Neutral Citation: [2026] UKUT 00027 (TCC)

Case Number: UT/2025/000002

UPPER TRIBUNAL
(Tax and Chancery Chamber)

The Royal Courts of Justice,
Rolls Building, London

STAMP DUTY LAND TAX – claim for overpayment relief – whether HMRC not liable to give effect to the claim because the amount paid was excessive by reason of a mistake in a claim – no – appeal allowed

Heard on: 7 and 8 October 2025
With further written submissions on:
17 and 21 October 2025
Judgment date: 21 January 2026

Before

JUDGE THOMAS SCOTT
JUDGE NICHOLAS ALEKSANDER

Between

BTR CORE FUND JPUT

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Hui Ling McCarthy KC and Susanna Mockford, instructed by Sean Randall Tax LLP

For the Respondents: James Henderson and Stacey Cranmore, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

DECISION

INTRODUCTION

1. BTR Core Fund JPUT ("BTR") acquired the leasehold estate of a property in Manchester consisting of dwellings and unlet commercial premises (the "Property"). It filed a return for the purposes of stamp duty land tax ("SDLT") in which it claimed "multiple dwellings relief" ("MDR"), a relief from the usual rates of SDLT where an interest in more than one dwelling is acquired. As a result of an error, BTR overpaid SDLT in the amount of £3,064,633.

2. BTR claimed "overpayment relief" under the relevant SDLT provisions. Those provisions state that HMRC are not liable to give effect to such a claim where the SDLT was excessive "by reason of…a mistake in a claim or election". HMRC refused the claim on this basis. BTR appealed to the First-tier Tribunal (Tax Chamber) (the "FTT"), which dismissed the appeal by the casting vote of the judge as presiding member. Its decision was issued on 1 October 2024 (the "Decision").

3. This is the decision on BTR's appeal against the Decision.

4. We were greatly assisted in reaching our decision by the clear and thoughtful written and oral submissions of Ms McCarthy, Ms Mockford, Mr Henderson and Ms Cranmore.

BACKGROUND FACTS

5. The FTT conveniently summarised the factual background as follows:

> 8. There is no dispute in this case on any question of fact.
>
> 9. On 15 April 2019, BTR acquired the leasehold estate in a property in Manchester known as West Tower (the "Property"), for £98,172,807 plus an overage. The Property consisted of 350 "build to rent" dwellings (one-, two- and three-bedroom flats) and unlet commercial premises on the ground floor.
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> 10. The commercial premises were intended to be let to the separate operators of a coffee shop and a cookery school. This non-residential element of the transaction was worth £541,141 including VAT.
>
> 11. BTR submitted an SDLT return in respect of the transaction in which it claimed multiple dwellings relief ("MDR"). BTR paid £4,335,760 of SDLT at the time when it submitted the return.
>
> 12. On 1 May 2019, BTR made an SDLT deferral application in respect of the overage payment. The application was granted. Overage of £4,600,000 was paid on 8 July 2020. HMRC were notified of the overage payment on 14 July 2020 and BTR paid an additional £367,126 of SDLT, bringing the total SDLT paid on the transaction to £4,702,886.
>
> 13. On 27 January 2021, BTR wrote to HMRC to claim overpayment relief under Sch 10, para 34 in the amount of £2,927,725. The claim was made on the basis that there was an error in the previous SDLT calculation.
>
> 14. On 15 March 2021, BTR wrote again to HMRC stating that the letter of 27 January 2021 failed to take account of the overage payment made by BTR on 8 July 2020. This increased BTR's overpayment relief claim to £3,064,633.
>
> 15. HMRC gave effect to the claim by making two payments, one on 17 June 2021 and another on 28 September 2021, in a total amount of £3,097,736.02. This amount represented the repayment of SDLT, plus interest.
>
> 16. HMRC opened a check into the overpayment relief claim and on 25 March 2022, they issued a closure notice concluding that they were not liable to give effect to the claim. BTR appealed this decision on 8 April 2022 and requested

> an independent review. HMRC issued their review conclusion letter, upholding the closure notice, on 1 September 2022. BTR appealed to the Tribunal on 21 September 2022.

FTT DECISION AND GROUNDS OF APPEAL

6. HMRC accepted that they were liable to meet BTR's overpayment claim unless the overpayment was "by reason of a mistake in a claim". Whether or not the overpayment was by reason of a mistake in a claim was the sole issue before the FTT. The FTT dismissed BTR's appeal. The Decision can be briefly summarised as follows:

(1) Having first set out the relevant legislation and certain case law referred to by the parties, the FTT summarised how BTR had calculated its claim to MDR, by reference to the detailed requirements of the SDLT return.

(2) The FTT explained how at the time when BTR completed the SDLT return, it calculated MDR in accordance with HMRC's guidance at that time. This guidance stated that the "higher rate" of SDLT would apply. In 2020, HMRC changed this guidance. The FTT set out the consequences of this as follows:

> 61. The Property comprised both residential and non-residential properties. HMRC now accept that BTR's acquisition of the Property was not a higher rates transaction, and have not contended that the non-residential element was negligible or artificially contrived. If BTR had calculated its claim to MDR in accordance with HMRC's amended guidance, its liability to SDLT would have been much lower.
>
> 62. The period in which BTR could have amended its SDLT return, including its claim to MDR, expired on 29 April 2020. So by the time of HMRC's updates to the SDLT Manual in November 2020, it was too late for BTR to amend its claim.
>
> 63. BTR therefore claimed overpayment relief instead, as the time limit for claiming overpayment relief did not expire until 15 April 2023. The claim for overpayment relief was made on the basis that there was an error in the self-assessed SDLT calculation, in that the MDR calculation should have used the residential standard rates and not the higher rates.

(3) BTR's case was that the relevant mistake was not in the making of a claim, but in the calculation of tax chargeable. HMRC's case was that calculation was part of making the claim, so the mistake was in a claim.

