TC08016

PROCEDURE – application that HMRC be precluded from raising an alternative argument set out in their skeleton argument that Montpelier acted on behalf of the appellants when considering the 20 year time limit for discovery assessments – skeleton only submitted a fortnight before the hearing of the appeals – Quah, Hicks and Taube considered – application allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2015/03404
TC/2015/03405

BETWEEN

ANTHONY OUTRAM
ROSS OUTRAM **Appellants**

-and-

THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE NIGEL POPPLEWELL

Hearing conducted remotely by video on 29 January 2021

Jeremy Woolf instructed by Barnes Roffe LLP for the Appellants

Sadiya Choudhury instructed by the General Counsel and Solicitor to HM Revenue & Customs for the Respondents

DECISION

INTRODUCTION

1. This is a case management decision. The substantive appeals to which it relates concern appeals by the appellants which arises out of their use of a Montpelier tax mitigation scheme. The scheme purportedly generated allowable trading losses which the appellants included in their 2005-2006 tax returns. HMRC issued discovery assessments in relation to those returns on 24 February 2015. The validity of those assessments depends on HMRC being able to bring them within the extended time limit of 20 years, and to do this they must establish that there was a loss of tax which was brought about deliberately by the appellants or by a person acting on their behalf.

2. The substantive appeal is due to be heard on 4 and 5 February 2021. The appellants have conceded that the losses are not allowable. So the only issue to be determined at the hearing of the substantive appeal is the validity of the discovery assessments.

3. HMRC's amended statement of case dated 29 September 2015 alleges deliberate conduct by the appellants, but it does not allege deliberate conduct by a person acting on their behalf. However, HMRC's skeleton argument dated 21 January 2021 which was prepared for the substantive appeal, does contain such an allegation.

4. The appellants made an application on 25 January 2021 that HMRC should be precluded from pursuing the arguments that they raise at paragraphs 56-58 of their skeleton argument; namely that Montpelier was acting on behalf of the appellants and could be considered to have brought about the deliberate loss of tax for the purposes of the relevant legislation. HMRC oppose that application. I have to decide whether HMRC may argue at the substantive hearing that Montpelier were acting on behalf of the appellants to bring about a loss of tax. For reasons given later in this decision I have decided that they may not so argue, and I grant the appellants application.

RELEVANT LAW

Legislation

5. Section 29 of the Taxes Management Act 1970 ("TMA") relevantly provides:

> "(1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a year of assessment—
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> > (a) that any income which ought to have been assessed to income tax, or chargeable gains which ought to have been assessed to capital gains tax, have not been assessed, or
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> > (b) that an assessment to tax is or has become insufficient, or
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> > (c) that any relief which has been given is or has become excessive, the officer or, as the case may be,
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> the Board may, subject to subsections (2) and (3) below, make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax……….

(3) Where the taxpayer has made and delivered a return under section 8 or 8A of this Act in respect of the relevant year of assessment, he shall not be assessed under subsection (1) above—

(a) in respect of the year of assessment mentioned in that subsection; and

(b) in the same capacity as that in which he made and delivered the return,

unless one of the two conditions mentioned below is fulfilled.

(4) The first condition is that the situation mentioned in subsection (1) above was brought about carelessly or deliberately by the taxpayer or a person acting on his behalf."

Precluding paras 56-58 and amending HMRC's amended statement of case

6. It is clear that the Tribunal has the power to allow a party to amend its case. This is set out in Rule 5(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("**Procedure Rules**") which provides:

(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may by direction permit or require a party to amend a document;

7. Rule 2(3) of the Procedure Rules requires us to give effect to the over-riding objective when exercising any power under the Rules. The over-riding objective, as set out in Rule 2(1), is as follows:

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

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

8. Although, strictly speaking, the appellants' application is that HMRC should not be permitted to raise a new argument at this late stage, it seems to me (and it seemed to the parties too) that the principles which apply to the application are those set out above. Indeed Miss Choudhury in her written submissions opposing the application set out, in an appendix, a suggested amendment to the respondents amended statement of case to cater for the new allegation of deliberate conduct by Montpelier. As far as the appellants were concerned, the new allegation in the skeleton argument is tantamount to HMRC seeking to introduce a new issue which should have been pleaded in their amended statement of case. I agree..

