Neutral Citation: **[2026] UKUT 00172 (TCC)**

Case Number: UT-2025-000020

UPPER TRIBUNAL
(Tax and Chancery Chamber)

Rolls Building, London

PROCEDURE – whether proposed amendment of HMRC's Statement of Case is within "the matter to which the appeal relates" – section 49I Taxes Management Act 1970 – yes – appeal dismissed

Heard on: 5 February 2026
Judgment date: 05 May 2026

Before

JUDGE JEANETTE ZAMAN
JUDGE MARK BALDWIN

Between

HENRY GWYN-JONES

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Martin Hayden SC and Julian Hickey of counsel, instructed by Hickey & Co Tax and Dispute Resolution Limited

For the Respondents: Christopher Stone KC and Colm Kelly of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. This is an appeal against the case management decision of the First-tier Tribunal (Tax Chamber) (the "FTT") released on 18 June 2024 (the "FTT Decision") in which the FTT gave permission for HMRC to amend their Statement of Case ("SoC"). That amendment asked the FTT, when dealing with quantum, to vary Mr Gwyn-Jones' self-assessment to show an income tax liability in respect of a dividend. The closure notice which had been issued by HMRC did not make any amendments in relation to that (or any) dividend income or otherwise refer to that (or any) dividend income.

2. Mr Gwyn-Jones appealed against the FTT Decision on the basis that the dividend is not within the scope of the appeal to the FTT and, consequently, the FTT had no jurisdiction to permit this amendment.

3. For the reasons set out below, we have dismissed the appeal.

BACKGROUND FACTS

4. There was no dispute between the parties as to the relevant background facts.

5. In December 2007 HMRC opened an enquiry into Mr Gwyn-Jones' residence status for the tax year 2005/6. They concluded that he was resident in the UK in that year and on 30 November 2016 they issued a closure notice (the "Closure Notice") to Mr Gwyn-Jones in respect of that tax year. So far as relevant, the Closure Notice reads as follows:

> "Based on the information and documentation supplied, my conclusion is that you did not substantially loosen your ties with the UK to make a distinct break on or before 5 April 2005 and as such were resident in the UK for tax purposes during the tax year ended 5 April 2006.
>
> I have not been able to obtain details from your advisor which would allow me to correctly calculate your income and gains so I have had no alternative but to estimate the tax and Capital Gains Tax due. I enclose a schedule showing how I arrived at the figures of income and gains that have included in your Self-Assessment.
>
> I have amended your tax return in line with my decision:
>
> - it previously showed that you were due to pay £1,097.01 tax
> - it now shows that you were due to pay £47,029,339.82 tax
> - the difference is £47,028,242.81
>
> I enclose details of my calculations.
>
> I have also updated your Self Assessment statement to reflect this change. As of 29 November 2016 your statement shows that you are due to pay a total of £64,966,614.10. This amount includes all the items on your statement, not just the results of my check of your tax return. This figure may change on a daily basis if other amounts become due or we add interest. I enclose a copy of your statement."

6. On 27 October 2017 Mr Gwyn-Jones gave Notice of Appeal to the FTT. In answer to the question "What is your dispute about?" Mr Gwyn-Jones' advisers wrote "Capital Gains Tax". Against the heading "Desired Outcome" they wrote "That the decision of HMRC that Mr Gwyn-Jones was resident in the UK in 2005-06 be overturned. We believe the decision should have been that Mr Gwyn-Jones was not resident in the UK."

7. On 20 May 2021 Mr Gwyn-Jones' advisers emailed HMRC attaching several documents, including the draft directors' report and unaudited financial statements for Gort Holdings Ltd ("GHL"), a Guernsey registered company, for the period from 24 November 2004 to 31 May 2006. The directors' report and notes to the financial statements referred to a dividend of £16,000,000 having been paid by GHL in the period ended 31 May 2006. HMRC's position is that it appears that the dividend was paid by GHL into Mr Gwyn-Jones' Guernsey bank account on 22 December 2005. As accepted by HMRC, Mr Gwyn-Jones has reserved the right to argue at the substantive hearing that there was no payment of a dividend and/or that any dividend paid was not chargeable to UK tax. For convenience, we refer to this (actual or purported) payment as the "Foreign Dividend" without (of course) making any finding or evaluation of Mr Gwyn-Jones' position.

8. On 19 January 2023 HMRC applied for permission to amend their SoC to add the following:

> "9. The Respondents request that the Tribunal deal with quantum as follows:
>
> …
>
> (b) in respect of the Closure Notice for 2005/06, to vary the Appellant's self assessment to show a total income tax liability to tax of £5,245,141.02 and a capital gains tax liability of £178,862.00, thereby bringing into charge all of the Appellant's worldwide income and gains in that year, unless otherwise exempt. The Respondents' calculations supporting those figures are provided as Appendix 1 to this Amended Consolidated Statement of Case.
>
> 10. The calculation of the Appellant's liability to tax for 2005/06 includes tax on a dividend of £16,000,000 paid to the Appellant in 2005/06. The dividend was declared by Gort (Holdings) Ltd, a Guernsey registered company of which the Appellant was the beneficial owner.
>
> 11. This dividend income was not included in the estimated calculations of the Appellant's tax liability contained in the Closure Notice for 2005/06 (as later varied on statutory review), and accordingly, the Appellant's self-assessment for 2005/06 as amended by the Respondents undercharged the Appellant's liability to income tax.
>
> 12. The dividend was not included in the Closure Notice because of the Appellant's failure to draw it to HMRC's attention as chargeable income. The Appellant's advisors were asked to state what income and gains should be included in an amended return on the assumption that the Appellant was UK resident in 2005/06. The Appellant and his advisors did not include the dividend payment amongst his income at this time, even though other income and gains for 2005/06 were identified.
>
> 13. The purpose of the Closure Notice for 2005/06 was to charge to tax all of the Appellant's worldwide income and gains in that year, unless otherwise exempt. Such amendments as the Closure Notice did make to the Appellant's self assessment were expressly stated to be based on an estimate of the tax due. The conclusion stated in the Closure Notice, and the matter before the Tribunal, is the Appellant's residence in 2005/06 and his consequent liability to tax in the UK on his world-wide income and gains. The amendments to the Appellant's self-assessment in the figures set out in Appendix 1 give effect [sic] of to that conclusion (i.e. by bringing into account the sums to be charged to tax). Accordingly, it is a matter within the scope of the present appeal."

