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FIRST-TIER TRIBUNAL
TAX CHAMBER Taylor House

Appeal Reference:TC/2018/05375, TC/2018/05594,
TC/2018/05639, TC/2018/05652,
TC/2018/05657, TC/2022/13563,
TC/2022/13770, TC/2022/13766

INCOME TAX - Lead Appeals - Participation in arrangements known as the 'Rathowen' Scheme - Appeals dismissed

Heard on: 28 May - 4 June 2025

Judgment date: 26 November 2025

Before

TRIBUNAL JUDGE CHRISTOPHER MCNALL
MR DUNCAN MCBRIDE

Between:

(1) DAVID BENSON
(2) CLARE KELLY
(3) AILEEN BROOMFIELD
(4) MARK BOWEN
(5) CARL MARINO
(6) LISA HIRST
(7) ANDREW CLIFFORD
(10) ANTHONY BUTLER

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

Ximena Montes Manzano and Stephen Morse, both of Counsel, for the Appellants, instructed by WTT Consulting Ltd

Sadiya Choudhury KC and Colm Kelly, both of Counsel, for the Respondents, instructed by General Counsel and Solicitor to HMRC

DECISION

OUTCOME

1. For the reasons set out more fully below, we dismiss the appeals of all the appellants.

INTRODUCTION

2. These are two groups of lead appeals (Appellants 1-5; and 6, 7 and 10) arising out of the lead appellants' individual participation (or, in the case only of Mr Butler, his alleged participation) in a contractor loan scheme known as the 'Rathowen' scheme (**'the Rathowen Scheme'**/**'the Scheme'**). It seems to be the case that many more other persons - at least 700 - participated in the Scheme. Of these many appealed: the sixth Appellant - Ms Hirst - is identified as the lead appellant along with 81 others together known as 'the Spring Group'.

3. The appeals challenge Closure Notices with Revenue amendments showing additional Income Tax and National Insurance contributions due.

4. In summary, the Rathowen Scheme operated through an Isle of Man company (Rathowen Ltd; '**Rathowen**') and an Isle of Man trust known as the "Fernleigh Employee Benefit Trust" (**'Fernleigh'**). Fernleigh's trustees were IoM companies: Ronsard Limited ('**Ronsard**') and Hazelmere Ltd ('**Hazelmere**').

5. The Appellants were predominantly, at the relevant time, UK-based IT professionals, providing IT services to UK corporate end clients via a cluster of other companies which were associated with the so-called Montpelier network of companies ('**Montpelier'**). The companies associated with Montpelier were MRG Consulting Ltd ('**MRG**') and Montpelier (Search & Selection) Ltd ('**MSS**').

6. In broad terms, by virtue of the Rathowen Scheme, payments from the end-clients were directed so that, after the deduction of fees by (successively) MRG/MSS and then Rathowen, the Appellants received the net, broken down into a comparatively small sum from Rathowen and a larger sum (described as an interest free loan, and described as free of income tax consequences) from Ronsard and/or Hazelmere.

7. The Appellants filed self-assessment Income Tax returns which declared that they were self-employed.

8. The white space disclosures (populated by Montpelier, but approved and signed by each Appellant) said:

> "During the year I received a short term interest free loan of £[*****] from a client for whom I perform IT services. I have not brought any income into my accounts in relation to the loan as I do not believe there are any provisions in the Taxes Acts which require me to do so".

9. In 2010/11, HMRC opened enquiries into the relevant self assessment returns and issued closure notices.

The 2018 Closure Notices

10. For Appellants (1)–(5) Closure Notices were issued in March 2018 (**'the 2018 Closure Notices'**).

11. In the 2018 Closure Notices, HMRC originally relied (in part) on the Transfer of Assets Abroad ('**ToAA**') provisions, but do not now seek to uphold the closure notices on ToAA

grounds. HMRC nonetheless seeks to uphold the 2018 Closure Notices on the basis, as set out in the 2018 Closure Notices, that the affected taxpayers are:

> "chargeable to tax on the whole of the profits of your self-employment under Part 2 Income Tax (Trading and Other Income) Act 2005. The amounts described as "loans" and "fees" form part of the income arising from your self-employment".

The 2021 Closure Notices

12. For Appellants (6),(7) and (10) the Closure Notices were issued in 2021 (**'the 2021 Closure Notices'**).

13. In the 2021 Closure Notices, HMRC's sole stated reason for its conclusion relied on ToAA, but the 2021 Closure Notices went on to say:

> "You should note that, depending on the exact nature of any contention put forward on your behalf to the contrary, HMRC may wish to additional or alternative grounds in support of amendment of your personal return".

14. The accompanying cover letters to the 2021 Closure Notices said:

> "There are other arguments as to the possible tax consequences that relate to the payments for services provided via Rathowen Ltd. These are not properly part of the closure notice as these are not our conclusions, but we thought it proper to note that if you disagree with the enclosed closure notice and refer that disagreement to a Tax Tribunal, HMRC reserves the right to refer to alternative arguments which may led to a different amendment to your tax return.
>
> Based on the information and documents that have been received, we believe that a variety of taxing provisions could still apply.
>
> For example:
>
> We may argue that [£*****] should not have been included in your return as self-employment and the [£*****] is taxable as employment income. This is because section 44 Income Tax (Earnings and Pensions) Act 2003 applies on the basis that your agency contract was held with Rathowen Ltd."

15. All the 2018 and 2021 Closure Notices were given under Sections 28A(1) and (2) of the *Taxes Management Act 1970.*

The section 684(7A)(b) decisions

16. On the footing that (i) a liability to tax arose on some of the Appellants in respect of earnings being treated for income tax purposes as duties of an employment held with Rathowen, and which arose in connection with the Appellants' use of the Rathowen Scheme; and (ii) the deemed employer, Rathowen, not being within the territorial scope of the PAYE system, HMRC also decided to exercise its discretion, under ITEPA 2003 section 684(7A)(b), to disapply the PAYE Regulations from the end-users of those Appellants' services. That was on the basis that the end-users were not aware of, or party to, the Appellants' participation in the Rathowen Scheme.

17. Consequently, the outstanding tax fell to be paid by the Appellants and not by the end-users.

THE GROUNDS OF APPEAL

Appellants 1 to 5

18. Their Grounds of Appeal have gone through several changes.

19. The originally filed Grounds of Appeal for Appellants 1-5 (all filed in August 2018) were all settled by PricewaterhouseCoopers (PWC), and are in terms materially identical each other.

20. They were:

(1) The amounts received by way of loan are not taxable as trading income;

(2) In any event, the amounts charged as trading income should be reduced to take account of expenses incurred by the appellants;

(3) The statutory requirements for a charge to arise under s 720 ITA 2007 (ToAA) are not met;

(4) If the amounts received are in fact taxable as income, then the provisions of section 44(1)(a)-(d) ITEPA 2003 were met ('the Section 44 Ground');

(5) If section 44 is met, credit arises under PAYE Regulation 185 in respect of any amount charged to tax as income.

21. In September 2018, HMRC complained that those original Grounds of Appeal were insufficiently particularised, meaning that HMRC could not prepare a Statement of Case. Particular aim was taken at the Section 44 ITEPA Ground.

22. In October 2018, PWC responded to HMRC, by way of a letter "providing some further explanation of the basis" for those appeals. That letter largely focused on the section 44 Ground; and went on to say that, assuming the income was not employment income "on first principles", the agency rules in ITEPA 2003 needed to be considered. PWC also intimated a challenge to the validity of the 2018 Closure Notices on the alleged basis of invalid notices of enquiry.

23. In December 2018, PWC wrote to the Tribunal identifying five grounds. Grounds 1 and 2 dealt with the Transfer of Assets Abroad regime. However, since ToAA is no longer relied on by HMRC, then those grounds are not now pursued, and need not be considered further by us. Ground 3 was put as "HMRC's Closure Notices do not reflect the deductions to the Appellant". Ground 4 was put as "The Appellants are entitled to a credit under the PAYE legislation". Ground 5 was put as "closure notices are not effective because there was no valid notice of enquiry".

24. The Grounds of Appeal for Mr Benson, Ms Broomfield, Mr Marino, Mr Bowen and Ms Kelly latterly are contained in a letter from PWC (omitted from the main hearing bundle) dated 19 June 2019, and described as "Detailed Grounds of Appeal."

25. Those were:

(1) The amounts received by way of loan are not taxable as trading income;

(2) In any event, the amounts charged as trading income should be reduced to take account of expenses incurred by the appellants;

(3) The statutory requirements for a charge to arise under s 720 ITA 2007 are not met;

(4) If the amounts received are in fact taxable as income, then the provisions of section 44(1)(a)-(d) ITEPA 2003 were met;

(5) If the Section 44 Ground is met, credit arises under PAYE Regulation 185 in respect of any amount charged to tax as income.

(6) The conditions in Schedule 1 Part 1 Paragraph 2 of the Social Security (Categorisation of Earnings) Regulations 1978 apply such that the amounts paid under the agency contracts are treated as employed earning's earnings with the obligation to account for Class 1 (rather than Class 4) NICs;

(7) No valid Notice of Enquiry.

26. The Appellants also noted "that further grounds of appeal may be introduced".

27. A later document (dating from May 2023) described as "Amendments and Additions to Detailed Grounds of Appeal dated 19 June 2019", sought to add in new material to PWC's June 2019 letter, namely:

(1) Rathowen had a UK trade presence and was therefore within the territorial scope of PAYE with an obligation to operate PAYE on payments/loans made through the Rathowen arrangements;

(2) The self-employed / employed status had not been determined by HMRC; but Mr Benson and appellants 2-5 were deemed to be employees, meaning that there could not have been any "income from self-employment".

28. The Notice of Enquiry Ground was formally withdrawn.

29. On 17 February 2025, Appellants 1 to 8 formally withdrew their appeal that the amounts charged as trading income should be reduced to take account of *expenses* incurred by the Appellants; but (as became clear from the Skeleton Arguments) a challenge in relation to the deductibility of *fees* paid to MRG/MSS and Rathowen was pursued.

The sixth and seventh appellants

30. Their original Grounds of Appeal, filed in November 2022, sought to challenge only HMRC's ToAA treatment.

31. Subsequently, on 17 February 2025, the sixth and seventh appellants applied to amend their Grounds of Appeal; in effect by seeking to adopt PWCs June 2019 letter, as amended.

HMRC's Statements of Case

32. There are two Statements of Case; one in relation to all the Appellants except Mr Butler; and one in relation to Mr Butler. Both are dated 20 January 2025.

ISSUES IN DISPUTE

33. In our view, the issues for determination are framed as follows.

The scope of the appeals (Apps (6)–(7) and (10) only; Ms Hirst; Mr Clifford; Mr Butler)

34. Whether, after withdrawing ToAA, HMRC may, on a fair reading of the 2021 Closure Notices and their context, nonetheless support the conclusions and amendments (which amendments remained the same) by advancing alternative grounds in relation to Ms Hirst, Mr Clifford and Mr Butler.

Jurisdiction (Apps (1)–(5))

35. Whether, given the terms of the 2018 Closure Notices, the Tribunal can, within the proper meaning and effect of section 31(1)(b) TMA 1970, entertain the argument of Appellants 1-5 that their true status was that of employees or deemed employees rather than self-employed.

Estoppel (Apps (1)-(5))

36. Whether Appellants (1)–(5) are precluded by an estoppel by convention from advancing an employment/agency case because their returns were filed on a self-employment basis and HMRC's enquiries into those Appellants proceeded accordingly.

Trading income (Apps (1)–(5))

37. Whether amounts described as "loans" from the trust and the Scheme's fees should be brought into the computation of profits chargeable as trading income under Part 2 ITTOIA 2005; and whether any fees paid to participate in the Scheme (as opposed to expenses) are deductible.

Section 44 ITEPA

38. Whether section 44 ITEPA 2003 applies on the facts. If so, who was "the agency" responsible for PAYE/NICs (was it Rathowen, or UK entities such as MRG/MSS, or, in the case of Mr Clifford, a firm called Cholmondley Ltd).

Rathowen's UK "tax presence"; effect of PAYE disapplication notices.

39. Whether Rathowen had a sufficient UK presence to be within the PAYE regime; and, consequentially, whether the notices issued under s 684(7A)(b) ITEPA disapplying the PAYE Regulations for end clients were correct.

