



Neutral Citation: [2026] UKFTT 516 (TC)

Case Number: TC 09835

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

In public by remote video hearing

Appeal reference: TC/2019/04858
TC/2019/04883

Capital gains tax – situs of assets when disposal made – whether loan notes were “registered” in Jersey at the time of their redemption – meaning of “register” and “registered” for the purposes of s.275(1)(e) TCGA – whether penalties for negligent delivery of incorrect returns under s.95 TMA should be upheld

Heard on: 21-22 January 2026
Judgment date: 01 April 2026

Before

**TRIBUNAL JUDGE KEVIN POOLE
SONIA GABLE**

Between

**THE PERSONAL REPRESENTATIVES OF MUKESH SEHGAL (1)
PROMILA SEHGAL (2)**

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellants: Michael Firth KC, instructed by TT Law

For the Respondents: Sadiya Choudhury KC, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. These appeals are in respect of capital gains tax (“CGT”) liabilities of some £4.9 million (in relation to the first Appellants, in their capacity as personal representatives of Mr Mukesh Sehgal (“MS”), who unfortunately died in 2023) and £1.3 million (in relation to the second Appellant (“PS”)) which HMRC say arise from disposals made by MS and PS of certain loan notes in the tax year 2006-07, along with related penalties, calculated at 25% of the tax said to have been underdeclared, for negligent delivery of the returns which HMRC claim to have been incorrect due to omission of these liabilities.

2. The three issues in the appeals are:

(1) whether the liabilities to CGT arose at all – and here, as MS and PS were accepted by HMRC as being domiciled outside the UK, the determining factor is whether the loan notes disposed of were “situated outside the United Kingdom” for the purposes of s 12 Taxation of Chargeable Gains Act 1992 (“TCGA”) at the time of the disposals. At the heart of this issue lies the composite question of what is required in order to render the loan notes “registered” and what constitutes a “register”, in each case for the purposes of s 275(1)(e) TCGA;

(2) if issue (1) is decided in favour of HMRC, whether MS and/or PS acted negligently in delivering their respective returns for the tax year 2006-07 without including the liabilities; and

(3) if issues (1) and (2) are decided in favour of HMRC, whether the mitigation applied by HMRC in calculating the penalties they imposed was appropriate.

THE FACTS

3. We received a bundle of documents extending to 1,892 pages and heard oral evidence from Mr Brian White (the former partner at Deloitte who had supervised the tax advice given by that firm), PS and her son Raj Sehgal. In addition, we admitted a written witness statement of officer Sally Harper from HMRC but, with the agreement of both counsel, did not hear oral evidence from her. We also admitted a written statement made by MS before his death.

4. We find the following facts.

The transactions leading up to the relevant disposal and the records of it

5. MS and PS had built up a successful business from the early 1980s as a clothing wholesaler importing fashion products for supply to retailers. In the 1990s they started to bring their family into the business, and by 2005 they were considering succession planning as MS’s health had taken a turn for the worse. A decision was taken to sell their majority shareholding in the company (called Visage Holdings Limited (“VHL”)) to the next generation of the family, with financial assistance from the Bank of Scotland (who would also take a minority equity stake).

6. It is not necessary to provide a detailed account of the structure that was adopted for the transaction, except to recount that all the shares in VHL were acquired by a new company (which subsequently took the name “Visage Group Limited” (“VGL”)). MS and PS took a combination of cash and loan notes issued by VGL in exchange for their shares in VHL. The bulk of their consideration was provided in loan notes, which were guaranteed by the Bank of Scotland. The transaction (with a stated total consideration of just under £100 million) completed on 16 September 2005, the day after clearance was given by HMRC in respect of it pursuant to s 138 TCGA.

7. On completion of the transaction, MS received cash of £307,859 and loan notes to a face value of £37,182,975. PS received cash of £75,850 and loan notes to a face value of £9,161,145. The Deed Poll issued at completion which constituted the loan notes included the following provisions:

5. REDEMPTION

5.1 Subject to clause 5.8, the Company shall be entitled, upon giving not less than 10 Business Days' prior notice in writing to each Noteholder, to redeem without penalty at any time at par the Notes or any part thereof plus any accrued interest for the time being outstanding and, on the expiry of the notice, the Notes in respect of which such notice has been given shall be so redeemed and such accrued interest so paid.

5.2 Subject to clause 5.8, a Noteholder may, by 20 Business Days' prior written notice to the Company, demand (any such demand to be in multiples of at least £1,000,000 (or the remaining principal amount of the Notes (if less))) that the Company shall redeem all or part of the principal amount of the Notes owned by the that Noteholder together with interest. To exercise this right, the Noteholder must complete and sign the redemption notice set out in schedule 5 and send this to the Company together with the certificate in respect of the Notes to be redeemed.

5.3 If any date for redemption of the Notes would otherwise fall on a day which is not a Business Day, it shall be delayed to the next day which is a Business Day.

5.4 Any redemption or purchase by the Company of part of the outstanding Notes shall be made pro-rata to the holdings of the Noteholders.

5.5 Every Noteholder, part or all of whose Notes is due to be redeemed under this clause 5 or otherwise repaid shall, not later than the due date of redemption, deliver the Certificate representing such Notes to the Company or as it shall direct. If part only of the Notes represented by the Certificate is then due to be redeemed or repaid, the Company shall, at its discretion, either endorse the Certificate with a memorandum of the date and amount paid to the Noteholder and return it to him or shall cancel the Certificate and without charge issue to the Noteholder a new Certificate for the balance of the principal amount due to him.

5.6 All Notes redeemed pursuant to this clause 5 or otherwise repaid shall be cancelled and the Company may not reissue the same.

5.7 As and when the Notes are redeemed under the provisions of this clause 5 or otherwise repaid, the Company shall, subject to compliance by such Noteholder with clause 5.4, pay to each Noteholder the full principal amount of the Notes held by him being redeemed together with any accrued interest thereon, the amounts received being first applied against accrued interest.

5.8 No redemption of the Notes may take place within the 6 month period following the date of this deed.

...

10. PAYMENT AND TITLE

10.1 The Company will recognise the person shown in the Register at the close of business on the Business Day before each Interest Payment Date or the date of repayment or redemption (as the case may be), as the holder of that Note and as the person entitled to receive and give effectual discharge for such interest or the monies comprised in them. Any payment of principal or interest

in respect of the Notes shall be paid to such person notwithstanding any intervening transfer or transmission of the Notes.

10.2 The principal amount of the Notes and any accrued interest will be payable at the registered office of the Company or at such other place as the Company may from time to time appoint by notice in writing to the Noteholder.

10.3 The Company shall not be bound to take notice or see to the execution of any trust whether express or implied or constructive to which the Notes may be subject and shall not be affected by any notice it may have whether express or constructive of the right, title, interest or claim of any other persons to or in the Notes or monies.

10.4 The Company shall recognise the executors or administrators (as the case may be) of a Noteholder as the only persons having any title or interest in such Notes on the death of such Noteholder. The Company shall recognise the survivor or survivors of joint registered holders of Notes as the only person or persons as having any title or interest in such Notes on the death of one or more of such joint registered holders.