THE FTT DECISION

9. The FTT granted permission to HMRC to make this amendment. References below in the form FTT[x] are to paragraphs of the FTT Decision.

10. The FTT recorded that Mr Gwyn-Jones' then counsel, Mr Robert Venables KC, objected to HMRC's application on the basis that the FTT has no power to increase the amount of tax assessed as there was no mention of the Foreign Dividend in the Closure Notice, the circumstances of this appeal are unlike the cases relied upon by HMRC and the Notice of Appeal only referred to capital gains tax ("CGT"). Mr Venables had emphasised that the authorities relied upon by HMRC all referred to both the conclusion "and amendment" in the closure notice whereas here no amendment was made to Mr Gwyn-Jones' self-assessment to reflect the Foreign Dividend and so, absent such an amendment, it was irrelevant that the conclusion in the Closure Notice might have supported such an amendment.

11. The FTT did not accept that submission, emphasising that s31(1)(b) Taxes Management Act 1970 ("TMA 1970") refers to an appeal being brought against "any conclusion stated or amendment" (FTT[3]). The FTT referred to *Daarasp LLP v HMRC* [2021] UKUT 87 (TCC) ("*Daarasp*") where the Upper Tribunal had stated at [35] that, whilst the consequential amendments in a closure notice may affect the construction of the conclusions, what is at issue (when deciding the scope of an appeal) is the "true meaning of the conclusions themselves, read in context and in the light of the entirety of the factual matrix".

12. The FTT also rejected Mr Venables' alternative argument that, as the Grounds of Appeal (as amended) only referred to CGT and did not refer to dividend income, the question of income tax on the Foreign Dividend was outside the scope of the appeal. The FTT observed that no authorities were relied upon in support of that submission (FTT[4]), and held that the scope of an appeal is determined by the closure notice and not by the grounds of appeal.

13. At the case management hearing HMRC had relied upon the witness statement of Officer Tracey Bedlington in support of their application. Officer Bedlington (who attended and gave evidence at the hearing) had exhibited her written record of a conversation on 16 September 2016 with Mr Gwyn-Jones' representative, Ms Ann Diggins to show that his advisers were asked to provide details of Mr Gwyn-Jones' income and gains which would be chargeable were he resident in the UK in 2005/06. So far as relevant, her note reads as follows:

> "Discussed with Ann — told her we think we have sufficient evidence to maintain HGJ R/OR — going through internal governance to agree we issue a Closure Notice. In the meantime can she give some thought to what income and gains should be on the amended return — on the assumption that he will remain R/OR
>
> Agent will advise client and consider the chargeable income and gains"

14. At FTT[8] the FTT accepted Officer Bedlington's evidence that it was intended that the Closure Notice included all worldwide income and gains, she was quite confident that what was discussed was all Mr Gwyn-Jones' income and gains as the whole issue was that HMRC were not aware of income outside the UK and she was asking Ms Diggins to confirm if she was aware of any income. The FTT was satisfied that the words "give some thought to what income and gains should be on the amended return" was recording her request to provide details of the income and gains which should be included for 2005/06 were Mr Gwyn-Jones to be found to be UK resident (FTT[9]).

15. The FTT concluded at FTT[9] that, having applied the relevant principles set out at [25] in *Daarasp*, "when the Closure Notice is read in context and in light of the entirety of the factual matrix, the meaning of the conclusions in the Closure Notice are that the Appellant was

UK resident and chargeable to tax in the UK on all of his world-wide income and gains. Accordingly, the foreign dividend payment is within the scope of the appeal".

THE LEGISLATIVE FRAMEWORK

16. We set out below (at a very high level) an outline of the regime Parliament has put in place for assessing income tax and CGT due from individuals, enquiring into individuals' tax affairs and appealing against decisions of HMRC. Unless otherwise stated, references to sections are to sections of TMA 1970.

17. Under s8 HMRC has power to issue a notice requiring an individual to deliver a tax return for the purpose of establishing the amounts on which he is chargeable to income tax and CGT for a year of assessment, and the amount payable by way of tax for that year. Section 9 requires every return under s8 to include a self-assessment of tax due.

18. Section 9A allows HMRC to enquire into a return under s8 by notice within 12 months of the filing date.

19. Section 28A, which deals with the completion of an enquiry into personal or trustee returns, provided as follows:

> "(1) An enquiry under section 9A(1) of this Act is completed when an officer of the Board by notice (a "closure notice") informs the taxpayer that he has completed his enquiries and states his conclusions.
>
> In this section "the taxpayer" means the person to whom notice of enquiry was given.
>
> (2) A closure notice must either—
>
> (a) state that in the officer's opinion no amendment of the return is required, or
>
> (b) make the amendments of the return required to give effect to his conclusions."

20. There is no time limit for the issue of a closure notice. However, a taxpayer can apply to the FTT for closure under s28A(4), and there is a statutory presumption that closure will be directed unless the FTT is satisfied that there are reasonable grounds for not issuing a closure notice within a specified period (s28A(7)).

21. Pursuant to s49E, if HMRC undertake a statutory review of a closure notice, the reviewing officer can uphold, vary or cancel the closure notice.