(4) The FTT agreed with HMRC. Its essential reasoning was that "the result of the [MDR] calculation, once entered in the SDLT return, was part of the claim": [83]. The FTT did not accept that the format or requirements of the return affected this analysis.

(5) The FTT heard arguments from the parties comparing MDR with other types of tax relief, and also regarding the legislative history of the SDLT provisions, but those arguments did not lead the FTT to alter its conclusion.

(6) HMRC referred to the explanatory notes to the overpayment relief provisions. The FTT considered that these provided support for its approach.

(7) The FTT considered that case law on other provisions in the overpayment legislation indicated that it would be inconsistent with Parliamentary intention if the time limits in the rules for amending SDLT returns "could be circumvented through a claim for overpayment relief": [110].

(8) Notwithstanding that BTR had submitted its claim for MDR on the basis of HMRC guidance at the time, BTR did not seek to argue a claim based on legitimate expectation before the FTT: [120].

7. The FTT member issued a reasoned dissenting decision, set out at [123]-[129]. He agreed with BTR that the relevant mistake was not in the claim but in the calculation of the liability to tax. He considered that the structure and format of the SDLT return were consistent with his approach and also placed weight on the fact that one of the other overpayment relief exclusions dealt separately with a situation regarding the calculation of liability. The dissenting member would have allowed BTR's appeal.

GROUNDS OF APPEAL

8. The FTT granted BTR permission to appeal. The core ground of appeal was that the FTT misinterpreted and misapplied the relevant exclusion in the overpayment legislation and was wrong to conclude that BTR had made a "mistake in a claim" when it submitted its SDLT return containing an incorrect MDR calculation.

9. The grounds of appeal identify a number of alleged errors of law, which are described as falling into two broad categories:

(1) The FTT misinterpreted the relevant provisions, failing properly to distinguish the discrete statutory concepts of "claim", "relief" and "tax chargeable".

(2) The FTT misinterpreted the SDLT return and the entries made by BTR in it.

RELEVANT LEGISLATION

10. Although the issue in this appeal involves the construction of a single statutory provision, in order to understand the arguments raised by the parties it is necessary to set out the statutory background and framework in some detail.

11. Unless stated otherwise, all references below are to provisions of the Finance Act 2003 ("FA 2003"). The legislation is stated as it was in force at the relevant time.

Liability for SDLT

12. Section 42 provides that SDLT is chargeable on a "land transaction", defined by section 43 as an acquisition of a "chargeable interest". The interest acquired by BTR in this case was a "chargeable interest", as defined in section 48(1).

13. A transaction is a chargeable transaction unless it is exempt: section 49. This transaction was not exempt.

14. Section 85 provides that the person liable to pay the SDLT is the purchaser.

Amount of SDLT: general rule and "higher rates"

15. The general rule as to the amount of SDLT which is chargeable is found in section 55.

16. Section 55(4A) provides as follows:

> (4A) Schedule 4ZA (higher rates for additional dwellings and dwellings purchased by companies) modifies this section as it applies for the purpose of determining the amount of tax chargeable in respect of certain transactions involving major interests in dwellings.

17. Schedule 4ZA sets out the rates to apply to "higher rates transactions". These rates were at the time of the transaction 3% higher than the Table A rates.

MDR

18. At the time when BTR acquired the Property, MDR provided for relief for certain acquisitions involving more than one dwelling. The relief operated by providing an alternative method of calculating liability for SDLT, described by the FTT at [32] as follows:

> 32. This alternative method involved determining the SDLT that would be chargeable if the transaction involved only residential property, and the consideration were an amount based on the actual consideration for the transaction. This amount was calculated by identifying the part of the actual consideration that was attributable to dwellings, and dividing this by the number of dwellings. The resulting amount of SDLT was multiplied by the number of dwellings and added to the SDLT that was due on any consideration that was not attributable to dwellings, to give the total amount of tax due on the transaction. Further rules applied to linked transactions, and it was provided that the effective rate of tax on the dwellings could not fall below 1%. Since lower value acquisitions attract SDLT at lower rates, this calculation usually resulted in a lower effective rate of tax overall.

19. The provisions relating to MDR are set out below.

Overpayment relief

20. Paragraph 34 of Schedule 10 sets out the relevant provisions as follows:

> **34 Claim for relief for overpaid tax etc**
>
> (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.

21. The relevant parts of the exclusion which is the subject matter of this appeal are as follows (emphasis added to original):

> **34A Cases in which Commissioners not liable to give effect to a claim**
>
> (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.
>
> …

(8) Case G is where—

(a) the amount paid, or liable to be paid, is excessive by reason of a mistake in calculating the claimant's liability to tax, and

(b) liability was calculated in accordance with the practice generally prevailing at the time.

DISCUSSION

22. If one asks whether an overpayment in a case such as this case arose "by reason of a mistake in a claim", a lay person might say that the answer is obvious: the taxpayer made a claim and it made a mistake, so the answer must be yes. Indeed, HMRC made that point in their submissions.

23. While that approach would certainly result in an easy task (and short decision) for the Tribunal, unfortunately the position is not so straightforward. The problem is, in our view, fairly summarised in the further written submissions of Ms McCarthy (made at the direction of the Tribunal) where it is stated:

> …while it is true that [as HMRC state] "where there is no claim for relief, the overpayment clearly cannot arise because of a mistake in a claim", it does not prove the converse, which is the issue in this case (ie where there is a claim for relief, this does not mean that the overpayment must necessarily arise because of a mistake in a claim).

24. Before we set out our approach to the issue, we will summarise our conclusions in relation to two lines of argument, raised before the FTT and in this appeal, which we have found to be of limited assistance. They relate to the distinctions drawn by case law between liability and the machinery of assessment, and various comparisons with taxes other than SDLT.