Discussion

40. It will be seen that these are by-and-large issues of a legal or technical character. With the exception of Mr Butler's amended case (see below), none of the appellants challenges:

(1) Their participation in the Rathowen arrangements;

(2) Their receipt of substantial sums of money described as interest-free loans; nor

(3) Take particular issue with the state of the documentation in their individual case.

CASE MANAGEMENT MATTERS

41. On the first morning of the hearing, we dealt with three case-management applications.

42. The first was an application to rely on additional documents. Given that these were largely documents passing between HMRC and the Appellants' advisors, there was no strenuous objection from HMRC to them being placed in evidence before the Tribunal and we so ordered. Insofar as one of the documents was headed 'without prejudice', HMRC confirmed that they had waived privilege (the same document having been inadvertently included in HMRC's List of Documents).

43. The second was an application to rely on a witness statement from Graham Webber dated 28 April 2025. He is an adviser (but not a legal adviser) to the Appellants. This statement had not been produced in conformity with Judge Fairpo's case management directions, which provided for witness statements about 8 weeks in advance of this hearing (in relation to appeals which had already been underway for several years). The witness statement came some 5 weeks late. The explanation for the delay was that Mr Webber was desirous to assist the Tribunal as far as he was able, and considered it appropriate to make the witness statement. HMRC objected to its inclusion: it was far too late, but in any event largely inadmissible or irrelevant comment on documents. There was an exhibit, containing 13 documents, some of them being documents already disclosed; others being documents otherwise on the public record (such as Companies House filings and court judgments from England and Wales, and the Isle of Man). No strenuous objection was taken by HMRC to those documents being placed before the Tribunal, although they had not been disclosed, and so were not in the hearing bundle.

44. We dismissed the application to rely on the witness statement, but admitted the documents. The witness statement was made far too late - ie, this was a case of serious delay - without any really good reason; and, taking all the circumstances into account (including that much of it was not really factual evidence, but was opinion evidence) then it should be excluded.

45. The third was an application to rely on a second witness statement from one of the Appellants, Mr Butler. He was alleged to have participated in the Rathowen arrangements, but his earlier witness statement, filed on time, had dealt only with his participation in other arrangements - called Newquay - and not with Rathowen. Having withdrawn his appeal insofar as it related to the Newquay arrangements, he nonetheless wished to give evidence, and to exhibit documents, relating to Rathowen. We allowed this application, on the footing that he was a party who was expected to be giving evidence, and in all the circumstances it would have been unduly prejudicial to have prevented him from giving written evidence. As with the preceding application, we admitted the accompanying documents.

46. However, as a condition of admitting this witness statement, we ordered - principally, for the sake of regularity - that Mr Butler file Amended Grounds of Appeal to capture the stance in his second witness statement.

Mr Butler's amended Grounds of appeal

47. Mr Butler's Amended Grounds of Appeal deny that he participated in the Rathowen arrangements; or that, if he did, (a) the amount of £1293.08 received on 28.04.08 credited by "RATHOWEN LIMITED" as payor; and (b) the amount of £9500.00 received on 28.04.08 credited by "RONSARD LTD ATO TH" as payor came from his participation in the Rathowen Arrangements.

THE BURDEN AND STANDARD OF PROOF

48. Overall, the burden of proof rests on the Appellants to show that HMRC's conclusions in the Closure Notices are wrong.

49. The standard of proof is the usual civil standard, which is the balance of probabilities or whether something is likelier than not.

EVIDENCE

50. We considered the following bundles of materials:

(1) Hearing Bundle: Volume 1 (4,521 pages); and Volume 2 (1,316 pages)

(2) Supplementary Bundle (785 pages; and containing redactions of certain material ordered by the Tribunal to preserve the identity of non-parties);

(3) Joint authorities bundle (2212 pages), and other authorities and materials handed up during the hearing.

51. We have also made use of a transcript of the entire hearing.

52. We read witness statements from the following witnesses:

(1) David Benson (14 August 2023)

(2) Carl Marino (29 August 2023)

(3) Mark Bowen (29 August 2023)

(4) Aileen Broomfield (30 August 2023)

(5) Clare Kelly (20 September 2023)

(6) Lisa Hirst (13 March 2025)

(7) Andrew Clifford (13 March 2025)

(8) Anthony Butler (14 March 2025; and date not shown).

53. We heard oral evidence, tested by cross-examination, from the following witnesses:

(1) David Benson

(2) Carl Marino

(3) Mark Bowen

(4) Aileen Broomfield

(5) Clare Kelly (via video link)

(6) Lisa Hirst (via video link)

(7) Andrew Clifford

(8) Anthony Butler

54. Unfortunately, due to technical difficulties at the Tribunal's end, we were unable to see Ms Kelly (although she could see us) but we could hear her. Her evidence was sometimes emotive but neither that, nor our inability to see her, have any bearing on the assessment of the cogency of her oral evidence, or the weight to be given to it.

55. HMRC's express position in closing is that all the Appellants were serious professional individuals who had given evidence honestly and were seeking to assist the Tribunal; and we are expressly asked not to make any finding of dishonesty. It seemed to us that the Appellants who gave evidence all did so in a manner which was straightforward and which we did not assess as intending to deceive or mislead us. But their evidence was often vague as to their understanding of the details of the financial arrangements into which they had entered and in which they had participated, or was not readily reconcilable and/or was inconsistent with the contemporary documentation. Whilst HMRC did not seek to challenge the Appellants' honesty as such, HMRC nonetheless says that Appellants' evidence is not always credible, in that they did not get everything right, meaning that their evidence was in some respects neither correct nor accurate. We agree with that approach: people can have a genuine belief in something which nonetheless turns out, on examination, to be mistaken.

56. We did not receive any witness statements or hear any evidence from anyone at Montpelier or Rathowen; nor any of the end clients to whom the Appellants had provided their services.

57. HMRC's cross-examination focussed on three areas:

(1) The entity with which the Appellants had contracts (in order to identify with whom the Appellants had an 'agency contract' for the purposes of ITEPA 2003 ss 44(1)(b) and 47(1);

(2) Whether the Appellants were subject to a right of supervision direction or control for the purpose of ITEPA s 44(1)(d);

(3) In relation to Appellants (1)-(5), whether they raised, in their self-assessment returns or during the enquiries preceding the issue of the 2018 Closure Notices, the issue of whether they had received income from employment (as opposed to income from trading).

58. We did not hear any evidence on behalf of HMRC. HMRC's expert witness was not called to give oral evidence.

GENERAL APPROACH TO EVIDENCE

59. When it comes to the overall assessment of the evidence, in our view the right approach, broadly speaking, is that described by Leggatt J (as he then was) in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), as summarised at Paragraph [12] of his decision:

> "[...] the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

60. We also apply the guidance in *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] 4 WLR 112, where the Court of Appeal (Males LJ, with whom Peter Jackson and McCombe LJJ agreed) said (at [48]).

> "[...] I would say something about the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to the motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party's internal documents including e-mails and instant messaging. Those tend to be the documents where a witness's guard is down and their true thoughts are plain to see. Indeed, it has become a commonplace of judgments in commercial cases where there is often extensive disclosure to emphasise the importance of the contemporary documents. Although this cannot be regarded as a rule of law, those documents are generally regarded as far more reliable than the oral evidence of witnesses, still less their demeanour while giving evidence…".

61. The authenticity of the documents (in the sense as to whether they came into existence when they say they did, and by the entity said to have produced them) is not challenged. But part of the task for us in our resolution of these appeals has been to make sense - as best we can - of the contemporary documents. This is not straightforward because the documentary picture before us is fragmentary (eg missing consultancy agreements for some of the Appellants, with the Tribunal being asked, by way of inference, to fill in the gaps) and/or contains inconsistencies (eg, documents - judging from their letterheads and footers - coming from different Montpelier entities, churning out paperwork, but without much apparent rigour at the Montpelier end as to the accuracy or content of this paperwork) and/or is obviously serving Rathowen's own interests, in the sense that it was seeking to continue to assert to the participants in the Rathowen Scheme that the arrangements were unexceptionable in taxation terms, that Rathowen's view as to the taxation consequences was correct, and HMRC's view was wrong.

62. Generally speaking, the evidence of Appellants as to what they considered contractual documents to have meant is - at the very most - of limited evidential weight; both for the

reasons set out above, and by virtue of the 'parol evidence' rule, which generally prevents a contracting party giving evidence as to their subjective view of what the contract meant.

63. We have considered the entirety of the documentary and oral evidence placed before us, which includes the Appellants' bank records, letters to them from Montpelier entities, assignment schedules ('assignment' in the sense of a deployment) and so-styled "consultancy agreements" (where available), as well as the enquiry correspondence. Applying *Gestmin* and *Simetra*, we place greater weight on contemporaneous documents and inherent probabilities than on recollection of events.

64. The documents, even though imperfect, are often the best evidence of what was actually happening. We consider it appropriate, wherever possible, to take documents at face value.

65. Where there are gaps (e.g., absent consultancy agreements) we assess whether reliable inferences can nonetheless be drawn from (for example) an otherwise consistent pattern and suite of documents across the cohort of Appellants.

66. We have no regard to the fact that some of the Appellants (i) were alleged also to have been participants in something known as the 'Newquay' scheme; (ii) had appealed the Closure Notices issued relating to alleged participation in that scheme; and (iii) the appeals had been withdrawn.

67. Finally, we adopt the following approach to the operation of the standard of proof when it comes to disputed facts:

> "[2] If a legal rule requires a fact to be proved (a 'fact in issue') a judge or jury must decide whether or not it happened. There is no room for a finding that it might not have happened. The law operates a binary system in which the only values are zero and one. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of zero is returned and the fact is treated as not having happened. If he does discharge it, a value of one is returned and the fact is treated as having happened.":
>
> see *Re B (Children) (Care Proceedings: Standard of Proof)* [2008] UKHL 35 at [2] per Lord Hoffmann.

FINDINGS OF FACT

68. On the basis of the entirety of the evidence which we have read and heard, we make the following findings of fact.

69. The Rathowen Scheme:

(1) Was a tax avoidance scheme; specifically a scheme designed to seek to avoid some of the taxation consequences of IR35;

(2) Ran from March 2008 to 2013/14;

(3) Was promoted by a firm called Montpelier (Tax Consultants) Ltd ('**MTC**'), which was part of a wider so-styled "Montpelier Group" - a network of companies based in the Isle of Man, and sharing an address at Fernleigh House, Palace Road, Douglas; and usually involving, as a director, one Mr Edward Watkin Gittins.

70. Before the Rathowen Scheme was brought into being, there was another Montpelier Group scheme, explicitly described in its promotional literature as 'A Sophisticated IR35 Tax Planning Arrangement', promising significant income tax efficiencies, which purported to

rely on Montpelier's interpretation of the UK/Isle of Man double taxation convention ('**the DTA Scheme**'):

(1) The DTA Scheme was a tax avoidance scheme;

(2) All the lead Appellants had participated in the DTA Scheme (some had attended a promotional seminar; some had not);

(3) Under the DTA Scheme, a taxpayer would enter into a consultancy agreement with one of a number of Isle of Man partnerships (such as the Fernleigh Partnership) for the provision of consultancy services by the taxpayer, to the Isle of Man entity, for the benefit of a third-party end client;

(4) The DTA Scheme was on the footing that (i) there was no income tax in the Isle of Man; nor (ii) any UK taxation on the partnership;

(5) This purported to produce the result that an individual who might otherwise (if subject to IR35) take home (say) 51% of their income net of NICs and Income Tax would instead take home up to (say) 75% (net of Montpelier entity fees);

(6) Insofar as the DTA Scheme did confer an exemption from UK tax pursuant to the UK/IoM double taxation convention, that exemption was removed by retrospective legislation; and the Tribunal in *Huitson v HMRC* [2015] UKFTT 448 confirmed that the tax advantage was not available.

71. The consultancy agreements which the Appellants had entered into with Fernleigh or other partnerships as part of the DTA Scheme came, at some point in or after March 2008, to be transferred to Rathowen Ltd ('**Rathowen Ltd**'). This move was variously described in the documents as "assignment", "migration", or "acquisition". HMRC does not know the precise mechanism or timing whereby the respective taxpayers' DTA Scheme consultancy agreements ended up involving Rathowen (i) because the individual Appellants themselves either did not know at the time (because they were never asked about it from the Montpelier end) and (ii) Rathowen and/or Montpelier's information was sketchy. But HMRC's case is that the Appellants - regardless of mechanism - did, as a matter of fact and as a matter of law, end up in arrangements with Rathowen. It was never in dispute that the transition (sic) to Rathowen was (as Ms Montes Manzano put it in opening) "done automatically", without the participants in the DTA Scheme being given any say in the matter. And (save for Mr Butler) the fact that Rathowen was the entity with whom the Appellants came to be contractually associated never seems to have been disputed by Rathowen; indeed, there is documentation - set out below - from the Montpelier end that the contractual counter-party was Rathowen.