22. Section 31 deals with rights of appeal, and provides:

> "(1) An appeal may be brought against—
>
> …
>
> (b) any conclusion stated or amendment made by a closure notice under section 28A or 28B of this Act (amendment by Revenue on completion of enquiry into return), …"

23. Section 49D provides that, if notice of appeal has been given to HMRC, an appellant may notify the appeal to the FTT and then provides:

> "(3) If the appellant notifies the appeal to the tribunal, the tribunal is to decide the matter in question."

24. Section 49I(1)(a) provides that, in s49A to 49H, "matter in question" means "the matter to which an appeal relates".

25. Section 50 sets out the powers of the FTT on an appeal as follows:

"(6) If, on an appeal notified to the tribunal, the tribunal decides—

(a) that ... the appellant is overcharged by a self-assessment;

(b) that ... any amounts contained in a partnership statement are excessive; or

(c) that the appellant is overcharged by an assessment other than a self assessment,

the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good.

(7) If, on an appeal notified to the tribunal, the tribunal decides—

(a) that the appellant is undercharged to tax by a self-assessment ... ;

(b) that any amounts contained in a partnership statement … are insufficient; or

(c) that the appellant is undercharged by an assessment other than a self assessment,

the assessment or amounts shall be increased accordingly."

26. Other provisions of TMA 1970 allow HMRC to assess a taxpayer where a loss of tax is discovered outside the enquiry/closure notice process (a "discovery assessment") and set out the conditions which must be satisfied before a discovery assessment can be raised, including the time limits for raising such assessments.

GROUNDS OF APPEAL

27. The FTT granted Mr Gwyn-Jones permission to appeal on three grounds which had been set out in the application for permission in the following terms:

(1) The FTT should have held that the FTT had no power to increase the amount of income tax assessed by the Closure Notice for 2005/06 by £5,200,000 to reflect a further dividend (if such there was) of £16,000,000 declared by GHL.

(2) The FTT should in particular have held that the FTT had no power to do so as in the amendment of Mr Gwyn-Jones' self-assessment for 2005/06 there was no item as respects any foreign dividend.

(3) The FTT should in particular have held that the FTT had no power to do so as the appeal lay under s31(1)(b) and Mr Gwyn-Jones had no power to appeal under that section against a non-existent assessment to tax on a foreign dividend and had not purported to do so.

28. We have summarised the parties' submissions below. We have not found it necessary to refer to each submission made but we have taken all written and oral submissions into account in making our decision.

SUMMARY OF MR GWYN-JONES' SUBMISSIONS

29. Mr Hayden submitted that the three grounds of appeal effectively coalesce into a single ground, namely whether the FTT has jurisdiction to amend the Closure Notice (and/or self-assessment) by adding a new head of charge to tax for foreign dividend income which is not referred to in the Closure Notice and in respect of which no amendment was made. Mr Hayden submitted that by seeking to amend their SoC HMRC is effectively trying to amend the Closure Notice (which is not permitted by the statutory framework). Mr Hayden submitted that on an appeal against amendments made by HMRC in a closure notice, the FTT cannot make amendments under s50(7) to include an item of income (and income tax thereon) which was not mentioned in the assessment (either the self-assessment or as amended by HMRC), even if

such further amendment would, if HMRC had included it in their amendment of the self-assessment, have been justified by the conclusion in the related closure notice.

30. Mr Hayden confirmed that Mr Gwyn-Jones was not challenging the FTT's construction of the Closure Notice.

31. Mr Hayden submitted that allowing HMRC to amend their SoC would provide HMRC with a backdoor way of amending the Closure Notice and would ride roughshod over the regime Parliament has established for investigating and correcting taxpayer errors. This regime includes carefully designed rules for the opening of enquiries into self-assessment returns, which end with closure notices, powers in Schedule 36 Finance Act 2008 for HMRC to obtain information, and HMRC's ability to assess a taxpayer where a loss of tax is discovered. Each of these elements has its own conditions and time limits. This system was described by David Richards LJ, giving the judgment of the Court of Appeal in *Raftopoulou v HMRC* [2018] EWCA Civ 818, as comprising "carefully defined time limits for enquiries, assessments and claims which balance the need to give finality and certainty to taxpayers and the Exchequer, with the need to provide sufficient flexibility to ensure fairness in the system" ([70]). Allowing HMRC effectively to re-write a closure notice to include something completely new would run counter to this carefully balanced approach.

32. Mr Hayden accepted that HMRC may introduce a new legal argument to support a conclusion in a closure notice, and they do not need to give detailed reasons in a closure notice (thus preserving their flexibility to raise new arguments in the future) (*Tower MCashback LLP 1 v HMRC* [2011] UKSC 19 ("*Tower MCashback"*) at [15], [18] and [83]). HMRC may put forward a case on appeal seeking a greater tax liability than that set out in the closure notice (*Investec Asset Finance plc v HMRC* [2020] EWCA Civ 579 ("*Investec*") at [71]). Nevertheless, this flexibility is limited by the scope and subject matter of an appeal, and these are defined by the conclusions stated in a closure notice and by the amendments required to give effect to those conclusions construed in context (*Fidex Ltd v HMRC* [2016] EWCA Civ 385 at [45], *Tower MCashback* at [83], and *Investec* at [72] to [73]). Mr Hayden submitted that whilst the decision of the Court of Appeal in *Investec* makes it clear (at [70] and [73]) that it is primarily for the FTT to decide what the subject matter of a closure notice and an appeal is, it also makes it clear that the FTT does not have an unlimited discretion when determining "the matter to which an appeal relates" for the purposes of s49I(1)(a).

33. Mr Hayden referred to the language of the Closure Notice itself, the context in which it was issued and the findings of the FTT at FTT[8] and [9]. The FTT accepted Officer Bedlington's evidence that it was intended that the Closure Notice included all worldwide income and gains (FTT[8]) (and Mr Hayden took us to the notes of telephone calls between HMRC and Mr Gwyn-Jones' adviser). Mr Hayden emphasised that HMRC had decided to issue the Closure Notice without having received a response from the adviser following the call on 16 September 2016, did not use their powers to issue an information notice, knew about the existence of GHL (as they had previously received a clearance application in respect of the exchange of shares) and did not amend the return to include the Foreign Dividend (or make any reference to dividend income). There has been no allegation that Mr Gwyn-Jones or his advisers had been careless or had misled HMRC.