25. We have found these lines of argument to be of limited assistance because considerable caution must be exercised in "reading across" into a purposive construction of provisions contained in the SDLT regime case law and statutory provisions from other taxes. SDLT is a self-contained system of taxing land transactions by self-assessment, with its own procedural machinery and time limits.

Liability versus machinery

26. Ms McCarthy submitted that BTR's basic position, namely that the mistake was not in the claim but in the calculation of liability, is supported by the clear distinction drawn in case law between the stages involved in the imposition of tax. Notably, in *Whitney v IRC* [1926] AC 37 ("*Whitney*") at page 52, Lord Dunedin said:

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

27. This passage was applied by the Supreme Court in *R (oao Derry) v HMRC* [2019] UKSC 19 ("*Derry*") at [35] in the context of a claim for relief from income tax.

28. The FTT accepted that in principle there was such a distinction, stating at [70]:

> The Tribunal agrees with Ms McCarthy that, applying the principles described in *Whitney* and *Derry*, there are different stages in the imposition of tax, and that the question of whether a person is liable to tax is distinct from the process

> by which that tax may be assessed. Similarly, the question of whether a person is entitled to a relief is separate from the process by which that relief may be claimed.

29. However, the FTT considered that even if Ms McCarthy's further proposition that the calculation of the amount of a relief does not form part of the "administrative or mechanical" process of claiming that relief was correct, the calculation of MDR was included in the claim and became part of the claim. The FTT stated (at [77]):

> …the Tribunal considers that it is more consistent with Lord Dunedin's approach to view the entry of the result of the calculation into the SDLT return as part of the process of assessment (or self-assessment, in the case of an SDLT return), than for it to be equated with liability.

30. We agree with the FTT that the authorities support a distinction between liability and its assessment. In the SDLT context, the Court of Appeal in *Candy v HMRC* [2022] EWCA Civ 1447 *("Candy")* drew a similar sort of distinction (at [48] of its decision), in relation to SDLT repayments under section 44(9) FA 2003, between a substantive right and "the process for enforcing that right".

31. However, while it is necessary to bear in mind such distinctions in construing the relevant legislation in this case, we do not consider that they provide the answer to the issue in this appeal. It is telling that in the FTT each of the presiding judge and the dissenting member considered that their conclusions were supported by those distinctions[1]. As discussed below, we consider that the question in this case is one of statutory construction as applied to the facts in this case. Distinctions of principle such as those in *Whitney* can be tested against a particular construction, but do not tell us whether that construction is right.

Comparisons with other taxes

32. Before the FTT, Ms McCarthy made submissions based on the differences between a claim for MDR and a claim for other (non-SDLT) reliefs such as corporation tax group relief. She also compared the equivalent provisions for overpayment relief which had been included in the Taxes Management Act 1970 (the "TMA") and Schedule 18 to the Finance Act 1998 ("FA 1988") (particularly those dealing with capital allowances).

33. The FTT broadly rejected the helpfulness of these comparisons.

34. We agree with the FTT that such comparisons are of limited utility in resolving the issue in this appeal, save that the absence in the SDLT legislation of any requirement to quantify MDR relief when it is claimed is clearly relevant to the statutory construction of what amounts to a "mistake in a claim".

35. Before us, Mr Henderson argued that this position was supported by a comparison with the similar provisions for mistakes in a claim in the TMA and FA 1998. He also argued that the rationale for excluding a mistake in a claim from overpayment relief can be found in a decision regarding similar provisions in the TMA, *HMRC v Applicants/Appellants in the Post Prudential Closure Notice Applications/Appeals Group Litigation* [2025] EWCA Civ 166 ("*Prudential*"). We discuss this below in relation to the purpose of the relevant provisions.

Our approach to the issue in this appeal

36. The only issue in this appeal is whether BTR's payment of SDLT was excessive "**by reason of a mistake in a claim**".

[1] See in particular [76]-[77] and, from the dissenting decision, [125].

Approach to statutory construction

37. The answer must be found by construing this wording and applying it to the facts of this case. In *Timothy Watts v HMRC* [2025] EWCA Civ 1615, the Court of Appeal very recently described the approach which we have followed. Although that case related to a tax avoidance scheme, we regard the summary of the relevant principles as very useful guidance in this case. Relevantly to this appeal, Miles LJ set out the current approach as follows (at [37]):

> *Approach to statutory construction*
>
> 37. The relevant authorities were reviewed by the Supreme Court in *Rossendale*, from which the following guidance may be drawn:
>
> i) The approach to the construction of taxing statutes stemming from *Ramsay* is well-settled. It is based upon the modern purposive approach to the interpretation of all legislation (para 9).
>
> …
>
> v) …in *Barclays Mercantile* at para 36 Lord Nicholls quoted with approval the similar statement of Ribeiro PJ in *Collector of Stamp Revenue v Arrowtown Assets Ltd* [2003] HKCFA 46, (2003) 6 ITLR 454, para 35, that:
>
> > "the driving principle in the *Ramsay* line of cases continues to involve a general rule of statutory construction and an unblinkered approach to the analysis of the facts. The ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically."
>
> vi) These two elements (the purposive construction of the statute and its realistic application to the facts) are two helpful analytical stages, but there is no rigid demarcation between them and an iterative approach may be required (para 15). The paramount question always is one of interpretation of the particular provision and its application to the facts of the case (para 14).
>
> vii) Both interpretation and application share the need to avoid tunnel-vision. The particular charging or exempting provision must be construed in the context of the whole statutory scheme and the identification of its purpose may require a wider view, including the history of the provision or scheme and its political or social objectives, to the extent these can reliably be ascertained (para 16).