9. The relevant principles, therefore, are those set out in *Quah International v Goldman Sachs* [2015] EWHC 759 (Comm) ("*Quah*"). *Quah* concerned an application by the claimant, made three weeks before the first day of the trial, to amend her particulars of claim. At paragraphs 36 to 38 of *Quah*, Mrs Justice Carr set out the relevant principles in determining whether permission to amend should be granted:

> "36. An application to amend will be refused if it is clear that the proposed amendment has no real prospects of success. The test to be applied is the same as that for summary judgment under CPR Part 24. Thus the applicant has to have a case which is better than merely arguable. The court may reject an amendment seeking to raise a version of the facts of the case which is inherently implausible, self-contradictory or is not supported by contemporaneous documentation.
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> 37. Beyond that, the relevant principles applying to very late applications to amend are well known. I have been referred to a number of authorities: *Swain-Mason v Mills & Reeve* [2011] 1 WLR 2735 (at paras. 69 to 72, 85 and 106); *Worldwide Corporation Ltd v GPT Ltd* [CA Transcript No 1835] 2 December 1988; *Hague Plant Limited v Hague* [2014] EWCA Civ 1609 (at paras. 27 to 33); *Dany Lions Ltd v Bristol Cars Ltd* [2014] EWHC 928 (QB) (at paras. 4 to 7 and 29); *Durley House Ltd v Firmdale Hotels plc* [2014] EWHC 2608 (Ch) (at paras. 31 and 32); *Mitchell v News Group Newspapers* [2013] EWCA Civ 1537.
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> 38. Drawing these authorities together, the relevant principles can be stated simply as follows:
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> > a) whether to allow an amendment is a matter for the discretion of the court. In exercising that discretion, the overriding objective is of the greatest importance. Applications always involve the court striking a balance between injustice to the applicant if the amendment is refused, and injustice to the opposing party and other litigants in general, if the amendment is permitted;
> >
> > b) where a very late application to amend is made the correct approach is not that the amendments ought, in general, to be allowed so that the real dispute between the parties can be adjudicated upon. Rather, a heavy burden lies on a party seeking a very late amendment to show the strength of the new case and why justice to him, his opponent and other court users requires him to be able to pursue it. The risk to a trial date may mean that the lateness of the application to amend will of itself cause the balance to be loaded heavily against the grant of permission;
> >
> > c) a very late amendment is one made when the trial date has been fixed and where permitting the amendments would cause the trial date to be lost. Parties and the court have a legitimate expectation that trial fixtures will be kept;

d) lateness is not an absolute, but a relative concept. It depends on a review of the nature of the proposed amendment, the quality of the explanation for its timing, and a fair appreciation of the consequences in terms of work wasted and consequential work to be done;

e) gone are the days when it was sufficient for the amending party to argue that no prejudice had been suffered, save as to costs. In the modern era it is more readily recognised that the payment of costs may not be adequate compensation;

f) it is incumbent on a party seeking the indulgence of the court to be allowed to raise a late claim to provide a good explanation for the delay;

g) a much stricter view is taken nowadays of non-compliance with the Civil Procedure Rules and directions of the Court. The achievement of justice means something different now. Parties can no longer expect indulgence if they fail to comply with their procedural obligations because those obligations not only serve the purpose of ensuring that they conduct the litigation proportionately in order to ensure their own costs are kept within proportionate bounds but also the wider public interest of ensuring that other litigants can obtain justice efficiently and proportionately, and that the courts enable them to do so."

Acting on a taxpayer's behalf?