34. Mr Hayden emphasised the need for an amendment to be made to a return, reiterating that HMRC did not make any amendments in the closure notice to Mr Gwyn-Jones' self-assessment to reflect the Foreign Dividend. The only amendments were for employment income and capital gains. Mr Hayden referred to the requirements of s28A, which provides at s28A(2) that a closure notice must either state that no amendment of the return is required or "(b) make the amendments of the return required to give effect to his conclusions". Mr Hayden

submitted that the decision of the Court of Appeal in *R (Archer) v HMRC* [2017] EWCA Civ 1962 ("*Archer"*) makes this clear, and submitted that those amendments (if any are made) define the subject matter of the appeal. Mr Hayden submitted that a valid closure notice is only valid for the specific sources of income identified. Allowing the addition of a completely new head of charge would broaden the scope of the appeal in a way which is qualitatively different from allowing HMRC to deploy a different reason to justify a conclusion they had already included in a Closure Notice or to argue for a higher quantum of a liability they had already identified and included in a closure notice.

35. Mr Hayden submitted that the present case differed from the position which had been considered in *B&K Lavery Property Trading Partnership v HMRC* [2016] UKUT 525 (TCC) ("*Lavery"*) and *Orsted West of Duddon Sands (UK) Ltd v HMRC* [2025] EWCA Civ 279 ("*Orsted"*).

36. In *Lavery*, the taxpayer made a claim for a trading loss based on the fall in value of two properties. During HMRC's enquiry into this loss, and up until HMRC's skeleton argument was served, HMRC's focus was on whether the taxpayer had commenced a trade. In its skeleton argument, it switched to focusing on the question of whether the properties were held as trading stock. The taxpayer sought to strike out HMRC's case on the basis that the closure notice had been confined to the commencement issue and HMRC had abandoned that argument. The Upper Tribunal held that the FTT had been correct to conclude that the relevant conclusion in the closure notice was simply that the revaluation adjustment was disallowed. Mr Hayden submitted that an important distinguishing factor is that in *Lavery* neither the initial notice of enquiry nor the correspondence during it were confined to the commencement issue and HMRC did not concede the stock issue during the enquiry ([41]). The FTT was able to conclude that the closure notice simply disallowed the loss without giving any particular reason why. That (he submitted) is not the case here. The scope of the Closure Notice is clear; HMRC have concluded that Mr Gwyn-Jones was UK tax resident and assessed employment income and chargeable gains in consequence.

37. Mr Hayden submitted that the Court of Appeal in *Orsted* was simply addressing a situation where HMRC had made a clerical error in the numbers on the closure notice and everyone knew what the right answer ought to be. The Court of Appeal did not address the decision in *Archer,* and did not need to do so. We are confronted with a very different situation; the Closure Notice (in both the text and the numerical amendments) says nothing about dividend income, whereas the closure notice in *Orsted* clearly put capital allowances in issue. Mr Hayden referred in particular to the reasoning at [135] where Newey LJ said that "section 50 … is not to be understood as barring the FTT from making adjustments to a return which flow from its conclusion on the amendment(s) under appeal".

38. At the hearing we asked counsel whether the "matter in question" was affected by the fact that HMRC had been enquiring into Mr Gwyn-Jones' residence position, which is potentially a more open-textured issue than an enquiry into (say) whether a particular type of expenditure on windfarms qualifies for capital allowances. Mr Hayden queried why this made any difference. He submitted that it does not alter the fact that HMRC are seeking to circumvent the restrictions on issuing assessments (outside the enquiry process) by amending their SoC. (Mr Stone similarly submitted that we should not speculate on what the position would be were a closure notice to be issued in different terms at the end of a narrower enquiry.)

SUMMARY OF HMRC'S SUBMISSIONS

39. Mr Stone emphasised that HMRC are not seeking to amend the Closure Notice; the Closure Notice, setting out the conclusion and amendments to the return (as required by s28A and confirmed by *Archer*), has been issued. HMRC are seeking permission to amend their SoC

to allow them to make submissions that the FTT should use its power in s50(7) to amend the self-assessment and bring the Foreign Dividend into charge to income tax. If the FTT accepts HMRC's argument, the FTT and not HMRC will be amending Mr Gwyn-Jones' self-assessment return.

40. The decision of the Court of Appeal in *Archer* is about how HMRC may make amendments to a self-assessment return. Mr Stone submitted that *Archer* says nothing about the scope of an appeal before the FTT or the FTT's powers under s50 – that case is only concerned with what HMRC need to do to issue a valid Closure Notice. This appeal is about the power of the FTT, and that was the issue in *Orsted*. There is no conflict between these two decisions of the Court of Appeal, which address different issues.

41. Mr Stone submitted that the crucial point to bear in mind is that there is no challenge to the FTT's interpretation of the Closure Notice. The Closure Notice is clear that HMRC used estimated figures and the FTT, considering the context which included the notes of the telephone calls showing that HMRC was seeking information to make amendments, reached the conclusion in FTT[9] that Mr Gwyn-Jones was UK resident and chargeable to tax in the UK on all his worldwide income and gains. Mr Gwyn-Jones knew this. His appeal to the FTT was against both the conclusion and the amendments.

42. Mr Stone relied on the decision of the Court of Appeal in *Investec*. The taxpayer had argued that it was not open to HMRC to argue for a different amendment from the one made by the closure notice, but the Court of Appeal rejected that submission, with Rose LJ, as she then was, stating (at [73]) that "It is for the First-tier Tribunal to decide what the subject matter of the closure is within the bounds I have described. … it should be open to HMRC to put forward arguments in any appeal even if they result in a larger amount of tax being due, provided that the different arguments all deal with the same matters in question identified in the closure notice".