38. We begin by considering the context in which the provisions relating to overpayment relief must be construed. We gratefully adopt the summary of the relevant context provided by Simler LJ in *Candy*, at [47]:

> 47. The SDLT scheme operates as a self-assessed tax: section 76 FA 2003. Taxpayers are required to complete a return and include a self-assessment to tax in the return. There are strict time limits for delivering returns: at the material time returns had to be submitted 30 days after the effective date of the transaction (that period is now 14 days). Returns must comply with the requirements of Schedule 10 FA 2003, including the time limits imposed for amending returns in paragraph 6(3), and those imposed on HMRC for opening an enquiry in paragraph 12. As Mr Afzal emphasised, the self-assessment system imposes hard-edged deadlines, both on taxpayers and HMRC, for the sound administration of the tax system and to achieve certainty and finality. If HMRC make no enquiry and a taxpayer has not amended his or her return once the time limits have expired, the self-assessment return becomes final. So, if HMRC fail to open an enquiry in time, the correct amount of tax will not be recoverable by HMRC in respect of an insufficient self-assessment (unless the case falls within the exceptions in Part 5 Schedule 10 FA 2003,

> which has its own time limits). Likewise, if a taxpayer has mistakenly overpaid tax or been subject to an excessive assessment but made no in-time amendment, the tax cannot be reclaimed unless Part 6 of Schedule 10 FA 2003 provides a remedy.

Purpose of overpayment relief

39. Within this context, what is the purpose of paragraph 34 of Schedule 10? As indicated in the final sentence of this passage, it is to provide what is in effect a statutory remedy of last resort where excessive SDLT has been paid. It is a last resort in part because a taxpayer's primary remedy in such a situation is to amend their SDLT return. Where that primary remedy is available, overpayment relief is not intended to apply, but where it is not available (and no other remedy is available: Case B), it is, as its name suggests, a "relief" which can nevertheless be claimed by a taxpayer, subject to its own time limit and other terms and restrictions.

40. It follows from this that in construing paragraph 34 purposively, an assertion that it cannot be used "to circumvent statutory time limits" may not, in our view, be particularly illuminating. It is true that its purpose is not to run in tandem with or to extend the time limit for amending a return in paragraph 6 of Schedule 10, or the time limits for making claims to a relief from SDLT. However, its purpose is to provide a separate remedy, with its own time limit, where the time limit for amending the return has expired, albeit only in tightly defined circumstances.

Purpose of restrictions on overpayment relief

41. The restrictions in paragraph 34A on the ability to claim relief under paragraph 34 are significant and should be read together with paragraph 34 itself. That is signalled by paragraph 34(3). As the Upper Tribunal put it in *L-L-O Contracting Ltd v HMRC* [2025] UKUT 127 (TCC) ("*L-L-O*"), at [18]:

> 18. The purpose of paragraph 34 is clearly to make provision for overpayment relief where a taxpayer has overpaid tax that was not due, but subject to certain restrictions in paragraph 34A.
>
> …
>
> 30. The purpose of paragraph 34 was to provide for overpayment relief, but not in the circumstances of Case A.

42. So, in determining the purpose of the exclusions (or "Cases") in paragraph 34A, it is clear that their *general* purpose is to restrict the relief which can be claimed by paragraph 34.

Purpose of Case A

43. However, when one turns to the *specific* purposes of each Case, it appears that Cases A to G have little in common other than that they address specific situations where for policy reasons (such as the availability of alternative remedies or the finality of litigation) Parliament has decided that overpayment relief should not be available. We asked Mr Henderson and Ms McCarthy for their submissions on the purposes of the various Cases, and they were broadly in agreement with this as a general summary, although not surprisingly they differed as to the precise purposes of Case A and G.

44. Therefore, in determining the purpose of Case A we do not have the benefit of any consistent theme or rationale for the Cases as a whole. We must ask ourselves what purpose did Parliament intend to be served by excluding a claim for overpayment of SDLT where the SDLT paid was excessive by reason of a mistake in a claim or election, or a mistake consisting of making or failing to make a claim or election.

45. In *L-L-O*, the Upper Tribunal commented on this question in the context of MDR, and said this (at [25]):

> 25. It is also worth noting that taxpayers have an option as to whether to make a claim for multiple dwellings relief. As the Upper Tribunal observed in *HM Revenue & Customs v Ridgway* [2024] UKUT 00036 (TCC) at [105], it may not always be in the best interests of a taxpayer to claim the relief. It is therefore incumbent on taxpayers to make a claim in accordance with the specific procedural requirements and within the specific time limits. The purpose and rationale behind Case A is clear. It prevents the time limits and procedural requirements in relation to claims being undermined and it promotes certainty and finality in the administration of SDLT. Where a mistake consists of a failure to make a claim for whatever reason, relief is not available.

46. Read in isolation, this passage might appear to lend support to HMRC's position, and the conclusion of the FTT. However, it must be seen in context. The facts in *L-L-O* were that the taxpayer had failed to claim MDR and was attempting to use paragraph 34 as an alternative means of reclaiming SDLT, arguing that it was not restricted by Case A because it had not made a "mistake". In that context, this passage is in substance emphasising that Case A prevents overpayment relief from being claimed whenever a taxpayer has simply failed to claim MDR in accordance with its terms.

47. We consider that the Upper Tribunal in *L-L-O* did correctly identify the underlying policy purpose of Case A as being to promote certainty and finality in the administration of SDLT. In response to a question from us on this issue, Ms McCarthy expanded on this by saying that the purpose of Case A was to "fix taxpayers with their choices as to claims and elections", because allowing taxpayers to change their minds over an extended period by making, altering or revoking a claim or election outside the statutory time limit applicable to that claim or election would be contrary to the importance of finality in the administration of SDLT. This, she said, was supported by the passage from *L-L-O* which we have set out above.

