Neutral Citation: [2025] UKFTT 00416 (TC)

Case Number: TC09482

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House, London

Appeal reference: TC/2015/06378

SDLT - whether a claim for overpayment relief under Para 34, Sched 10, Finance Act 2003 ("FA 03") can be brought in a situation where that SDLT would have been repayable under s 44(9) FA 03 because of the substantial performance of a contract not subsequently carried into effect, in circumstances where s 44(9) cannot apply as the claimant is out of time to amend its land transaction return. Held – yes – as Para 34 provides a "back-stop" for SDLT relief which is independent of s 44(9). Appeal allowed

Heard on: 29 February – 1 March 2024
Judgment date: 10 April 2025

Before

JUDGE VIMAL TILAKAPALA

CHRISTIAN PETER CANDY

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS
Respondents

Representation:

For the Appellant: Mr Michael Thomas KC, instructed by Blick Rothenberg

For the Respondents: Mr Imran Afzal, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. This is an appeal relating to a claim for repayment of stamp duty land tax ("SDLT") made under paragraph 34, Schedule 10, Finance Act 2003 ("FA 03" and "Para 34"). The amount claimed is £1,920,000.

2. The claim under Para 34 (the "Para 34 Claim") was refused by HMRC in a closure notice dated 13 August 2015 and the Appellant (Mr Christian Candy) appealed to the FTT.

3. That appeal was stayed for several years as Mr Candy had also claimed relief for the SDLT payment under s 44(9) FA 03 (the "S 44 Claim") which HMRC had also refused. The S 44 Claim was the subject of litigation which resulted in an FTT decision (Christian Peter Candy v HMRC [2020] UKFTT 0113 ("*Candy FTT*"), an Upper Tribunal Decision (Christian Peter Candy v HMRC [2021] UK UT 0170 (TCC) ("*Candy UT*") and a Court of Appeal decision (Christian Peter Candy v HMRC [2022] EWCA Civ 144) ("*Candy CA*"). Candy UT and Candy CA upheld HMRC's refusal. As a consequence the Para 34 Claim is no longer stayed.

4. The hearing took place over two days. I received skeleton arguments from each side, a hearing bundle of 334 pages and an authorities bundle. The parties also provided, at my request, following the hearing, a document setting out an agreed chronology of the legislative history of Para 34 together with appendices containing explanatory notes, extracts from parliamentary debates and an HMRC technical paper relating to it. Further written submissions were also provided by each party on 22 March 2024.

THE FACTS

5. The facts of this appeal are not disputed. They were summarised in *Candy FTT* and we set out that summary below. Mr Candy is referred to in the summary as "CC" and his brother Mr Nicholas Candy as "NC".

6. All section references in the summary and throughout this Decision are, unless otherwise stated, to FA 03.

> [11] On 9 August 2012, CC entered into two contracts with the Commissioners of the Royal Hospital Chelsea ("the Seller") and Major-General Archibald Peter Neil Currie CB and Justin Francis Quintus Fenwick QC in their capacity as intermediate landlords (the "Intermediate Landlords") in respect of a property known at that time as "Gordon House" (and referred to as "Gordon House" in this decision). Gordon House is a substantial house (with associated buildings and a garden) adjacent to the grounds of the Royal Hospital in Chelsea, London.
>
> [12] The first agreement was an agreement for a lease (the "Initial Lease") of Gordon House for a term of 25 years and was entered into together with a "Supplemental Deed" which governed the development of that property by CC. The premium for the grant of the Initial Lease was £20 million.
>
> [13] The second agreement was an agreement for the assignment to CC of another lease (the "Contracted-out Lease") of Gordon House for a term of 201 years from 1 October 2012. The purchase price for the Contracted-out Lease was £48 million, payable in four instalments. CC paid the first instalment payment of £7.39 million on 1 October 2013.
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> [14] The Initial Lease was granted on 1 October 2012. The Contracted-out Lease was granted on 16 April 2019.
>
> [15] The reason for the two leases and the timing of their grants was to address enfranchisement rights. The transaction was structured so that an

application for a court order to grant the Contracted-out Lease without enfranchisement rights would be made after a flat was constructed by CC as part of the development of the property. After the grant of the court order the Contracted-out Lease would be granted by the Seller to the Intermediate Landlords, who would then assign the Contracted-out lease to CC. This structure enabled the Contracted out Lease to be excluded from the enfranchisement legislation which applies to long leases of residential premises and gives tenants the right to the extension of lease terms and, in certain cases, the right to acquire the freehold.