43. In *Daarasp*, having reviewed the authorities (including *Investec*), the Upper Tribunal emphasised that the conclusions of a closure notice are distinct from the amendments that may arise out of those conclusions; there is a nexus between the two, but they are very different things ([24]). This led the Upper Tribunal to observe at [25(8)] that:

> ""[T]he matter to which the appeal relates" for the purposes of section 49I(1)(a) must be the [conclusion and/or] the amendment and either the conclusion or the amendment is therefore the "matter in question" which the FTT is required to determine by section 49I(1) of the Taxes Management Act 1970. That then restricts the ambit of the appeal at the conclusion of which the FTT may decide that there has been an overcharge or an undercharge and so make a reduction or an increase in the assessment pursuant to section 50(6) or (7) of the Taxes Management Act 1970 as appropriate. There is a limit on the jurisdiction of the FTT which is not simply a matter of ensuring procedural fairness. Any purported exercise by the FTT of a broader power to consider matters beyond that would be an error of law: *Investec* at [70]."

44. Mr Stone then took us to the decision of the Court of Appeal in *Orsted*. This decision was released after the date of the FTT Decision and he submitted that it is closest to the submissions which are being made by HMRC in this appeal. Mr Stone submitted that *Orsted* had both endorsed the decision in *Investec* on the scope of an appeal and rejected the taxpayers' submission that the FTT cannot use s50(7) to increase an entry which has not previously been amended by HMRC. Mr Stone submitted that once it is recognised that the action the FTT can take under s50(7) to give effect to its conclusions is not constrained by the amendments HMRC made in a closure notice, it must follow that "the matter to which [the] appeal relates" also cannot be limited by reference to HMRC's amendments in a closure notice.

45. Mr Stone submitted that Mr Gwyn-Jones' worldwide income and gains are already within the scope of the appeal based on the FTT's construction of the Closure Notice. It is then clear from the language of s50(7) that the FTT can increase a self-assessment to include the Foreign Dividend. To the extent there is any doubt on the point, that is removed by *Orsted*.

DISCUSSION

46. In line with the approach taken by both parties, we have not sought to address the three grounds of appeal for which permission to appeal was granted by the FTT separately. We have considered whether the FTT made an error of law in the FTT Decision by reference to the submissions made in Mr Hayden's skeleton argument and his oral submissions at the hearing, as summarised above.

47. Rule 25 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the FTT Rules") required HMRC to serve a statement of case within 60 days of being sent Mr Gwyn-Jones' notice of appeal. Under rule 5(3)(c) the FTT has power to permit a party to amend any document. Mr Gwyn-Jones' challenge to the FTT Decision is on the basis that the FTT made an error of law in granting permission for the amendment of HMRC's SoC as the proposed amendment would take HMRC's case outside the scope of the "matter in question".

Scope of the "matter in question"

48. Section 49D(3) provides that if the appellant notifies the appeal to the FTT "the [FTT] is to decide the matter in question". This is then defined by s49I(1)(a) as "the matter to which an appeal relates". That is the only matter the FTT has jurisdiction to decide.

49. The scope of the "matter in question" was considered by the Court of Appeal in *Investec* and *Orsted*. (We recognise that since the date of the hearing of this appeal, the Supreme Court has released its decision in *Orsted West of Duddon Sands (UK) Ltd v HMRC* [2026] UKSC 12. The only issue before the Supreme Court was whether the expenditure on various studies was "on the provision of" plant.)

50. The appeals in *Investec* and *Orsted* involved corporation tax self-assessment returns, the relevant provisions in relation to which are set out in Schedule 18 to Finance Act 1998. The provisions of Part V of TMA 1970, which includes ss49A to 49H and s50, then apply to the appeals to the FTT with necessary modifications. Whilst s31(1)(b) provides in relation to income tax that an appeal may be brought against "any conclusion stated or amendment made by a closure notice", paragraph 34(3) of Schedule 18 refers only to an appeal being brought against the amendment of the company's return. This difference in language is relevant when reading the decisions of the Court of Appeal in *Investec* and *Orsted*.

51. In *Investec* the taxpayer had argued that it was not open to HMRC to argue for a different amendment from the one made by a closure notice. The Court of Appeal rejected that submission. Rose LJ (with whom Sir Timothy Lloyd and Peter Jackson LJ agreed) set out her conclusions as follows (and we consider it helpful to set out these paragraphs in full):

> "70. I accept the point made by the Appellants that this case is different from the *Tower MCashback* and *Fidex* cases because Issue 4 is not a different argument in support of the adjustments made to their tax returns to implement the conclusion set out in the closure notices. I would also go part of the way with the Appellants in accepting that the FTT does not have an unlimited discretion when determining what is 'the matter to which an appeal relates' for the purposes of s 49I(1)(a) TMA or 'the matter in question' for the purposes of s 49G(4) TMA. In their covering letter HMRC could have indicated that they might open up entirely different areas of the Appellants' tax returns if the closure notice were appealed to the tribunal. The fact that the Appellants had been warned about those potential challenges being raised

would not, in my view, empower the FTT to treat those issues as within the scope of the appeal. According to para 34(3) of Sch 18 FA 1998, an appeal may be brought against an amendment of a company's return. It seems to me that 'the matter to which an appeal relates' for the purposes of s 49I(1)(a) must be that amendment and the amendment is therefore the 'matter in question' which the tribunal is required to determine by s 49G(4) TMA. That then restricts the ambit of the appeal at the conclusion of which the tribunal may decide that there has been an overcharge or an undercharge and so make a reduction or an increase in the assessment pursuant to s 50(6) or (7) as appropriate. There is a limit on the jurisdiction of the FTT which is not simply a matter of ensuring procedural fairness. Any purported exercise by the FTT of a broader power to consider matters beyond that would be an error of law.