48. We agree. Mr Henderson described Case A as preventing "a second bite of the cherry"[2]. He submitted that this was borne out by statements made by Falk LJ in *Prudential*. One of the issues in that case concerned the provisions for overpayment relief in FA 1998. Before setting out the paragraphs of Falk LJ's decision relied on by Mr Henderson (being [86]-[87]), it is helpful to set them in context. That can be done by setting out paragraphs [80]-[87] of the decision, as follows:

> **Were there valid claims under paragraph 51 of Schedule 18 FA 1998?**
>
> [80] Paragraph 51, as in force up to 31 March 2010, is set out in the Appendix. The most critical parts are as follows:
>
> "(1) A company which believes it has paid tax under an assessment which was excessive by reason of some mistake in a return may make a claim for relief …
>
> (2) On receiving the claim the Board shall enquire into the matter and give by way of repayment such relief in respect of the mistake as is reasonable and just.
>
> (3) No relief shall be given under this paragraph —
>
> …
>
> (b) in respect of a mistake in a claim or election which is included in the return."

[2] HMRC skeleton argument paragraph 19.

> [81] Mr Bremner submitted that tax paid was excessive because of a mistake in the returns. The mistake was to treat the tax as lawfully due when it was not. There was also no "mistake in a claim … included in the return" within paragraph 51(3)(b) because no claim had been made at all in the return. He contrasted the language of the provisions that replaced paragraph 51 with effect from 1 April 2010, which include a specific exclusion for a mistake of failing to make a claim, as well as a mistake in a claim (paragraph 51A(2)(a) and (b) of the current version of Schedule 18 FA 1998).
>
> [82] I have come to the conclusion that HMRC are correct that, on a proper construction of paragraph 51 in its statutory context, there was no "mistake in a return". Since no mistake was made within paragraph 51(1), HMRC are not obliged to give relief "in respect of the mistake" as provided in paragraph 51(2).
>
> [83] The reason that there was no mistake in the return is that the dividends were correctly treated as taxable. In the absence of a valid claim for an FNR credit, the tax paid was therefore not excessive. What was missing from the return was a claim for that credit, but without such a claim no credit was allowable and the return was accurate.
>
> [84] This makes sense of the fact that paragraph 51(3)(b) is limited to excluding mistakes made in claims included in a return. There was simply no need for it to have gone further and cover claims that were not included in the return at all. Mr Bremner referred to paragraph 57(2) of Schedule 18, which requires claims to be included in a return if they can be so included. But that does not assist. It simply has the effect that, if a taxpayer wants to make such a claim, they need to include it in the return.
>
> [85] The conclusion I have reached is strongly supported by the broader statutory context. Provisions that permit claims to be made may well contain their own time limits. It so happens that at the relevant time the normal time limit for DTR claims was consistent with the time limit for claims under paragraph 51 (six years after the end of the accounting period) but that is far from universal. For example, the basic time limit for group relief claims is 12 months after the filing date for the claimant's return: paragraph 74 of Schedule 18 FA 1998.
>
> [86] If the Taxpayers' argument were correct then, where a mistake took the form of failing to make a claim at all, shorter time limits for claims could be circumvented by a mistake-based claim under paragraph 51 at any time up to six years after the end of the accounting period. In contrast, where a claim had been made but in a mistaken amount then the effect of paragraph 56 of Schedule 18 FA 1998 would be that a supplementary claim could only be made within the original time allowed for the claim. (Paragraph 56, set out in the Appendix, permits "a supplementary claim … within the time allowed for making the original claim" where a claim has been made which contains a mistake.)
>
> [87] Thus, if the Taxpayers' argument were correct then a claim that was mistakenly made in the amount of (say) £1 rather than £1m could not be corrected outside the original time limit for a claim because paragraph 56 would preclude it, whereas a failure to make any claim to any part of the £1m could be corrected if the time limit under paragraph 51 had not expired. That would make little sense. Rather, paragraph 56 provides a clear indication that Parliament did not intend claim time limits to be circumvented.

49. We accept that at [86] and [87] Falk LJ is making a general point that Parliament would not have intended a mistake-based claim (in our case an overpayment claim) to operate as a

means of extending the normal time limit applicable to a particular claim for relief. However, the real point being made, and therefore the focus of Falk LJ's comments, is that since the relevant statutory provisions (paragraph 56 Schedule 18 FA 1998) would explicitly prevent such an extension where a claim had been made in a mistaken amount, it would be odd and illogical if it was not also prevented where no claim had been made at all. That is a different point, so we would not accept that the weight can be placed on these paragraphs that Mr Henderson gave them. In particular, we do not accept his assertion that they show that Falk LJ was assuming that a "computational error" (which is how HMRC characterise the mistake made by BTR) is necessarily a "mistake in a claim". The context shows that that question was not the one which Falk LJ was addressing.

Meaning of "by reason of a mistake in a claim"

50. Both before the FTT and this Tribunal, much of the discussion focussed on the meaning of "in a claim", and whether the mistake made by BTR was in its claim for MDR.

51. In our opinion, it is important to construe the relevant wording in its entirety. Case A will apply in this appeal if but only if the amount of SDLT paid by BTR was excessive "**by reason of** a mistake in a claim". This language is effectively looking at a question of causation; **what was the reason for the overpayment and was that reason a mistake in a claim**?

52. This interpretation is consistent with a purposive construction. As we have found, the mischief at which Case A is directed is the situation of a taxpayer who seeks by claiming overpayment relief to extend the time limits for making or amending a claim or election or otherwise avoid the conditions for a claim or election. So, where, as in this case, there is no dispute that there has been both a claim and an overpayment, the question is whether the reason for that overpayment is a mistake in the claim, such that the purpose of Case A is engaged.

53. The use by the drafter of the words "by reason of" is found in many sections of the tax code. While we do not consider that case law on the meaning of those words in the non-SDLT context can simply be read across to SDLT, for the reasons we explain at paragraphs 32-34 above, the phrase clearly imports a closer test in relation to the causal link to a mistake than looser wording such as "in relation to" or "in respect of".