[16] If the Contracted-out Lease had not been granted by a long-stop date of 26 January 2021 (four years after the date of practical completion of the flat), the Seller and CC each had put and call options for the sale and purchase of the freehold of the property for a total price of £53 million.

[17] On 10 August 2012 CC's building contractors commenced work at Gordon House. This effected "substantial performance" of the agreement for the Contracted-out Lease for the purposes of s44(4).

[18] On 1 April 2014, CC gifted his interests in Gordon House (being the Initial Lease and the benefit of the Contracted-out Lease agreement) to his brother, Nicholas Candy ("NC"), in consideration of natural love and affection. This was done prior to the completion of the development of Gordon House. No debt was secured on the property at the time of this transfer. The Initial Lease was assigned by CC to NC, whilst both the Supplemental Deed and the Contracted-out Lease agreement were novated by deed. The parties to the deed of novation of the Contracted-out Lease agreement (the "Deed of Novation") were the Seller, the Intermediate Landlords, CC, and NC. Under the Deed of Novation, the Seller and the Intermediate Landlords released and discharged CC from all obligations and liabilities which remained to be performed under the agreement for the Contracted-out Lease. The original parties to the agreement for the Contracted-out Lease acknowledged between themselves that the obligations and liabilities as against each other under the agreement were extinguished. NC thereafter assumed the obligations and liabilities, as described above, which remained to be performed under the agreement for the Contracted-out Lease.

[19] Upon execution of the Deed of Novation on 1 April 2014, NC took possession of Gordon House. NC paid the second and third tranches of the £48 million premium on 1 October 2014 and 1 October 2015, respectively.

[20] The date of the practical completion of the flat referred to above was agreed as being 26 January 2017, the Court Order was obtained on 9 April 2019 and the grant of the Contracted out Lease to the Intermediate Landlords was completed on 16 April 2019.

[21] NC together with his family continue to reside in Gordon House under the Initial Lease, pending his acquisition of the Contracted-out Lease. When the assignment of the Contracted out Lease to NC is completed, he will become liable to pay the final tranche of the consideration and the Initial Lease will expire.

The Background to the SDLT dispute

[22] SDLT was paid by CC in respect of both the completion of the Initial Lease and the substantial performance of the agreement for the Contracted-out Lease. The chargeable consideration was £20 million in respect of the Initial Lease and £48 million in respect of the substantial performance of the agreement for the Contracted-out Lease. CC submitted two

land transaction returns on 8 October 2012, one in respect of each transaction, and the corresponding amounts of SDLT were duly paid.

[23] NC, on taking possession of Gordon House on 1 April 2014, substantially performed the novated agreement for the Contracted-out Lease agreement for the purposes of s44(4). The chargeable consideration for this transaction is deemed to be the full purchase price of the Contracted-out Lease received by the Seller (£48 million) rather than the three outstanding instalments payable under the novated agreement for the Contracted-out Lease – even though it was only the liability for the three outstanding instalments that was assumed by NC pursuant to the Deed of Novation. This was a consequence of the subject-matter of the Deed of Novation being an uncompleted contract and the gift being between relatives, so that the special charging rules in paragraphs 12 to 14 Schedule 2A were engaged. A land transaction return was submitted by NC, and in it he duly self-assessed his liability to SDLT.