11. REGISTER OF NOTEHOLDERS

11.1 The Company shall at all times maintain a register ("Register") at its registered office or at such other place in the United Kingdom as it may from time to time notify to the Noteholders in which shall be entered the names and addresses of the holders for the time being of the Notes together with the amounts of their respective holdings of Notes, the dates upon which they were respectively registered as holders of such Notes, the serial number of each Certificate issued and its date of issue and the date on which a person ceased to be a Noteholder.

11.2 The Company shall promptly enter in the Register each change to the information specified in clause 11.1.

11.3 Each Noteholder shall notify the Company of any change of his name or address and the Company upon receiving such notification shall alter the Register accordingly.

11.4 The Register shall at all reasonable times during business hours be open for inspection by the Noteholders or any of them or by any person authorised in writing by them. The Noteholders or any of them may at any time and from time to time request a copy of the Register or any part of it.

11.5 The Company shall promptly deliver to the Guarantor such information concerning the state of the Register as the Guarantor may, from time to time, reasonably request.

...

15. SUBSTITUTION

15.1 The Company (or, where a substitution has taken place under this clause 15, a Substituted Debtor (as the case may be)) may with the prior written consent of the Guarantor and without the consent of the Noteholders, substitute any subsidiary or holding company of the Company (the "Substituted Debtor") for, or in place of, the Company (or of any previous Substituted Debtor under this clause 15 (as the case may be)) as the principal debtor under this deed in respect of all or any part of the Notes. A substitution shall be made by means of a deed (the "Substitution Deed") executed by the Company (or insofar as relevant any previous Substituted Debtor under this clause 15 who is the principal debtor under this deed at the relevant time (as

the case may be)) and the Substituted Debtor which is to replace it in such form as they may agree, a copy of which shall be made available for inspection by the Noteholders and the Guarantor.

15.2 Immediately on the execution of the Substitution Instrument and compliance in full with the provisions of clause 15.1, the Substituted Debtor shall assume liability as the principal debtor under this deed in respect of such of the Notes to which the Substitution Deed relates for all moneys payable from time to time in relation to such Notes or otherwise under or in respect of this deed in relation to such Notes. Upon such execution and compliance with clause 15.1, the Company (or any such previous Substituted Debtor (as the case may be)) shall automatically be released from any and all of such liabilities and obligations under this deed (and/or, insofar as relevant, under any Substituted Deed) and in respect of such Notes (other than any existing liability in respect of any breach of such deed). Not later than 10 Business Days after the execution of the Substitution Deed and after compliance with the provisions set out in clause 15.1, the Company shall give notice of the substitution to the relevant Noteholders and the Guarantor. Such notice shall also state where copies of the Substitution Deed may be inspected. The non-receipt of notice by, or the accidental omission to give notice to, any Noteholder shall not invalidate any substitution effected pursuant to this clause 15.

15.3 On the execution of the Substitution Deed and compliance with the other provisions of clause 15.1, the Substituted Debtor shall be deemed to be named in this deed and on the Notes to which the Substitution Deed relates as the principal debtor in place of the Company (or of any previous Substituted Debtor (as the case may be)) as provided in the Substitution Deed. The existing certificates relating to such Notes held by the Noteholders (including the conditions endorsed thereon) shall not be cancelled but shall remain valid in relation to the Substituted Debtor as aforesaid.

8. The loan notes were structured so as not to be qualifying corporate bonds for CGT purposes.

9. At or shortly after the issue of the loan notes to MS and PS by VGL, a formal hard copy register of the loan notes was created on behalf of VGL by its solicitors. It was structured in three parts. Part 1 (entitled "Issue of Loan Notes") recorded the issue of loan notes to MS and KS on 16 September 2005, giving the nominal amounts of loan notes issued to each of them, noting that the loan notes were "Issued as consideration for the acquisition of shares in Visage Holdings Limited", and referring to the relevant page in the "Register of Loan Note Holders" (see below). Part 2 (entitled "Register of Transfers of Loan Notes") remained blank. Part 3 (entitled "Register of Loan Note Holders") consisted of two sheets, one each for MS and PS. On each sheet a "Date of entry as holder" was given (16 September 2005 in each case), the respective names and address of MS and PS were stated and a note of the nominal amount of loan notes issued to them respectively. Further entries were added to this document later (see [24] below).

10. It can be seen that the earliest redemption date for the loan notes held by MS and PS was in March 2006. With that date approaching, they sought advice from Deloitte as to the procedure to be used to encash them. We infer that Deloitte had, from the outset, considered the prospect of substituting an offshore subsidiary of VGL as the debtor under MS and PS's loan notes, with an eye to enabling MS and PS to take advantage of their non-UK domiciled status to avoid an immediate charge to CGT on redemption of their loan notes; they had, shortly before completion of the sale of VHL, provided suggested wording for the "Substitution" clause set out above to MS and PS's solicitors for inclusion in the deed poll for their loan notes.

11. There was no evidence brought to our attention to show exactly when MS and PS had been made aware of this possibility, however they were clearly aware of it by the time they were considering redeeming their loan notes in early 2006, as a “Loan Note Planning” report was produced for them by Deloitte dated February 2006. This report recorded that “it has been agreed that the loan notes will be redeemed 6 months and two weeks after the issue date, which will be 30 March 2006”. The report went on to state that if the loan notes were simply redeemed, that would result in CGT liabilities for MS and PS at a rate of 10%. However, if an offshore company were substituted for VGL as debtor under the loan notes, then because of the non-domiciled status of MS and PS, it would be possible to redeem them without any CGT liability except to the extent the proceeds were remitted to the UK.

12. The report, which was seen by MS and PS, included the following text:

4.1 Proposed Planning

4.1.1 Step 1

At present the loan notes are UK assets issued by Broomco (3856) Limited¹, a company incorporated in the UK.

Broomco (3856) Limited should take advantage of the Substitution Clause (clause 15) of the loan note instrument in order to transfer the liabilities and obligations of the loan notes to a subsidiary company incorporated outside the UK. The funds backing the loan notes should also be transferred to the new subsidiary.

A deed of agreement should be signed by the companies ('Substitution Deed'). The agreement will state that Broomco has agreed to transfer to the new subsidiary all the obligations and liabilities in respect of the loan notes as stated in the loan note instrument. The new subsidiary agrees to accept these obligations and liabilities.

The loan note register will be required to reflect the transfer of the loan notes obligations and liabilities from Broomco (3856) Limited to the new subsidiary.

The loan notes upon transfer are now assets held outside the UK and should fall outside the charge to UK capital gains tax for an individual with non-UK domicile status provided the proceeds are not remitted to the UK, as this would crystallise a capital gain for UK tax purposes.

4.1.2 Step 2

It is possible to utilise an offshore interest in possession trust to remit capital from the trust to the UK and no capital gains tax would arise.

Mukesh and Pamela will need to request the redemption of the loan notes. It is critical that the loan notes are not redeemed before they have run the full 6 month period. They will be required to serve the notice 20 business days prior by written notice to the subsidiary company by completing and signing the redemption notice on Schedule 5 of the loan note instrument, along with the loan note certificate.

The date of disposal for capital gains tax purposes is the encashment date. Therefore, on the day before the encashment of the loan notes, the loan notes should be transferred from Mukesh Sehgal and Pamela Sehgal to their respective offshore interest in possession trusts. Stock transfer forms will be required to be completed in respect of this.

¹ The original name of VGL, which had in fact been changed on 26 September 2005.