10. The question of when a loss of tax is brought about by a person "acting on [the taxpayer's] behalf" was considered by the Upper Tribunal in *HMRC v Hicks* [2020] STC 254 ("*Hicks*"). This case also concerned a Montpelier scheme. One of the issues was whether the taxpayer had acted carelessly in bringing about a loss of tax within the meaning of s. 29(4); and/or whether his accountant, a Mr Bevis, or Montpelier had done so while acting on his behalf. At [122], the Upper Tribunal endorsed the test applied by the FTT in Trustees of the *Bessie Taube Trust v HMRC* [2010] UKFTT 43 ("*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."

Hicks

11. In Hicks, the Upper Tribunal also said, relevantly:

> "[152] Our conclusion in relation to the carelessness of Mr Bevis also makes it unnecessary for us to consider whether Montpelier was a person acting on behalf of Mr Hicks in relation to the relevant assessments and, if so, whether Montpelier was also careless within section 29(4). However, as the matter was also fully argued, we will deal with this point albeit more briefly than might otherwise have been appropriate if the issue were to be decisive of the appeal.

[153] In relation to Montpelier, HMRC's case is as follows:

(1) Informing Mr Hicks that the scheme was "perfect for derivatives traders" and that Mr Hicks was "precisely the category of financial trader for whom the Scheme worked to generate a tax loss" (FTT decision at [156], [159] and [189(4)]) in circumstances where Mr Hicks did not meet the trading conditions in paragraph 11 of Counsel's Opinion.

(2) Providing Mr Bevis with the entries to be cut and pasted into his tax returns when they would have known that the relevant transactions – to which the entries related – had not taken place.

[154] The first question in relation to Montpelier is whether it was a person acting on behalf of Mr Hicks in relation to the relevant assessments. To answer this question, we will apply the test identified above derived from the decision in Bessie Taube. As regards the first particular of carelessness put forward by HMRC, the matter complained of relates to Montpelier's role as the seller of the scheme or, at most, an adviser to Mr Hicks. In that role, Montpelier was not acting on behalf of Mr Hicks for the purposes of section 29(4).

[155] The second particular of carelessness on the part of Montpelier relates to its providing entries to Mr Bevis to be inserted into the tax returns. As we understand it, the information provided by Montpelier was of particular relevance in relation to the 2008/09 return which established the loss which was carried forward in the two subsequent years. Although we are not entirely clear as to this, the information provided appeared to relate to the figures for the dividends received by Mr Hicks and, possibly, the dates of those dividends. Although the provision of that information for the purposes of the 2008/09 return, producing a loss which was carried forward for the two subsequent years, brings Montpelier closer to the position of someone acting on behalf of Mr Hicks in relation to the returns for the two subsequent years, we regard the question as to whether Montpelier did cross the line into acting on behalf of Mr Hicks in relation to the relevant assessments as a difficult one. However, if we are right as to the nature of the information provided by Montpelier and in view of the FTT's finding that the transactions had taken place, it would seem to follow that the information provided by Montpelier was accurate and could not be said to have been carelessly provided. If the question as to 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 to be used in a return could be regarded as acting on behalf of the taxpayer for the purposes of section 29(4). In view of the fact that these points are not necessary for our decision, in the light of our earlier conclusions, we do not think it appropriate for us to go further."

SUBMISSIONS

12. I am grateful to Mr Woolf and Miss Choudhury for their clear and helpful submissions both written and oral and for making themselves available at such short notice to attend the case management hearing. I have carefully considered their submissions in reaching my conclusions but in doing so I have not found it necessary to refer to each and every argument advanced by them.