[24] On 10 April 2014, CC applied to HMRC for repayment of the amount of SDLT paid on substantial performance (£1,920,000) under s44(9) by amending the SDLT return that related to the Contracted-out Lease agreement. This was on the basis that the original agreement for the Contracted-out Lease was extinguished as a result of the Deed of Novation, and therefore not carried into effect. CC also applied for a repayment of the same tax in the alternative under paragraph 34 (claim for relief for overpaid tax etc).

[25] By a letter dated 16 May 2014 (following a meeting between the parties in April 2014), HMRC stated that they did not consider that CC could amend his return. His first basis of claim was accordingly rejected, and it is this decision which is the subject of this appeal.

[26] I am told that CC was advised that the HMRC's decision was not capable of being appealed, and therefore he did not lodge any appeal against this decision at that time. On 17 June 2014, the Upper Tribunal handed down its decision in Portland Gas Storage Limited v HMRC [2014] UKUT 0270 (TCC) and CC became aware of that decision on the same day. Acting upon further advice, CC considered that Portland Gas confirmed that the letter of 16 May 2014 was a closure notice, and thus the conclusion stated in it was capable of being appealed.

[27] By a letter dated 2 July 2014, HMRC gave notice of their intention to enquire under paragraph 7 Schedule 11A into CC's alternative claim for repayment of the tax under paragraph 34. HMRC rejected this claim by a separate decision dated 13 August 2015. This alternative claim is the subject of a separate appeal under appeal number TC/2015/06378.

THE RELEVANT LEGISLATION

7. I set out below the legislation applicable at the relevant time.

8. I have included provisions relating to the S 44 Claim as some examination of s 44 is necessary in considering the applicability of Para 34.

S 44

44 Contract and conveyance

(1) This section applies where a contract for a land transaction is entered into under which the transaction is to be completed by a conveyance.

(2) A person is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.

(3) If the transaction is completed without previously having been substantially performed, the contract and the transaction effected on completion are treated as parts of a single land transaction. In this case the effective date of the transaction is the date of completion.

(4) If the contract is substantially performed without having been completed, the contract is treated as if it were itself the transaction provided for in the contract. In this case the effective date of the transaction is when the contract is substantially performed.

[…]

(9) Where subsection (4) applies and the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that subsection shall (to that extent) be repaid by the Inland Revenue.

Repayment must be claimed by amendment of the land transaction return made in respect of the contract.

[…]

9. The provisions dealing with amendment of a land transaction return and overpayment of SDLT are set out in paragraph 6 of Schedule 10:

Amendment of return by purchaser

6—

(1) The purchaser may amend a land transaction return given by him by notice to the Inland Revenue.

(2) The notice must be in such form, and contain such information, as the Inland Revenue may require.

(2A) If the effect of the amendment would be to entitle the purchaser to a repayment of tax, the notice must be accompanied by—

the contract for the land transaction; and

the instrument (if any) by which that transaction was affected.

(3) Except as otherwise provided, an amendment may not be made more than twelve months after the filing date.

10. Para 34 provides as follows:

Claim for relief for overpaid tax etc.

34—

(1) This paragraph applies where—

(a) a person has paid an amount by way of tax but believes that the tax was not due, or

(b) a person has been assessed as liable to pay an amount by way of tax, or there has been a determination to that effect, but the person believes that the tax is not due.

(2) The person may make a claim to the Commissioners for Her Majesty's Revenue and Customs for repayment or discharge of the amount.

(3) Paragraph 34A makes provision about cases in which the Commissioners for Her Majesty's Revenue and Customs are not liable to give effect to a claim under this paragraph.

(4) The following make further provision about making and giving effect to claims under this paragraph—

(a) paragraphs 34B to 34D, and

(b) Schedule 11A.

(5) Paragraph 34E makes provision about the application of this paragraph and paragraphs 34A to 34D to amounts paid under contract settlements.

(6) The Commissioners for Her Majesty's Revenue and Customs are not liable to give relief in respect of a case described in subparagraph (1)(a) or (b) except as provided—

(a) by this Schedule and Schedule 11A (following a claim under this paragraph), or

(b) by or under another provision of this Part of this Act.

