs 52 to 55 of *Mudan UT* make it clear that suitability for use as a dwelling cannot be determined primarily by reference to the length of time that repairs take. In any event the primary source of delay was the planning permission and building warrant.

135. In an email dated 7 March 2025, the First Appellant quoted from the author of the Habitability Report stating that the electrics, bathrooms and heating “were stripped out to facilitate the essential renovation work...”. However, those facilities were present, albeit requiring repair at the effective date. In the words of paragraph 58(2) of *Mudan UT* this was no “empty shell with no main roof”. At a value of £1 million, before anticipated extensive repairs were undertaken, this was a desirable house which had become dilapidated and required updating; hence the installation of en-suite bathrooms, a new kitchen etc for in the words of the Consultant for “the updated layout”.

136. In summary, the Second Property was used (and occupied) as a residential property for in excess of 200 years. It had all the attributes of a dwelling house in that period albeit by 2017, let alone 2022, it had serious defects that required expensive repair and renovation. Nevertheless, that was its use. Whilst we certainly understand why the Appellants would not have wished to move their young family into the building before or during renovation, that is not the test.

137. We agree entirely with the quotation of paragraph 68 from *Mudan CA* which we have recorded at paragraph 93(8) above. This was a property which was previously used as a dwelling but was undergoing extensive refurbishment such that it could not be lived in; it was, and remained, residential property. It never lost its identity.

## **Decision**

138. For all these reasons the appeal is dismissed because:

- (a) The Second Property was correctly defined as being residential property in the LBTT return, and
- (b) The Appellants do not meet the criteria for repayment of ADS.

139. Accordingly, the Closure Notice is upheld.

140. 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: 3 February 2026**

**Lands and Buildings Transaction Tax (Scotland) Act 2013 – Schedule 2A**

**2 Transactions relating to second homes etc.**

(1) This schedule applies to a chargeable transaction if the following conditions are satisfied—

- (a) the subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling,
- (b) the relevant consideration for the transaction is £40,000 or more,
- (c) at the end of the day that is the effective date of the transaction, the buyer owns more than one dwelling, and
- (d) either—
  - (i) the buyer is not replacing the buyer's only or main residence, or
  - (ii) the buyer is replacing the buyer's only or main residence but the subject-matter of the transaction also includes the acquisition of ownership of one or more other dwellings in addition to the one that the buyer intends to occupy as the buyer's only or main residence.

(2) A buyer is replacing the buyer's only or main residence if—

- (a) during the period of 18 months ending with the effective date of the transaction, the buyer has disposed of the ownership of a dwelling,
- (b) that dwelling was the buyer's only or main residence at any time during the period of 18 months, and
- (c) on the effective date of the transaction, the buyer intends to occupy the dwelling that is or forms part of the subject-matter of the transaction as the buyer's only or main residence.

**5 Joint buyers**

(1) This paragraph applies to a chargeable transaction which satisfies the conditions in paragraph 2(1)(a) and (b) or 3(1)(a) and (b) if there are two or more buyers who are or will be jointly entitled to ownership of the dwelling.

(2) The conditions set out in paragraph 2(1)(c) and (d) or, as the case may be, 3(1)(c) are satisfied if they are satisfied in relation to any one of, or more than one of, the buyers.

