



Neutral Citation: [2026] UKFTT 248 (TC)

Case Number: TC 09784

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

[Location/By remote video hearing]

**Appeal references: TC/2015/03404  
TC/2015/03405**

*INCOME TAX – discovery assessments – case remitted from the Upper Tribunal for a new hearing of the appeal – whether Appellants deliberately brought about a loss of tax so that the extended time limit under section 36(1A)(a) Taxes Management Act applies – no – appeals allowed*

**Heard on:** 7-9 October 2025  
**Judgment date:** 06 February 2026

**Before**

**TRIBUNAL JUDGE KIM SUKUL  
TRIBUNAL MEMBER MANU DUGGAL**

**Between**

**ANTHONY OUTRAM  
ROSS OUTRAM**

**Appellants**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS  
Respondents**

**Representation:**

For the Appellants: Jeremy Woolf of counsel, instructed by Barnes Roffe LLP

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

## DECISION

### INTRODUCTION

1. Anthony Outram and Ross Outram ('the Appellants') appeal against discovery assessments issued by the Respondents ('HMRC') on 24 February 2015 under section 29 of the Taxes Management Act 1970 ('TMA 1970') for the tax year 2005-06.
2. The Appellants are brothers who participated in arrangements marketed by a firm within the Montpelier Group ('Montpelier'), commonly referred to as 'Pendulum' arrangements. These arrangements involved contracts with Pendulum Investment Corporation, a company incorporated in the Seychelles, described as contracts for difference ('CFDs') linked to movements in the FTSE 100 index. The arrangements were intended to create trading losses for tax purposes. The Appellants have conceded that the arrangements were ineffective to achieve that outcome.
3. The appeals were originally dismissed by the First-tier Tribunal ('FTT') in April 2021. That decision was set aside by the Upper Tribunal ('UT') on 15 July 2024. The UT held that the FTT had erred in law and remitted the case back to the FTT for a full rehearing before a differently constituted panel.
4. The hearing lasted 3 days. The documents to which we were referred were contained within the hearing bundle (2,322 pages), a bundle of authorities (639 pages), and skeleton arguments from both parties. We also received correspondence from the parties, including further written representations, on 14, 16, 20, 21, 23, 27, 28 and 31 October 2025, and on 2 and 3 November 2025.
5. Having carefully considered all the submissions made by the parties and the evidence adduced during the hearing, we have decided to allow these appeals. Our conclusions regarding the facts and the key arguments are set out below.

### POSITION OF THE PARTIES

6. HMRC's case is that each Appellant deliberately brought about a loss of tax by claiming trading loss relief to which he knew he was not entitled or at least suspected that to be the case and therefore had 'blind-eye' knowledge. HMRC contends that the Appellants were aware that they had not established a trade in CFDs before entering the Pendulum arrangements, contrary to the advice they had received from Montpelier. HMRC argues that the Appellants failed to follow that advice and did nothing to ensure that the loan arrangements were implemented or that the margin call balances were paid, despite knowing that these were integral to the scheme. HMRC submits that these failures, taken together with the Appellants' purpose of securing a tax advantage, demonstrate deliberate conduct.
7. The Appellants' case is that they acted honestly and in reliance on professional advice throughout. They contend that they believed the arrangements were legitimate and that they were entitled to claim the losses shown in their returns. They point to Montpelier's assurances, references to counsel's opinion, and the involvement of Barnes Roffe LLP in preparing their returns, as evidence of that belief. The Appellants deny any knowledge that the returns were inaccurate and reject any suggestion of blind-eye knowledge, asserting that they had no reason to suspect that the scheme would fail or that the claimed losses were not permissible. They contend that their purpose was not confined to generating a tax loss but included a genuine expectation of profit. They further argue that the absence of a loan and the timing of the CFD trades they carried out were irrelevant to the issue of deductibility as a matter of law, as confirmed by the UT. In their submission, HMRC has not proved deliberate conduct and the statutory test is not satisfied.

## SUMMARY OF THE ARRANGEMENTS

8. The arrangements into which the Appellants entered were part of a marketed tax avoidance scheme promoted by Montpelier Tax Planning (Isle of Man) Limited, a company within the Montpelier group. The scheme was designed to enable participants to claim substantial trading losses for tax purposes without incurring a corresponding economic loss. It sought to achieve this by creating an artificial loss which could be set against general income, thereby reducing the participant's overall tax liability.

9. The mechanism adopted involved each Appellant entering into a financial contract with Pendulum Investment Corporation, a company incorporated in the Seychelles. These contracts were described as CFDs, although that description was later acknowledged to be inaccurate. The contracts referenced movements in the FTSE 100 index over a potential twenty-five-year period and were structured in multiple phases. At the outset, each Appellant was required to pay an Initial Margin calculated as a percentage of the designated issue value of the contract. If the FTSE moved beyond a specified range during the first phase, the counterparty would pay a sum described as "Trade Profit" calculated as twice the Initial Margin. If the contract did not terminate after the first phase, it would progress through further phases each linked to index targets and offering increasingly large potential returns, culminating in a theoretical profit of 1,200% in the final phase.

## MATTERS NOT IN DISPUTE

10. Each Appellant attended a meeting with Montpelier representatives on 3 March 2006 and signed documentation relating to the arrangements. Each also entered into a contract with Pendulum dated 15 March 2006.

11. Under Anthony Outram's contract, the designated issue value was £200,000, the initial margin was £14,000, and the margin call balance was £186,000. Under Ross Outram's contract, the designated issue value was £500,000, the initial margin was £35,000, and the margin call balance was £465,000. Both Appellants paid the initial margin in March 2006. Notices of obligation requiring payment of the margin call balance were served on both Appellants on 27 March 2006.

12. Each Appellant signed an undated loan agreement with Mandaconsult AG for the purpose of funding the margin call balance. In 2014, Mandaconsult confirmed that no loans were executed, no payments were made, and it had no dealings with Montpelier or Pendulum. Neither Appellant made any payment of the margin call balance.

13. Both Appellants filed self-assessment tax returns for 2005-06 on 31 January 2007 claiming trading losses. Anthony Outram claimed a loss of £216,273 and Ross Outram claimed a loss of £506,370. Those losses were set against current and prior year income, resulting in repayments of tax. Neither return contained any disclosure in the 'white space' beyond the reference to the losses claimed.

14. Montpelier promoted the arrangements and provided documentation. Barnes Roffe LLP prepared the Appellants' tax returns. Neither Appellant saw any written opinion from counsel regarding the arrangements.