72. The shift of Appellants from the DTA Scheme to the Rathowen Scheme:

(1) Happened as a response to legislative changes (namely, changes to ITTOIA 2005 announced in the March 2008 budget):

(2) Rathowen was registered on the Isle of Man on 10 March 2008. Its principal activity was said to have been the provision of consultancy services. It seems to have been incorporated expressly for the purposes of transitioning (for want of a better word) participants from the DTA Scheme to the Rathowen Scheme;

(3) Rathowen generally did not enter into any new agreements with users of the DTA Scheme but adopted the terms and conditions of the agreement already existing under the DTA Scheme between an individual and the Isle of Man partnership;

(4) On 19 March 2008, Montpelier Tax Planning (Isle of Man) Ltd wrote to at least some participants in its DTA arrangements that, in response to IR35 changes, it "had

already taken steps to change the existing arrangements. Your input was not needed for this. The flow of funds to you will continue in the same manner as previously [...]"

(5) The intention was that Rathowen would provide consultancy services to agencies such as MRG Consulting Limited ('**MRG**') and Montpelier (Search and Selection) Ltd ('**MSS**') (sometimes referred to by its trading name Montpelier Contracting and Consulting ('**MCC'**)) and Cholmondley Limited ('**Cholmondley**');

(6) MRG, MSS and Cholmondley were all UK registered companies. There would be an assignment schedule ('assignment' not in the sense of a legal assignment, but in the sense of deployment) which (typically) would identify Fernleigh or Rathowen as the 'Supplier' and which would specify the end client to whom the individual participant was to provide their services, the services to be provided, and the start and end dates for their 'assignment' (in the above sense);

(7) MRG/MSS/Cholmondley would contract with a third party UK agency for the provision of the services of the individual to the end client;

(8) Typically, the end client was unaware that the individual for whose services they contracted was using an avoidance scheme;

(9) MRG/MSS/Cholmondley would issue invoices for the provision of the services of the individual;

(10) By way of a deed dated 13 March 2008, Rathowen settled the Fernleigh Employee Benefit Trust ('**Fernleigh EBT**'). Ronsard Limited ('**Ronsard**') was the trustee. Ronsard was an Isle of Man registered company which had been registered, at the same time as Rathowen, only some days earlier;

(11) The beneficiaries of the Fernleigh EBT included "*the present and future directors officers employees consultants or former directors officers employees or consultants of*" Rathowen;

(12) Ronsard held the capital and income of the Fernleigh EBT for the benefit of the beneficiaries and had a discretionary power of appointment. Ronsard was ostensibly required to consider any recommendations made by Rathowen. Ronsard had the power to lend to beneficiaries, ostensibly on such terms as it thought fit, including whether or not to charge interest;

(13) It was envisaged that the trustees would make what were described as unsecured and interest-free loans to individuals. Ronsard would make what was described as loans to individuals out of what were described as sub-funds set up to benefit individual taxpayers and their families (eg, **'the David Benson Sub Fund'**);

(14) The individual would typically receive large monthly payments from Ronsard and much smaller monthly payments from Rathowen;

(15) In 2016, another Isle of Man company, Hazelmere Ltd, became trustee in place of Ronsard;

(16) The individuals were advised by Montpelier that they were self-employed contractors;

(17) The individuals' self-assessment returns were completed for them by Montpelier, on the basis that the loans received by them were not income;

(18) The individuals were aware of the content of those self-assessment returns.

73. Ms Montes Manzano identified, helpfully, that the entities and the way in which they were structured in the Rathowen Scheme was, for all intents and purposes, very similar to the DTA Scheme. The DTA Scheme (described as 'the Montpelier arrangements') was considered by this Tribunal (Judge Harriet Morgan, dismissing the taxpayers' appeals) in *Lancashire, Lee and Johnson v HMRC* [2020] UKFTT 0407 (TC) at Para [3]. We were told that permission to appeal to the Upper Tribunal has been granted in that appeal, but that it has not yet been heard.

Common features of the evidence

74. A number of common factors emerge from the evidence of the Appellants, and it is appropriate to record these.

75. The Appellants:

(1) Were IT contractors who had operated through personal service companies;

(2) Joined the DTA scheme (via partnerships like Fernleigh);

(3) Were later moved or 'migrated' to the Rathowen arrangements;

(4) Their 'migration' to Rathowen was done unilaterally by the individual's counterparty; and without any or any clear explanation from the Montpelier end to the individual, or consent from the individual (the same often not having been sought);

(5) The individuals were often uncertain who their contractual counterparty was: for example, whether it was MRG, Rathowen, Ronsard, or some other Montpelier entity;

(6) The individuals did not inform their end-clients about these arrangements; including not informing their end-clients that they had contracted with an Isle of Man entity; nor that they were receiving sums described as loans;

(7) They relied on Montpelier to populate and file their tax returns;

(8) Those returns showed their status as self-employed;

(9) The loans were disclosed in the 'white space' (eg, "During the year I received a short term interest fee loan of [amount] from a client for whom I perform IT services");

(10) Although there were some demands for repayment of a proportion of the loans, no repayments were made by any of the present Appellants (with the exception of a single payment made by Ms Broomfield);

(11) The Appellants usually worked on-site at client premises, used client systems, and followed client policies;

(12) Their end-clients had the right to supervise and direct or control ('**SDC**') their work.

76. Rathowen was a genuine company - in the sense that it actually existed. We have seen its filed accounts which show substantial monies moving in and out (the latter, described as 'distributions').

77. We accept HMRC's position that - as far as the available evidence shows - payments received by Appellants ostensibly coming from Rathowen (eg, 'Rathowen' shown as the payor as a reference on a bank statement) were actually coming from Rathowen. To approach this differently is to depart from the evidence, and to engage in a form of unprincipled guesswork.

78. We do not set out the precise contractual arrangements for each Appellant:

(1) These are not fundamentally challenged;

(2) There is a significant degree of similarity between the arrangements known to have existed in relation to each Appellant.

79. We have considered the so-described 'Factual Appendix' provided by the Appellants' representatives in relation to each Appellant. We will make findings only insofar as it seems to us to be material to the analysis we must conduct.

80. As well as repeating the above general findings, we make some findings of fact as to individuals.

Mr Benson

81. He is an experienced IT contractor engaged at UK financial institutions through agency chains. He accepted that he participated in the DTA Scheme and then in Rathowen. He described the paperwork as confusing. His understanding was that MRG/MSS handled UK deployment logistics (rates, timesheets, invoicing) while Rathowen appeared as “supplier” on some schedules. He had no recollection of signing a stand-alone Rathowen consultancy agreement but accepted that the only entity with which he had a contract was Rathowen. That would be consistent with Dawn Bull's email to him on 29 November 2017 that "no new consultancy agreement was issued when you moved from the original partnership to the Fernleigh Partnership and in turn Rathowen Ltd".

82. He had not made any loan repayments. He accepted that on client sites he worked under the client’s processes and practical supervision. His tax returns were prepared on a self employment basis with “loan” disclosures in the whitespace. He did not inform end clients of the loan structure.

83. In cross-examination, he maintained that he relied on professional advice; accepted that documents used mixed labels and entities; and did not know who (if anyone) operated PAYE in practice.

84. On 18 February 2011, Mr Benson's agents, Montpelier, told HMRC that the IT services mentioned in the white space entry of his tax return were provided by him "to Rathowen Ltd".

85. There is no extant consultancy agreement in evidence involving Mr Benson. We are invited by HMRC to infer, and do so, that a consultancy agreement in fact existed between Mr Benson and Fernleigh/Rathowen: (i) it is expressly referred to in an email from Montpelier to Mr Benson on 29 November 2017 (where it was said that he had moved from 'the original partnership' to Fernleigh and in turn to Rathowen); and (ii) it is inherently likely given the suite of documents which constitute the Rathowen Scheme arrangements for the other appellants.

86. On 21 March 2017, he made an application to the Tribunal for a direction that HMRC issue a closure notice in relation to open enquiries into his self-assessment returns for 2008/9 and 2009/10. That reached a hearing on 4 September 2017, at which Mr Benson represented himself. By way of a detailed reserved decision released on 25 September 2017, the Tribunal (Judge Peter Kempster and Mr Ian Menzies-Conacher FCA) refused his application: see [2017] UKFTT 0707 (TC).

Mr Marino

87. He was a UK based IT contractor providing services at major financial institutions. He used Montpelier’s DTA Scheme, having attended a seminar "to avoid IR35"; and migrated to the Rathowen model in 2008 without actively negotiating new terms. He recalled agency paperwork naming MRG and recruiters. He could not confirm signing a dedicated Rathowen consultancy agreement; and understood MRG handled the day-to-day matters. He regarded

the “loan” amounts as part of the agreed remuneration package. He accepted client-side supervision and adherence to client policies. He did not disclose the structure to his end-clients. He declared loans in the white space of his returns; his returns were on the footing that he was self-employed; and he did not record any income from employment.

88. In a letter to HMRC dated 12 January 2018, he said that "I understand that the contract which is signed to provide services was signed with Rathowen. I can confirm that there were no other entities with which I signed a contract".

89. In cross-examination he accepted inconsistencies across documents; but said that he followed professional advice and assumed taxes were handled appropriately. He accepted that his consultancy agreement transferred to Rathowen and that he did not have a contract with any other entity including MRG. He accepted that he was subject to a right of supervision, direction or control. He accepted that his returns did not declare any employment income. He did not dispute that the enquiry correspondence did not raise the issue of employment income.

Mr Bowen

90. He was with the DTA Scheme first, having entered it because of "issues around employment status under the IR35 legislation". He described the shift to the Rathowen Scheme as largely administrative, done by the promoter. He recalled schedules showing Rathowen as “supplier” and MRG/MSS in the chain; he did not recall a formal Rathowen contract being put to him for signature. There was a pattern of small payments from Rathowen and larger “loans” via EBT trustees; and no repayments. He worked under client oversight; completed timesheets; and used client systems. His tax returns declared him to be self-employed with loan in the white space. His end client might have known of his contractual arrangements.

91. In cross-examination, he agreed that he relied on Montpelier for filings; and accepted he did not verify whether any UK intermediary operated PAYE. He accepted that the enquiry correspondence did not raise the issue of employment income. He accepted that he was subject to a right of supervision, direction or control.

92. We were originally invited by HMRC to infer that a consultancy agreement existed between Mr Bowen and an IoM partnership known as the Odulayko Partnership: (i) it is expressly referred to in a letter from Montpelier to HMRC (where it was also said that the partnership's business had been acquired by Fernleigh and then by Rathowen); and (ii) it is inherently likely given the suite of documents which constitute the Scheme arrangements for the other appellants. However, we did not need to infer anything because a copy of a consultancy agreement with the Odulayko Partnership eventually emerged.

93. During the enquiry, Montpelier, acting as Mr Bowen's agent, wrote to HMRC that the IT services mentioned in the white space entry of his tax return were provided by him to Rathowen Ltd.

Ms Broomfield

94. There was no signed Rathowen consultancy in her papers, but she accepted that her consultancy agreement transferred to Rathowen. She had taken part in the DTA Scheme having attended a seminar on it because of the implications of IR35, and considered the Rathowen Scheme to be "tax planning in the light of the IR35 issues".

95. During the enquiry, Montpelier, acting as Ms Broomfield's agent, wrote to HMRC that the IT services mentioned in the white space entry of his tax return were provided by her to Rathowen Ltd.

96. Deployment letters pointed her to PAYE/NIC clauses, yet she was told she was self-employed. She accepted that her self-assessment returns did not declare any employment income.

97. Uniquely among the present appellants, she had made a modest (£7,693) repayment (c. 1% of the sum ostensibly 'loaned') in response to a demand from Hazelmere's in 2016 for a 10% repayment; otherwise, she had not made any repayments. For the reasons set out more fully below, the tax treatment does not depend on the fact that she made a repayment.

98. She accepted client supervision on site and compliance with client policies.

99. In cross-examination, she was candid about administrative confusion and her reliance on Montpelier. She accepted that entity labels varied across documents.