71. The authorities do not support a narrow construction of those key phrases in ss 49I and 49G and they establish that the FTT is the appropriate stage at which the scope of the matter in question in the appeal is to be determined. The FTT is a specialist tribunal and an appellate court should not interfere with that decision unless it is clearly outside the scope of the statutory provisions. There are, as Moses LJ recognised, likely to be boundary issues whatever the test to be applied. Those issues are much more likely to be problematic and time-consuming if a narrow view is adopted. This became apparent during argument when trying to establish the limits of any appeal in this case. Mr Peacock had to accept that legal arguments can be deployed which were not referred to in the closure notice. He also had to accept that the outcome of any particular appeal may be that the tax liability is something different from the figure for which either side was contending if, as in the present case, the tribunal accepts some but not all of one party's arguments. He insisted however that the taxpayer should be able to challenge a closure notice without taking the risk that he would end up paying more tax than the adjustment made by the closure notice. That cannot be right, not least because as Mr Peacock was pushed to submit, it might lead to a situation where HMRC considered there were two possible constructions of the relevant legislation and were forced to adopt a closure notice based on the construction that resulted in the most tax being payable, even if they thought the arguments in support of that construction were far weaker than the arguments in favour of the construction leading to a lower adjustment. Such a construction of the provisions would simply multiply the number of appeals.

72. The possibility of HMRC putting forward a case on appeal seeking a greater tax liability than that set out in the closure notice does not create an unfair imbalance between the interests of the Revenue and the taxpayer. *Tower MCashback* and *D'Arcy* show that despite the major change to tax law when the self-assessment regime was introduced and the importance of the finality of the self-assessment, the statutory provisions are not intended dramatically to narrow the scope of appeals. There are other checks and balances in the scheme here designed to protect the taxpayer. Those protections are the time limit imposed on HMRC in opening an enquiry, the fact that only one enquiry can be opened into any one tax return and the ability of the taxpayer to seek a direction for the issue of a closure notice. A narrow confinement of the subject matter of the appeal is not intended to be one of the protections conferred on the taxpayer. The 'venerable principle' is also an important underlying factor in any tax matter. I accept HMRC's submission that proceedings before the FTT are not simply a dispute between two private parties and the venerable principle has a role to play here as the courts have found in the three cases which were cited to us.

> 73. I would conclude that the description of the scope of the matter in question in para [117] of the FTT's decision is a useful and practical one. It is for the First-tier Tribunal to decide what the subject matter of the closure notice is within the bounds I have described. They are best placed to determine whether the context of the closure notice and the surrounding circumstances demonstrate that the subject matter is broader than the particular conclusion and adjustments addressed in the closure notice. If that is the case, it should be open to HMRC to put forward arguments in any appeal even if they result in a larger amount of tax being due, provided that the different arguments all deal with the same matters in question identified in the closure notice. Although it is accepted that this case goes beyond the point decided in *Tower MCashback* and *Fidex*, I do not regard those cases as requiring a bright line to be drawn. I would therefore dismiss the Appellants' appeal on Issue 3."

52. The decision in *Orsted* addressed whether the taxpayers (windfarm operators) could claim capital allowances or make deductions from their taxable profits for expenditure on a variety of studies (including surveys) carried out in the years before the windfarms became operational. One of the issues arose from the fact that, when making amendments to the taxpayers' returns in the closure notices, HMRC did not adjust the figures stated in returns for "qualifying expenditure" on plant and machinery. The closure notices did then reduce the figure for "Allowances in trading profits or losses" as regards "Machinery and plant – main pool". The FTT had described this as a "simple transcriptional error", and found that the recipient would have concluded that HMRC had simply made a secretarial error (at [235] of the decision of the FTT, cited by the Court of Appeal at [111]).

53. The taxpayers submitted that the "matter in question" as regards the appeals to the FTT was limited to the amendments which HMRC had made in the closure notices, and that the tax legislation does not confer on the FTT power to change a part of a tax return which HMRC had not amended; and s50 TMA 1970 allows the FTT to increase or reduce the amount of an amendment but it does not enable the FTT to amend something different ([124]).

54. Newey LJ (with whom Zacaroli LJ and Sir Launcelot Henderson agreed) started by endorsing the approach of the Court of Appeal at [70] to [73] in *Investec*:

> "128. In *Investec*, Rose LJ observed in paragraphs 70 and 71 that the authorities do not support a narrow construction of the "key phrases": "the matter to which an appeal relates" and "matter in question". As Rose LJ explained in paragraph 71, it was accepted in *Investec* that "legal arguments can be deployed which were not referred to in the closure notice" and that "the outcome of any particular appeal may be that the tax liability is something different from the figure for which either side was contending". Rose LJ also commented, in paragraph 72, that a "narrow confinement of the subject matter of the appeal is not intended to be one of the protections conferred on the taxpayer" and that the "venerable principle" that there is a public interest in taxpayers paying the correct amount of tax is an "important underlying factor in any tax matter". Further, in paragraph 73 Rose LJ contemplated that "the context of the closure notice and the surrounding circumstances" could "demonstrate that the subject matter is broader than the particular conclusion and adjustments addressed in the closure notice" and concluded that "it should be open to HMRC to put forward arguments in any appeal even if they result in a larger amount of tax being due, provided that the different arguments all deal with the same matters in question identified in the closure notice"."

55. Newey LJ then stated:

> "129. … That HMRC were seeking to make amendments to give effect to its view that items for which the companies had claimed capital allowances were

> not eligible for them was evident from the amendments specified in the Closure Notices (from which it was obvious that HMRC were making a mistake); from the conclusions explained in the email from Mr Seawright to which the Closure Notices cross referred; and from the inherent relationship between writing down allowances and "qualifying expenditure". Writing down allowances are a function of "qualifying expenditure". It would therefore make no sense for a company's writing down allowance to be reduced while its total "qualifying expenditure" was not. This, therefore, was a case where "the context of [each] Closure Notice and the surrounding circumstances" demonstrated that "the subject matter is broader than the particular conclusion and amendments addressed in the Closure Notice"."