15. HMRC became aware of the Appellants' participation in the arrangements during a criminal investigation into Montpelier. On 29 September 2010, HMRC searched Montpelier's premises and recovered documents identifying the Appellants as participants. The cases were allocated to Officer Mark Reilly on 23 April 2013. Following a review and Code of Practice 9 investigations, HMRC concluded on 18 December 2014 that the Appellants' returns contained inaccuracies. Assessments were issued on 24 February 2015, nine years after the end of the 2005-06 tax year.

16. Under section 36(1A)(a) TMA 1970, an assessment may be made within 20 years where a loss of tax is brought about deliberately. If established, this satisfies section 29(4) and the extended time limit applies.

#### PREVIOUS PROCEEDINGS

17. In the first hearing of this appeal, the FTT upheld HMRC's assessments on the basis of deliberate inaccuracy. In allowing the appeal against that decision, the UT clarified two points of law, namely that, in order for the scheme to be effective, there was no requirement for a trade to be established before entering the Pendulum contract, and that the absence of a loan did not necessarily render the scheme ineffective, since a loss could still arise under the accruals basis if a contractual liability existed.

18. In reaching their conclusion, the UT held that it could not re-make the FTT's decision because it had not heard oral evidence and had not been taken to any transcripts of the original hearing. The UT emphasised that deliberateness is a subjective test requiring consideration of the Appellants' state of mind, and that this could not be properly assessed without hearing their evidence. The UT rejected HMRC's argument that the appeals could be decided on the basis of blind-eye knowledge, noting that this had not been pleaded before the FTT and was raised for the first time in written submissions, and that it would therefore be unfair for the UT to decide the appeals on that basis.

19. In light of these findings, the UT concluded that the original decision could not stand and directed that the matter be reheard by the FTT so that oral evidence could be considered and proper findings made on the Appellants' knowledge and intent.

#### POINT IN ISSUE

20. The parties agree that the sole issue before us is whether each Appellant deliberately brought about a loss of tax so that the extended time limit for making a discovery assessment under section 36(1A)(a) TMA 1970 applies.

#### LEGAL TEST

21. The extended time limit for making a discovery assessment under section 36(1A)(a) TMA 1970 applies only where a loss of tax has been "brought about deliberately". Section 118(7) TMA 1970 provides that this includes a situation arising from a "deliberate inaccuracy" in a document given to HMRC. The meaning of that phrase has been considered in a series of authorities.

22. In *HMRC v Tooth* [2021] UKSC 17 (*Tooth*), the Supreme Court held that the phrase "deliberate inaccuracy" requires intentionality attached to the inaccuracy itself. At [42]–[43], Lord Briggs stated:

"The question is whether it means (i) a deliberate statement which is (in fact) inaccurate or (ii) a statement which, when made, was deliberately inaccurate. If (ii) is correct, it would need to be shown that the maker of the statement knew it to be inaccurate or (perhaps) that he was reckless rather than merely careless or mistaken as to its accuracy. We have no hesitation in concluding that the second of those interpretations is to be preferred... Deliberate is an adjective which attaches a requirement of intentionality to the whole of that which it describes, namely 'inaccuracy'. An inaccuracy in a document is a statement which is inaccurate. Thus the required intentionality is attached both to the making of the statement and to its being inaccurate."

23. The test is therefore subjective. It is not enough that a reasonable taxpayer might have acted differently or that the taxpayer failed to take reasonable care. What matters is the taxpayer's actual state of mind at the time the document was submitted. We agree with the

approach taken in *Auxilium Project Management v HMRC* [2016] UKFTT 249 (TC), where the FTT stated at [63]:

“In our view, a deliberate inaccuracy occurs when a taxpayer knowingly provides HMRC with a document that contains an error with the intention that HMRC should rely upon it as an accurate document. This is a subjective test.”

24. The UT in *Campbell v HMRC* [2023] UKUT 265 (TCC) confirmed this interpretation, observing at [115]:

“Put simply, in order for HMRC to discharge the burden of demonstrating that an act or omission by a taxpayer was deliberate, they will need to establish to the normal civil standard that the act or omission was intentional; the fact that an act or omission may have been careless, mistaken or stupid is not enough.”

25. The authorities also recognise that blind-eye knowledge may amount to deliberate conduct. In *CPR Commercials Ltd v HMRC* [2023] UKUT 61 (TCC), the UT commented at [23]:

“Where a taxpayer suspects that a document contained an inaccuracy but deliberately and without good reason chooses not to confirm the true position before submitting the document to HMRC then the inaccuracy is deliberate on the part of the taxpayer... However, the suspicion must be more than merely fanciful.”

26. The concept of blind-eye knowledge was considered in *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd* [2001] UKHL 1 (*Manifest Shipping*), where Lord Scott stated at [116]:

“Blind-eye knowledge requires... a suspicion that the relevant facts do exist and a deliberate decision to avoid confirming that they exist... In order for there to be blind-eye knowledge, the suspicion must be firmly grounded and targeted on specific facts. The deliberate decision must be a decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe.”

27. From these authorities, we consider the following principles emerge:

- (1) The test is subjective and requires proof of actual knowledge or a conscious decision to avoid confirming what is strongly suspected.
- (2) Mere carelessness, even if gross, is insufficient.
- (3) Blind-eye knowledge demands a specific and firmly grounded suspicion coupled with a deliberate decision not to investigate because of concern about what would be discovered.

28. It follows that for HMRC to succeed in this appeal, they must establish on the balance of probabilities that, at the time the returns were filed, each Appellant either knew that the claim for loss relief was inaccurate or suspected that it might be and deliberately refrained from making inquiries that would have confirmed that suspicion.

#### **APPROACH TO DETERMINING THE ISSUE**

29. In light of the UT’s decision in this appeal, the relevant caselaw and the statutory framework, we are required to consider afresh the following matters in determining whether each Appellant deliberately brought about a loss of tax.

#### *The Appellants’ State of Mind*

30. We must determine whether, at the time their returns were submitted, either Appellant knew that the claim for trading loss relief was inaccurate, or suspected that it might be

inaccurate and deliberately refrained from making inquiries that would have confirmed that suspicion. This requires consideration of the subjective test for deliberateness as articulated in *Tooth*, which makes clear that a deliberate inaccuracy involves a conscious intention to mislead rather than mere carelessness.