[…]

11. The ability to reclaim tax under Para 34 is subject to Para 34A. This provides, so far as relevant, as follows:

Cases in which Commissioners not liable to give effect to a claim

34A—

(1) The Commissioners for Her Majesty's Revenue and Customs are not liable to give effect to a claim under paragraph 34 if or to the extent that the claim falls within a case described in this paragraph.

(2) Case A is where the amount paid, or liable to be paid, is excessive by reason of—

(a) a mistake in a claim or election, or

(b) a mistake consisting of making or giving, or failing to make or give, a claim or election.

(3) Case B is where the claimant is or will be able to seek relief by taking other steps under this Part of this Act.

(4) Case C is where the claimant—

(a) could have sought relief by taking such steps within a period that has now expired, and

(b) knew, or ought reasonably to have known, before the end of that period that such relief was available.

[…]

12. Para 34B contains the time limit for claims under Paragraph 34:

Making a claim

34B—

(1) A claim under paragraph 34 may not be made more than 4 years after the effective date of the transaction.

(2) A claim under paragraph 34 may not be made by being included in a land transaction return.

THE ISSUE FOR DETERMINATION

13. The single issue for determination in this Appeal is whether relief is available under Para 34 for SDLT in a situation where that SDLT would have become repayable under 44(9) because

of the substantial performance of a contract not subsequently carried into effect, in circumstances where s 44 cannot apply as the tax payer is out of time,

14. It is common ground that relief would have been available under s 44(9) had a claim been able to be made in time.

15. Mr Candy contends that SDLT relief is available under Para 34 given that he is unable to claim relief under s 44(9).

16. HMRC originally put forward two reasons why it considered Para 34 to be inapplicable. The first was, broadly, that the SDLT in question must have been "overpaid" at the time it was paid and so the claim for relief did not pass through the "gateway" necessary for Para 34 to apply as the tax was "due" at the time it was paid.

17. The second was that a claim under Para 34 cannot be made in respect of the SDLT as relief can only be claimed under s 44(9) by means of an amendment to a land transaction return.

18. The parties agreed at the outset of the hearing that the first reason was no longer being relied upon by HMRC.

19. The sole ground on which HMRC contends that the claim under Para 34 must fail is that it is prevented from applying by s 44(9).

THE PARTIES' SUBMISSIONS

HMRC

20. Mr Afzal's primary submission was that the wording of s 44(9) precludes a claim for relief under Para 34. This is because it provides that repayment of SDLT in the circumstances covered by it "*must*" be sought by way of an amendment to a land transaction.

21. Mr Afzal contended that as a matter of statutory construction the wording makes it clear that relief for the SDLT repayable under s 44(9) cannot, as a procedural requirement, be claimed in any other way.

22. He also submitted that if a claim under Para 34 was possible then not only would it be inconsistent with the wording of s 44(9), but it would also undermine the time limit to which the provision was subject, the significance of which was confirmed by the Court of Appeal in respect of Mr Candy's S 44 Claim.

The Appellant

23. Mr Thomas submitted that s 44(9) does not prevent a claim from being made under Para 34 in Mr Candy's particular circumstances.

24. At the heart of Mr Thomas' submission was the proposition that Para 34 is a stand-alone relieving provision designed to provide a "back-stop remedy" where tax has been overpaid and relief cannot be claimed on any other statutory basis.

25. In support of his submission he cited the FTT decision in *Derek and Susan Smallman v HMRC* [2018] UKFTT 0680 (TC) ("*Smallman*") which held that Para 34 was indeed a back-stop allowing the taxpayers in that case to claim relief for overpaid SDLT in circumstances where they were out of time to make a claim under s 44(9).

26. He went on to outline how interpreting Para 34 in the way that he proposed would not give rise to the concerns raised by Mr Khan that there would be no time limits for cases – or that any out of time application would be possible.