In addition, the Loan Note register held by the company should be updated to reflect the loan notes have been transferred in order to comply with clause 13.2 of the loan note instrument. This clause deems the transferor to remain the owner of the loan notes until the Register is updated.

The trust should then be the legal owner of the loan notes on the date of encashment. As a result of this no capital gains should arise even if the funds are remitted to the UK.

13. A “Sequence of Events” table was included as part of the report, as follows:

Event	Date	Responsibility
Broomco (3856) Ltd to create an offshore subsidiary	28.02.2006	Broomco/Bailhache
Pamela & Mukesh to request redemption of the loan notes. Bank details completed on the redemption notice should be the trust bank account details	01.03.2006	Pamela/Mukesh
Broomco (3856) Ltd to transfer the valuation and obligations of the loan notes to the offshore subsidiary by way of “substitution” Deed. The Loan Note register to be updated to reflect the transfer of obligation and liabilities.	28.03.2006	Broomco/subsidiary company
Pamela and Mukesh transfer loan notes to their respective life interest settlements. Stock transfer forms to be completed. Loan note register to be updated.	29.03.2006	Pamela/Mukesh/Broomco
Loan Notes are encashed and payment made to trustees.	30.03.2006	Broomco

14. The report was sent by Deloitte to the solicitors for VGL, who pointed out that the “Sequence of Events” was not possible in accordance with the terms of the loan notes, as those terms provided that no transfer of the loan notes could take place if a notice of redemption had been given to VGL.

15. In response to this, the proposals were adjusted. The proposal for transfers of loan notes by MS and PS to their respective life interest settlements was dropped.

16. On 7 April 2006, Deloitte confirmed, in response to a request from VGL’s solicitors, that notices of redemption of the loan notes could be given as contemplated in their planning document, and their email included the following paragraph:

Early next week Christine [of Deloitte] will circulate a revised timetable, based on the redemption notice being served on Monday. It will be imperative that this timetable and steps are followed otherwise the planning will not be achieved.

17. On Monday 10 April 2006, MS and KS delivered Redemption Notices for their respective holdings of loan notes, instructing that the redemption proceeds be paid into their joint Jersey bank account with Barclays Bank plc. The due date for payment was stated as being “as soon

as possible and in any event by no later than 20 business days from the date of this Notice.” Due to the timing of the May Day bank holiday and Easter that year, this meant that the latest date for redemption was 11 May 2006. (In fact, the redemptions took place on 12 May, but neither side took any point on the date.)

18. On 11 April 2006, Deloitte sent a revised “Sequence of Events” table as follows to VGL and its solicitors:

Event	Date	Responsibility
Visage Group Ltd to create an offshore subsidiary	10.04.2006	Visage Group Limited/Bailhache
Pamela & Mukesh to request redemption of the loan notes. Bank details completed on the redemption notice should be their personal offshore bank account details	10.04.2006	Pamela/Mukesh
Visage Group Ltd to transfer the liabilities and obligations of the loan notes to the offshore subsidiary by way of “substitution” Deed. The Loan Note register to be updated to reflect the transfer of obligation and liabilities.	Day before cash due	Visage Group Limited/subsidiary company
Loan Notes are encashed and payment made to Pamela and Mukesh’s offshore bank accounts	Day cash due	Visage Group Limited

19. On 18 April 2006 the intended new Jersey subsidiary company of VGL was incorporated by the Jersey Administrators Bailhache Labesse Trustees Limited (“BLTL”) under the name Manakin Limited (“ML”). The detail of what occurred between that date and 11 May 2006 was not explored during the hearing, but on the latter date a number of transactions took place. Most crucially, a Deed of Substitution was entered into between VGL, the Bank of Scotland and ML. That document included the following clause:

2. Substitution

(a) on execution of this Deed by all the parties hereto:

- (i) [VGL] is hereby released from all its obligations under the Loan note Instrument and under the Loan Notes, without prejudice to any claims thereunder which have arisen prior to the date of this deed;
- (ii) [ML] hereby agrees to have transferred to it, and to assume, all of the rights and obligations of [VGL] under the Loan Note Instrument and will replace [VGL] as the principal debtor in respect of all of the Loan Notes outstanding from time to time; and
- (iii) [the Bank of Scotland] hereby grants consent to the Substitution in accordance with the terms of the Loan Note Instrument.

....

20. The redemption proceeds of the loan notes were paid into the joint Jersey bank account of MS and PS on 12 May 2006, PS having telephoned BLTL shortly beforehand, to check that the money was going to be sent to the correct account.

Recording of the loan note holdings of MS and PS

21. Subject to paragraph [22] below, no separate document (whether in electronic or hard copy form) was produced or maintained by BLTL or any other entity on behalf of ML which was specifically identified as a register of the holders of the loan notes in question, although of course the register referred to at [9] above had been prepared at or shortly after the original issue of the loan notes by VGL.

22. A document was provided by Deloitte to HMRC following a meeting on 7 December 2009, under cover of a letter dated 22 February 2010, described in that letter as “the Manakin Limited loan note register”. That document consisted of a single page, headed “Manakin Limited”, with a subheading “Register of Loan Notes”, then a further sub-subheading “Guaranteed Unsecured Loan Note 2010”. The substantive content of the document consisted of four numbered lines of information, each under the column headings “Loan Note Holder”, “Loan Note Holders’ addresses”, “Acquisitions (£)”, “Transfer of notes”, “Date” and “Notes”. In the first two lines, the holdings of MS and PS were stated, giving their home address, the value of their respective loan notes under “Acquisitions”, the date 11 May 2006 and the note “Assignment of loan notes to the company as a substitute for Visage Group Limited under the terms of the Loan Note Instrument”. In lines 3 and 4, their names and addresses were repeated, with the full amounts of their respective loan notes shown as minus figures under the heading “Transfer of notes”, the date 12 May 2006 and the note “Redemption of loan notes”. A total of “0” was then shown at the foot of the “Transfer of notes” column. However, when HMRC asked detailed questions about the provenance of this document, Deloitte replied as follows in a letter dated 4 June 2010:

Following our meeting on 7 December 2009, we requested a copy of the loan note register for Manakin Limited from the former directors of the company. The former directors reviewed their archived records and noted that the loan note register had not been completed accurately. The former directors acknowledged that in accordance with the loan note instrument, the substituted debtor (i.e. Manakin Limited) was required to maintain the loan note register. The loan note register was subsequently completed by the former directors and provided to us.

23. This document was clearly therefore not in existence at the time of the redemptions in May 2006.

24. On or shortly after 11 May 2006, the loan note register of VGL referred to at [9] above was updated by its solicitors. A line was added to the Part 3 entry for each of MS and PS, giving an “Issue date” of 11 May 2006, entering the total nominal value of loan notes originally held under the “Disposals” column, resulting in a nil balance under the “Balance” column, with the word “Redeemed” added under the “Remarks” column. In addition, a “Date of ceasing to hold” of 11 May 2006 was added to each sheet. Much later on 16 February 2010, after HMRC’s enquiries had been running for a while, VGL’s solicitors revisited the register, deleted the word “Redeemed” and inserted “Transferred to Manakin Limited as substitute debtor”; the “Date of ceasing to hold” entry remained unchanged at “11 May 2006”.