*Reliance on Advice and Professional Involvement*

31. We must consider whether the Appellants' reliance on Montpelier's assurances, references to counsel's opinion, and the preparation of their returns by Barnes Roffe LLP negates any inference we might make as to their deliberate conduct. The question is whether such reliance was genuine and reasonable, and whether it is inconsistent with the Appellants having actual knowledge or blind-eye knowledge of any inaccuracy.

*Purpose and Motivation*

32. We must assess whether the Appellants' purpose in entering the Pendulum arrangements was confined to generating a tax loss or whether they genuinely believed there was a realistic prospect of profit. The extent to which the latter purpose affected their state of mind when filing their returns is relevant to whether they appreciated that the claimed losses were not allowable.

*Loan Arrangements and Margin Call Obligations*

33. We must determine whether at the time of filing their tax returns the Appellants appreciated that no loan had been executed and that the margin call balances remained unpaid, and whether any such appreciation renders the inclusion of those amounts in the claimed losses a deliberate inaccuracy.

*Effect of Non-Payment and Accruals Basis*

34. We must consider whether at the time of filing their tax returns the Appellants understood that payment of the margin call balance was not required to establish a deductible loss and whether any misunderstanding on that point is causally relevant to the alleged deliberate error. This involves applying the principle, confirmed by the UT, that the absence of a loan does not of itself render the scheme ineffective.

*Blind-Eye Knowledge*

35. Finally, if actual knowledge is not established, we must consider whether either appellant had a firmly grounded suspicion that the returns were inaccurate and made a conscious decision not to investigate, thereby satisfying the test for blind-eye knowledge as explained in *Manifest Shipping* which requires "a suspicion that the relevant facts do exist" which must be "firmly grounded and targeted on specific facts" coupled with "a deliberate decision to avoid confirming that they exist".

**WITNESS EVIDENCE**

36. Both Appellants gave evidence during the hearing in addition to two witnesses from Barnes Roffe LLP.

37. HMRC relied on the written evidence of two retired officers, Mark Reilly and Mark Bradley.

***Mark Bradley (HMRC)***

38. Mr Bradley's evidence was provided in his witness statement and was not challenged by the Appellants. He is a retired HMRC officer with prior involvement in investigations concerning the Pendulum arrangements and similar marketed tax avoidance schemes. In his witness statement, Mr Bradley explained that HMRC had identified 253 Pendulum contracts entered into by various taxpayers, including the Appellants.

39. Mr Bradley described the Pendulum scheme as a series of contracts structured in phases, where only a small proportion succeeded at Phase One. He explained that the design of the arrangements created a strong economic incentive to lose at Phase One, as losses generated substantial tax advantages without incurring the full economic cost. His analysis indicated that just over 10% of contracts were successful at Phase One, and all individuals who made a profit at that stage reinvested in further contracts, which subsequently failed at Phase One.

40. He noted that offers by Pendulum to repurchase contracts at very low values indicated that success beyond Phase One was highly unlikely. The scheme relied on highly uncommercial loan terms that were not intended to be enforced, reinforcing his view that the arrangements were artificial and aimed at creating tax losses rather than genuine trading profits.

41. He concluded that the true purpose of participants, including the Appellants, was to obtain a tax loss rather than to pursue a genuine trading profit. He characterised the arrangements as wholly artificial and consistent with findings in other cases.

***Mark Reilly (HMRC)***

42. Mr Reilly's evidence was also provided in written form and was not tested in cross-examination, as the Appellants confirmed he was not required to attend, although they dispute his conclusion that their conduct was deliberate. Mr Reilly is a retired HMRC officer who led the civil investigation into the Appellants' tax affairs following the discovery of documents during HMRC's raid on Montpelier premises in 2010. He explained that in 2013 he was allocated the Appellants' cases as part of a project investigating users of the Pendulum arrangements, which HMRC regarded as a mass-marketed tax avoidance scheme.

43. Mr Reilly stated that he reviewed the Appellants' 2005-06 tax returns and identified claims for substantial trading losses linked to Pendulum contracts. He noted that the returns contained no disclosure in the white space and that the claimed losses were based on contracts with an offshore entity and purported loans on highly uncommercial terms. His analysis concluded that the Appellants had not engaged in genuine trading and had suffered no economic loss, as the loans were never executed and the Margin Call Balances were never paid.

44. He considered that the Appellants' behaviour in submitting returns claiming such losses was deliberate, given the absence of due diligence, the implausibility of the loan terms, and the Appellants' failure to verify documentation. Mr Reilly also referred to internal Montpelier emails and marketing materials recovered during the raid, which indicated that the scheme was designed to create tax losses without economic cost and that loans were never intended to be enforced.

***Keith Mason (Barnes Roffe LLP)***

45. Mr Mason's witness statement explained his role as a partner at Barnes Roffe LLP responsible for overseeing the preparation of the Appellants' tax returns for 2005-06. He confirmed that the firm acted on information provided by the Appellants and Montpelier, and that Barnes Roffe did not advise on the validity or effectiveness of the Pendulum arrangements. He commented that the returns were prepared based on figures supplied by the Appellants, including details of the Pendulum contracts and other trading activity and that Barnes Roffe understood the arrangements to be a tax planning scheme marketed by Montpelier, which claimed to have obtained a positive opinion from tax counsel. The firm did not receive any written advice or documentation from Montpelier beyond basic transactional details and did not see counsel's opinion. No disclosure was made in the white space of the returns because Barnes Roffe did not consider it necessary at the time, given their understanding that the scheme was supported by professional advice.

46. Mr Mason acknowledged that the documentation was complex and incomplete but stated that the firm deemed it “appropriate” to submit the returns on the basis that the Appellants had engaged in a trade in CFDs. He emphasised that Barnes Roffe’s role was limited to preparing accurate returns from the information provided, not to opine on whether the scheme constituted genuine trading or whether the losses were allowable.

47. In oral testimony, Mr Mason reiterated that Barnes Roffe did not advise on the merits of the Pendulum scheme and relied on Montpelier’s assurances and the Appellants’ instructions. He confirmed that the firm had no direct dealings with Pendulum and received no confirmation of the loan agreements. He accepted that the absence of signed master agreements and other primary documents was “not ideal” but did not consider it fatal at the time. He acknowledged that, in hindsight, he would have asked to see counsel’s opinion, but at the time the firm relied on Montpelier’s representation that such advice existed. He agreed that the firm was not surprised when HMRC later opened enquiries, as they had anticipated challenge.