13. Mr Woolf made the following submissions. As regards merits: On the facts, Montpelier were not acting on behalf of the appellants in the *Taube* sense; given the passing of time, no one is sure precisely what was supplied by Montpelier either to the appellants or to Barnes Roffe; there is little or no evidence of what was supplied by Montpelier; HMRC have not particularised the error made by Montpelier nor how any error was a result of deliberate conduct, a very different situation from that in *Hicks* where Montpelier told the taxpayer what to put in his returns; there is no factual foundation for HMRC's suggestion that Montpelier were acting on the appellants behalf. As regards prejudice and other matters: The Barnes Roffe witness statements evidencing reliance on Montpelier were sent to HMRC shortly after they were compiled in November 2016; the same is true of the witness statements compiled by the appellants; the stay of the appeal until the release of the decision in Sherrington ended in March 2020; *Hick*s was released in January 2020; HMRC could and should have taken the point then; there is no good reason why they failed to do so; this new argument appears to challenge the evidence of Mr Gittins which HMRC have agreed that they would not challenge; it calls into question the basis on which the appellants have conceded that the scheme does not work; although the burden of establishing deliberate conduct rests with HMRC, the appellants may wish to call rebuttal evidence which will be very difficult at this late stage and will require the postponement of the hearing of the substantive appeal; it is unfair and prejudicial to the appellants to raise this new argument so late in the day; the Tribunal should be slow to make a finding of deliberate conduct against individuals who have no opportunity to defend themselves or to present a contrary case.

14. Miss Choudhury made the following submissions. As regards merits: in the context of these appeals, the new argument is of some significance; the appellants unchallenged evidence is that the figures relating to the income and expenditure in relation to the use of the scheme were provided by Montpelier; this is supported by other documentary evidence; it was a tax avoidance scheme; it is certainly arguable that Montpelier acted on behalf of the appellants in light of the sentiments expressed in *Hicks*. As regards prejudice and other matters: it is a matter of regret that this alternative argument was not raised sooner, but that is a consequence of the progression of these appeals since they were first made in March 2015; these appeals were stayed behind Sherrington for a period of three years and it was during that three year stay that the appellants witness evidence was received by HMRC; the alternative argument was not considered before the stay since it may not have been a necessary, depending on the outcome of Sherrington; since the expiry of the stay in March 2020, HMRC's focus has been on (shortly stated) the technical merits of the appellants appeals (namely whether the trading losses were allowable losses); HMRC have the burden of proving deliberate conduct and can do this on the basis of the evidence which is currently before the Tribunal; the Tribunal will be required to apply the law as set out in *Hicks* to the evidence which is already before it in the form of the written and oral evidence of the appellants and the unchallenged witness statements of the appellants' witnesses; this will not affect the length of the hearing; there is no need for rebuttal evidence since the burden is on HMRC; both parties want the substantive hearing to proceed on the scheduled dates, but if further evidence is required, there is no reason why the witness evidence cannot be adduced and tested on those dates so that the scheduled hearing is not wasted; it would be in accordance with the overriding objective to permit HMRC to rely on their alternative argument which will not result in a loss of their scheduled hearing date even if the appellants do wish to adduce further evidence.

DISCUSSION

15. I turn first to the merits of the alternative argument since unless they have a real prospect of success, I must allow the application. The test, as set out in *Quah* is whether the alternative argument is arguable or better than arguable, or, to the contrary, whether it is inherently implausible, self-contradictory or unsupported by contemporaneous documentation.

16. On this point, I am with Miss Choudhury, but only just. It seems clear to me that Montpelier has provided information in a form which enabled Barnes Roffe to include it in the appellants' tax returns. I accept Mr Woolf's submission that it is not absolutely clear what this information was nor the form in which it was communicated by Montpelier to either the appellants or Barnes Roffe. But it was in a form which enabled the latter to include it in the appellants' tax returns without, it seems to me, a great deal of editing or additional work by them. I accept, equally, that it is not as clear as the position in *Hicks*, where Montpelier had provided information which just needed to be cut and pasted into the taxpayer's return. But information of sorts was provided by Montpelier to Barnes Roffe which does bring Montpelier within the ambit of acting on behalf of the appellants as that expression was approved in *Hicks*. Indeed, in *Hicks*, the Upper Tribunal regarded the question as to whether Montpelier had crossed the line into acting on behalf of Mr Hicks in relation to the relevant assessments as a "difficult one". The judges did not simply dismiss the argument as being implausible. They accepted it as being arguable. They then went on to say that if the question as to the role of Montpelier was to be decisive, they would need to investigate more thoroughly what precisely Montpelier did in relation to the completion of the tax returns. But given it was not decisive, there was no need for them to carry out that investigation.