25. As to the records maintained on behalf of ML, it is clear that BLTL, in carrying out their duties as administrators of ML, maintained its accounting records. The detail of exactly what records they kept are not clear, however what is known is that those records were sufficient for an apparently related company Appleby Administrators (Jersey) Limited (“AAJ”) to produce, some years later, a number of “trial balance” documents which were provided in various formats to HMRC over the period of their enquiries. Copies of three such documents were included in the evidence before us and are set out in the Appendix to this decision.

26. The first of them was provided to HMRC on 5 August 2013 at a meeting. It is described on its face as a trial balance for the period 18 April 2006 to 19 November 2007 and stamped as “Certified to be a true and exact copy of the original” on 2 August 2013 by an authorised signatory of Appleby Secretaries (Jersey) Limited. On being pressed, BW later acknowledged that this was not a true trial balance but was in fact what he described as a “flow thru” document showing “the throughput of transactional activity through various stages”, from the formation of ML up to its liquidation (though as referred to at [31] below, ML was actually dissolved on 9 August 2007 and not in November 2007).

27. The second and third “trial balance” documents were provided by Appleby Trust (Jersey) Limited to BW on 28 November 2013, but it appears they were not sent to HMRC until some time later (possibly late in 2014). They are stated on their respective faces to be drawn up as at 11 May 2006 and 12 May 2006 respectively, though there was no evidence before us as to the actual date or dates on which they had been produced. These documents were not explored in any detail at the hearing, and we do not find them particularly easy to follow, however we note that there are entries in the 11 May 2006 document in respect of the loan note holdings of MS and PS, albeit that a corresponding receivable owing to ML in respect of its liability under the loan notes is shown as a “creditor”, and we can see no provision in the documents by which ML assumed liability as debtor under the loan notes which provided it with any consideration for doing so which was capable of giving rise to such a receivable in any event. Be that as it may, we accept that on the face of the trial balance document as at 11 May 2006, there is reference to loan note holdings of MS and PS in the relevant amounts. There is no such reference in the 12 May 2006 document.

28. It was not argued that any of these documents constituted a “register” for the purposes of s 275 TCGA and in any event there was no evidence before us to demonstrate that these documents were in existence by 11 or 12 May 2006; however it is equally clear that the records from which they were created must have existed at some point. No evidence from AAJ or anyone else was before us to clarify how and when the underlying records were brought into existence. The nearest thing to such evidence was a paragraph in a letter expressed to be from AAJ (but signed by an unnamed director of Appleby Trust (Jersey) Limited) to BW dated 5 November 2014, which contained the following paragraphs:

Appleby Trust (Jersey) Limited maintained a record of loan notes by way of its bookkeeping ledgers as there were only ever two security holders. There is no requirement under the Companies (Jersey) Law to maintain a specific form of loan note register, and Appleby Trust (Jersey) Limited maintained a list of loan note holders (Mukesh and Promila Sehgal).

...

We confirm that Manakin Limited had listed its two creditors, Mukesh and Promila Sehgal, in its accounting ledgers and they were the only creditors. The loan notes were subsequently redeemed.

29. The bookkeeping/accounting ledgers referred to in this letter were not in evidence before us in any form. We infer that they were kept solely in electronic form, but there was no evidence before us either as to their format or as to the timing of the creation of the entries in them, and in particular there was no evidence before us to demonstrate that they were brought into existence between the time on 11 May 2006 when ML assumed liability as the substituted debtor under the loan notes and the time on 12 May 2006 when the loan notes were repaid. In the absence of any such evidence and in view of the very short period under consideration, we infer on a balance of probabilities that the ledger entries from which the trial balance documents were prepared were only created some time after the repayment of the loan notes on 12 May 2006.

30. We infer that Appleby Trust (Jersey) Limited referred to above was the same legal entity as BLTL. This is reinforced by the fact that the “trial balance” documents referred to a credit item “Cash Held in BLTL Client Account”. There was no evidence before us as to when the name change occurred.

31. ML was dissolved on 9 August 2007, without filing any accounts with the Jersey authorities. There is no evidence that it had maintained any separate records (accounting or other) of its own, beyond those which were prepared for it by BLTL.

Subsequent events

Preparation of tax returns

32. When the time came for preparation of the tax returns of MS and PS, the process in all relevant years was managed and largely dealt with by Deloitte on their behalf. By way of preparation, Deloitte compiled the information known to them and sent out checklists of information they required to complete the returns. Upon receiving the responses, they prepared draft returns including all the relevant information compiled from their own files and the responses received back from MS and PS.

33. A representative of Deloitte would then arrange a meeting with MS and PS and go through the draft returns with them. MS and PS would seek to understand the returns as best they could, but essentially they relied on the expertise of Deloitte. PS in particular would ask questions at the meeting to satisfy herself that everything had been done correctly. At the end of the meeting they would sign the returns, which would then be submitted to HMRC by Deloitte.

34. The cash proceeds received on the disposals of the shares in VGL were included in the returns for the tax year 2005-06; a note explaining the disposal and referencing the loan note element was included in the “Additional information” box in each return.

35. The returns which are in issue in these proceedings in relation to the penalties which HMRC have imposed are those for the tax year 2006-07, which we infer were submitted in late 2007 or January 2008. No entry of any gain on the disposal of the loan notes was included in either return, however the return of MS included the following text in the “Additional information” box:

On 16 September 2005, I disposed of 13,191 ordinary shares of £1 in Visage Holdings Limited, in exchange for a combination of cash and £37,182,975 Guaranteed Unsecured Loan Notes 2010.

In May 2006, Visage Group Limited transferred the liabilities and obligations of the Guaranteed Unsecured Loan Notes 2010 to a company resident in the Isle of Man, by invoking the Substitution Clause of the Loan Note instrument.

On 12 May 2006, I redeemed £37,182,975 Guaranteed Unsecured Loan Notes 2010 in exchange for cash.

As I am not domiciled in the UK, the capital gain in respect of the redemption of the loan notes is assessable to capital gains tax on a remittance basis. I did not remit the proceeds to the UK during the year ended 5 April 2007.

36. The return of PS for 2006-07 contained a note in exactly the same terms (but with the different amounts of her holdings of shares and loan notes).

37. The fact that both notes incorrectly referred to the Isle of Man rather than Jersey was not noticed at the time but was pointed out by Deloitte in their initial response dated 19 February 2009 to HMRC’s letters opening enquiries into the 2006-07 tax returns of MS and PS (see below).

Outline of HMRC enquiries

38. HMRC opened enquiries into the 2006-07 returns of MS and PS on 8 January 2009. It is not necessary here to recount the detail of the enquiries, save to say that they involved lengthy exchanges of correspondence, meetings, an Alternative Dispute Resolution (“ADR”) process and judicial review proceedings, as well as some periods of delay on both sides. On 25 January 2019 HMRC finally issued closure notices (amending the self-assessments of MS and PS) and related penalty determination letters, which were confirmed in statutory review letters issued on 19 July 2019 (in relation to MS) and 20 August 2019 (in relation to PS). MS and PS subsequently appealed to the Tribunal.

THE LAW

39. Section 12 TCGA provided, so far as relevant, as follows:

(1) In the case of individuals resident or ordinarily resident but not domiciled in the United Kingdom, capital gains tax shall not be charged in respect of gains accruing to them from the disposal of assets situated outside the United Kingdom (that is, chargeable gains accruing in the year 1965–66 or a later year of assessment) except that the tax shall be charged on the amounts (if any) received in the United Kingdom in respect of those chargeable gains, any such amounts being treated as gains accruing when they are received in the United Kingdom.