48. When asked about the significance of the loan, Mr Mason said that his initial view was that the loan was crucial to the scheme, but later accepted that legal liability under the contract might suffice even without an actual loan drawdown. He confirmed that Barnes Roffe did not advise the Appellants to make any disclosure in the returns and did not consider the arrangements to be fraudulent.

49. Under cross-examination, Mr Mason accepted that the firm relied heavily on Montpelier and did not carry out independent due diligence. He maintained, however, that the Appellants appeared to genuinely believe the arrangements were legitimate and that Barnes Roffe acted in good faith based on the information available.

***Duncan Stannett (Barnes Roffe LLP)***

50. Mr Stannett’s witness statement explained his role as a partner at Barnes Roffe LLP and his involvement with the Appellants in early 2006. He confirmed that he attended a meeting with Ross Outram on 20 February 2006, during which what he described as “the planning” was briefly discussed. His note of that meeting, later sent to Ross Outram, recorded that the primary focus was Ross Outram’s proposed venture into spread betting, with only a passing reference to Montpelier and an intention to meet Peter Crawford from Montpelier for advice. He stated that Barnes Roffe issued letters of engagement to both Appellants in January and February 2006 and subsequently assisted with preparing their tax returns and he confirmed that Barnes Roffe understood the arrangements to be a tax planning scheme marketed by Montpelier, which claimed to have obtained a positive opinion from tax counsel. He emphasised that Barnes Roffe did not advise on the validity of the scheme and relied on Montpelier’s assurances and the Appellants’ instructions.

51. In oral testimony, Mr Stannett reiterated that his involvement was limited and that he did not provide tax planning advice. He confirmed that the meeting with Ross Outram was short and focused mainly on spread betting, not on the detailed mechanics of the Pendulum arrangements, and he accepted that he did not see any counsel’s opinion and did not request it. He acknowledged that Barnes Roffe relied on Montpelier’s representation that the scheme was supported by professional advice and stated that he did not advise the Appellants to make any disclosure in the white space of their returns and did not consider the arrangements to be fraudulent.

52. Under cross-examination, he agreed that Barnes Roffe’s role was confined to preparing returns based on figures provided and that the firm did not carry out independent due diligence on the scheme. Mr Stannett maintained that the Appellants appeared to genuinely believe the arrangements were legitimate and that Barnes Roffe acted in good faith based on the information available.

### ***Anthony Outram***

53. Anthony Outram provided a witness statement (revised 20 February 2025) and gave oral evidence. His evidence addressed his background, the circumstances in which he entered into the Pendulum arrangements, the documents he signed, the payments he made, his understanding of the loan and margin call, his approach to tax returns, and his subsequent actions.

#### *Background and trading activities*

54. Anthony Outram stated that he worked in oil futures at Refco until redundancy in spring 2005. Thereafter he traded futures on his own account between April and December 2005, which was not profitable. In his 2005-06 return he described himself as a self-employed options trader and claimed a net trading loss of £216,273, part of which was set against 2005-06 income and the balance carried back to prior years. The bulk of the loss related to the Pendulum contract, with smaller amounts arising from other CFD transactions. His Statement of Income and Expenditure for 2005-06 showed CFD purchases of £283,944 and sales of £87,850, of which £200,000 related to Pendulum, and a margin on other CFDs of £3,906. He accepted that the smaller CFD trades may have been transacted after the Pendulum contract and that he had not traded CFDs since March 2006 because they did not “suit” him.

#### *Introduction to Montpelier and nature of advice*

55. Anthony Outram was introduced to Montpelier by his brother and Matthew Woolf and attended a meeting on 3 March 2006 with Peter Crawford (Montpelier Financial Services) and Andrew Simpson (Montpelier Tax Consultants (City) Ltd). He recalled being told the arrangements were backed by counsel and were legitimate. He understood Montpelier marketed tax planning and “investments” and accepted that Montpelier were acting as tax advisers in relation to the arrangements. He signed documentation at that meeting, including a Montpelier Tax Planning (Isle of Man) Limited Professional Services Agreement (for taxation advice concerning commencing a derivatives trade), a ‘know your customer’ form (stating “tax planning” as his reason for engaging Montpelier), and a confidentiality agreement. He paid a £500 + VAT fee to Montpelier for those services.

#### *Pendulum documentation and contract terms*

56. Anthony Outram’s evidence was that all relevant documents were signed at the 3 March 2006 meeting. He accepted that his “CFD Offer to Trade” (purportedly dated 15 March 2006) proposed an issue value of £200,000 and identified Phase One as a seven-day period with a designated swing movement of  $\pm 140$  FTSE points. He paid an Initial Margin of £14,000 on 16 March 2006. He received a Notice of Obligation to pay a Margin Call Balance of £186,000 dated 27 March 2006 after Phase One did not terminate the contract. He said he did not speak to anyone at Pendulum, did not check whether he had made a profit or loss at later phases, and could not say whether he accepted Pendulum’s subsequent offer to repurchase the contract.

#### *Loan agreement and understanding of financing*

57. Anthony Outram said that a loan was to be used to fund any Margin Call Balance. He signed an outline loan agreement with Mandaconsult AG (undated and witnessed by Peter Crawford). He understood the loan to be interest-free, repayable on the 50th anniversary, and subject to lender fees in the event of profits. He assumed the loan would be drawn down to meet the Margin Call Balance and accepted that he relied on Montpelier to “take care of it”. He stated that, at the time, he believed there was a loan to pay the margin call and that he would owe the money in 50 years. He regarded the existence of the loan as important and said he would probably not have entered the Pendulum contract without loan financing. He did not contact Pendulum to confirm payment of the Margin Call Balance and did not speak to any lender himself. He said it later transpired that the loan did not exist, but at the time he believed

it did. He indicated he became aware of the absence of a loan in or around 2015 during proceedings and took no steps before then to verify or regularise loan arrangements.

*Tax return preparation and reliance on advisers*

58. Anthony Outram stated that his returns were prepared by Barnes Roffe. He said Barnes Roffe were aware of the arrangements and he relied on them and on Montpelier. He did not include any specific disclosure in the white space of the return about the Pendulum arrangements, and he did not recall Barnes Roffe advising that disclosure should be made. He said he believed the returns were correct when filed because they were prepared by Barnes Roffe and the arrangements had been marketed as legitimate tax planning backed by counsel. He confirmed he did not seek independent tax advice beyond Montpelier's involvement and did not ask to see any counsel's opinion. He said he would have expected Barnes Roffe to warn him if there were problems.