100. She accepted that the enquiry correspondence did not raise the issue of employment income.

Ms Kelly

101. She moved from the DTA Scheme (which she had entered "to protect her from IR35") to Rathowen; that was organised by Montpelier. She had a consultancy agreement with the Albosem Partnership on the Isle of Man dated 29 June 2004, but in 2011 Montpelier wrote to HMRC that the IT services mentioned in the white space entry of her tax return were provided by her to Rathowen Ltd. In 2015, Montpelier told HMRC that Ms Kelly had not signed any further consultancy agreements, but that the business of the Albosem Partnership had been acquired by the Fernleigh Partnership and then by Rathowen in March 2008.

102. Although she understood MRG/MSS to be the practical UK interface, she accepted that she did not have a contract with MRG or MSS. She accepted that she was subject to a right of supervision, direction or control.

103. She reiterated her reliance on promoter advice; and could not assist the Tribunal with on PAYE operation within the chain.

104. She accepted that her returns did not declare any employment income.

Ms Hirst

105. She accepted that she had entered the DTA Scheme because of IR35.

106. There is no extant consultancy agreement in evidence involving Ms Hirst. She accepted that it was possible that she had a contract with Fernleigh, but did not recall having a consultancy agreement the counterpart to which was Rathowen.

107. We are invited by HMRC to infer, and do so, as a fact, that a consultancy agreement did exist between Ms Hirst and Fernleigh of the kind referred to in respect of the other Appellants whose terms and conditions Rathowen later agreed to honour. This also seems inherently likely given the other documents appertaining to Ms Hirst.

108. On 12 March 2008, MTM (Consultants) Ltd, in a letter headed "The Fernleigh Partnership", and ostensibly as its Managing Partner, wrote that, from 17 March 2008 to 17 March 2009, Fernleigh was to be the supplier, with Bright Purple Resourcing Ltd ("BPRL") as the "intermediary/agency". On that same date, Ms Hirst signed an Addendum Schedule to that letter. She had been contacted by MTM Consultants that, until it received that Schedule, invoicing could not begin.

109. On 22 August 2008, Rathowen wrote to Ms Hirst setting out the details of the trust fund which Rathowen had established for her.

110. In October 2008, BRPL produced an addendum to a contract between BPRL and MRG Consulting Group (as "the Supplier") which was apparently dated 5 March 2008, but which we have not seen. It purported to extend Ms Hirst's contract term from 1 November 2008 to 17 March 2009.

111. On 16 March 2011, one Thomas Whiteley, a Tax Compliance Assistant of Montpelier Tax Consultants (Isle of Man) Ltd wrote to HMRC that in F2008/9, Ms Hirst had provided IT services to Rathowen.

112. We have considered the above documents. It is fair to say that the contractual position - looked at on the face of the documents - is confused: not least because the Montpelier documents in March 2008, contemplating a contract term through to March 2009, are inconsistent with the October 2008 document.

113. We are invited by HMRC to find, and do so, that Rathowen contracted with MRG who in turn contracted with BPRL for the provision of Ms Hirst's services as a contractor to the end-client.

114. She accepted her end-client's policies and procedures. She emphasised that she treated the Rathowen Scheme as advised tax planning at the time. In cross-examination she accepted she did not challenge the Scheme's tax treatment contemporaneously.

115. She accepted that she was subject to a right of supervision, direction or control.

Mr Clifford

116. He had been an IT contractor since the 1990s; and moved from personal company contracting to Montpelier arrangements post-IR35. He considered that some of the text in the contracts which constituted the Rathowen Scheme was "intended to prevent agencies and end clients from being deemed as employers of consultants under IR35".

117. An unredacted copy of an agreement between him and the Tomarez Partnership, an IoM partnership, entered into by him as part of the DTA Scheme, emerged during the hearing.

118. Although he did not have any firm recollection of a specific Rathowen consultancy being executed, we find that the benefit of the agreement with the Tomarez Partnership was transferred to Rathowen:

(1) On 13 June 2008, Cholmondely wrote to him that "We have been advised by Montpelier that in future, when you're negotiating a new contract, you should initially contact ... at Rathowen Ltd and not us!";

(2) On 12 August 2008, Dawn M Bull at Rathowen Ltd wrote to Mr Clifford, referring to an earlier letter (26 February 2008) and referring to Rathowen's decision to change/standardise its payment dates "to enable us to include as much of these monies as possible in the fees we pay out on a monthly basis";

(3) On 22 August 2008, Rathowen write to Mr Clifford setting out the details of the trust which Rathowen had established for him;

(4) In an undated letter, but referring to an email sent on 15 October 2008, Rathowen wrote to Mr Clifford complaining that details of "new assignments and extensions to assignments" should not be coming via Cholmondley. The letter said:

> "As your Consultancy Agreement is with Rathowen Ltd, we should be your first point of contact on all matters relating to New Assignments, Extensions to Assignments, and also any queries relating to issuing of invoices or payments".

That letter concluded:

"5. At no time should you be in correspondence with any intermediary agency or end client as you have no contractual relationship with any other parties than Rathowen Ltd";

(5) Rathowen was invoicing Cholmondley for Mr Clifford's services;

(6) Mr Clifford's witness statement states that he was "contracted to Rathowen as a supplier of consultancy services".

119. We reject his case (which is not only contrary to the evidence referred to above, but is also unsupported by any contemporary documentation) that he had an 'implied employment' with Cholmondley or that Cholmondley was "the controlling entity of the Loan Arrangements". As he accepted in his evidence, this was only an assumption on his part, and did not marry up with the evidence before the Tribunal, referred to above.

120. Although he might have considered Hays to have been the agency in the arrangements, he accepted that he did not have a contract with Hays.

121. He accepted that he was subject to a right of supervision, direction or control.

122. In cross-examination, he accepted he relied on Montpelier to prepare filings; and that he did not investigate PAYE obligations of any intermediary at the time.

Mr Butler

123. He accepted that he had taken part in the DTA Scheme, but latterly disputed that he had participated in the Rathowen Scheme for 2008/09. We say 'latterly', because correspondence from Montpelier to Mr Butler as early as 2008 refers to 'the amounts you have received from Rathowen and Ronsard'. In 2011, Mr Butler wrote to Montpelier referring to the "arrangement with Rathowen/Ronsard", and in 2018 his agents wrote to HMRC referring to HMRC's inquiry into 2008/9 "in connection with loans received from Ronsard".

124. Despite the contemporary documents, including from Montpelier, and from him, which are tolerably clear that he regarded his contractual relationship for 2008/9 to have been with Rathowen, his amended case before us was that two payments into his bank account on 28 April 2008, totalling £11,432.08, (i) from "RATHOWEN LIMITED" of £1,923.08 and (ii) from "RONSARD LTD ATO TH" of £9,500 were in fact for services provided in F2007/8, under the DTA/Newquay scheme, and not from his participation in the Rathowen Scheme in F2008/9.

125. On 8 May 2025, Mr Butler withdrew that part of his appeal which dealt with his participation in arrangements known as the Newquay arrangements. The residue of his appeal is as above. Even that is a relatively modest amount, his appeal nonetheless continued to proceed as a lead appeal. Therefore, as part of our consideration of the wider issues at play in the other lead appeals, and the fact that we had to spend part of the first day dealing with case-management issues arising in relation to Mr Butler's appeal, we have had to conduct a fact-finding exercise in relation to Mr Butler. This is incongruous, and has added significantly to the time spent in dealing with the appeals at the hearing, and in issuing this decision.

126. We find that it was likelier than not that Mr Butler did take part in the Rathowen Scheme in 2008/9; which means that, on the operation of the ordinary principles of judicial fact-finding, he did take part the Rathowen Scheme in 2008/9. The £9,500 from Ronsard was the 'loan' element; and the £1,923.08 was the 'pay' element.

127. There are several reasons for this:

(1) The payment descriptors - Rathowen and Ronsard - were attached to the payments by Montpelier;

(2) Those descriptors are consistent, on the face of it, with Mr Butler having received money from Rathowen, and from Ronsard;

(3) The descriptors are, on the face of it, and taken at face value, consistent with him having taken part in the Rathowen Scheme in 2008/9;

(4) He did not dispute that the invoices exhibited to his second witness statement in respect of work done in 2007/8 did not establish £11,432.08 of work done in March 2008 (ie, in F2007/8), meaning that the payments to him which are in dispute could not be reconciled by him with the work done in F2007/8; meaning that the inherent likelihood is that the payments must have related to work done in F2008/9 and not F2007/8;

(5) His evidence that, when he did work, moneys normally took about a fortnight to arrive in his account is consistent with payments on 28 April 2008 relating to work done in or about 14 April 2008 - ie, about a week into F2008/9, and not in F2007/8;

(6) There is a clear differentiation on his bank statements between moneys received from "NEWQUAY" (which carry on well into 2009) and other entities;

(7) Rathowen was writing to him in August 2008, setting out moneys settled on trust for him by Rathowen with Ronsard as trustee;

(8) The Loan Agreement between Ronsard and Mr Butler (executed retrospectively) purports to take effect from 13 March 2008 - ie, before the payments;

(9) We reject his case that the payments referred to above related to "legacy flows" or "promoter-side allocations" (rather than to him joining Rathowen). There is no evidence of the former; but sufficient evidence that the payments related to him joining Rathowen.

128. Moreover, his own advisers, as late as 8 May 2025, wrote to the Tribunal and HMRC in terms that Mr Butler had participated in Rathowen in 2008/9 (see the document at page 46 of the supplementary bundle).

129. We are invited by HMRC to infer, and do so, that a consultancy agreement existed between Mr Butler and Fernleigh/Rathowen of the kind referred to in respect of the other appellants: (i) Mr Butler says in his witness statement that he worked via the Fernleigh Partnership/MRG; (ii) there are email exchanges which demonstrated his participation in the Rathowen Scheme; (iii) there are bank statements showing payments to him from Rathowen and Ronsard; (iv) such an agreement is inherently likely given the suite of documents which constitute the Scheme arrangements for the other appellants. We infer that Mr Butler had a contract the counterparty to which was Rathowen; and not MRG or MSS.

130. Mr Butler agreed that he worked alongside other consultants and employees and "if that constitutes supervision, direction and control, then yes", he was subject to such a right of supervision, direction or control. We conclude that he was so subject.

THE PARTIES' SUBMISSIONS AND OUR DISCUSSION

The scope of the appeals against the 2021 Closure Notices

Appellant 6, 7 and 10's case

131. The 2021 Closure Notices conclude that amounts are "chargeable to income tax as other UK income" and state ToAA as the reason. Having abandoned ToAA, HMRC cannot now substitute different conclusions or amendments by invoking new grounds; with the effect that, having withdrawn the ToAA conclusions and reasons, there is now no case to answer in relation to these Appellants.

HMRC's case

132. The subject matter identified by the notices is payment for services provided via Rathowen. The 2021 Closure Notices expressly contemplated "additional or alternative grounds in support of amendment of your personal return"; and the covering letters referred to section 44 ITEPA, meaning that the affected Appellants were on notice of this route of challenge at the time of the closure notices. The actual amounts remain unaltered.

133. On the authorities (set out and summarised by the Upper Tribunal in *Daarasp*) HMRC may advance an alternative legal route supporting the same subject matter and resulting amendments, provided there is no ambush.

Discussion

134. In the 2021 Closure Notices, HMRC's sole stated reason for its conclusion relied on ToAA. However, and relevantly, the 2021 Closure Notices went on to say:

> "You should note that, depending on the exact nature of any contention put forward on your behalf to the contrary, HMRC may wish to additional or alternative grounds in support of amendment of your personal return".

135. The accompanying cover letters to the 2021 Closure Notices said:

> "There are other arguments as to the possible tax consequences that relate to the payments for services provided via Rathowen Ltd. These are not properly part of the closure notice as these are not our conclusions, but we thought it proper to note that if you disagree with the enclosed closure notice and refer that disagreement to a Tax Tribunal, HMRC reserves the right to refer to alternative arguments which may led to a different amendment to your tax return.
>
> Based on the information and documents that have been received, we believe that a variety of taxing provisions could still apply.
>
> For example:
>
> We may argue that [£*****] should not have been included in your return as self-employment and the [£*****] is taxable as employment income. This is because section 44 Income Tax (Earnings and Pensions) Act 2003 applies on the basis that your agency contract was held with Rathowen Ltd."