40. Section 275 TCGA, headed “Location of Assets”, provided, so far as relevant, as follows:

(1) For the purposes of this Act—

...

(c) subject to the following provisions of this subsection, a debt secured or unsecured, is situated in the United Kingdom if and only if the creditor is resident in the United Kingdom,

(d) shares or debentures issued by any municipal or governmental authority, or by any body created by such an authority, are situated in the country of that authority,

(da) subject to paragraph (d) above, shares in or debentures of a company incorporated in any part of the United Kingdom are situated in the United Kingdom,

(e) subject to paragraphs (d) and (da) above, registered shares or debentures are situated where they are registered and, if registered in more than one register, where the principal register is situated,

...

41. At the time relevant to these appeals s 95 Taxes Management Act 1970 (“TMA”) provided as follows:

Incorrect return or accounts for income tax or capital gains tax.

(1) Where a person fraudulently or negligently—

(a) delivers any incorrect return of a kind mentioned in section 8 or 8A of this Act (or either of those sections as extended by section 12 of this Act),
or

...

he shall be liable to a penalty not exceeding the amount of the difference specified in subsection (2) below.

(2) The difference is that between—

(a) the amount of income tax and capital gains tax payable for the relevant years of assessment by the said person (including any amount of income tax deducted at source and not repayable), and

(b) the amount which would have been the amount so payable if the return, statement, declaration or accounts as made or submitted by him had been correct.

42. Section 100 TMA provided that, in cases such as the present:

... an officer of the Board authorised by the Board for the purposes of this section may make a determination imposing a penalty under any provision of the Taxes Acts and setting it at such amount as, in his opinion, is correct or appropriate.

43. Under s 100B(2) TMA the Tribunal is empowered, on appeal, to reduce or increase the amount of any penalty:

(1) An appeal may be brought against the determination of a penalty under section 100 above and, subject to sections 93, 93A and 95A of this Act and the following provisions of this section, the provisions of this Act relating to appeals shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax

(2) On an appeal against the determination of a penalty under section 100 above section 50(6) to (8) of this Act shall not apply but—

(a) in the case of a penalty which is required to be of a particular amount....

(b) in the case of any other penalty, the First-tier Tribunal may –

(i) if it appears that no penalty has been incurred, set the determination aside,

(ii) if the amount determined appears to be appropriate, confirm the determination,

(iii) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as it considers appropriate, or

(iv) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as it considers appropriate

44. It is agreed that the burden lies on HMRC to show that the Appellants are liable for a penalty. There is no suggestion of fraud in this case, so the burden lies on HMRC to establish that MS and PS acted negligently in delivering their respective returns, if those returns are found to have been incorrect.

THE ARGUMENTS

Situs of loan note assets

For the Appellants

45. Mr Firth KC, in seeking to argue that the assets in question (i.e. the loan notes) were “situated outside the United Kingdom” for the purposes of s 12 TCGA at the time of their redemption, sought to rely on s 275(1)(e) TCGA, on the basis that they were “registered” in Jersey at that time, the records of information maintained about them by or on behalf of ML’s Jersey directors as part of its accounts process amounting to a register for these purposes. As to the content of those records, he relied on the letter dated 5 November 2014 from AAJ referred to at [28] above.

46. On the basis of that letter, he submitted that ML recorded, in relation to each loan note, the identity of the loan note holder and the quantum of his/her holding.

47. This, he submitted, was sufficient to amount to a “register” to render the loan notes “registered” in Jersey at the relevant time. Whilst there was, he accepted, no direct authority on what constituted a register for the purposes of s 275(1)(e) TCGA, there were several cases in which the meaning of “register” and/or “registered” had been considered.

48. First, in *WT Ramsay v IRC* [1979] STC 582, the Court of Appeal was considering arguments as to why a particular debt was not a “debt on a security”. One of the arguments relied on by the taxpayer was that there was no register, to which Templeman LJ responded by saying that “a register is only a record of the identity of lenders and their assignees”. The House of Lords did not disagree with this.

49. Second, in *Collins v British Airways Board* [1982] QB 734, which was concerned with limitation of liability in relation to lost baggage, a reference to “registered baggage” in the Warsaw Convention was under consideration. The term was not defined in the Warsaw Convention, so the Court of Appeal examined the question from first principles. Lord Denning MR (with whom the other members of the Court agreed) said this:

In ordinary speech “register” is a book which contains a list of persons or things of which it is important to keep a record. Entries in it are made by a person who is authorised to keep the list. The *Shorter Oxford English Dictionary*, 3rd ed. (1944), says that a register is “a book in which regular entry is made of details of any kind sufficiently important to be exactly recorded”: and that “to register” is “to make formal entry... in a particular register”: and that “registration” is “the act of registering...”

The earliest use that I know of is the “register of writs” *registrum brevium*. But I remember well the school “register” which was kept by the master, and you had to answer to your name. Nowadays we all speak of a “registered letter”, or sending it by “registered post”. You take the letter to the post office. The lady behind the counter has a book in front of her. She enters in it the name and address on the letter and hands you the counterpart. It is then dispatched as a “registered letter”. In such case the register is the book in which she enters the details. The registration is made when she makes the entry.

50. On this basis, Mr Firth submitted that a “register” is simply a “list of persons or things of which it is important to keep a record”.

51. As to the question of any required format for a “register” to be constituted, he referred to *Re Land Credit Company of Ireland* (1873) LR 8 Ch App 831. In that case, a company had become insolvent and the court was considering the liability of its former members to contribute to it. Under the relevant Companies Act, “every other person who has agreed to become a member of a company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company.” The company in question had maintained two books, one formally entitled “Register of Members” (which contained only the names of the original shareholders) and a second book, specifically referred to in the first, which gave “the whole information which was intended by the Act of Parliament to be given by the register of members”. James LJ (with whom Mellish LJ agreed on this point) said that the second book was “in fact and in truth, a second volume of the register of members”, and he was “satisfied that it was intended to be the register of members subsequent to the list of the original members”. Therefore, the former member whose name had been entered into the second book was to be treated as a member of the company and was accordingly liable to

contribute in its insolvency. This meant, Mr Firth submitted, that anything which contained all the relevant information required to be recorded should be regarded as being a “register” of it.

52. In the modern era, of course, he submitted that the maintenance of a hard copy record was not necessary, referring to s 1135(1) Companies Act 2006, which provides as follows:

(1) Company records –

(a) may be kept in hardcopy or electronic form, and

(b) may be arranged in such manner as the directors of the company think fit, provided the information in question is adequately recorded for future reference.

(2) Where the records are kept in electronic form, they must be capable of being reproduced in hardcopy form.

53. Accordingly, he submitted that a register, in relation to loan notes, need be nothing more than a record of the existence of the loan notes along with the identity of their holders which is maintained by the debtor as a record of such information. This was a matter of substance rather than form. Furthermore, there was no reason why information recorded by a company as part of its accounting processes could not amount to a register – accounting records include lists of things of which it is important to keep a record and do so precisely because it is important to keep a record of those things. There was no reason to draw an artificial line between records maintained as part of accounting processes and records which could be regarded as “registers”. Given the limited information required to be kept (the amounts of the loan notes and the details of their holders), no more formality was required beyond the reflection of the relevant details in ML’s accounting records.