*Motivation and assessment of profit/loss prospects*

59. Anthony Outram said he entered the arrangements as a trade with tax planning attached and hoped to make a profit; he accepted that if the trade went against him the tax planning would apply. He assessed Phase One as having roughly a 50/50 chance of success at the time, but considered the prospect of profit in later phases minimal. He agreed that the availability of a long-term, interest-free loan made the arrangements more attractive. He said that CFDs were "fashionable" at the time and that he looked at them in part because Montpelier suggested them. He stated that had he made money he would have continued trading CFDs. He denied that any short-lived CFD activity was solely to create the appearance of trading.

*Understanding of regulation and warnings*

60. Anthony Outram stated that at the time he did not appreciate Pendulum's regulatory status and relied on Montpelier's reputation and the assurance that the arrangements had been "run past counsel". He now accepts that Pendulum was not regulated in the Seychelles or the UK and had minimal paid-up capital, as reflected in the relevant documents. He did not recall reading all documents in detail and described himself as "not a details person" but maintained that he trusted Montpelier and believed the arrangements were bona fide.

*Record-keeping and subsequent actions*

61. Anthony Outram said he kept receipts and ordinary records for small cash expenses but relied on Montpelier regarding complex contract documentation. He sent statements and relevant papers to Barnes Roffe for return preparation. He did not contact Pendulum after receiving the offer to repurchase to query valuations or outcomes, and he did not pursue confirmation of loan drawdown at the time, stating that he relied on Montpelier. He acknowledged that, in 2014, Barnes Roffe wrote to Mandaconsult and received a response that no loans had been made. He accepted that it "comes to light now" that there was no loan in place. He did not take steps to investigate or remedy his position after learning this, explaining that matters were then being handled within the proceedings.

*Position maintained in oral evidence*

62. Anthony Outram gave oral evidence and affirmed his written statement. He described his background as an experienced derivatives trader, having previously worked on the trading floor before moving to screen-based trading. He explained that he was introduced to the Pendulum arrangements through his brother and Matthew Woolf and understood it to be a combination of trading and tax planning.

63. Regarding his meeting with Montpelier representatives where the broad outline of the arrangements were explained, he recalled being told that the scheme was supported by senior tax counsel and he believed this provided legitimacy. He did not see the counsel's opinion and

did not seek independent advice, relying instead on Montpelier's reputation and its status as an FSA-registered firm. He explained that, at the material time, he was unaware that Pendulum was not regulated.

64. On the documentation, Anthony Outram accepted that he signed papers presented at the meeting but could not recall whether the figures were his or suggested by Montpelier. He assumed that Montpelier would complete all necessary steps, including arranging the loan facility intended to fund margin calls. He believed the loan had been drawn down automatically and only discovered in 2015, during HMRC's enquiries, that no loan had ever been advanced. He acknowledged that the loan terms (a 50-year, interest-free facility) were unusual but said he trusted Montpelier to manage the process.

65. Regarding his motivation, Anthony Outram maintained that he hoped to make a profit, particularly at the early phases of the contract, although he accepted that later phases were unlikely to succeed. He considered the arrangements to be a genuine trade with tax planning attached, and said the tax relief made the scheme more attractive but was not the sole purpose. He also undertook some CFD trading alongside the Pendulum contract, which he described as exploratory rather than cosmetic, and denied that this was done merely to create the appearance of trading.

66. Under cross-examination, Anthony Outram accepted that he did not verify the loan agreement, did not request copies of documents, and did not question the repurchase offer or the absence of loan confirmation. He agreed that he relied entirely on Montpelier and his accountant, Barnes Roffe, and did not take steps to regularise his position when he later learned that no loan existed. He maintained, however, that at the time he believed the arrangements were legitimate and that he had a genuine liability under the contract.

67. Anthony Outram also maintained that he believed he had entered a trade and made a loss and therefore was entitled to claim the loss in his tax return. He considered that, even if the loan had not been drawn down, he remained contractually obliged to pay the Margin Call Balance to Pendulum and thus had incurred a liability. He accepted his returns did not include specific disclosure of the planning but reiterated that he relied on Barnes Roffe's judgment and Montpelier's assurances.

68. In re-examination, Anthony Outram reiterated that he regarded himself as a trader and believed the Pendulum contract was a genuine trading transaction with tax planning attached. He said he trusted Montpelier completely and acted on the understanding that the arrangements were backed by counsel and professionally advised. He maintained that he considered the FTSE swing realistic and viewed the contract as consistent with his prior high-risk trading.

### ***Ross Outram***

69. Ross Outram gave evidence through his witness statement (revised 21 February 2025) and oral testimony. His evidence addressed his background, entry into the Pendulum arrangements, documentation signed, payments made, understanding of the loan and margin call, approach to tax returns, and subsequent actions.

#### ***Background and Claimed Losses***

70. Ross Outram stated that he had worked in oil futures for Refco Futures Limited from 2001 to 2005 and subsequently for Nymex. He described himself as a self-employed options trader in his 2005-06 tax return and claimed a trading loss of £506,370, of which £122,380.90 was set against income for 2005-06 and the remainder carried back to prior years. This was significantly higher than Anthony Outram's claimed loss of £216,273. Ross Outram confirmed that the bulk of his loss related to the Pendulum contract, with a small amount from other CFD trades. His Statement of Income and Expenditure showed CFD purchases of £817,865 and sales

of £327,653, of which £500,000 related to Pendulum. He accepted that other CFD trades were minimal and short-lived, occurring between 17 March and 3 April 2006, and produced a loss of £155.

#### *Introduction to Montpelier and Meeting*

71. Ross Outram stated that he was introduced to Montpelier by Matthew Woolf and attended a meeting on 3 March 2006 with Peter Crawford (Montpelier Financial Services) and Andrew Simpson (Montpelier Tax Consultants (City) Ltd). He recalled being told that the arrangements were backed by counsel and legitimate. He understood Montpelier marketed tax planning and trading opportunities. He signed documents at that meeting, including a Professional Services Agreement with Montpelier Tax Planning (Isle of Man) Limited for taxation advice on derivative trading, and paid a £500 + VAT fee. Both brothers attended the same meeting and signed similar documents.