## **8 Repayment of additional amount in certain cases**

- (1) Sub-paragraph (2) applies in relation to a chargeable transaction to which this schedule applies by virtue of paragraph 2 if—
  - (a) within the period of 18 months beginning with the day after the effective date of the transaction, the buyer disposes of the ownership of a dwelling (other than one that was or formed part of the subject-matter of the chargeable transaction),
  - (b) that dwelling was the buyer's only or main residence at any time during the period of 18 months ending with the effective date of the transaction, and
  - (c) the dwelling that was or formed part of the subject-matter of the transaction has been occupied as the buyer's only or main residence.
- (2) Where this sub-paragraph applies—
  - (a) the chargeable transaction is to be treated as having been exempt from the additional amount, and
  - (b) if the buyer has made a land transaction return in respect of the transaction, the buyer may take one of the steps mentioned in sub-paragraph (3).
- (3) The steps are—
  - (a) within the period allowed for amendment of the land transaction return, amend the return accordingly, or
  - (b) after the end of that period (if the land transaction return is not so amended), make a claim to the Tax Authority under section 107 of the Revenue Scotland and Tax Powers Act 2014 for repayment of the amount overpaid.
- (4) For the period allowed for amendment of returns, see section 83 of the Revenue Scotland and Tax Powers Act 2014.
- (5) In the case of a chargeable transaction to which this schedule applies by virtue of paragraph 2(1)(d)(ii), sub-paragraph (2)(a) has effect only in relation to the additional amount applicable to so much of the relevant consideration for the transaction as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling (including any interest or right pertaining to ownership of the dwelling) referred to in sub-paragraph (1)(c).

### **8A Repayment of additional amount: spouses, civil partners and cohabitants replacing main residence**

- (1) Sub-paragraph (2) applies in relation to a chargeable transaction to which this schedule applies by virtue of paragraph 2 if—
  - (a) there are only two buyers, and

(b) the buyers—

- (i) are (in relation to each other) spouses, civil partners or cohabitants, and
- (ii) are or will be jointly entitled to ownership of the dwelling that is or forms part of the subject-matter of the transaction.

(2) Paragraph 8 has effect in relation to the transaction as if—

(a) the reference in sub-paragraph (10)(a) of that paragraph to the buyer were a reference to either or both of the buyers, and

(b) the references in sub-paragraph (1)(b) and (c) of that paragraph to the buyer were references to both of the buyers together.

(3) For the purposes of sub-paragraph (1)(b)(i), two buyers are cohabitants if they live together as though married to one another.

## **LBTT4012-Non-Residential transactions**

### **Derelict/uninhabitable properties**

A dwelling may no longer be suitable for use as a dwelling where damage to a property is beyond the extent of normal repair, modernisation or refurbishment work at the effective date.

If on the effective date:

- the structural integrity is compromised to the extent that without significant repair work it would be deemed unsafe to live in or
- repair work to make the dwelling suitable to live in requires demolishing the existing structure

it is likely the property would be deemed unsuitable as a dwelling and therefore non-residential rates would apply.

Normal repair would include:

- fitting of kitchen or bathroom facilities
- repairing or replacing windows
- paintwork
- rewiring
- repair work to the roof including a re-slate, re-tile or re-thatch
- reconnection to utilities such as the fitting of a boiler for heating and replacement of piping to access water
- repair work or replacement of supporting timbers
- repair work as a result of water or fire damage
- replacement of fixtures and fittings that have been removed

### **Situation at the effective date**

The use, or suitability for use, of the property as a dwelling is to be assessed at the effective date of the transaction. *Assessing the use, and the suitability for use as a dwelling, of a property are separate tests.* Any historic use or intended future use of the property is therefore not relevant to determining the *actual use* of the property at the effective date. However, previous use (even historic use) as a dwelling is a highly relevant factor in assessing *suitability for use* as a dwelling. In addition, a building that has not previously been used as a dwelling could still be suitable for use at the effective date, depending on the factors described below.

## Meaning of 'Dwelling'

- 'Dwelling' does not have a defined meaning for LBTT. Revenue Scotland use the everyday meaning of 'dwelling' which is: 'a building, or a part of a building, that gives those who use it the facilities required for day-to-day private domestic living and a sufficient degree of permanence.'
- A dwelling also includes buildings in the process of construction or adaption for such use.

No single factor will determine the suitability for use as a dwelling although factors to be considered include:

- Physical configuration of the building including independent access
- Bathroom facilities
- Kitchen facilities
- Accommodation for living and sleeping
- Security
- Degree of permanence