54. Mr Firth went on to submit that since registers in electronic form were clearly allowable, the question arose as to the location of such a register. As to that, an electronic register that was accessed and maintained by the Jersey directors of a Jersey company in Jersey was, in his submission, plainly situated in Jersey. This point had not been raised by HMRC and was therefore explored no further, but he observed that the complexities that might be caused by cloud storage and the uncertain location of such data storage were obviously not as widespread in 2006 as they might be now.

For HMRC

55. Ms Choudhury KC submitted that whilst no particular form was required to constitute a register, guidance from the Courts in other cases indicated that there were two key characteristics of a “register”, neither of which was present in this case.

56. First, she submitted, a record could not be a register unless it had been prepared for the purpose of serving as such. Whilst acknowledging the comments of Lord Denning in *Collins*, she submitted on the basis of *Re Printing Telegraph & Construction Co of Agence Havas, ex parte Cammell* [1894] 2 Ch 392 (where a company attempted to rely on allotment sheets as a register of shareholders) that “preparatory materials” could not constitute a “register”. In that case, Lindley LJ had said this (at 398):

The authorities which have been cited shew that a book or document intended to be a register may be admitted as a register, although the requirements of the Act of Parliament as to the keeping of a register have not been regularly complied with; but I am not aware of any authority for saying that rough memoranda or sheets of paper not intended as a register at all, but intended as materials from which a register may be prepared, can be a register. It is clear from the evidence that these allotment sheets were never intended to be the register. They were allotment sheets giving certain details respecting the

allottees, and containing a column referring to the register, and were intended as materials from which the register was to be formed as distinguished from the register itself. We should be straining the language of the Act of Parliament and straining the evidence if we were to hold that these sheets constituted the register.

57. Agreeing, Lopes LJ said this (at 399):

...it is said that certain allotment sheets are in point of fact, under the circumstances of this case, to be regarded as the register. In my judgment, they cannot be so regarded. They are called "Allotment Book," and they are the materials from which the register is to be subsequently compiled. There are in these allotment sheets omissions of some of the requirements of the Acts of Parliament, though that may not be conclusive. But all these things go to shew that these allotment sheets were not intended to be the register. There is also the column containing references to the register, clearly shewing that the thing subsequently compiled by the company was to be the register...

58. The second key characteristic of a "register", she submitted was that it must be open to public inspection. In support of this, she again cited *Re Land Credit Co*, in which James LJ had said that the second book was "in fact the only book, from which a person having occasion to ascertain anything with regard to the state of the company could get the information which he desired to have."

59. In support of this proposition, she also cited the *obiter* comments of Rix LJ in *R (oao Heather Moor & Edgecomb Ltd) v Financial Ombudsman Service* [2008] EWCA Civ 642. The Financial Ombudsman was required to maintain "a register of each money award and direction made". In fact, the Ombudsman had sought to comply with that rule by keeping an internal database which was not available for public inspection. Rix LJ observed (at [90]) "I have my doubts as to whether such an internal data base amounts to a "register" properly so called. A register is an official list or record. It may be that it can be kept in any form, but I suspect that it needs to be open to public inspection."

60. Ms Choudhury submitted that neither requirement was met here. The trial balances (and, by extension, the underlying accounting records) were plainly not prepared for the purpose of serving as a register (as was tacitly acknowledged by an attempt, after the event, to create a more formal register at a later date – see [22] above). And there was no suggestion that any of the trial balances (or, by extension, the underlying accounting records) was intended to be available for public inspection. Furthermore, it could not be rational for the thoroughness (or otherwise) of a debtor company's internal record keeping practices to determine whether a particular debenture was registered or not, in a situation where the creditor under it would have no means of establishing the facts.

61. In argument, she moderated her position somewhat in relation to the "available for public inspection" requirement, but still asserted that a document could only be a register if it was available for some kind of inspection by those with a valid right to do so (as the loan note holders had in this case under the clause 11 in the loan note Deed Poll – see [7] above); accordingly the form of the document was relevant, in that it should contain the required information in readily accessible and directly applicable form, and that requirement was not satisfied by requiring a so-called "register" to be extracted or pieced together from a wider pool of records.

Penalties

For HMRC

62. Ms Choudhury submitted that PS and MS had failed to follow the advice given to them by Deloittes in relation to the redemption of the loan notes. Deloittes had advised them that the funds to redeem the loan notes would be transferred to ML at the same time as it was substituted as the debtor under the loan notes; however it had never had a bank account. Further, and “more importantly, despite Deloitte’s *[sic]* clear advice”, the loan notes were not registered in Jersey. It was submitted that MS and PS had therefore “failed to act on the advice they received”. In spite of instructing professional advisers, they had failed to communicate properly with them, which meant they had taken no steps to ensure that their returns were prepared on the basis of the transactions as they were actually implemented. In her submission, given the warning that had been given about the need to follow the timetable and steps exactly, a prudent and reasonable taxpayer would not have delivered their return without confirming that they had been exactly followed. The stated general reliance on Deloittes and the other professionals instructed by them was insufficient to exonerate PS and MS from negligence in the delivery of their incorrect returns. This was brought into sharp relief by the fact that PS had actually taken the step of telephoning to ensure that the redemption money would be paid into the correct account; in Ms Choudhury’s submission this clearly demonstrated that PS was in a position to check that the transactions were all being correctly implemented in accordance with the step plan. She also submitted that their failure to seek specific reassurance from Deloittes that everything had been done properly before signing their returns amounted to negligence.

63. She cited the observations of the FTT in *Hanson v HMRC* [2012] UKFTT 314 at [23] – [24]:

23. At one extreme is an error of omission, for example failing to declare a source of income. In those circumstances it seems to me that a taxpayer will almost always be expected to identify the error. At the other extreme an error might involve wrongly construing a complex piece of legislation. In those circumstances the possibility of a penalty may still arise because of the carelessness of the agent, but the taxpayer’s liability to a penalty might well be excluded on the basis that he took reasonable care but did not identify the error.

24. I agree with the general thrust of the guidance given in the HMRC Compliance Handbook. In particular that a taxpayer cannot simply leave everything to his agent. A taxpayer must certainly satisfy himself that the agent has not made any obvious error. That might involve the taxpayer seeking to understand the basis upon which an entry on his return has been made by the agent. However in matters that would not be straightforward to a reasonable taxpayer and where advice from an agent has been sought which is ostensibly within the agent’s area of competence, the taxpayer is entitled to rely upon that advice. At the heart of this issue is the extent to which a taxpayer is required to satisfy himself that the advice he has received from a professional adviser is correct. The answer to that will depend on the particular circumstances of the case.

64. Ms Choudhury submitted that these appeals were analogous to the first extreme identified in *Hanson* in that by failing, before signing their tax returns, to seek any reassurance that those returns were prepared on the basis of the facts as they actually were, they had failed to reveal a gain on disposal of a UK-situs asset, corresponding closely to a failure to disclose a source of income.

65. Whilst HMRC had at an earlier stage admittedly stated that “MKS was not negligent, and did, in fact, take reasonable care”, this was not determinative as it was quite legitimate for HMRC to change their minds after more consideration of the facts.