136. TMA 1970 section 28A(1) and (2) provide that "the enquiry is completed when an officer of HMRC informs the taxpayer by notice ('a final closure notice') "in a case where no partial closure notice has been given, that the officer has completed his enquiries". A closure notice "must state the officer's conclusions" and (unless no amendment of the return is

required) must "make the amendments of the return required to give effect to his conclusions".

137. Section 31(1)(b) TMA 1970 sets out the relevant right of appeal:

> "(1) An appeal may be brought against
>
> (b) any conclusion stated or amendment made by a closure notice under section 28A ... of this Act."

138. The relevant law and principles, binding on us, are compendiously and authoritatively set out by the Upper Tribunal (Marcus Smith J and UTJ Guy Brannan) in *Daarasp LLP* [2021] UKUT 87 (TCC) at Paras 21-25, as follows:

> "Closure notices: the case-law
>
> 21. The following paragraphs draw on the law as expounded in the following cases:
>
> (1) *Tower MCashback LLP v. Revenue and Customs Commissioners*, [2011] UKSC 19 (Tower MCashback);
>
> (2) *Fidex Ltd v. Revenue and Customs Commissioners*, [2016] EWCA Civ 385 (Fidex);
>
> (3) *Bristol & West plc v. Revenue and Customs Commissioners*, [2016] EWCA Civ 397 (Bristol & West);
>
> (4) *B & K Lavery Property Trading Partnership v. Revenue and Customs Commissioners*, [2016] UKUT 525 (TCC) (Lavery);
>
> (5) *Investec Asset Finance plc v. The Commissioners of Her Majesty's Revenue and Customs,* [2020] EWCA Civ 579 (Investec).
>
> We are, of course, very conscious that these are decisions ranging from the Upper Tribunal up to the Supreme Court. The paragraphs below take account of statements of the law that we consider to be binding on us, as supplemented by statements of the law which, although not binding, elucidate and are consistent with those binding statements.
>
> 22. An enquiry, begun by way of an enquiry notice, is concluded by a closure notice.
>
> The closure notice comprises two elements:
>
> (1) A statement of the officer's conclusions; and
>
> (2) A statement of what, if anything, must be done to give effect to those conclusions.
>
> 23. The whole point of tax returns and enquiries into them is to ensure that the public interest in taxpayers paying the correct amount of tax is met. To that end,

HMRC must have an appropriate ability to examine the return, but the taxpayer must have a fair opportunity to challenge (by way of appeal) either (i) the conclusions of HMRC or (ii) the manner in which those conclusions have been given effect to (by way of amendments to the return). As can be seen from section 28A of the Taxes Management Act 1970, a closure notice quite clearly contains – and must contain – both elements; equally, as section 31(1)(b) of the same Act provides, an appeal lies against both "any conclusion stated" or any "amendment made".

24. It is important to appreciate that the conclusions of a closure notice are distinct from the amendments that may arise out of those conclusions. Obviously, there is a nexus between the two – the amendments implement the conclusions reached – but they are very different things. The conclusions in a closure notice consist of a statement why the taxpayer's return is incorrect (if it is), whereas the amendments set out how the return must be corrected in order to give effect to those conclusions. A closure notice must state the officer's conclusions; and having issued a closure notice, HMRC has no power to amend the relevant return other than to give effect to the conclusions: Bristol & West at [24]; Investec at [51].

25. Turning, then, to the operation of closure notices more specifically:

(1) There is no obligation on the officer to set out or state the reasons which have led him to his conclusion(s). What matters is the conclusion that the officer has reached upon the completion of his investigation, not the process of reasoning by which he has reached those conclusions: Tower MCashback at [15]; Fidex at [45]. This means that, on any appeal, the conclusions in the closure notice may be justified by reasons that were not articulated either at the time the closure notice was issued or during the enquiry that preceded it.

(2) It follows that when justifying a conclusion that has been reached by the officer and stated in the closure notice, reasons other than those in play at the time of the closure notice may be relied upon to justify it. On any appeal, the FTT will form its own view on the law, without being restricted to what HMRC state in their conclusion or the taxpayer states in the notice of appeal. Either party can change its legal arguments, but such changes in argument cannot be used as an ambush, and the FTT must be astute to prevent this, by using its case management powers: Tower MCashback at [15], [18].

(3) That does not, however, mean that an appeal against a closure notice opens the door to a general roving inquiry into the return. The scope and subject matter of the appeal will be defined by the conclusions stated in the closure notice and by the amendments (if any) made to the return (as well as the overriding question of fairness): Tower MCashback at [15].

(4) How the conclusions of a closure notice are framed will very much depend upon the nature of the issues arising in relation to the enquiry. Lord Walker said this in Tower MCashback at [18]:

> "This should not be taken as an encouragement to officers of the revenue to draft every closure notice that they issue in wide and uninformative terms. In issuing a closure notice an officer is

> performing an important public function in which fairness to the taxpayer must be matched by a proper regard for the public interest in the recovery of the full amount of tax payable. In a case in which it is clear that only a single, specific point is in issue, that point should be identified in the closure notice. But if, as in the present case, the facts are complicated and have not been fully investigated, and if their analysis is controversial, the public interest may require the notice to be expressed in more general terms…"

See, also, Fidex at [41].

(5) It is desirable that the statement by the officer of his conclusions should be as informative as possible: Tower MCashback at [83]; Fidex at [42]. Furthermore, notices are given at the conclusion of an enquiry, and must be read in context. It will be rare for a notice to be sent without some previous indication during the enquiry of the points that have attracted the officer's attention: Tower MCashback at [84]; Fidex at [42], [45]; Lavery at [37]. That said, a narrowly drawn closure notice – properly construed – cannot be widened by reference to the scope of the enquiry which preceded it: Lavery at [34].

(6) It is not appropriate to construe a closure notice as if it were a statute: Fidex at [51]; Lavery at [28]. The ordinary rules of construction apply to closure notices, and the question of construction is a mixed question of fact and law: the identification of the relevant circumstances and context in which the document is to be construed is a question of fact, whilst the meaning of the document – construed within that context, as found – is a question of law: Lavery at [36]. Essentially, when approaching the question of construction, it is appropriate to consider how the reasonable recipient of the notice, standing in the shoes of the taxpayer, would have construed it: Lavery at [42].

(7) The issue of a closure notice represents an important stage in closing the officer's enquiry. In Bristol & West, the Court of Appeal stated at [35]:

> "We do not doubt that the conclusion of an inquiry and the expression of HMRC's conclusions in a closure notice leaves open for further debate, negotiation and settlement the final outcome as to the extent of the taxpayer's tax liability. But we reject any notion that the closure of the inquiry and the expression of HMRC's conclusions arising from it can be belittled as a mere procedural pause. Closure marks an important stage at which the inquiry (with HMRC's attendant powers and duties) ends, HMRC is required to state its case as to the amount of tax due, in the closure notice itself, following which its power to amend the assessment is limited to such amendments as will give effect to those conclusions…"

Indeed, the closure notice marks the beginning of a series of "precisely timed stages" whereby the return is amended and/or the closure notice challenged by way of appeal: Bristol & West at [36]. In particular, the jurisdiction of the FTT – to which any appeal is made – is fixed by the terms of the closure notice: Lavery at [19]; Investec at [70]. Furthermore, the scope of the closure notice

and the matters arising out of any appeal of closure notice are matters for the FTT, and an appellate court should be slow to interfere with the FTT's decision unless it is clearly outside the scope of the statutory provisions: Investec at [71].

(8) "[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].

(9) The authorities do not support a narrow construction of the key phrase in section 49I of the Taxes Management Act 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 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. Such a construction of the provisions would simply multiply the number of appeals: Investec at [71].

(10) There are other checks and balances in the legislative scheme 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" – that taxpayers should pay the right amount of tax – is also an important underlying factor in any tax matter. Proceedings before the FTT are not simply a dispute between two private parties and the venerable principle has a role to play here: Investec at [72].

139. At Paragraph 35 of *Daarasp*, the Upper Tribunal remarked, relevantly:

> "[...] At the end of the day, what is at issue is the true meaning of the conclusions themselves, read in context and in the light of the entirety of the factual matrix, including the whole of the closure notice in question. If the meaning of those conclusions is clear, then those conclusions cannot be widened by reference to the consequential amendments – even if these are, in themselves, clearly and distinctly wider than the true meaning of the conclusions."

140. There is no need for us to gloss those clearly articulated principles.

141. We accept that the FtT is the appropriate stage at which the scope of the matter in the appeal is to be determined, albeit within certain bounds: see *Investec* at [71]-[73], where the

Court of Appeal (Rose LJ, as she then was, with whom Peter Jackson LJ and Sir Timothy Lloyd agreed) approved as "useful and practical" the following passage at Para [117] of the FtT's decision [2016] UKFTT 356 (TC) (Judge Howard Nowlan and Ms Elizabeth Bridge):

> "....it is for the FtT to decide what the subject matter of the closure notice happens to be; that the circumstances may demonstrate that the subject matter is slightly broader than the particular conclusion and adjustments addressed in the closure notice and that it is open to HMRC to mount different arguments in any appeal, even for instance occasioning greater adjustments to the taxable profits, provided of course that the different arguments all deal with the same identified or obvious subject matter".

142. Minute textual analysis of Closure Notices is unlikely to be productive. Closure Notices are practical documents for practical purposes. They tell the taxpayer that the inquiry has come to an end (thereby setting the clock running on statutory time limits for making an appeal) and they say what the end result of the inquiry is. Closure Notices are not statutes; and the issuing officers are not to be treated as if they are completing an examination paper on Revenue law. Covering letters are an admissible part of the context within which Closure Notices may be considered.

143. At their irreducible minimum, Closure Notices contain a 'why' (the conclusion) and a 'how' (the Revenue amendment).

144. The matter in question is "defined by the conclusions stated in the closure notice and by the amendments required to give effect to those conclusions": see *Fidex Ltd v HMRC* [2016] EWCA Civ 385 at [45], and the authorities to which *Fidex* refers, but bearing in mind that it is not appropriate to construe a closure notice as if it were a statute or as though its conclusions, grounds and amendments are necessarily contained in watertight compartments, labelled accordingly: *ibid.* at [51].

145. Considering the surrounding circumstances, and the context, it was neither unfair to the Appellants, nor a species of ambush, nor something which has deprived any of the Appellants of an opportunity fairly to marshal evidence, for HMRC, having abandoned its ToAA argument (ostensibly as its sole argument) to advance alternative legal arguments supporting the same Revenue amendments.

(1) The section 44 argument had been a running theme during the inquiry. We do not know why HMRC chose to advance only the ToAA, rather than (as in the 2018 Closure Notices) on two fronts simultaneously;

(2) The covering letters to the 2021 Closure Notices (an admissible aid to interpretation of the Closure Notices) were in materially identical terms (ie, deploying a similar formula) to that considered and discussed by the Court of Appeal (Rose LJ, as she then was, with whom Peter Jackson LJ and Sir Timothy Lloyd agreed) in *Investec Asset Finance plc v HMRC* [2020] EWCA Civ 579 at [18]-[19]. In that case, the taxpayers and the Court accepted that 'legal arguments can be deployed which were not referred to in the closure notice': see Para [71];

(3) The 2021 Closure Notices are clear that "additional or alternative grounds" could be raised;

(4) An ordinary and common-sense reading of "additional or alternative grounds" are additional or alternative grounds *other than ToAA*; and not additional or alternative reasons why the ToAA provisions applied.

146. Hence, and applying the guidance above, we consider this to be a case where HMRC can put forward arguments 'provided that the different arguments all deal with the same matters in question identified in the closure notice'.

147. This is not to give HMRC *carte blanche*. The appeal's scope is expansible only to a certain, limited, degree. It cannot be expanded to wholly different matters.

148. In our view, HMRC's section 44 argument addresses the same 'matter in dispute': that is to say, the chargeability of the same sums, but treated as employment income. The consequence is that HMRC may advance section 44 as an alternative ground to uphold the 2021 Closure Notices and Revenue amendments for Appellants (6)(7) and (10).

Jurisdiction and estoppel (Appellants 1 to 5)

HMRC's case

149. The Tribunal does not have jurisdiction to determine whether Appellants 1-5 provided their services as employees or deemed employees rather than as self-employed individuals.

150. Section 31(1)(b) TMA confers a right of appeal against "a conclusion stated or amendment made" by a closure notice. All the Appellants submitted tax returns on the basis that they were self-employed and maintained that position during the enquiry process; only suggesting otherwise after the 2018 Closure Notices were issued. The Revenue amendments were made on the basis that Appellants 1-5 (as, on their own tax returns, self-employed persons) had understated their profits by not including the amounts described as loans and Scheme fees.