54. In construing the wording, we have not found the Explanatory Notes to paragraph 34A to be of any assistance. The FTT found that those notes "provide at least some support for the proposition that the Tribunal should not adopt a narrow or restrictive interpretation of the phrase "mistake in a claim": [108]. We do not consider that they support either party's case. The explanatory notes might have been relevant if they shed some light on the purpose of Case A, but they do not. They cannot otherwise replace or gloss the words actually used in the statute. We agree with the conclusion to that effect reached in *L-L-O*, at [48].

Application to the facts

55. We turn now to how this construction of the relevant wording applies to the facts in this appeal, bearing in mind the guidance in *Rossendale* that although purposive construction and application to the facts are two helpful analytical stages, there is no rigid demarcation between them.

56. In our opinion, it follows from a purposive construction that Case A does not apply merely because in completing its return BTR made a claim for MDR and also made a mistake. It is necessary to determine the precise nature of the mistake which caused the overpayment, and to determine precisely what the making of a claim for MDR entails. Only by that process can one then assess whether the excessive payment was by reason of a mistake in the claim for MDR or by reason of some other type of mistake.

57. In relation to this process, it seemed to us that it would be helpful for the parties to clarify their positions on the question of whether the same mistake made by BTR in this case could or could not have been made at the relevant time by a taxpayer who was not claiming MDR, and, if it could, for HMRC to clarify whether in practice they would have sought to deny a claim for overpayment relief in such a situation. We directed the parties to provide further submissions on these issues, for which we are grateful and which we have taken into account in reaching our decision.

The relevant statutory requirements

58. In order to identify the operative mistake made by BTR, and then consider whether it was a mistake in a claim, it is first necessary to consider the requirements and procedures applicable to the making of a claim for MDR (which was, of course, the only "claim" in this case). It is critical to understand those requirements and procedures in the context of the overall legislative framework applying for SDLT purposes in this case. The position can be summarised as follows:

(1) BTR's acquisition of the Property was a "chargeable transaction" on which SDLT was due.

(2) The person liable to pay the SDLT was BTR: section 85.

(3) The acquisition was a "notifiable transaction": section 77. As a result, section 76 applied. This relevantly provided as follows:

> **76 Duty to deliver land transaction return**
>
> (1) In the case of every notifiable transaction the purchaser must deliver a return (a "land transaction return") to the Inland Revenue before the end of the period of 14 days after the effective date of the transaction.
>
> …
>
> (3) A land transaction return in respect of a chargeable transaction must—
>
> (a) include an assessment (a "self-assessment") of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction,
>
> …

(4) So, BTR was obliged to deliver a land transaction return in which it self-assessed the SDLT due. Section 78(1) provided that Schedule 10 had effect "with respect to land transaction returns, assessments and related matters".

(5) Paragraph 1(1) of Schedule 10 provided that a land transaction return must "be in the prescribed form" and "contain the prescribed information". "Prescribed" meant prescribed by HMRC regulations. We discuss below the form completed by BTR pursuant to such regulations.

(6) The amount of SDLT which is chargeable is found in other provisions. Section 55 sets out a two-stage calculation under which SDLT is chargeable on the aggregate of specified rates applied to specified elements of the consideration for the transaction. The specified rates are contained in Table A for residential property and Table B for land which is or includes non-residential property.

(7) Section 55(4A) sets out the rates to apply to "higher rates transactions". These rates are 3% higher than the Table A rates. It provided as follows:

> (4A) Schedule 4ZA (higher rates for additional dwellings and dwellings purchased by companies) modifies this section as it applies for the purpose of

determining the amount of tax chargeable in respect of certain transactions involving major interests in dwellings.

(8) The MDR provisions appeared in a section headed "Reliefs". Section 58D provided as follows:

> **58D Transfers involving multiple dwellings**
>
> (1) Schedule 6B provides for relief in the case of transfers involving multiple dwellings.
>
> (2) Any relief under that Schedule must be claimed in a land transaction return or an amendment of such a return.

(9) Paragraph 1(c) of Schedule 6B states that "paragraphs 4 and 5 describe the relief available if a claim is made".

(10) Paragraph 2 of Schedule 6B provides:

> **2 Transactions to which this Schedule applies**
>
> (1) This Schedule applies to a chargeable transaction that is—
>
> (a) within sub-paragraph (2) or sub-paragraph (3), and
>
> (b) not excluded by sub-paragraph (4).
>
> (2) A transaction is within this sub-paragraph if its main subject-matter consists of—
>
> (a) an interest in at least two dwellings, or
>
> (b) an interest in at least two dwellings and other property.

(11) The acquisition of the Property was a transaction to which paragraph 2 applied.

(12) Schedule 6B then relevantly provided as follows:

> **3 Key terms**
>
> (1) A chargeable transaction to which this Schedule applies is referred to in this Schedule as a "relevant transaction"
>
> …
>
> (4) A relevant transaction is a "multiple dwelling transaction" if its main subject-matter consists of—
>
> (a) an interest in at least two dwellings, or
>
> (b) an interest in at least two dwellings and other property.
>
> (5) In relation to such a transaction, those dwellings are referred to as "the dwellings".
>
> **4 The relief**
>
> (1) If relief under this Schedule is claimed for a relevant transaction, the amount of tax chargeable in respect of the transaction is the sum of—
>
> (a) the tax related to the consideration attributable to dwellings (see paragraph 5(1) and (2)), and
>
> (b) the tax related to the remaining consideration (if any) (see paragraph 5(7)).
>
> (2) "The consideration attributable to dwellings" is—
>
> …

(b) for a multiple dwelling transaction, so much of the chargeable consideration for the transaction as is attributable to the dwellings in total.