56. Newey LJ went on to hold that "[t]he "matter in question" as regards the appeals to the FTT … was not, therefore, circumscribed by the specific amendments to [the] returns which HMRC had erroneously made" ([130]).

57. Newey LJ then addressed the taxpayers' submission that s50 did not give the FTT the power to alter an element of a return which has not been the subject of an amendment by HMRC in the closure notice:

> "133. There is force, too, in the analogy which Ms Wilson drew with self-assessment. Section 50 of TMA 1970 1970 provides for a self-assessment to be reduced or increased. Where, however, a self-assessment has proved erroneous, there should surely be scope for the FTT to correct not just the bare figure but the element(s) in calculations giving rise to it where that follows from the FTT's conclusions on the "matter to which an appeal relates". If that is right, it tends to indicate that in the case of an appeal against an amendment the FTT can similarly be expected to be able to do more than just correct the particular amendment should its conclusions on "the matter to which [the] appeal relates" make that appropriate.
>
> …
>
> 135. I agree that, where an appeal is brought under paragraph 34(3) of schedule 18 to FA 1998, the FTT can do more than merely correct the specific amendment(s) if that is necessary to give effect to its conclusions on the "matter in question". The requirement to read section 50 of TMA 1970 "subject to any necessary modifications" does not, as it seems to me, limit the FTT to revising the amendment(s) in such a case. As I see it, section 50 is intended to empower the FTT to carry its conclusions on the "matter in question" into effect and so to ensure that the taxpayer pays the correct amount of tax. *Investec* shows that the provision is wide enough to allow the FTT to impose a liability greater than an amendment to a closure notice had provided for; and the FTT can also, as it appears to me, revisit entries in a return which HMRC have not amended if that is needed to give full effect to the FTT's conclusions. The better view is that the fact that section 50 envisages a "self-assessment" being increased or reduced does not preclude revision of other entries in the relevant tax return and, likewise, section 50 (as read with section 48) is not to be understood as barring the FTT from making adjustments to a return which flow from its conclusions on the amendment(s) under appeal where an appeal has been brought pursuant to paragraph 34(3) of schedule 18: the FTT can work through the implications of its decision as regards both a self-assessment and an amendment provided that it does not stray beyond the "matter in question". In the present case, accordingly, it was open to the FTT to decide (as it did) that figures in the relevant tax returns of Gunfleet, Gunfleet II and Walney which underlay those that HMRC had amended (as well, presumably, as the companies' self-assessments) could be revised to reflect

> its conclusions even though the closure notices had not themselves amended those entries in the returns."

58. In these two decisions the Court of Appeal has thus emphasised:

(1) Section 49G(4) restricts the ambit of the appeal, with the result that there is a limit on the jurisdiction of the FTT (*Investec* at [70]), and it is for the FTT to decide what the subject matter of the closure notice is within the bounds described (*Investec* at [73]).

(2) The authorities do not support a narrow construction of the key phrases in ss49I and 49G (*Investec* at [71]). The "venerable principle" is an important underlying factor, and has a role to play (*Investec* at [72]).

(3) The context of the closure notice and the surrounding circumstances may demonstrate that the subject matter is broader than the particular conclusion and adjustments addressed in the closure notice (*Investec* at [73]). HMRC may put forward a case on appeal that seeks a greater tax liability than that set out in the closure notice (*Investec* at [71] and [72]).

(4) The FTT can carry its conclusions on the "matter in question" into effect and ensure the taxpayer pays the correct amount of tax. The FTT can revisit entries in a return which HMRC have not amended if that is needed to give full effect to the FTT's conclusions, provided it does not stray beyond the "matter in question" (*Orsted* at [135]).

59. Here, HMRC has issued the Closure Notice to Mr Gwyn-Jones. The Closure Notice states the officer's conclusions (in accordance with s28(1)) and makes the amendments of the return required to give effect to his conclusions (in accordance with s28(2)(b)). No amendment was made to charge income tax on the amount of the Foreign Dividend; and there is no provision in TMA 1970 which permits HMRC to amend a closure notice which has been issued. There is no challenge to the validity of the Closure Notice itself (and we address below Mr Hayden's submission that a valid closure notice is valid only for the specific sources of income identified).

60. The FTT set out its construction of the Closure Notice, which has not been challenged, in FTT[9]. The FTT concluded:

> "9. … when the Closure Notice is read in context and in light of the entirety of the factual matrix, the meaning of the conclusions in the Closure Notice are that the Appellant was UK resident and chargeable to tax in the UK on all of his world-wide income and gains."

61. Mr Gwyn-Jones' Notice of Appeal said that his appeal was "about" CGT, and the "Desired Outcome" is stated to be "That the decision of HMRC that Mr Gwyn-Jones was resident in the UK in 2005-06 be overturned. We believe the decision should have been that Mr Gwyn-Jones was not resident in the UK." The Grounds of Appeal then focus exclusively on the residence issue - nothing was said about particular items of income or gains. Subsequently, Mr Gwyn-Jones sought permission to amend his Grounds of Appeal to include arguments on the operation of what was then s13 Taxation of Chargeable Gains Act 1992, but again nothing was said about particular items of income or gains.

62. Mr Hayden's submissions that the Foreign Dividend is outside the scope of the "matter in question" included that:

(1) the amendments made in the Closure Notice define the subject matter of the appeal, and HMRC have not made an amendment to charge income tax on the Foreign Dividend; and

(2) allowing HMRC to amend their SoC would be contrary to the statutory framework for investigating and correcting taxpayer errors which does not permit HMRC to amend a closure notice and which includes time limits for the issue of discovery assessments.