151. The 2018 Closure Notices did not state any conclusion in relation to their employment status; therefore that status is not within "the matter in question" for these appeals. The 2018 Closure Notices became final when they were issued: not when they were upheld on review.

152. If that argument fails then, as to estoppel by convention, HMRC say that the taxpayers and HMRC shared and acted on a common assumption that the income was trading income. HMRC relied on that assumption to direct their enquiries and frame the 2018 Closure Notices so as impose liability on the Appellants rather than an employer (and are now time-barred from pursuing PAYE from an employer). On those facts, it would be unconscionable to permit Appellants 1 to 5 to now resile from the shared assumption.

The Appellants' case

153. As to jurisdiction: the status/agency point was squarely trailed before the 2018 Closure Notices became final in relation to the first five appellants and then pleaded as a ground of appeal. On a fair reading of the enquiries, review and correspondence, the status issue forms part of "the matter to which the appeal relates". Fairness supports the Tribunal determining status for these Appellants.

154. As to estoppel, if it arises (which will only be if Appellants 1-5 succeed in relation to the status/agency point) HMRC must prove each element for each Appellant and each year. Moreover, there was no clear, shared assumption "crossing the line"; nor proven reliance or detriment by admissible evidence. HMRC in fact explored section 44 with the end clients, indicating they did not rely solely on the self-employment presentation. It is neither unjust nor unconscionable to permit the Appellants to argue status on appeal.

Discussion

Jurisdiction

155. The Closure Notices for Appellants 1-5, issued in March 2018, read, relevantly, as follows:

> "My decision is that, following your participation in tax arrangements that sought tax advantages, your return is incorrect.
>
> There are two areas of tax law that I consider impose a tax charge and they are not mutually exclusive, although we will only charge the relevant tax and appropriate National Insurance contributions (NICs) once.
>
> [1 ToAA; no longer in issue]
>
> 2. You are chargeable to tax on the whole of the profits of your self-employment under Part 2 Income Tax (Trading and Other Income) Act 2005. The amounts described as "loans" and "fees" form part of the income arising from your self-employment.
>
> "I have amended your tax return in line with my decision ...".

156. The issue in immediate dispute is whether we have jurisdiction (which can only come through TMA section 31(1)(b)) to determine whether Appellants 1-5 provided their services as employees (or deemed employees) rather than as self-employed individuals: that is to say, what was the employment status of Appellants 1-5.

157. In our view, HMRC did not take issue with the declared self-employment status - in the sense that HMRC did not challenge it during their inquiries. The exact opposite happened. HMRC adopted the declared self-employment status; and section 31 does not confer a right of appeal against a conclusion stated in a Closure Notice which agrees with the contents of the taxpayer's return.

158. HMRC's Revenue amendments were on the basis that the receipts constituted trading profit: see the screenshots of the tax calculations accompanying the Closure Notices from HMRC's SA computer, which recorded alterations to "Income Received (Before Tax Taken off)" by increasing the "Profit from self-employment" line, and the Class 4 NICs due.

The appropriate time

159. We must however consider whether Appellants 1-5 had raised arguments as to their employment status at an appropriate time.

160. That time was before the date of the Closure Notice; not the date on which the Closure Notice was upheld by departmental review. The scope of the "matter in question" in a Closure Notice cannot be altered by the subsequent review process: see *Shinelock* at [64] where the Upper Tribunal remarked that:

> "[t]he scope of the closure notice was to be determined, in context, at the time it was issued, on the basis of the understanding of a reasonable recipient standing in the shoes of the taxpayer. *Subsequent discussions ... would not retrospectively extend the scope of the matter in question."*

161. In our view, and contrary to the Appellants' submissions, there is no relevant distinction in this regard between a Closure Notice which goes straight to appeal before this Tribunal, and one which goes to appeal only after a departmental review. In both cases, the Closure

Notice has been given; and it is then up to HMRC to uphold it, vary it, or cancel it, as the case may be (see TMA 1970 section 49E(5)).

162. We do not agree that TMA 1970 sections 49E(2) and 49E(3)(b), and the latter's provision that "HMRC must [for the purpose of determining the nature and extent of the review] " ... have regard to steps taken before the beginning of the review ... by any person in seeking to resolve disagreement about the matter in question" means that the scope of the Closure Notice remains (in effect) in suspense pending completion of the review.

163. Firstly, section 49E(3)(b) points back only to HMRC's determination of the "nature and extent of the review" and that the same should be "such as appear appropriate to HMRC in the circumstances". It has to do with the nature and extent of the review; it has nothing to do with the scope of the thing being reviewed.

164. Secondly, we are fortified in our view on this because, if the Closure Notice is adhered to, then the appeal to this Tribunal is against the Closure Notice and not against the review; and it is the terms of the Closure Notice which - if challenged - fall for scrutiny by the Tribunal; and not those of the review.

Montpelier Tax Consultants letter of 12 August 2011

165. Enquiries were opened in 2010/11.

166. There is extant correspondence between HMRC Specialist Investigations and Montpelier Tax Consultants (Isle of Man) Ltd in August 2011; but this does not in our view suffice to capture the status point that the present Appellants are seeking to make. It is not clear what entity that letter relates to, and the statement that "Montpelier does disclose the use of EBTs to the HMRC Anti-Avoidance Group, but in this instance the trust has only been used for self-employed persons albeit that the trust does not meet the definition of an employee benefit scheme" does not, in our view, show that the issue of the status of any of these appellants was at large with HMRC.

PWC's letter of 18 July 2017

167. Heavy reliance is placed by the Appellants on PWCs letter of 18 July 2017 (headed 'Contractor Loan Arrangements'). This is the only document from PWC in the supplementary bundle which antedates the 2018 Closure Notices being issued to Appellants 1-5. Although the letter was headed 'without prejudice', it was common ground before us that privilege in it had been waived and that we could consider it.

168. This letter does not identify any particular taxpayers; and so does not identify any of the present taxpayers. It was expressly written at a 'relatively high-level', aiming to identify "broad principles". It is impossible, on the face of it, to tell which taxpayers it related to, and even whether the present appellants were amongst them. There is also the evidence that an action group involving the Appellants only came into being at some later stage.

169. We do not consider that the 18 July 2017 letter can be relied on by any of the first five appellants in support of their argument that status was raised before March 2018:

(1) We know that this letter cannot have been written on behalf of Mr Benson, because he was not even represented by PWC in July 2017; he was representing himself at his closure notice application in September 2017;

(2) As to the other members of that group of appellants (Ms Kelly; Ms Broomfield; Mr Bowen; Mr Marino) we find that it was not written on their behalfs either. Although the point is an obvious one, especially in the light of the argument being advanced on their behalf before the Tribunal, none of these identified the date of PWC's retainer, nor sought to place any letter of retainer with PWC before the Tribunal;

(3) PWC's letter of 14 May 2018 ("Montpelier Contractor Loan Arrangements") postdates the 2018 Closure Notices, and deals with PWCs wish to obtain Closure Notices in relation to other clients. Insofar as it refers to Appellants 1-5, this letter recognises that the 2018 Closure Notices were received "before our requests were submitted in respect of their particular facts/circumstances";

(4) PWC's letter of 2 July 2018 says that (unnamed) clients "have formed a group which has enabled them to instruct both PwC and Counsel"; the inference being that group had - at 2 July 2018 - been relatively recently formed;

(5) In their oral evidence, none of Appellants 2, 3, 4 or 5 could not remember when they had first instructed PWC; but thought it was about the time of the closure notices - which is suggestive of spring 2018 and not summer 2017;

(6) The affected appellants bear the burden of showing that this letter was written on their behalfs, and they have failed to discharge that burden.

170. Even if we were wrong about that, and it were shown that PWC had been instructed by Appellants 1-5 before the 2018 Closure Notices:

(1) The July 2017 letter is in any event too vague to be read as raising a status issue with any degree of cogency;

(2) Although it sets out (as a Scenario 2) a scenario where an individual engages as a self-employed consultant with a non-UK entity, and considers the agency rules at section 44, this is one of two analyses advanced at a high level of abstraction, and absent any knowledge or details of "the contractual terms between the entities involved in the chain";

(3) The 14 May 2018 letter is itself clear that the 2018 Closure Notices had been given before PWC had made any representations in relation to Appellants 1-5.

171. Hence, PWCs letter of 2 July 2018 ("Beneficiaries of the ... Fernleigh and Hazelmere Benefit Trusts") is not relevant in assessing the status issue because it postdates the 2018 Closure Notices.

172. Therefore, taking account of all the above, the status of Appellants 1-5 was not one which was raised by them before the 2018 Closure Notices; the relevant time was the giving of those Closure Notices; and therefore Appellants 1-5 could not, after the 2018 Closure Notices, and cannot now, before us, raise any status argument.

173. In our view, to approach the matter otherwise would be to impermissibly, and retrospectively, enlarge the scope of the matter in question, and would be to extend the appeal right in section 31(1) beyond its proper limit.

174. We note, but respectfully disagree, with Ms Montes Manzano's argument that this gives rise to an anomalous situation where Appellants 1 to 5 are to be treated as self-employed (by dint of rejecting the Appellants' argument that they should be allowed to being their status into issue and argue that they were employed); but Appellants 6 and onwards - on the basis (inter alia) of similar facts and the way in which the Scheme was implemented - are to be treated as employed (by dint of accepting HMRC's argument that the scope of the matter in question did extend to their status).

175. The argument, taken to its conclusion, is that something should be read into the appeals of Appellants 1-5 because it is present in the appeals of Appellant 6 and onwards. But, in our view, that would be wrong. The situation arises simply from the manner in which the respective groups of appeals were advanced: we were not bound to treat Appellants 1-5 as

employed simply because Appellants 6 and onwards were to be treated as employed (and/or vice versa).

176. We do not agree that the situation as set out is actually anomalous: it is simply a natural consequence of there being different appeals by different taxpayers, advanced in different ways, and (for the reasons set out above) approached and dealt with (consonant with the law) by HMRC (in the two sets of Closure Notices) and the Tribunal in different ways. It does not therefore matter, in terms of that analysis, that two groups of lead appeals were consolidated to be heard together. The fact of consolidation was a case-management measure which did not change or affect the underlying substantive bases of the respective groups of appeals, albeit they were, after consolidation moving, procedurally, in tandem.

Estoppel

177. Having succeeded on that point, it is, strictly speaking, unnecessary for us to go on to consider the estoppel argument. Therefore, what follows is obiter. Although we are mindful of the need to keep this decision within a manageable compass, we consider it appropriate to express our views, through deference to the arguments which we have heard, and lest our conclusions on the scope of the 2018 Closure Notices should fall for reconsideration.

178. HMRC's subsidiary challenge is that Appellants 1 to 5 are now estopped from seeking to re-characterise their income as employment income on the basis of estoppel by convention and/or estoppel by representation.

179. Since HMRC seeks to advance the estoppel, it bears the burden of showing that it came into being.

180. The relevant principles for estoppel by convention were articulated by the Supreme Court (Lord Burrows JSC and Lord Briggs JSC) in *Tinkler v HMRC* [2021] UKSC 39, at [45] and following and [86] and following. The Supreme Court adopted dicta of Briggs J (as he then was) in *HMRC v Benchdollar* [2009] EWHC 1310 (Ch) and the Court of Appeal in *Blindley Heath Investments Ltd v Bass* [2015] EWCA Civ 1023.

181. The starting point is that there must be a common assumption expressly shared by the parties which 'crosses the line' sufficient to manifest an assent to the assumption. "Crossing of the line" between the parties may consist either of words, or conduct from which the necessary sharing can properly be inferred: see Briggs J in *Stena Line* [2010] EWHC 1805 (Ch) (a case decided shortly after *Benchdollar*).

182. We consider that there was such an assumption: it was the assumption that the income received by the Appellants in connection with the Rathowen Scheme was taxable as profits of a trade (ie, from self-employment) rather than as employment income. That position arose because the Appellants' self-assessment returns - formal documents declared by each of them to be accurate, and not subject to any valid in-time amendment - said so.

183. For the same reason, each of the Appellants can "properly be said to have assumed some element of responsibility for that common assumption" because the Appellants must (objectively) have intended, or expected, that would be the effect on HMRC of their conduct crossing the line; namely, the manner in which their self-assessment returns were populated, and approved.