(3) "The remaining consideration" is the chargeable consideration for the transaction less the consideration attributable to dwellings

…

(6) "Attributable" means attributable on a just and reasonable basis.

5 The amount of tax chargeable

(1) For the purposes of paragraph 4(1)(a), "the tax related to the consideration attributable to dwellings" is determined as follows—

Step 1

Determine the amount of tax that would be chargeable under section 55 on the assumption that—

(a) the relevant land consisted entirely of residential property, and

(b) the relevant consideration were the fraction produced by dividing total dwellings consideration by total dwellings.

Step 2

Multiply the amount determined at Step 1 by total dwellings.

Step 3

If the relevant transaction is one of a number of linked transactions, go to Step 4.

Otherwise, the amount found at Step 2 is the tax related to the consideration attributable to dwellings

…

(3) For a transaction that is not one of a number of linked transactions, "total dwellings consideration" is the consideration attributable to dwellings for that transaction (see paragraph 4(2))

…

(5) "Total dwellings" is the total number of dwellings by reference to which total dwellings consideration is calculated

…

(6A) In the application of sub-paragraph (1), account is to be taken of paragraph 1 of Schedule 4ZA if the relevant transaction is a higher rates transaction for the purposes of that paragraph.

(7) For the purposes of paragraph 4(1)(b), "the tax related to the remaining consideration" is the appropriate fraction of the amount of tax which (but for this Schedule) would be due in respect of the relevant transaction.

59. The FTT set out and commented on the relevant sections of the return completed by BTR at [53]-[57] as follows:

> 53. … section 58D(2) provided that MDR must be claimed in an SDLT return. There is no dispute that BTR's claim for MDR complied with this requirement.
>
> 54. The SDLT return required only a limited amount of information to be provided for the purpose of making a claim for MDR. We have reproduced below the questions in the SDLT return (using the numbering adopted by that

return) in so far as they are relevant to the MDR claim, together with the responses given by BTR when it submitted its return. All these questions and responses appear in a section of the SDLT return headed "tax calculation".

Question in SDLT return	**BTR's response**
9. Are you claiming relief?	Y – Yes
9. Type of relief claimed	33- Multiple dwellings relief
9. Where relief is claimed on part of the property only what is the amount that remains chargeable?	£98,172,807
10. Total consideration in money or money's worth including any VAT actually payable for the notified transaction	[Left blank]
11. VAT amount included in the total consideration (where applicable)	[Left blank]
12. What form(s) does the consideration take	30 – Cash
14. Total amount of tax due for this transaction	£4,335,760

55. We observe that, as we have set it out here, it appears strange that there are three separate questions all numbered 9, but this reflects the numbering on the SDLT return supplied to us by the parties. There is, in fact, a fourth question, also numbered 9, concerning charities and CIS numbers, which is not relevant here and so we have not reproduced it. In this decision, when we refer to Question 9, we mean all the questions numbered 9 in the SDLT return.

56. As may be seen from the questions and responses reproduced above, there is no requirement for the SDLT return to show any part of the taxpayer's workings in calculating the claim to MDR. There is also no requirement to show what might be described as the amount of relief, in the sense of the difference between the amount of tax due both with and without the benefit of MDR. All that is required is for the taxpayer to state that they are claiming MDR, and then state the amount of tax due.

57. In compliance with these requirements, BTR completed Question 9 to show that it was claiming MDR, and at Question 14 entered the results of its calculation of the amount of SDLT due…

The mistake in this case

60. The return had to "include an assessment (a "self-assessment") of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction": section 76(3). The resultant figure was what had to be entered in response to Question 14.

61. In carrying out that assessment, BTR had to decide what rate of SDLT was applicable.

62. Because BTR was making a claim for MDR, as was clear from its answers to Question 9, it had to do so in accordance with Schedule 6B. Paragraph 4 of Schedule 6B stated that if MDR was claimed, then the amount of tax chargeable involved calculating "the tax related to the consideration attributable to dwellings". Paragraph 5(1) then set out a series of steps to determine "the tax related to the consideration attributable to dwellings". Paragraph 5(6A) stated that in applying those steps, "account is to be taken of paragraph 1 of Schedule 4ZA if the relevant transaction is a higher rates transaction for the purposes of that paragraph".

63. According to HMRC guidance at the time when BTR filed the SDLT return[3], the acquisition of the Property was a higher rates transaction because it fell within paragraph 7(1) of Schedule 4ZA, which stated as follows:

> 7(1) A chargeable transaction falls within this paragraph [and is as a result a higher rates transaction] if—
>
> (a) the purchaser is not an individual,
>
> (b) the main subject-matter of the transaction consists of a major interest in two or more dwellings ("the purchased dwellings"), and
>
> (c) at least one of the purchased dwellings meets conditions A and B[4].

64. On the basis of this guidance from HMRC, BTR used the higher rates in calculating the total amount of tax due in Question 14. That was its mistake. HMRC's guidance was wrong, and was subsequently changed, but changed too late for BTR to amend its return.

Discussion: was the overpayment by reason of a mistake in a claim?

65. HMRC say that the answer is simple and straightforward: BTR's mistake was a mistake in its claim for MDR. They argue that Schedule 6B is a "self-contained code" which sets out the conditions and procedure when MDR is claimed. Schedule 6B, say HMRC, has distinct rules for calculating the amount of SDLT chargeable where MDR is claimed. As Mr Henderson put it, "Schedule 6B takes you on a different, bespoke, journey where you are claiming MDR", the steps in which do not need to be followed by a taxpayer who is not claiming MDR. It necessarily followed that a mistake made in properly meeting the requirements of Schedule 6B was a mistake in a claim. As he expressed it in his skeleton argument[5], "where the wrong amount was arrived at and included on the relevant SDLT return because the Schedule 6B claim process had been wrongly followed then that was clearly a "mistake in a claim" for the purpose of Case A".