17. Given the definition of "acting on behalf of" in *Taube*, as approved in *Hicks*, it is my view on what I have seen, and without undertaking an exhaustive analysis of the evidence, that HMRC face an uphill task of establishing that the information provided by Montpelier to the appellants and/or Barnes Roffe bring Montpelier within the ambit of acting on behalf of the appellants. But it is certainly arguable. And so I do consider that the alternative argument has a real (as opposed to fanciful to use the language of strike out) prospect of success. The appellant's application cannot succeed by knocking out HMRC's challenge at this first stage. And HMRC's proposed amendment to their amended statement of case lives to fight another day and needs to be tested against the second limb of the *Quah* test, namely the balance of prejudice (to put it in a nutshell).

18. It is clear that this is a very late amendment and so is within the ambit of the principles set out in *Quah*. And that a heavy burden lies on HMRC to justify why they should be able to proceed with the alternative argument. They need to show the strength of their case and why justice to them and to the appellants and other court users require them to pursue it. One factor which may militate towards allowing HMRC to run the alternative argument is that they have good reasons for having not sought to amend the amended statement of case to enable them to run this argument until it was first set out in their skeleton argument on 21 January 2021. It is incumbent on HMRC to provide a good explanation for the delay.

19. I am sympathetic to the submissions made in this regard by Miss Choudhury, and I can see that given the stay, it was unrealistic to expect HMRC to have considered the evidence which they now say forms the basis of their alternative argument, at the time that it was submitted to them (in 2016 and 2017). And if this alternative argument was an entirely new one, that submission would have considerable force. However, it is clearly not a new argument. Mr Hicks appealed against his discovery assessments in July 2016, and his appeal was heard by the FTT in September 2017. It was HMRC's submissions in that case that

Montpelier had acted on behalf of Mr Hicks for the purposes of section 29 (4) TMA. So it is clear that HMRC have been not just aware of, but actively run, the alternative argument in other cases which go back a number of years. It could and should have been considered in the Outram appeals even before the stay behind Sherrington. And once the stay in these appeals had expired in March 2020, they could, and should, in reviewing the then current situation (which would have included a review of the appellants' evidence received during the stay) raised the alternative argument and sought to amend their amended statement of case at that time. I wholly appreciate Miss Choudhury's submissions that the focus once the stay had ended was on the technical merits of the appellants case. Furthermore, and although she did not seek to justify HMRC's position on these grounds, I am conscious that a combination of Brexit and the Covid19 pandemic has made life considerably more difficult for HMRC officers during 2020.

20. But I am afraid that I do not consider that this is sufficient justification for having failed to review the position following the expiry of the stay in March 2020 and so of itself discharge the burden on HMRC to justify the late amendment.

21. I have also reconsidered the merits of the alternative argument at this stage of the analysis since it weighs on the balance of prejudice. I have said above that I think that the argument has "legs". But I consider them to be somewhat spindly. Mr Woolf's observation that it is not possible from the evidence to tell precisely the form of the information nor its content which was supplied by Montpelier to the appellants or Barnes Roffe are cogent at this stage in the analysis. My understanding of the relevance of Miss Choudhury's submission that the scheme had been found to be a tax avoidance scheme in other cases is (and I do not wish to put words into her mouth) that it would have been known to Montpelier that the technical analysis of the scheme was unmeritorious; for example there was no trade, or the trade was not carried on on a commercial basis or with a reasonable expectation of profit. And so given that they had held themselves out as tax experts, Montpelier would have known that the information they supplied to the appellants, knowing that it would be passed on to HMRC, was incorrect. And deliberately so. As Miss Choudhury says, this is something that I can assess, and come to a decision on, on the basis of the evidence which is currently before me. And there is no need for the appellant to call rebuttal evidence. But with respect to her, I disagree on the latter point. It is clear from *Hicks* that the Upper Tribunal found the capacity in which Montpelier acted was a difficult one and if its role was to be decisive, the Tribunal would need to investigate more thoroughly precisely what Montpelier did in relation to the completion of the tax returns. This strongly suggests to me that I would need to undertake a thorough investigation, and I do not feel it is fair on the appellants that I should assume that mantle without giving them the opportunity to call rebuttal evidence.