27. In his further written submissions, Mr Thomas pointed out that the explanatory notes to Finance (No.2) Bill 2003 which introduced Para 34 in its current form, confirmed that it is intended to provide a wide right to repayment which was then subject to restrictions contained

in Para 34A. As none of those restrictions applied in this case (and HMRC had not contended that they did), it was in his view entirely right that the relief ought to be available.

DISCUSSION

28. It is clear that s 44(9) provides, as a mechanical matter, that repayment of tax paid pursuant to s 44 (4) and which is required to be repaid pursuant to s 44(9), must be reclaimed by way of amendment of the relevant land transaction return.

29. The question for us to determine is whether, as Mr Afzal contends, this precludes relief under Para 34 (or indeed any other provision) or whether, as Mr Thomas contends, Para 34 operates as a "back-stop" that can provide relief in certain circumstances where relief under s 44(9) cannot be obtained.

The earlier appeals

30. The focus of Mr Candy's earlier appeals was s 44(9), not Para 34. The specific question for determination in those appeals was a relatively narrow one – which was the relationship between s 44(9) and the general time limit in para 6(3), Sch 10 for amending land transaction returns. Although there was focus on the history and purpose of s 44 in the context of the SDLT architecture, there was no consideration of its interaction with Para 34.

31. This was the case both in the UT and the CA. As Simler LJ noted at in *Candy CA* at [40]

> "I therefore start, as the UT did, with the purpose of section 44 FA 2003 and the function of Schedule 10, paragraph 6(3) FA 2003, as part of a self-assessment system of taxation.

32. Those decisions are, therefore, of limited relevance to the current appeal.

Is Para 34 a backstop

33. I agree with Mr Thomas that Para 34 is of potentially wide application once its threshold provisions are met and its procedural requirements satisfied. That is the effect of Paras 34(1) and (2), together with Para 34(3) which refers to the specific circumstances in Para 34A (cases) in which HMRC are not required to give relief.

34. I note also that the wording of Case C in Para 34A(4) is consistent with the relief under Para 34 operating as a back-stop. This is because Case C precludes relief under Para 34 where the claimant:

> "(a) could have sought relief by taking such steps within a period that has now expired, and
>
> (b) knew, or ought reasonably to have known, before the end of that period that such relief was available."

35. In my view, the natural reading of this is that relief for SDLT under Para 34 *is* possible where a claimant is out of time to claim relief for that SDLT under another relieving provision and was unable to have made a claim under that other relieving provision (i.e. the converse of the situation set out in Case C).

36. Ultimately, my role here is to discern and give effect to the meaning of the words used by Parliament, as stated by Simler LJ in *Candy CA*:

> [38] "As is well established, the court's task is to ascertain and give effect to the meaning of the words used by Parliament. This was explained by Lord Bingham of Cornhill in R (Quintavalle) v Secretary of State for Health [2003] UKHL 13, [2003] 2 AC 687 at [8]:
>
> "8. The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But

> that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Every statue other than pure consolidating statute is, after all, enacted to make some change, or address some problem …The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be Judgment Approved by the court for handing down. read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

37. It is therefore appropriate here, as an aid to discerning the purpose of Para 34, to turn to the explanatory notes to the Finance (No.2) Bill 2010 (the "Explanatory Notes") which introduced Para 34 in the form relevant to this appeal.

38. As confirmed by Lord Steyn in *R (Westminster City Council) v National Asylum Support Service* [2002] 1 WLR 2956 a court is able to consider explanatory notes as an admissible aid to statutory construction to the extent that they;

> [5] "cast light on the objective setting or contextual scene of the statute, and the mischief at which it is aimed".

39. This approach was adopted by the UT and CA in Candy UT and Candy CA to help with the interpretation of s 44. In *Candy CA*, Simler LJ stated that:

> [39] "External aids to interpretation play a secondary role. Explanatory notes prepared under the authority of Parliament may be considered on this basis, particularly where they cast light on the purpose of the particular statutory provision in question.