#### *Pendulum Contract and Payments*

72. Ross Outram's Pendulum contract was purportedly dated 15 March 2006 with an issue value of £500,000. He paid an Initial Margin of £35,000 on 16 March 2006. After Phase One ended without success, he received a Notice of Obligation to pay a Margin Call Balance of £465,000 on 27 March 2006. He did not pay this sum personally and did not contact Pendulum to confirm payment or check subsequent valuations. He assumed he had received an offer similar to Anthony Outram's repurchase letter from Pendulum but could not recall whether he accepted Pendulum's offer to repurchase the contract.

#### *Loan Agreement and Understanding*

73. Ross Outram stated that a loan was intended to fund the Margin Call Balance. He signed an outline loan agreement with Mandaconsult AG, which was undated and witnessed by Peter Crawford. The agreement specified a 50-year term, no interest, and repayment at the end of the term, with fees payable if profits were made. Ross Outram assumed the loan would be drawn down automatically and relied on Montpelier to arrange this. He said he believed the loan existed and would cover the margin call, and that the availability of the loan made the arrangements attractive. He accepted that he did not verify the loan or speak to any lender. Later correspondence confirmed that Mandaconsult AG had never signed any loan agreements or made payments. Ross Outram's loan document contained an anomaly, in that the name opposite his signature was that of another individual. He was unable to provide an explanation for the anomaly.

#### *Tax Return Preparation and Reliance*

74. Ross Outram confirmed that Barnes Roffe prepared his tax return. He did not include any disclosure in the white space about the Pendulum arrangements and did not recall being advised to do so. He said he relied on Montpelier and Barnes Roffe and believed the returns were correct because they were prepared by professionals and the scheme was marketed as legitimate tax planning backed by counsel. He did not seek independent tax advice and did not ask to see any counsel's opinion.

#### *Motivation and Profit/Loss Assessment*

75. Ross Outram stated that he entered the arrangements hoping to make a profit but acknowledged that he was aware of the potential to make a loss and utilise that loss for tax purposes. He said that he had emailed Duncan Stannett asking for details of his tax losses intending to utilise them if he lost on the trade. He described Phase Two as his "main driver" believing there was a significant chance of profit at that stage. He accepted that the tax benefit reduced his concern about losses and that the loan feature made the arrangements more attractive. He denied that his CFD trades were undertaken solely to create the appearance of

trading, stating that he would have continued if profitable. Ross Outram was explicit in admitting that he expected to make a loss and saw that as a logical outcome.

#### *Understanding of Regulation and Documentation*

76. Ross Outram acknowledged that Pendulum was not regulated and had minimal paid-up capital, as stated in the documents. He said he relied on Montpelier's reputation and assurances that the scheme had been reviewed by counsel. He did not recall reading all documents in detail and described himself as relying on Montpelier for compliance.

#### *Record-Keeping and Subsequent Actions*

77. Ross Outram said he left documentation matters to Montpelier and Barnes Roffe. He did not pursue confirmation of loan drawdown or margin call payment and did not investigate the position after learning in 2014 that Mandaconsult denied any loans. He explained that he relied on his advisers and assumed matters were in order.

#### *Position maintained in oral evidence*

78. Ross Outram also gave oral evidence and affirmed his written statement. He described his background as a former floor trader with experience in oil futures and other derivatives. He explained that he was introduced to the Pendulum arrangements through Matthew Woolf and attended a meeting with Montpelier representatives where the structure was outlined. He recalled being told that the scheme was supported by tax counsel and believed this provided legitimacy. He did not see counsel's opinion and did not seek independent advice, relying instead on Montpelier's reputation and its status as an FSA-registered firm. He was unaware that Pendulum was not regulated.

79. Ross Outram stated that he understood the arrangements to be a commercial trade with tax benefits attached. He said he hoped to make a profit from the Pendulum contract, particularly in the early phases, and considered the tax relief as a safety net rather than the sole purpose. He undertook some CFD trading alongside the Pendulum contract, which he described as exploratory and consistent with his interest in trading new products. He denied that this was done merely to create the appearance of trading for the purpose of claiming tax losses.

80. On documentation, Ross Outram accepted that he signed papers presented at the meeting but could not recall whether the figures were his or suggested by Montpelier. He assumed Montpelier would complete all necessary steps, including arranging the loan facility intended to fund margin calls. He believed the loan had been drawn down automatically and only discovered during HMRC's enquiries that no loan had ever been advanced. He acknowledged that the loan terms were unusual but said he trusted Montpelier to manage the process.

81. Under cross-examination, Ross Outram accepted that he did not verify the loan agreement, did not request copies of documents, and did not question the absence of loan confirmation. He agreed that he relied entirely on Montpelier and his accountant, Barnes Roffe, and did not take steps to regularise his position when he later learned that no loan existed. He maintained, however, that at the time he believed the arrangements were legitimate and that he had a genuine liability under the contract. He also confirmed that he did not speak to anyone at Pendulum and had no dealings with them beyond what Montpelier arranged.

82. In re-examination, Ross Outram reiterated that he regarded himself as a trader and believed the arrangements were a bona fide trade with tax benefits if a loss occurred. He said he relied entirely on Montpelier to manage all formalities and proceeded on the basis that the planning was supported by professional advice and counsel's opinion.

### *Approach to the evidence*

83. We bear in mind the considerable lapse of time since the relevant events and recognise that memory of detail fades and may be reconstructed. We therefore give greatest weight to contemporaneous documents and to those parts of the oral evidence that are consistent with such documents. The Appellants, Mr Mason and Mr Stannett gave evidence that was, in our assessment, broadly consistent internally and with the available documentation. HMRC relied on the written evidence of Mr Bradley and Mr Reilly. Mr Bradley's evidence was not challenged and Mr Reilly was not cross-examined. Their analyses assist our understanding in relation to the mechanics and context of the Pendulum arrangements. However, on the issue of subjective knowledge, we attach weight to the direct testimony of the Appellants and their advisers.

### **FINDINGS OF FACT**

84. Having considered the evidence before us, including the witness evidence and the documents set out at [4] above, we make the following findings on the facts.

85. We accept HMRC's evidence, particularly that of Mr Bradley, that the Pendulum arrangements offered only a remote prospect of commercial gain. His analysis demonstrated that success beyond Phase One was highly improbable, requiring extreme market movements, and that even Phase One presented only a minimal chance of profit. The data he possessed showed that approximately 10% of users achieved a Phase One gain, and all such individuals reinvested in further contracts which then lost, reinforcing the conclusion that the scheme was not designed to provide participants with a sustainable platform from which to generate trading profits. Mr Reilly's evidence supported this view, noting that internal Montpelier materials emphasised tax benefits rather than profit making trading opportunities. We find that the arrangements were structured primarily to create tax losses and that any suggestion of genuine trading profit potential for participants in the arrangements was incidental and unrealistic.