184. HMRC relied (at least to some, material, extent) on that common assumption. HMRC did not have to rely solely on that common assumption; and the fact of it reliance does not disappear if an appellant were able to show some other operative cause for HMRC's conduct.

185. HMRC's reliance occurred in connection with the mutual dealing between the Appellants and HMRC whereby HMRC inquired and pursued closure notices and Revenue

amendments on the footing that the Appellants (as they had declared) were trading and were not employees. As the Appellants intended or expected (or should have expected) the Appellants' subscription to the common assumption strengthened or influenced HMRC in HMRC thereafter relying on the common assumption.

186. We consider that HMRC's detrimental reliance was that it did not not explore or pursue PAYE against the third party employer(s) or others within the time which otherwise would have been available to HMRC.

187. In many cases, unconscionability is unlikely to add much once the other elements of the estoppel have been established; and especially where it has been established that HMRC has detrimentally relied on the common assumption: see *Tinkler* at Para [64]. But, standing back and looking at it holistically, we do consider that it would now be unjust or unconscionable to allow the Appellants to assert that the true legal or factual position was (contrary to their returns) that they were employed rather than self-employed. There is a general public interest in the integrity and fairness of the self-assessment tax system; and in HMRC's ability to administer that system fairly. The latter is heavily dependent on what self-assessed taxpayers tell it. It is unfair and inequitable for taxpayers - years down the line, and when HMRC had framed its position in response to the taxpayers' returns - to seek to turn on a sixpence so as (in effect) to impeach the accuracy of their own self-assessment returns.

188. We have considered the Appellants' arguments that the elements of the estoppel are not made out individually for each appellant/year. However, we consider that HMRC have discharged their burden of establishing that an appeal-wide estoppel arises.

189. The effect of that is that Appellants 1-5, if they had been permitted to advance the argument, would nonetheless have been estopped from reliance on section 44 / agency arguments.

Trading income (Mr Benson; Ms Kelly; Ms Broomfield; Mr Bowen; Mr Marino).

HMRC's case

190. As to chargeability: Under Part 2 ITTOIA, receipts arising from the 1-5th Appellants' provision of services are trading receipts. The fact that most receipts were routed to a trust which then advanced "loans" does not alter their character. On the reasoning in *Rangers,* redirection of earnings to a trust does not prevent the amounts being chargeable (there, as employment earnings; here, by analogy, as trading receipts). Each of these Appellants is chargeable to tax on the whole of the profits of his or her trade as trading income.

191. As to deductibility: Payments to participate in the scheme (including fees) fail the "wholly and exclusively" test, because there is at least a dual purpose, one of which was tax avoidance. Accordingly, they are not deductible.

192. HMRC also rely on accounting evidence that the returns were not prepared in accordance with GAAP.

Appellants' case

193. If treated as self employed, agency/intermediary commissions and administration costs were commercial costs of obtaining and managing engagements and are deductible. The computation should be of gross receipts less these commercial costs.

194. While accepting that the "loans" may be treated as income consistent with *Rangers*, the Appellants emphasise the need to reflect the proper net measure of profit.

Discussion

195. In our view, the argument that the *fees* payable to Montpelier and its group of companies were deductible in computing the appellants' profits for tax purposes was a new one, raised in the Appellants' skeleton argument, and not properly foreshadowed in the Grounds of Appeal or the correspondence; meaning that it is not an argument open to the Appellants. However, having heard submissions, we consider it pragmatic to consider this argument on a *de bene esse* basis, and do so below.

196. We agree with HMRC that each of Appellant 1-5 is chargeable to tax on the whole of the profits of his or her trade treated as trading income under Part 2 ITTOIA 2005.

197. We are invited to adopt an analysis which is founded by way of analogy on the decision of the Supreme Court in *Rangers*. That is a case about employment income, where the Supreme Court held that contributions to an employee benefit trust funded by an employer constituted chargeable employment income of the employees. Here, it is said that a like principle should apply. We agree: the sums paid to the Trust form part of the consideration received for the provision of each Appellant's services to end users. The sums advanced as "loans" were, in substance, remuneration for the Appellants' services and formed part of their trading receipts. The label "loan" does not displace that analysis.

198. The relevant extracts from *Rangers* are:

> "[41] As a general rule, therefore, the charge to tax on employment income extends to money that the employee is entitled to have paid as his or her remuneration whether it is paid to the employee or a third party. The legislation does not require that the employee receive the money; a third party, including a trustee, may receive it...
>
> [58] In summary, (i) income tax on emoluments or earnings is due on money paid as a reward or remuneration for the exertions of the employee; (ii) focusing on the statutory wording, neither s 131 of ICTA nor s 62(2)(a) or (c) of ITEPA, nor the other provisions of ITEPA which I have quoted (except s 62(2)(b)), provide that the employee himself or herself must receive the remuneration; (iii) in this context the references to making a relevant payment 'to an employee' or 'other payee' in the PAYE Regulations fall to be construed as payment either to the employee or to the person to whom the payment is made with the agreement or acquiescence of the employee or as arranged by the employee, for example by assignation or assignment; (iv) the specific statutory rule governing gratuities, profits and incidental benefits in s 62(2)(b) of ITEPA applies only to such benefits; (v) the cases, to which I have referred above, other than Hadlee, do not address the question of the taxability of remuneration paid to a third party; (vi) Hadlee supports the view which I have reached; and (vii) the special commissioners in Sempra Metals (and in Dextra) were presented with arguments that misapplied the gloss in Garforth and erred in adopting the gloss as a principle so as to exclude the payment of emoluments to a third party.
>
> [59] Parliament in enacting legislation for the taxation of emoluments or earnings from employment has sought to tax remuneration paid in money or money's worth. No persuasive rationale has been advanced for excluding from the scope of this tax charge remuneration in the form of money which the employee agrees should be paid to a third party, or where he arranges or acquiesces in a transaction to that effect".

199. HMRC say that the loan element simply reflects earnings which were redirected to the trust by the appellant's end-client, and that *Rangers* is authority that the charge to income tax on that employment income arises at the point at which that "salary" is paid to the Trust.

200. We agree. The sums received were taxable at the moment of their receipt. That was the moment at which there was a redirection of money, and that was the moment at which liability to taxation arose. As such, the die having been cast at the moment of redirection, later financial movements (including repayments of a loan) do not affect the analysis.

201. That means that the fact that Ms Broomfield made an isolated repayment, in response to the letter to her in April 2016, does not matter; we do not need to go further to make any findings as to whether that letter, or letters of its kind, were genuine demands for repayment, or were simply colourable, being written with the purpose of supporting the trustees' argument that the loans were "true loans" or "proper and bona fide").

202. The Appellants are therefore chargeable to tax under Part 2 ITTOIA 2005 (i) on the money received from Rathowen; and (ii) the money received described as loans; and (iii) any fees which they paid for participation in the Rathowen Scheme (unless, in case of the latter, deductible: see below).

203. Section 25(1) of ITTOIA requires trading profits to be calculated in accordance with GAAP. There is unchallenged evidence, advanced by HMRC, from Richard Jones, Fellow of ICAEW, contained in a report dated 23 February 2024, that the 1st to 5th Appellants did not calculate the profits declared in their self-assessment returns in accordance with GAAP: see §§5.27 (Mr Benson); 5.28 (Ms Broomfield); 5.29 (Mr Marino); 5.30 (Mr Bowen); 5.31 (Ms Kelly); and 6.12.

204. Mr Jones is an advisory accountant in the Fraud Investigation Service Directorate of HMRC. However, and insofar as criticism is made that he is an 'in-house' expert for HMRC, his report is supported by a Statement of Truth; states that Mr Jones understands that his overriding duty is to the Tribunal and not to the party instructing or paying him; and states that his opinions represent his true and complete professional opinions on the matters to which they refer.

205. We direct ourselves in accordance with the recent decision of the Supreme Court in *Griffiths v TUI (UK) Ltd* [2025] AC 374, and especially Paragraph [70]: the fact that the evidence is not challenged does not automatically mean that it should be accepted. And an expert witness is still just a witness.

206. However, giving appropriate weight to the report, which weight includes (but is not determined) by the absence of expert evidence to the contrary, and the above features, we find that the Appellants' returns were not prepared in accordance with GAAP.

207. The sums paid by Rathowen to the Trust formed part of the profits of the trade of Appellant's 1-5.

Scheme Fees

208. The Ground of Appeal relating to the deductibility of Scheme *expenses* was withdrawn. Perhaps there was insufficient clarity or interrogation at the time as to whether this was intended to capture an argument about the Scheme *fees* as well: HMRC considered that the fees were not in issue; the Appellants (through argument on this point in their Skeleton Argument) thought that they were.

209. We do not need to consider whether the Appellants' argument was out-of-bounds because, proceeding pragmatically, we have heard sufficient evidence and submissions to decide the substantive point.

210. In our view, the fees paid by each Appellant to participate in the Scheme were not deductible.

211. The simple reason for this is that the Appellants bear the burden of establishing that the fees are deductible, and have failed to discharge that burden, because none of the Appellants mention the fees, or what they were paid for, in their witness statements, which are intended to stand as their evidence-in-chief. This is sufficient, in and of itself, and on entirely ordinary principles of evidence and burden, to dispose of this argument; which it does.

212. This relieves us from having to determine whether the "wholly and exclusively" test in section 34 ITTOIA was met; or how the guidance of the Court of Appeal in *Hoey v HMRC* [2022] EWCA Civ 656 at [194] and following applies.

213. The outcome of the above discussion is that:

(1) The amounts described as "loans" form part of the profits of the trade for Appellants 1-5;

(2) The amounts described as "loans" form part of the earnings for Appellants 6,7 and 10;

(3) The Scheme fees are not deductible.

Section 44 ITEPA (agency workers) and the identity of "the agency"

214. For the reasons already set out above, this is not an argument which is available to Appellants 1 to 5.

215. For Appellants (6) (Ms Hirst) (7) (Mr Clifford) and (10) (Mr Butler), it is common ground that the agency worker conditions in section 44 ITEPA are met in substance (that is to say, personal service, supervision/direction/control (SDC), and remuneration under or in consequence of arrangements).

216. However, the parties do not agree as to the identity of "the agency" liable to account to HMRC for tax and NICs.

217. The agency is a counterparty to the worker in relation to the contract under the terms of which the worker is obliged to personally provide services to the client: ITEPA section 44(2)(a).

HMRC's case

218. Under the version of the legislation in force at the time, the only worker to agency "agency contract" was between the workers and Rathowen. There is no evidence that the affected Appellants entered into agency contracts with any of MRG, MSS or Cholmondley in the sense required by s 47(1). Section 44 therefore treats the workers as employed by Rathowen.

Appellants' case

219. On a realistic view of the documentation and conduct, the UK agents were liable to deduct and account for payments of PAYE and NICs. This is because the workers entered arrangements through which the UK entities set daily rates, collected timesheets, invoiced and administered assignments, satisfying sections 44 and 45.

Discussion

220. For Appellants (6)–(7) and (10), there is substantial common ground that the personal service and SDC conditions are met, and remuneration was receivable under or in consequence of the arrangements.

221. The identity of the 'agency' is disputed. HMRC say the only "agency contract" for the purposes of section 44 was between the worker and Rathowen; the Appellants say MRG/MSS/Cholmondley were, in substance, the agency.

222. There is a body of contemporary documentary evidence, emanating from Rathowen, which is clear that Rathowen, after March 2008, consistently considered and represented that the appellants' contracts had ended up with Rathowen.

223. On 17 October 2008, Rathowen wrote to all consultants to "remind all consultants that their contract is with Rathowen Ltd to whom all queries should be addressed".

224. On 31 January 2014, Rathowen wrote to a redacted recipient, in response to an email from that person about "sabre rattling" about tax avoidance/evasion from HMRC". One Dawn M Bull at Rathowen wrote:

> "In light of the budget reforms, in March 2008 the arrangement changed. Your contract with the Fernleigh Partnership was assigned to Rathowen Ltd and you continued to contract through Rathowen until 31 December 2012. Consultancy fees would then have been paid from Rathowen in accordance with your consultancy agreement. You would also be entitled to receive loans from the Fernleigh Employee Trust as you would have been included in a class of beneficiaries entitled to receive loans as you were providing services as a self employed consultant to Rathowen."