Absence of amendment of the return to charge income tax on the Foreign Dividend

63. Mr Hayden submitted that, as HMRC made no amendment in the Closure Notice for the Foreign Dividend, there is no scope to increase Mr Gwyn-Jones' assessment to reflect any income tax liability he may have on that Foreign Dividend. Mr Hayden emphasised the requirements of s28A that a Closure Notice both states the conclusions and makes the amendments to give effect to that conclusion.

64. We do not accept this submission.

65. An appeal may be brought under s31 against "any conclusion stated or amendment made by a closure notice" (emphasis added). HMRC's conclusion in the Closure Notice was that Mr Gwyn-Jones was UK resident and chargeable to tax in the UK on all of his worldwide income and gains. He has appealed against that conclusion. In this situation, the "matter in question" is the conclusion on residence. Given the indivisible nature of that single conclusion, an appeal against the residence conclusion of necessity means that the appeal relates to the income and gains that would be chargeable if Mr Gwyn-Jones were UK tax resident as well as to the question whether he was UK resident in the first place.

66. Our conclusion is entirely in line with the authorities. It is clear from *Investec* (at [73] – and confirmed by the Court of Appeal in *Orsted* at [130]) that the "subject matter [of an appeal may be] broader than the particular conclusion and amendments addressed in the closure notice". Mr Hayden drew attention to the fact that at [135] in *Orsted* Newey LJ had said that s50 is "not to be understood as barring the FTT from making adjustments to a return which flow from its conclusions on the amendment(s) under appeal". This reference to the amendments under appeal has to be understood with reference to the fact that paragraph 34(3) of Schedule 18 provides for an appeal to be made against the amendments and does not refer to the conclusions, unlike s31(1)(b).

67. Similarly, once it is recognised that the subject matter of an appeal can be broader than the particular amendments made in a closure notice, then the FTT's powers under s50(7) cannot be constrained by those amendments. The FTT's task is to decide the matter in question and, if it decides that an appellant has been undercharged by an assessment, to increase the assessment. There is nothing in s50(7) to limit the FTT's power to increase those items which were the subject of amendments by HMRC in the closure notice. This has been confirmed by the Court of Appeal in *Orsted*. The taxpayers submitted that the "matter in question" as regards the appeals to the FTT are limited to the amendments which HMRC made in the closure notice and that the tax legislation does not confer on the FTT power to change a part of a tax return which HMRC has not amended. That submission was emphatically rejected by the Court of Appeal. Newey LJ explained that s50 "is intended to empower the FTT to carry its conclusions on the "matter in question" into effect and so to ensure that the taxpayer pays the correct amount of tax. … the provision is wide enough to allow the FTT to impose a liability greater than an amendment to a closure notice had provided for; and the FTT can also, as it appears to me, revisit entries in a return which HMRC have not amended if that is needed to give full effect to the FTT's conclusions" ([135]).

68. We do not consider that the decision of the Court of Appeal in *Archer* assists Mr Hayden. Lewison LJ referred at [17] to the fact that, under s28A, there are two express statutory requirements of a closure notice, namely the officer must state his conclusions and either state that no amendment of the return is required or make the amendments required to give effect to his conclusions. This is undoubtedly correct; but here the Closure Notice did meet these

requirements. The decision in *Archer* was addressing whether HMRC had amended the return for this purpose - Lewison LJ concluded that the closure notices did not comply with s28A(2) ([31]), but that s114 operated to validate the closure notices as amendments of Mr Archer's returns and self-assessments ([41]). There was no challenge to the validity of the Closure Notice. Nevertheless, Mr Hayden sought to submit, based on *Archer*, that a valid closure notice is only valid for the specific sources of income identified. There is nothing in *Archer* to support such a proposition; furthermore, such a submission is contrary to the subsequent decision in *Orsted* which, although not addressing the validity of a closure notice, makes it clear that the FTT can increase or reduce a self-assessment by revising entries in a return which had not been amended by the closure notices.

69. At the substantive hearing, HMRC may ask the FTT, if the FTT concludes that Mr Gwyn-Jones was UK resident in 2005/6, to increase Mr Gwyn-Jones' assessment to include an income tax liability in respect of the amount of the Foreign Dividend (assuming all other requirements for such a liability are satisfied). This is not precluded by HMRC not having made an amendment in the Closure Notice in relation to that Foreign Dividend.

Consistency with statutory framework

70. Mr Hayden submitted that, if HMRC are permitted to amend their SoC, this would be circumventing the limitations in the statutory framework, which includes time limits for the issue of discovery assessments and does not include any provision for HMRC to amend a closure notice.

71. As a matter of form, HMRC are clearly not trying to amend the Closure Notice. They accept that they do not have power to do so. Mr Hayden submitted that HMRC are effectively trying to achieve the same thing, by seeking to make an amendment to their SoC.

72. We do not agree that HMRC's application to amend their SoC is contrary to the statutory framework.

73. Once a closure notice has been issued, if a taxpayer does not ask for a review or give notice of appeal to the FTT, then, subject to HMRC's power to issue a discovery assessment, the amendments of the return made in that closure notice are final.

74. However, if a taxpayer gives notice of appeal to the FTT, the legislation sets out the jurisdiction of the FTT to determine the "matter in question" (the scope of which is addressed above) and empowers the FTT, if it decides that the taxpayer is undercharged by an assessment, to increase the assessment. It is abundantly clear that, where a taxpayer brings an appeal, he starts a process which, within limits, can result in his tax liability being increased. That process is catered for by, and falls entirely within, the statutory framework.

Conclusion

75. For the reasons set out above, the FTT did not make an error of law in concluding that the Foreign Dividend is within the scope of the appeal. The FTT accordingly had jurisdiction to grant permission to HMRC to amend their SoC.

DISPOSITION

76. The appeal is dismissed.

JUDGE JEANETTE ZAMAN
JUDGE MARK BALDWIN

Release date: 05 May 2026