86. However, we accept the evidence given by the Appellants regarding their knowledge, intention and state of mind. Although both Appellants accepted that Montpelier suggested trading CFDs, we accept that Anthony Outram believed that because he was already trading and had numerous accounts, he was already "a trader" and did not have to do anything further to establish a CFD trade because the conditions for entering the Pendulum contract were already fulfilled. We also accept that Ross Outram considered himself to be "a trader generally" and thought the CFD activity was exploratory rather than to create an appearance of trading. We accept his evidence that he believed he was already trading other products and saw no need for elaborate steps to establish a trade.

87. Whilst we find that the potential tax benefit was a motivating factor for both Appellants in entering the arrangements, we accept that both Appellants believed there was a possibility of making a trading profit and that the arrangements constituted trading activity.

88. We accept that Anthony Outram considered the arrangements primarily as trading. Ross Outram expressly acknowledged that he anticipated a loss and regarded the ability to utilise that loss for tax purposes as advantageous. We do not however consider that evidence demonstrates that he believed the loss claim would be inaccurate, as we accept his evidence that, on advice, he understood a loss (if incurred) to be claimable.

89. We also accept that the Appellants believed the arrangements were endorsed by senior tax counsel and acted in reliance on that advice and on Barnes Roffe's preparation of their returns.

90. Ross Outram's evidence was that he "assumed" he had received such a repurchase offer although no such document was produced. We consider it more likely than not that Ross

Outram did receive an offer similar to Anthony Outram’s repurchase letter from Pendulum, and we find that, having signed loan agreements and received repurchase letters referring to the Margin Call balance as “having been paid”, both Appellants assumed Montpelier had implemented the loan arrangements, and both believed a loan was in place. Neither Appellant knew nor suspected that the margin call balance remained unpaid. The Appellants were not told that the loan would never be enforced and they understood the loan to be repayable after 50 years.

91. It is our finding that both Appellants believed their returns were correct based on advice from Montpelier and the involvement of their accountants. They did not know or suspect that the advice given to them or the entries made on their tax returns were inaccurate.

## DISCUSSION

### *Legal framework and burden*

92. The burden of proof rests with HMRC to demonstrate that an act or omission by a taxpayer was deliberate.

93. The sole issue for our determination is whether HMRC has established, on the balance of probabilities, that either Appellant made a deliberate inaccuracy when filing his return. The Supreme Court in *Tooth* makes clear that “deliberate” denotes a conscious intention to submit an incorrect return; it is not enough that the taxpayer was careless or even very careless. The focus is the taxpayer’s subjective state of mind at the time of filing.

94. We approach the blind-eye variant on the same footing and we consider that it requires a subjective suspicion of the true position coupled with a deliberate decision not to inquire precisely because the taxpayer does not wish to confirm the inconvenient truth. It is not enough to show that a reasonable taxpayer would have been put on inquiry.

95. HMRC did not advance a case of recklessness and accepted that the test here is subjective. We therefore consider whether each Appellant either knew the relevant return entry was wrong or, suspecting it was wrong, wilfully avoided confirming that suspicion, and, further, whether any such state of mind caused the inaccuracy.

### *State of mind at filing*

96. HMRC submits that each Appellant knew, or at least suspected, that his return was wrong and either acted deliberately or turned a blind eye to the truth. We reject that submission. On the evidence, it is our finding that both Appellants believed that the returns were prepared and submitted on a proper footing. They relied on Montpelier’s representations, framed as being supported by senior tax counsel, and on the professional involvement of Barnes Roffe in compiling and filing the returns. That reliance may be criticised as incautious, but *Tooth* requires more than carelessness. HMRC has not demonstrated that either Appellant knew an entry was false when made, or that he chose not to inquire because he feared confirmation of falsity.

97. We accept the Appellants’ evidence that, at the time of filing, they believed they had entered arrangements which, while having tax advantages, were capable of generating profit at least at the early phase. We also accept that they believed the accounting treatment adopted, prepared and filed by their accountants, was correct. The absence of disclosure in the white space does not, without more, lead us to infer the necessary subjective intention to mislead.

### *Purpose and motivation*

98. HMRC contends that the Appellants’ sole or primary purpose was to create a tax loss and that they knew the arrangements were not genuine trading. We are not persuaded. The Appellants candidly accepted that tax was a consideration. They gave coherent evidence that

they understood there to be a real (if limited) prospect of a Phase One gain and that they approached the arrangements as trading transactions with tax planning attached. Even accepting HMRC's broader analysis that the scheme was heavily weighted towards loss creation, that objective feature does not, in our view, establish the Appellants' subjective awareness that their claims were inaccurate.

99. HMRC submitted that the Appellants' CFD trading was minimal and brief and contended it was cosmetic. We accept the brevity of the trading activity. However, our task is not to determine whether the trading was commercially robust, but whether, at the time of filing, either Appellant knew or suspected the claimed losses were inaccurate. On the evidence, both Appellants regarded themselves as traders and understood the CFD activity to be exploratory rather than a mere façade. The brevity of trading is therefore relevant to commercial context but is not, without more, probative of the subjective intention required by *Tooth*.

100. HMRC also relied on Ross Outram's email to his accountant enquiring about the utilisation of tax losses prior to meeting Montpelier. We accept that this correspondence evidences a significant tax motivation. Nevertheless, tax motivation, even if substantial, is not of itself demonstrative of the subjective state of mind required by *Tooth*. It neither establishes that Ross Outram knew any return entry was wrong nor that he suspected an inaccuracy and chose not to confirm it. We therefore treat the email as part of the contextual background to motivation, without finding that it advances HMRC's case on deliberateness.

#### ***Reliance on professional advice***

101. Regarding the Appellants' reliance on Montpelier's assurances and references to counsel's opinion, the question for us is not whether Montpelier's advice was correct or fulsome, but what the Appellants believed and intended. On the evidence, they were told the planning had been vetted by senior counsel, and they engaged accountants who prepared the returns without recommending disclosure or separate reservations. In that context, we find the Appellants genuinely believed they were acting appropriately when submitting their returns. That belief negates a finding of deliberate inaccuracy. It also undermines any blind-eye case as there is no cogent evidence that the Appellants suspected the entries were wrong and avoided inquiry for fear of confirmation. Rather, the evidence supports that they believed the position had been addressed by their advisers.