66. Ms McCarthy argues that Mr Henderson mischaracterises Schedule 6B as being the "claim process" and a "self-contained code" for claiming MDR. It is necessary to look at what is required by the statute in making an MDR claim. Making a claim for MDR does not require any calculation of SDLT liability or any quantification of the relief. The MDR claim in this case contained no mistake; it was properly made in the return by the entry of "Yes" in the first part of Question 9 and "Code 33" in the second part of Question 9. The only mistake which was made was in complying with the requirement in section 76(3)(a) to specify the total amount of tax due, which was the answer to Question 14. A mistake in the self-assessment obligation concerning the applicable rate is not the same as a mistake in a claim. The calculation figure is not part of the procedure for making a valid claim but rather a consequence of the claim.

67. In deciding this issue, we do not consider that the answer can be provided by a passenger on the Clapham omnibus. As Ms McCarthy admitted in oral submissions, that test might well prompt the response "you made a claim and you made a mistake so you must have made a mistake in a claim". The statutory wording ("by reason of") imposes a particular test.

68. Nor have we taken into account in reaching our decision questions of "fairness". On the one hand, BTR's case can be characterised, as it was by HMRC, as unduly narrow and technical. On the other hand, in practice the mistake in this case was made because BTR followed HMRC guidance at the time, which was only changed after the time limit to amend

[3] HMRC's SDLT Manual at SDLTM29975.
[4] It was agreed before the FTT that conditions A and B were satisfied: [29].
[5] At paragraph 15(vi).

the SDLT return had passed. However, we have approached our task in this appeal, as we have said, as purely a question of purposive statutory construction applied to the facts.

69. In considering what is necessary to make a claim for MDR, section 58D(1) does state that Schedule 6B "provides for [the] relief": that is perhaps the high point of HMRC's case. However, the requirement for a claim and its form (it must be in a return or an amendment of a return) is dealt with separately, in section 58D(2). The distinction intended by the drafter between a claim and the relief is in our opinion clear from paragraph 1(c) of Schedule 6B: this states that "paragraphs 4 and 5 describe the relief available **if a claim is made**" (emphasis added to original). This signals that paragraphs 4 and 5, on which HMRC rely as identifying the reason for the mistake, are describing the relief and not the claim. So, although paragraphs 4 and 6 set out the amount of SDLT chargeable, they are prefaced by paragraph 4(1) with the words "[I]f relief under this Schedule is claimed…".

70. On the facts found in this case:

(1) The purchase satisfied eligibility for a claim for MDR because it was a transaction to which Schedule 6B applied: that was determined by paragraph 2 of Schedule 6B.

(2) The claim satisfied section 58D(2) because it was made in the land transaction return.

(3) In that return, the claim was properly made by the completion of the answers to Question 9.

(4) There were no other requirements applicable to the making of the claim, and, in particular, there was no requirement to quantify the amount of the claim of the sort typically imposed in a direct tax context[6].

71. On this basis, we agree with Ms McCarthy that BTR did make a claim for MDR which complied with the legislative requirements.

72. The mistake which was made then arose **by reason of** the wrong choice of rate for the SDLT which fed into the calculation of tax chargeable as required by paragraphs 4 and 5, and in particular paragraph 5(1). While paragraph 5(6A) stated that "in the application of [paragraph 5(1)], account is to be taken of paragraph 1 of Schedule 4ZA if the relevant transaction is a higher rates transaction…", that was not a requirement imposed on the making of the claim, for the reasons we have explained.

73. Therefore, we conclude that the mistake in this case did not arise "by reason of a mistake in a claim", and, as a result, Case A did not apply.

74. In addition to the arguments raised by the parties which we have discussed above, in reaching our conclusion we have considered the following points (in no particular order):

(1) We accept Ms McCarthy's submission that this analysis of the legislative provisions "maps into" Questions 9 and 14 in the land transaction return (and the absence of any other relevant questions in the return).

(2) HMRC confirmed that, in practice, a mistake as to the applicability of the higher rates in the SDLT calculation could have been made in reliance on the HMRC guidance at the relevant time by a taxpayer who was not making a claim for MDR or any other claim or election. They also confirmed that in such a situation they would typically not have challenged a subsequent claim for overpayment relief, unless one of the other Cases applied. While we do not rely on these confirmations in reaching our conclusion, we

[66] See, for instance, the requirement in section 42(1A) TMA that, with certain exceptions, " a claim for a relief, an allowance or a repayment of tax shall be for an amount which is quantified at the time when the claim is made."

consider that they are consistent with a purposive construction of Case A, and our interpretation and application of the relevant provisions.

(3) The dissenting member considered that support for BTR's construction was found in Case G. This deals with a case where the excessive payment was "by reason of a mistake in calculating the claimant's liability to tax" in accordance with practice generally prevailing at the time. The member considered that Case G showed that a mistake in calculating liability was distinct from a mistake in a claim. Ms McCarthy placed no reliance on this argument. We consider that Case G can be interpreted consistently with either party's suggested construction, so we think that Ms McCarthy was right to do so.

(4) We heard submissions from the parties (delving at times into increasingly esoteric areas of SDLT) as to whether the construction of Case A which we have decided upon would render Case A redundant/largely redundant. We did not find any material assistance in these submissions.

(5) While we do not consider that the answer in this appeal lies in the distinction of principle between liability and assessment machinery discussed in case law, we note that our interpretation of the applicable SDLT legislation is consistent with this distinction.

DISPOSITION

75. We consider that the FTT erred in law in reaching the conclusion that Case A applied to preclude BTR's claim for overpayment relief.

76. The appeal is allowed.

JUDGE THOMAS SCOTT
JUDGE NICHOLAS ALEKSANDER

Release date: 21 January 2026