40. Here the Explanatory Notes show that the new legislation introduced a substantive change to the relief mechanism in Para 34.

41. Specifically, the "old Para 34" applied in cases where overpayment was due to a "mistake in a return which has become final". Subject to limitations, the "new Para 34" is intended to cover "any situation in which a person overpays or is over-assessed an amount in respect of SDLT", in circumstances where there; "was no other means of reclaiming the overpayment … in the SDLT legislation when the person first became aware or ought to have become aware that they could recover the overpayment" (see paragraphs 21 and 23 of the "Background Note" section of the Explanatory Notes).

42. The rationale for that widening is given in paragraph 28 of the Background Note which states that:

> "Claims under the new rules will replace alternative legal actions for repayment or restitution in respect of an overpayment ensuring there is a common route to obtain redress and that disputes are dealt with as far as possible through the tribunal rather than through the courts."

43. The intention behind this change was outlined in an HMRC "Technical Note" headed "Relief for mistakes in Stamp Duty Land Tax Returns – draft legislation" which introduced for comment the draft legislation for new Para 34.

44. The Technical Note stated, in its introduction, as follows:

> 2.2 The assessment and collection rules for direct taxes aim to strike a fair balance between the effective administration of the system and the protection of taxpayers' rights. A return that can no longer be varied is normally conclusive of a taxpayer's liability. In the majority of cases, this is an efficient and even-handed way for HMRC and taxpayers to finalise tax liabilities. HMRC or the taxpayer have the opportunity in some circumstances

> to re-visiting a liability for which an assessment has become final and in other respects conclusive.

45. Having discussed the then current position under the error and mistake rules, the Technical Note went on to say:

> 2.9 The recent House of Lords decision in Deutsche Morgan Grenfell has confirmed that it is possible to make a common law claim for restitution of direct tax paid under a mistake of law. However, the courts have also confirmed where there is a statutory remedy there is no alternative right of recovery (HMRC v Monro).
>
> 2.10 In view of this, the changes in FA 2009 introduce a consistent and comprehensive statutory scheme for the recovery of overpayments of income tax, CGT and corporation tax. This enables taxpayers to identify the appropriate means for recovering overpayment, allows claims to be administered more easily and, as ar as possible, disputed claims to be dealt with initially through the tax tribunal.
>
> 2.11 The proposed amendments to FA 2003 introduce this scheme for SDLT.
>
> […]
>
> 2.13 Claims under the new rules will replace alternative legal actions for repayment or restitution in respect of an overpayment ensuring that there is a common route to obtaining redress and that disputes will [be] dealt with as far as possible through the tribunal rather than through the courts."

46. The Technical Note does not carry the same weight as the Explanatory Notes in terms of aiding statutory interpretation and I do not treat it as having such weight. However, it does give colour to the wording of the Explanatory Notes as it sets out clearly the policy aim of new Para 34 which helps to put the provision in context.

47. My conclusion, from the combination of the legislation, the Explanatory Notes and the Technical Note, is that the purpose of Para 34 is to provide a final statutory remedy when no other such remedy exists and for this to be a last resort or back-stop where all other statutory relief provisions had been exhausted. As per the Technical Note, the intention behind this is to limit common law claims which would be possible in the absence of such a statutory mechanism.

48. It follows that I do not agree with Mr Azal that s 44(9) precludes a claim under Para 34. The second limb of s 44(9) prevents relief from being claimed *under s 44(9)* other than by way of an amendment to a land transaction return, but it does not prevent relief for that SDLT being claimed under Para 34 if the claimant satisfies the conditions of Para 34. This interpretation of the statutory provisions does not require a divergence from the natural meaning of the terms used and is consistent with the architecture of the SDLT framework and the purpose of the legislation as indicated in the Explanatory Notes and Technical Note.

49. I consider therefore that Mr Candy is entitled to bring his claim under Para 34.

Additional arguments

50. For completeness I deal below with the other arguments raised by Mr Afzal as to why in his view a Para 34 claim was not possible.