102. The contemporaneous Montpelier letters included disclaimers indicating that Montpelier was not recommending the investment and advising recipients to obtain independent advice. We have considered those disclaimers. They tend to show that reliance on Montpelier alone was incautious. Nonetheless, the issue we must determine is the Appellants' subjective state of mind at filing. On the evidence, both Appellants believed the arrangements had been vetted by counsel and relied on the involvement of Barnes Roffe in preparing the returns. While the disclaimers temper the reasonableness of that reliance, they do not, in our view, establish that either Appellant knew an entry was wrong or suspected falsity and deliberately avoided confirmation.

#### ***Loan arrangements and the Margin Call Balance***

103. HMRC submits that no loan existed and that the Appellants knew the Margin Call Balance was not paid when they filed, thereby overstating losses. It was agreed, and we accept, that no loan was in fact advanced, but we also accept the Appellants' evidence that they believed the loan would be implemented by Montpelier and that they had a liability under the contracts in any event. They signed loan documentation, received an offer to repurchase letter drafted on the premise that the initial margin and margin call had been paid, and were content to leave operational matters to Montpelier. We consider there is no reliable evidential basis to conclude that, at the filing date, either Appellant knew that no loan existed or that the margin

call remained unpaid. The fact that they later learned the true position does not retroactively convert their earlier belief into a deliberate inaccuracy.

104. HMRC drew attention to an anomaly in Ross Outram's loan document, namely that the name opposite his signature was that of another individual. We regard that feature as indicative of imperfect documentation and of limited scrutiny by the Appellant at the time. However, in the absence of evidence that Ross Outram appreciated the anomaly when filing the return, or that he suspected the loan would not be implemented and refrained from inquiry for fear of confirmation, the anomaly does not, in our judgment, satisfy the subjective test for deliberate inaccuracy or blind-eye knowledge.

#### ***Effect of non-payment on the loss claim***

105. HMRC further submits that the absence of payment or a drawn down loan meant no loss could properly be claimed. We proceed on the basis, reflected in the UT's guidance in this litigation, that on an accruals basis a deductible loss may arise by reference to the contractual obligation, absent actual payment, absent rescission. That legal context does not support an inference of a deliberate inaccuracy on the part of Appellants as to the existence of a loss at the time of filing. Against that legal background, we consider the Appellants' belief that the accounting treatment was correct, was not only genuine but aligned with the approach later articulated by the UT.

#### ***Awareness of loan enforceability***

106. We have considered HMRC's suggestion that the Appellants knew, or were told, that the loan would never be enforced. We accept that the loans were highly uncommercial as to term and interest rate. However, we also accept the Appellants' evidence that they understood the loan to be repayable in 50 years and that funding for the margin call balance was an important feature of the planning. We do not consider the evidence demonstrates that either Appellant appreciated, at the relevant time, that the loan would never be pursued.

#### ***Due diligence and conduct***

107. HMRC contends that the lack of due diligence on the part of the Appellants suggests that their conduct was inconsistent with genuine trading. We consider a lack of rigorous inquiry can amount to carelessness but does not, without more, establish subjective deliberateness. The Appellants acted as advised. On the facts here, we are not satisfied that any omission to investigate amounted to a conscious decision to avoid the truth.

#### ***Profit likelihood and its evidential weight***

108. We accept Mr Bradley's broader analysis that the arrangements afforded only a limited prospect of commercial gain for the Appellants, particularly beyond Phase One. That feature may inform how the scheme was designed but does not, however, answer the distinct question under *Tooth*: what did these Appellants believe when they filed their tax returns? Even if the scheme's objective design skewed towards loss creation, HMRC has not shown that either Appellant knew his return entries were wrong or suspected as much and chose not to look.

#### ***Causation***

109. For blind-eye knowledge to suffice, we consider there must be a causal link between the conscious abstention from inquiry and the inaccuracy in the return. On our findings, there was no such abstention. The Appellants believed matters had been put in place by Montpelier and verified through their accountant's involvement. We have found that any failures to probe loan mechanics or contractual detail did not stem from a desire to avoid learning an inconvenient truth, but instead from misplaced trust.

### **Post-hearing submissions**

110. In post-hearing submissions, we were referred to Leggatt J’s observation in *Gestmin SGPS SA v Credit Suisse* [2013] EWHC 3560 (at [22]) that courts should “place little if any reliance on witnesses’ recollections of what was said in meetings or conversations”. We were also referred to the Court of Appeal guidance in *Kogan v Martin* [2019] EWCA Civ 1645 that even where documents exist, a tribunal must engage with oral testimony and give reasons for not accepting it, rather than discounting recollection wholesale (per Floyd LJ at [88]).

111. In a case that turns on subjective state of mind, such as this one, we consider the probative value of tested oral evidence to be significant. We therefore treat Leggatt J’s caution as a useful reminder, but not a rule displacing the need to assess credibility and belief, and we accept the Appellants’ contention that their oral testimony is centrally relevant.

112. We do not consider the scheme marketing material and documentation, or the references by the Appellants to assumptions they made rather than clear recollection, form a sufficiently cogent basis for us to reject their oral testimony.

113. Further, both parties addressed the Tribunal on the issue of causation in the light of the recently released Court of Appeal decision in *Mainpay Ltd v HMRC* [2025] EWCA Civ 1290. Given our finding that the Appellants had not acted deliberately, we do not consider the question of whether the inaccuracy was caused by deliberate behaviour arises in these appeal and we have therefore not considered this issue further.

### **CONCLUSION**

114. Within the meaning of section 36(1A)(a) TMA 1970, we are required to consider whether, at the time the relevant returns were filed, either Appellant knowingly included an inaccuracy or acted with blind-eye knowledge as described in the authorities.

115. Taking the evidence and legal tests together, we have concluded that HMRC has not discharged their burden of proving that either Appellant made a deliberate inaccuracy or acted with blind-eye knowledge. The Appellants’ reliance on professional advice, their belief as to the loan arrangements and contractual obligations, the legal context as to accruals, and the absence of cogent evidence of contemporaneous knowledge or suspicion, lead us to conclude that, in the circumstances of these appeals, the assessments predicated on deliberateness cannot stand.

116. Given the reasons set out above, we allow both appeals.

### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

117. 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:  
06 February 2026**