For the Appellants

66. Mr Firth submitted that it was important to be clear that the “negligence” that HMRC had to establish was not negligence in failing to follow Deloitte’s advice, but negligence in delivering an incorrect return. He cited *Magic Carpets (Commercial) Limited v HMRC* [2023] UKFTT 70 at [93] (in which the extended time limits under s 36 TMA for making an assessment were under consideration):

Section 36 only applies where the taxpayer “carelessly brought about” the loss of tax. The careless implementation of a series of steps in a tax planning scheme does not of itself bring about a loss of tax. It is only when the taxpayer, or a person acting on the taxpayer’s behalf, completes the tax return incorrectly or fails to complete a tax return, that the loss of tax is “brought about.”

67. He submitted that the tax returns in this case had been prepared by Deloitte, the same firm as had advised on the transactions and arranged their implementation. As far as MS and PS were concerned, Deloitte were well aware of the advice they had given, and of what had happened, and had prepared the returns accordingly. They had relied on them in doing so, and by preparing the returns in the way they had, Deloitte were effectively confirming that the steps they had designed had been adequately implemented. Here, he cited *HMRC v Bella Figura* [2020] UKUT 120 (TCC) at [61(1)]:

The FTT had made detailed findings at [81] as to the care that Mr Wightman took to select an appropriate practitioner to prepare documentation in full knowledge that the documentation would need to meet specific requirements. The FTT should have gone on to consider, when formulating its conclusions at [88], whether even in the absence of specific advice, BFL obtained implicit reassurance that the loans would qualify which was enough to amount to the taking of reasonable care. By analogy, a person who instructs a lawyer to act on the purchase of a house might be said to obtain implicit advice to the effect that the documents will operate to convey title simply from the fact that the lawyer prepares those documents and identifies no problem with them.

68. In summary, he submitted that “the clear evidence is that [MS and PS] took advice and relied on professionals both as to the implementation of the advice and completion of their tax returns in light of what had been implemented. That amounts to reasonable care.”

DISCUSSION AND DECISION

Situs of loan note assets

69. The key question with which we are concerned is whether the loan notes are to be regarded as having been situated in Jersey at the time of their redemption pursuant to s 275(1)(e) TCGA: “... registered ... debentures are situated where they are registered and, if registered in more than one register, where the principal register is situated”.

70. It is clear that to fall within this provision, any debentures must be “registered debentures”, and that their registration must be effected in a “register” which is situated in a particular place. This leads logically on to an examination of what might, in the present case, be argued to be a relevant “register” at the time of the redemptions. It seems to us that there are four possibilities:

- (1) in accordance with Mr Firth’s main argument, that the accounting records maintained in Jersey on behalf of ML constituted the only (and therefore the relevant)

register. If this is the case, then the appeals must succeed, because the consequence of it is that the loan notes were registered in Jersey;

(2) the original register maintained on behalf of VGL from the time when the loan notes were first issued constituted the only (and therefore the relevant) register. If this is the case, then the appeals must fail, because the consequence of it is that the loan notes were registered in the United Kingdom;

(3) both the accounting records maintained on behalf of ML in Jersey and the more formal register maintained on behalf of VGL in the United Kingdom were relevant “registers”. If this is the case, then it is necessary to determine which of them was the “principal register” at the time of the redemptions. If the Jersey register was the principal register, the appeals would succeed and if the UK register was the principal register, then they would fail; and

(4) Neither the accounting records maintained on behalf of ML in Jersey nor the more formal register maintained on behalf of VGL in the United Kingdom was a relevant “register”. If this is the case, then the appeals would necessarily fail because the loan notes would have been situated in the United Kingdom when redeemed, pursuant to s 275(1)(c) TCGA.

71. A consideration of these four possibilities leads us straight into the central question addressed at some length by both counsel: what is needed to constitute a “register” for the purposes of s 275(1)(e) TCGA? In essence, Mr Firth contends that a “register” is nothing more than a record of any type, maintained in any format and for any purpose, which contains a list of things which it is important should be recorded, and which is maintained in order to keep a record, for whatever purpose, of those things – in this case the core details of the holdings (the names of the loan note holders and the values of their respective holdings of loan notes). Ms Choudhury on the other hand contends that a record can only be a “register” if it is prepared and maintained with the purpose of serving as a formal record, available for inspection, of the specific information required to be kept (implicitly, not intermixed with other information irrelevant to that purpose).

72. In the present case, the Deed Poll which constituted the loan notes set out very specific requirements as to what information was supposed to be inserted in the register, what its legal effect was and how and where it was to be maintained and made available for inspection. Those requirements became binding on ML upon its substitution as debtor under the loan notes. Clearly the accounting records of ML upon which the Appellants now seek to rely did not even attempt to comply with these requirements, and whilst that does not of itself mean that different records from those required under the Deed Poll could not have amounted to a “register” for the purposes of s 275(1)(e) TCGA, it gives some illustration of what was considered to be the appropriate content and format of a “register” in this case. Indeed, clause 10 of the Deed Poll made it clear that the register was to be the authoritative record, so far as VGL was concerned, of the ownership of the loan notes (see [7] above).

73. We consider that, as Ms Choudhury submitted, a “register” in the present context is something qualitatively different from a simple “record” (or even a collection of records). The words “register”, “registered” and “registration” in our view connote a degree of formality and specificity about the interlinked elements of (i) the information which is to be included, (ii) the formality of the way in which it is to be recorded and (iii) the intended purpose of recording it (which, in our view, should be so as to serve as a single identifiable formal point of reference to which recourse can be had in order to obtain an authoritative statement of the information recorded in it).

74. We then consider the detail of what is actually argued by Mr Firth to amount to the “register” in this case. The best argument available to him on the facts is that some unspecified accounting records which have not been put in evidence, made on an unknown date, from which various later trial balances were derived which showed the names of the two loan note holders and the amounts of loan notes respectively held by them, are sufficient to constitute a “register” of those loan notes.

75. There are a number of problems with this argument. First of all, there was no evidence before us that the underlying accounting records upon which he seeks to rely had even been brought into existence by the time the loan notes were redeemed on 12 May 2006 (remembering that the restructuring of the loan note obligations to substitute ML as the debtor only took place the day before). Nor was there any evidence before us as to precisely what the content of those records was or how they were structured, once they were created. It is therefore impossible to ascertain whether any identifiable section of them would have contained the names and loan note holding values of MS and PS: the best Mr Firth can argue is that all that information would have been contained there somewhere if a proper search had been made, and invite us to find that the records did exist by the time the redemptions took place.

76. We do not consider this comes close to establishing that, by the time of redemption on 12 May 2006, there existed a “register” of the loan notes in Jersey, in which MS’s and PS’s loan notes were “registered”, for three reasons:

- (1) we are not satisfied, on a balance of probabilities, that even the accounting records which the Appellants seek to rely on were in existence at the time the loan notes were redeemed;
- (2) even if they were, we do not know what form those accounting records took, and it is therefore not possible to say, on a balance of probabilities, whether or not they might be sufficient to amount to a “register”; and
- (3) on the basis of our view of what is required to constitute a “register” (see [73] above), we do not consider that any normal accounting record (or collection of such records) would be sufficient to amount to one.

77. It follows that we do not consider either the first or third possibility identified at [70] above can apply. Whichever of the second or fourth possibilities is correct, the appeals must fail in any event.