22. Nor do I think it is fair to put them on the spot and ask them to rush around between now and the date scheduled for the substantive appeal to identify what evidence they should call and whether it is possible to find somebody from Montpelier to give it. In practice to safeguard their position, they would need to proof that witness. And I think that is inconceivable given the lateness of the hour. And this is especially unfair on them given that HMRC could, and should, as I have mentioned above, raised this alternative argument well before now, following a case review after the stay expired in March 2020.

23. I am conscious that by restricting HMRC to the argument that the deliberate conduct was that only of the appellants, I am depriving them of an "argument of some significance" (as submitted by Miss Choudhury); and by doing so it might cause them prejudice and indeed hardship, since it is an argument which might succeed. And HMRC might feel in those

circumstances that the appellants have "got off on a technicality". But it is clear from the Martland line of cases, and in particular from the Upper Tribunal decision in *HMRC v Katib* [2019] STC 2106 that the financial hardship of depriving an appellant an opportunity to bring an appeal because that appeal was brought late, even if in those circumstances the financial consequences were such that he would lose his home, were not sufficient to weigh the balance of prejudice in favour of permitting a late appeal. The Upper Tribunal indicated that hardship was a common feature which could be raised by many appellants, and in the circumstances of that case it could not be given sufficient weight to overcome the difficulties posed by the fact that the delays were very significant and there were no good reasons for them. I feel the same about HMRC's position in this application. Rather than suffering financial hardship, they will lose the opportunity of running an alternative argument which is not unarguable. And so will be prejudiced. But that loss of opportunity does not have sufficient weight to overcome the difficulties posed by the fact that the reasons given for failing to raise the alternative argument until now are not, in my view, particularly good ones.

24. Finally, this application must be seen in the context of the admonition in *Quah* that a much stricter view is taken nowadays with the non-compliance; parties can no longer expect indulgence if they fail to comply with their procedural obligations; and, in the language of Martland, when undertaking an evaluation of all the circumstances of the application and undertaking a balancing exercise which essentially assesses the merits of the reasons given for the late application and the prejudice which might be caused to both parties by granting or refusing permission, I should take into account the particular importance of the need to comply with directions and time limits; and that litigants should be able to obtain justice efficiently and proportionately and that the court should enable them to do so.

25. When considered from this viewpoint, I have no hesitation in concluding that given that the weakness of the appellants alternative argument, the lateness of its introduction into the appeals, the inadequacy of the reasons given for that lateness and the impact it will have on the form and timing of the hearing on 4 and 5 February 2021the balance of prejudice weighs heavily in allowing the appellant's application.

DECISION

26. I grant the appellants' application that HMRC should not be permitted to pursue its alternative argument that the loss of tax was brought about deliberately by Montpelier acting on behalf the appellants, as set out in paragraph 56-58 of HMRC's skeleton argument of 21 January 2021. And I also reject the "counter application" that HMRC should be permitted to amend its amended statement of case in accordance with the proposed amendment set out in the appendix to Miss Choudhury's response to the appellants objection dated 28 January 2021 or at all.

27. The hearing on 4 and 5 February 2021 will therefore proceed on the basis of the foregoing decision.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

28. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

29. The application must be received by this Tribunal not later than 56 days after my decision of the substantive appeal which is to be heard on 4 and 5 February 2021 is sent to

that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice, but any time limits in that guidance should be read in the light of the extended time limit to appeal against this decision set out earlier in this paragraph.

NIGEL POPPLEWELL

TRIBUNAL JUDGE

RELEASE DATE: 2 FEBRUARY 2021