If Para 34 can be used to obtain repayment after the time limit for making an amendment pursuant to s 44(9) that would render the time limit for amending a return meaningless.

51. Mr Afzal referred here to *Candy CA* and the Court's focus on the importance of specific time limits in the context of relief claims and in the context of a self-assessment system generally. The key passages from *Candy CA* are as follows:

> [50] Nor can I see any rational reason why Parliament would have wished to dispense altogether with the generally applicable time limit in paragraph 6(3), enabling taxpayers to make claims for repayment without any time limit, even decades later when memories may have faded and documents relating to the original land transaction may have been lost. There is nothing inconsistent in Parliament providing a right to reclaim tax paid as a safeguard for innocent taxpayers caught by the widely worded charge in section 44(4), but at the same time making that right subject to clear procedural rules, including time limits on the right to reclaim payment. It is of the essence of a self assessment system that tax effects can be undone by administrative failure and merely meeting the substantive conditions for the grant of a relief is rarely enough to secure that a taxpayer receives the relief in question. Where the relief requires a claim, and the claim is not made in accordance with any procedural requirements, the taxpayer will not be given the relief.
>
> [51] Moreover, hard-edged time limits are a common feature of the self-assessment scheme. Where they govern the availability of a relief, they have the inevitable potential to cause hardship. In the case of section 44(9), a balance between the competing objectives of preventing tax avoidance on the one hand, and relieving innocent transactions caught by section 44(4) on the other, was clearly intended by Parliament. Since the longer the period of substantial performance lasts without completion of the contract, the more likely it is the purchaser will have obtained benefits under the contract in a way that justifies maintaining the SDLT charge, it was rational to strike that balance with a time limit of 13 months for amending the return from the effective date of the transaction giving rise to substantial performance (in other words, 12 months after the filing date). This limits the scope for avoidance but is simple to operate (for both HMRC and taxpayers). I can see no good reason why the unambiguous, hard-edged time limit in paragraph 6(3) should yield to section 44(9) as Mr Thomas contended. The consequence of Mr Thomas' construction is to dispense with certainty and finality in the sound administration of SDLT. That would be a surprising result.

52. Mr Thomas pointed out that Para 34 relief is time limited and subject to various limitations which reduce its scope to a specific range of cases.

53. It is clear that Para 34 is not of general application nor is it intended to apply in most circumstances where relief can be, or could have been, claimed under s 44(9). This is a consequence of the limitations in Paras 34A(3) (Case B) and (4) (Case C). Relief is also subject to the time limit in Para 34B which limits claims to a four year period after substantial completion of a land transaction in accordance with s 44(4).

54. Although a Para 34 claim may, therefore, allow relief after the time limit provided for in 44(9), I do not see that as "undermining" the ordinary time limit for making an amendment to a return. The relief under Para 34 is intended, as a policy decision, to act in specific circumstances as a back-stop with its own time limit. That does not, in my view, mean that integrity of the ordinary time limit is compromised.

There was no overpayment of SDLT

55. Mr Afzal suggested that no tax was in fact overpaid by Mr Candy and that it was necessary for tax to have been overpaid in order for a Para 34 claim to succeed.

56. His reasoning here was that HMRC would only be required to repay the SDLT paid by Mr Candy if an in-time amendment to his land transaction return was made pursuant to s 44(9). In the absence of such an amendment HMRC would not be liable to make any repayment.

57. A similar point was considered by the FTT in *LLO Consulting [2023] UKFTT 859* (TC) ("*LLO*") although in the context of the interaction between Para 34 and s 58D(2). S 58D(2) is similar to s 44(9) in that it provides that relief from SDLT (in this case under Sched 6B on the purchase of "mixed dwellings") "must be claimed in a land transaction return or an amendment of such a return". As with s 44, the general time limit in Sch 10, para 6 applies in relation to amendments to a land transaction return.