225. On 14 November 2014, Rathowen, through Mrs Bull, wrote to a redacted participant as follows:

> "In March 2008 as a consequence of BN66 (section 56 FA 2008) you ceased providing services to the Partnership and started to provide them to Rathowen Ltd. As part of that consultancy, Rathowen advanced you loans in the same way as loans were previously made to you when you worked for the partnerships."

226. On 11 February 2019, Dawn Bull wrote to a redacted participant as follows:

> "Your original consultancy agreement was with the Yellvax Partnership... the business of the partnership was assigned to the Fernleigh Partnership on 6 April 2007 and then assigned onto Rathowen from the Fernleigh Partnership on 13 March 2008. No new consultancy agreement were issued when the business was assigned to different entities."

227. The assignment schedules / letters describe Rathowen as "the Supplier" with MRG/MSS/Cholmondley contracting with third-party recruiters/end-clients. There are no extant agency contracts between these Appellants and MRG/MSS/Cholmondley.

228. We disagree that these documents should be given only limited weight, on the basis that they seek to put forward only "a veneer" of an actual contractual relationship. The documents coming from Rathowen have to be given weight (i) because Rathowen existed; (ii) because the documents exist; (iii) because the documents emanate from Rathowen, and, on the face of it, are not a sham; (iv) because there is nothing (looked at conversely) to suggest that the documents were being produced simply for the sake of show.

The argument about the inability to assign to Rathowen

229. If the existence or otherwise of a contractual relationship with Rathowen is in issue, then the matter of the manner in which the Appellants' individual agreements ended up in the hands of Rathowen (and indeed the wider issues of the Appellants' contractual arrangements) is one for each of the Appellants to establish.

230. In their Grounds of Appeal, none of the Appellants sought to take formal issue with the fact that their consultancy agreements ended up with Rathowen. However, the Appellants now argue that the consultancy agreements could not lawfully (that is to say, under the laws of England and Wales) have been assigned to Rathowen. This is a new argument and a new ground of appeal, for which permission has not been sought or given. As such, it is not something which we need to consider.

231. But, even if it were justiciable, and fell for consideration, this argument fails in the absence of evidence from the Appellants.

232. There is a technical argument, founded on Chitty on Contracts §23-056 and 57, and the authorities cited therein (see notes 223-235), and *Griffith v Tower Publishing Company* [1896] 1 Ch 21 (Stirling J), that the benefit of the consultancy agreements such as those existing under the DTA Scheme could not be assigned to Rathowen without the Appellants' agreement.

233. The above law is that of England and Wales, although (on the basis of the consultancy agreements which we have seen) the standard form was for those agreements to state that they were governed by the law of the Isle of Man (with the Isle of Man courts having exclusive jurisdiction over them).

234. Therefore, the first reason that the argument as to assignment fails is that we have not heard or received any evidence as to the laws of the Isle of Man.

235. But, even if that were wrong, and assuming that the position in the Isle of Man is legally identical to that in England and Wales, the argument nonetheless still fails.

236. Looked at objectively, it does not succeed because the identity of the Appellant's counterparty, as a matter of fact, and whether that were Rathowen or somebody else, made absolutely no difference to any of the Appellants, who continued providing their services, without any discernible interruption or material change, notwithstanding the strenuous Montpelier-end efforts to move the Appellants, as quickly as possible, from the DTA Scheme to the Rathowen Scheme.

237. There is no evidence of any of them ever apparently objecting to was was being done on the Isle of Man by Montpelier to the DTA Scheme so as to move the appellants to the Rathowen Scheme. The Appellants did agree to this happening: if not explicitly, then impliedly and/or by conduct. The contrary is unarguable.

238. The Appellants' lack of concern or objection, giving rise to the reasonable presumption that they ended up contracting with Rathowen either by implication or by conduct, is not surprising because, in blunt terms, the Appellants were frankly indifferent as to the identity of their counterparty so long as sums of money described as loans and/or sums of money upon which (as the Appellants had been given to believe) no income tax was or would be payable continued to arrive in their bank accounts.

239. This was far from the case - discussed in the above materials - where the taxpayers had a genuine commercial interest in the identity of their paying counterparty (for example, where counterparty A was notably lax in its enforcement of the contractual obligations, but counterparty B was ruthless).

240. Moreover, and even if we were wrong about the above, and the argument had been pleaded, and the contracts, as a matter of law, were non-assignable, and had not, as a matter of law, been assigned to Rathowen, the Appellants are, in taxation terms, in the self-same position. If Rathowen is removed from the arrangements, then the best evidence is that the Appellants would therefore have remained, as a matter of law, contractually bound to their

counterparty under the DTA Scheme - also an IoM entity; and the consequences of the DTA Scheme have already been considered and determined by this Tribunal in *Lee, Lancashire.*

241. As to Ms Hirst, for the reasons already set out, we find that Rathowen contracted with MRG who in turn contracted with Bright Purple for the provision of Ms Hirst's services as a contractor to the end-client. Rathowen was the relevant agency for the purposes of section 44.

242. As to Mr Clifford:

(1) An unredacted copy of an agreement between him and the Tomarez Partnership, entered into by him as part of the DTA Scheme, emerged during the hearing;

(2) Although he did not have any firm recollection of a specific Rathowen consultancy being executed, we find that the benefit of the agreement with the Tomarez Partnership came into the hands of Rathowen because of the references in the letter from Rathowen dated 16 March 2012 which repeatedly referred to an agreement between Mr Clifford and Rathowen;

(3) Mr Clifford did not have an 'implied employment' with Cholmondely;

(4) Cholmondley was not "the controlling entity of the Loan Arrangements";

(5) He accepted that he did not have a contract with Hays;

(6) Rathowen was the relevant agency for the purposes of section 44.

243. As to Mr Butler (and accepting the point that his amended Grounds of Appeal did not abandon this argument) for the reasons already set out above, we infer that a consultancy agreement existed between Mr Butler and Rathowen. Rathowen was the relevant agency for the purposes of section 44.

244. Given the above findings, the only contract that fits section 47(1) ("contract made between the worker and the agency under which the worker is obliged personally to provide services to the client") for each of the affected Appellants is with Rathowen. It follows that, where section 44 applies, the worker is to be treated as employed by Rathowen and PAYE/NICs consequences flow under ITEPA section 688.

245. The PAYE Regulation 185 adjustment of credit is a matter of correction or enforcement and is not within our jurisdiction.

RATHOWEN'S UK PRESENCE

HMRC's case

246. There is insufficient evidence that Rathowen had a UK "tax presence" (as distinct from residence/Place of Establishment). Under *Clark v Oceanic Contractors Inc* [1983] 2 AC 130, PAYE applies where collection is practicable.

The Appellants' case

247. Even if (as per the immediately preceding issue) Rathowen were the "agency", the UK entities' role and the group structure demonstrate that Rathowen had a UK presence for PAYE purposes. Rathowen had a *de facto* UK presence because it operated through a UK workforce, UK agents, and UK clients. The UK entities managed contracting and invoicing and were, in reality, the UK arm of a single Montpelier enterprise. On that footing, Rathowen (or a UK agency) should have operated PAYE; section 689 would not shift liability to end-clients, and the section 684(7A)(b) notices issued to end-clients would be misdirected.

Discussion

248. We are not satisfied that Rathowen had a UK "tax presence" of the kind envisaged in *Oceanic Contractors,* where Oceanic had a trading presence in the UK (more specifically,

on the UK Continental Shelf): it was carrying on a trade in the UK. For the purposes of that trade, it employed a work force in that sector, had an address for service in the UK, and had a UK Corporation Tax presence. The majority of the House of Lords concluded that there would be no practical difficulties for Oceanic to operate PAYE; and it was obliged to do so: see p 148E-F *per* Lord Scarman.

249. Rathowen was a private company limited by shares incorporated in the Isle of Man pursuant to the *Isle of Man Companies Acts 1931 to 2004* on 10 March 2008 on the terms of a Memorandum of Association dated 4 March 2008. At incorporation, it had one shareholder: Montpelier (Trust and Corporate) Services Ltd; also an IoM private company which between 1994 and 2010 "expanded rapidly by in particular pursuing a strategy of managing trust and companies as part of sophisticated tax avoidance schemes primarily set up for UK residents", such schemes being developed by Mr Gittins and settled by tax counsel in London: see *Isle of Man Financial Services Authority v Montpelier (Trust and Corporate Services) Ltd* (HC of the Isle of Man, CHP 2019/66, Acting Deemster Khamisa QC) at Paras [84]-[87].

250. Rathowen had two directors; one of whom was Mr Edward Watkin Gittins. He was also a director of Ronsard.

251. There is no evidence that Rathowen is, in formal terms, a member of the Montpelier group in the ordinary Companies Act sense. Therefore, it cannot be treated as such.

252. Moreover, the overall structure of Montpelier remains opaque and has to some extent defied clear exposition both in the courts in the Isle of Man and the United Kingdom; but it is clear that it is sprawling (involving at various times companies in Barbados and Delaware, as well as the IoM) and that the moving spirit of the whole enterprise is Mr Edward Watkin Gittins, who is resident in the Isle of Man.

253. Rathowen did not have a UK Corporation Tax presence; and did not operate PAYE. Its accounts make no provision for the incidence of UK taxation.

254. The 'Scheme Flowchart" for Montpelier Self-employed Scheme' shows Rathowen on the Isle of Man side of the "IOM"/"UK" line. Its Additional Notes state that "Rathowen engaged the consultants as self-employed (sole traders) under a consultancy agreement". The involvement of MSS and/or MRG seems to have been limited to the deduction of a 4% fee from 'the 3rd party recruitment agency', before passing the net sum onto Rathowen, which itself took a 6% fee before distributing the net moneys - a small portion to the taxpayer ostensibly as self-employed income; and the remainder via the EBT ostensibly as interest-free loans.

255. Rathowen was in direct contact with the Appellants: see the letters referred to above, and Rathowen's letter to consultants dated 17 October 2008 reminding them that their contract was "with Rathowen Ltd, to whom all queries should be addressed"; and to whom queries were addressed, and responded to. Rathowen did have a significant and ongoing role in administering the contracts of the consultants which had been had assigned to it.

256. MRG, MSS and Cholmondely are separate companies from Rathowen.

257. MRG Consulting Group Ltd was a company registered in England and Wales. We dismiss the argument that Rathowen can be treated as having a UK tax presence because the directors (and ultimate controlling parties) of MRG - David John Gittins and Anna Amalia Gittins (Edward Watkin Gittins' brother and sister-in-law) - lived in Warrington in the UK. On the face of MRG's filed (audited) accounts, it was an independent free-standing company in England and Wales, and there is nothing in those filed accounts even to indicate, let alone show, that it was a representative or branch or agency of Rathowen. On the contrary, its

accounts indicate that it was making purchases from Rathowen, under MRG's normal commercial terms.

258. For similar reasons, there is no evidence that Rathowen had a UK tax presence through Montpelier (Search and Selection) Ltd (also a company registered in England and Wales; also with David John Gittins, but as its sole director); and hence any argument that it did, fails. There is evidence that MSS was recorded in its accounts for year ending 31 April 2008 as a wholly owned subsidiary of MT Holdings Ltd, a company registered in the Isle of Man; MT Holdings Ltd holding the shares in MSS in its capacity as a trustee of a trust based in the IoM; which trust was therefore the ultimate controlling party: this is placing increasing distance between MSS and Rathowen. MSS was buying professional and administrative services in the year ended 30 April 2009 from MRG, being undertaken on normal commercial terms.

259. The fact that MRG and MSS had a commercial relationship with Rathowen does not mean that they were subsidiaries or representatives, branches or agencies of Rathowen. The expression used in some of the documents - "Montpelier UK affiliated companies" - is technically meaningless.

260. Rathowen cannot have had a UK tax presence through Cholmondley, because Cholmondely was not related to Montpelier at all, but was set up by Mr Clifford's accountants.

Section 684(7A)(b) Notices

261. Even if - contrary to our findings - we had been with the Appellants on this point, we would still have not been able to find or direct that the section 684(7A)(b) notices were "misdirected and of no effect", because challenges to the propriety of HMRC's section 684(7A)(b) discretion to disapply PAYE for end-clients are not within the FtT's jurisdiction, but are properly matters for judicial review: see *Hoey v HMRC* [2022] EWCA Civ 656 at Para 205(iii).

OUTCOME

262. The Appeals are dismissed.

263. We conclude by extending our thanks to all Counsel for their assistance and industry.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

264. 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: 26th NOVEMER 2025