78. It follows that we do not consider that the loan notes were registered in a register situated in Jersey within s 275(1)(e) TCGA at the time of their redemption. The loan notes were either unregistered or, if they were registered, it was in the original register maintained on behalf of VGL in the United Kingdom. If the first, then since MS and PS were both resident in the United Kingdom at that time the loan notes instead fell within s 275(1)(c) TCGA; and if the second, then the loan notes were situated in the United Kingdom pursuant to s 275(1)(e) TCGA. In either case, we must dismiss the appeals insofar as they relate to the liabilities to capital gains tax on the redemptions.

Penalties

Liability

79. We essentially agree with Mr Firth that in a situation where MS and PS had engaged reputable and apparently competent advisers to give them advice on what steps to take, to supervise the implementation of those steps and then to draw up their returns in full knowledge of the steps that had been taken, HMRC face an uphill battle in demonstrating that they had acted negligently in delivering the returns, even though they have ultimately turned out to be incorrect.

80. In a situation where the steps to be taken in the reorganisation were not straightforward and involved instruction of overseas professionals and extensive and complex documentation, we consider it unrealistic to expect MS and PS to have overseen the details of all the steps themselves, nor do we consider that they acted negligently by not seeking explicit confirmation from Deloitte that all the transactions in the original plan had been implemented correctly before signing the returns that were drafted for them by Deloitte – in the circumstances, it is quite clear that it was reasonable for MS and PS to take the view that Deloitte, in drawing up the returns as they did, were implicitly confirming that the transactions had all been carried through as originally intended.

81. This view is only reinforced by a close consideration of the “step plan” document which, according to HMRC, MS and PS should have explicitly enquired about. The relevant text in the final version said this (see [18] above):

Event:

Visage Group Ltd to transfer the liabilities and obligations of the loan notes to the offshore subsidiary by way of “substitution” Deed.

The Loan Note register to be updated to reflect the transfer of obligation and liabilities.

Responsibility:

Visage Group Limited/subsidiary company.

82. This text is itself ambiguous. Whatever the writer of the step plan actually intended, in context “The Loan Note register” being referred to can only have been the original loan note register of VGL (since ML could not at that time have already held a register which needed to be “updated”). The plan contains no reference to the need for a new register to be created offshore by the substituted debtor company. The same is true of the more detailed commentary set out in “Step 1” of the “Loan Note Planning” report by Deloitte, reproduced at [12] above. So even on a close reading of these documents, MS and PS would not have been aware of the right questions to ask in order to uncover the problem which has subsequently come to light.

83. In short, in the circumstances we agree with Mr Firth’s submission that “the clear evidence is that [MS and PS] took advice and relied on professionals both as to the implementation of the advice and completion of their tax returns in light of what had been implemented. That amounts to reasonable care.”

84. It follows that we consider the penalties to have been incorrectly imposed and we therefore set them aside pursuant to s 100B TMA.

Mitigation

85. Since we consider the penalties to have been incorrectly imposed and have set them aside, we do not need to address the question of whether the mitigation allowed by HMRC was appropriate. Nonetheless, we consider it appropriate to make some comment on the mitigation allowed by HMRC.

86. First, they allowed 15% mitigation (out of a normal maximum of 20%) for “Disclosure”, for the following stated reason:

The omission of the capital gain on your 2007 tax return has not been accepted with the failure to precisely follow the steps as the per tax planning advise /sic/ from a professional advisor only being discovered during the course of the enquiry.

87. In our view, this amounts to penalising MS and PS for simply not agreeing with HMRC’s interpretation of the law, rather than failing to provide full disclosure during the course of the

investigation. Had we been considering mitigation, we would have seen no justification for anything less than full 20% mitigation under this heading.

88. Second, HMRC allowed 35% mitigation (out of a normal maximum of 40%) for “Co-operation”, for the following stated reason:

The information requested has been supplied, in the main, but some delays have been experienced.

89. Having reviewed the conduct of the investigation, and the various delays on both sides we would, were the matter relevant, have seen no justification for allowing less than the full 40% mitigation under this heading.

90. Third, HMRC allowed 25% mitigation (out of a normal maximum of 40%) for “Seriousness”, for the following stated reason:

The amounts involved in this transaction are significant yet the steps directed by your professional advisor were not precisely followed.

91. For the reasons given above, we do not consider that criticism of MS and PS for failure to ensure correct implementation of the transactions can be justified. The amounts involved were however very significant, which in our view would justify some small penalty loading under this heading, and if it were relevant we would have allowed 30% mitigation under this heading.

92. Overall, therefore, if we had considered the imposition of penalties to be appropriate, we would have found that a 10% penalty rather than a 25% penalty should have been imposed in each case, and we would have reduced the penalties accordingly.

CONCLUSION AND SUMMARY

93. We dismiss the appeals against the liabilities to capital gains tax – see [77] above.

94. We allow the appeals against the penalties and we set them aside in full – see [84] above.

95. If we had been satisfied that penalties were appropriate, we would have reduced them to 10% – see [92] above.

96. To the above extent, the appeals are accordingly **ALLOWED IN PART**.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

97. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

Release date:
01 April 2026

APPENDIX

TRIAL BALANCE DOCUMENTS (CLAUSES [25] – [27])

1. “Flow thru” document covering period 18 April 2006 to 19 November 2007

Manakin Limited

Trial Balance

Period 18.4.2006 – 19.11.2007

	Dr	Cr
Loan Note – Mukesh Kumar Sehgal		37,182,975.00
Loan Note – Promila Sehgal		9,161,145.00
Debtors - Sundry	2.00	
Cash held in BLTL client a/c		3,506.19
Creditors – BL Office account		186.01
Debtor – Visage Group Limited	46,344,120.00	
Share capital		2.00
Secretarial & admin fees	1,858.22	
Formation expenses	1,200.00	
Exempt company fees	600.00	
Sundry expenses	33.98	
	<u>46,347,814.20</u>	<u>46,347,814.20</u>

[Stamped and signed as “Certified to be a true and exact copy of the original”
by a named “Authorised Signatory of Appleby Secretaries (Jersey) Limited”,
dated 02/08/2013]

2. Trial balance as at 11 May 2006

Manakin Limited

Trial Balance

Date 11.05.2006

	Dr	Cr
Loan Note – Mukesh Kumar Sehgal	37,182,975.00	
Loan Note – Promila Sehgal	9,161,145.00	
Debtors - Sundry	2.00	
Cash held in BLTL client a/c		3,506.19
Creditors – BL Office account		186.01
Creditor – Loan Notes		46,344,120.00
Share capital		2.00
Secretarial & admin fees	1,858.22	
Formation expenses	1,200.00	
Exempt company fees	600.00	
Sundry expenses	33.98	
	<u>46,347,814.20</u>	<u>46,347,814.20</u>

3. Trial balance as at 12 May 2006

Client Trial Balance

Appleby Trust (Jersey) Limited

Client Trial Balance

C12613 Manakin Limited

Date 12.05.2006

Client Currency – GBP

<i>Name</i>	<i>Balance Debit</i>	<i>Balance Credit</i>
Debtors - Sundry	2.00	
Cash held in BLTL client a/c		3,506.19
Creditors – BL Office account		186.01
Share capital		2.00
Secretarial & admin fees	1,858.22	
Formation expenses	1,200.00	
Exempt company fees	600.00	
Sundry expenses	33.98	
TOTAL	<u>3,694.20</u>	<u>3,694.20</u>