58. The question asked in LLO was:

> "… whether, as a matter of law, an overpayment of SDLT can arise for the purposes of a claim for overpayment relief pursuant to Para 34 of Schedule 10 Finance Act 2003 from purported availability of MDR, in light of the provisions of Section 58D(2) Finance Act 2003 and in the absence of a claim to MDR in a return or an amendment to a return" [18]

59. The argument against a Para 34 claim being made was similar to Mr Afzal's argument in this case.

60. The FTT judge concluded at as follows:

> [21.] In my judgment, the answer to this issue can be found in paras 34 and 34A, which operate as follows:
>
> (1) A claim can be made under para 34 if a person believes they have overpaid SDLT … .
>
> (2) Para 34(3) then provides that HMRC do not have to consider claims which come under the Cases set out in para 34A,
>
> (3) Case A applies where "the tax paid is excessive" including where a taxpayer failed to make a claim or election, see para 34A(2).
>
> (4) The words "is excessive" only make sense if the SDLT has been overpaid. If, as HMRC submitted, in this situation there was no overpayment because by virtue of s 58D(2) the MDR was nil, the SDLT would not be "excessive".
>
> [22] I therefore decide Issue 1(b) in favour of the Appellants, and find that where a person has failed to claim MDR in accordance with s 58D(2), an SDLT overpayment can arise for the purposes of a claim for overpayment relief under para 34. The answer to Issue 1(b) is therefore "yes".

61. I agree with this interpretation of Paras 34 and 34A. It is consistent with the statutory language and is consistent with Para 34 operating as a back-stop which I consider to be the purpose of the provision.

Ridgway v HMRC [2024] UKUT 36 TCC ("Ridgway")

62. Mr Afzal cited the UT decision in *Ridgway*, in which I was one of the UT judges, as implicitly supporting his view on Para 34.

63. *Ridgway* concerned, broadly, a taxpayer who had not claimed multiple dwellings relief (under s 58D(1) and Schedule 6B) in his land transaction return or in an amendment to it. The taxpayer's failure to claim the relief was a consequence of his mistaken belief that mixed use relief was available. Following an enquiry by HMRC and subsequent litigation it became apparent that mixed use relief was not available. Multiple dwellings relief would, however, have been available. By then it was too late, by reason of s 58D(2) for a claim for multiple dwellings relief to be made.

64. The taxpayer contended that in his circumstances there was no need for him to have made a claim for multiple dwellings relief as HMRC had the ability when closing its enquiry and amending his return, to give effect to an MDR claim.

65. The UT's focus was on whether HMRC were required in those circumstances to give effect to multiple dwellings relief in the absence of a claim by the taxpayer. It concluded that they were not (see [105]). The UT also considered whether para 42(2) of Schedule 10, which allows the Tribunal to reduce an assessment if it considers that an appellant is overcharged by a self-assessment, would have effect. Here it concluded that the appellant had not been overcharged in his self assessment return as no claim for repayment had been made – and such a claim was also outside the scope of the appeal. The decision in LLO was considered – but the UT pointed out (at [114]) that the fact that an amount of tax has been paid which was not due for the purposes of Para 34, does not mean that a taxpayer in the circumstances considered in Ridgway, has been overcharged in an amended self assessment return for the purposes of Para 42.

66. Ridgway does not therefore assist Mr Afzal nor is it inconsistent with this decision.

Smallwood

67. Mr Afzal contended that *Smallwood* was incorrectly decided and also that it was not a binding on me. Although I agree with the conclusion in *Smallwood* that Para 34 is a "back-stop", I have not relied on that decision in coming to my conclusion. Mr Afzal's contention is not therefore relevant.

DISPOSITION

68. For the reasons given, I consider that s 44(9) does not preclude Mr Candy's claim under Para 34 and accordingly Mr Candy's appeal is allowed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

69. 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. The application must be received by this Tribunal not later than 56 days after this decision 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.

Release date: 10th APRIL 2025