Appeal number: TC/2012/05860

Capital Gains Tax: Sections 38, 222 and 223 Taxation of Chargeable Gains Act 1992 ("TCGA"). Section 95 Taxes Management Act 1970. Meaning of "consideration" and of "acquisition cost" in section 38 TCGA. Whether mortgage fees deductible as incidental costs of disposal under section 38(1)(c) and (2) TCGA—Held: no. Whether deposit on property purchase effectively paid by vendors to themselves ("gifted deposit") goes to reduce consideration to be used as starting point under section 38 TCGA—Held: yes. Whether private residence relief available under sections 222 and 223 TCGA—Held: no, on the facts. Whether painting and decorating cost claimed as enhancement cost is deductible under section 38(1)(b) TCGA—Held: yes, on the facts. Penalty for negligence under section 95 Taxes Management Act 1970

FIRST-TIER TRIBUNAL
TAX CHAMBER

JOHN ARTHUR DAY **Appellants**
AND AMANDA JANE DALGETY

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE RACHEL PEREZ
HELEN FOLORUNSO

Sitting in public at 45 Bedford Square, London on 29 January 2013

The appellants appeared in person

Miss Joanna Bartup of HMRC for the respondents

DECISION

Introduction

1. These appeals were against capital gains tax assessments and penalties for three properties, which we refer to simply as 64 Wainwright, 14 Somerville and 52 Blenheim Way. The tax year in question was the year ended 5 April 2007.

2. By summary decision, we allowed Mr Day's appeal to the extent that his net chargeable gain was reduced to £13,285 and his tax reduced to £2,657, giving a reduced penalty of £398.55. Apart from that, we dismissed Mr Day's appeal.

3. By summary decision, we allowed Miss Dalgety's appeal to the extent that her net chargeable gain was reduced to £13,285 and her tax reduced to £5,314, giving a reduced penalty of £797.10. Apart from that, we dismissed Miss Dalgety's appeal.

4. We now give our full decision at both parties' request.

5. We have set out at Annexes A(1), B(1) and C(1) to this decision the mode of computation contended for by the appellants. At Annexes A(2), B(2) and C(2), we have set out our decision on what the computation should be. The figures in Annexes A(2), B(2) and C(2) inform the final figures we have decided upon, shown at paragraph 184 below.

Background

6. It was common ground that, in the year ended 5 April 2007, the appellants disposed of three properties. These were not the only properties the appellants owned. But they were the only ones to which the appeal related. All three had been purchased in the appellants' joint names. They were 64 Wainwright, 14 Somerville and 52 Blenheim Way. It was common ground that each appellant's tax return for that tax year did not disclose any disposal or capital gain for any of the three properties and contained no capital gains tax pages.

7. HMRC first wrote to the appellants on 27 November 2009 to request information about disposals. It was common ground that this was some ten months after the expiry, on 31 January that year, of the time limit for opening an enquiry under section 9A of the Taxes Management Act 1970 (c.9, "TMA").

8. It was common ground that 64 Wainwright and 14 Somerville were rental properties. The appellants said that the reason they had not declared the disposal and gain in relation to those two properties was that they had calculated the gains to be below the individual allowance and were not aware that the gains should have been declared. The dispute for these two properties centred on the correct mode of calculation of the sale proceeds on the appellants' disposal of the properties, and on what amounts properly fell to be deducted in calculating the net chargeable gain on the disposal.

9. The appellants said prior to the appeal that the reason that they had not included 52 Blenheim Way on their returns was because they claimed it attracted private residence relief. By the time the appeal came before us, Miss Dalgety accepted that her gain on disposal of 52 Blenheim Way did not qualify for private residence relief. Mr Day maintained before us however that his gain on disposal of 52 Blenheim Way did qualify for private residence relief because, he said, he had lived in the property intending to make it his only or main permanent home. In addition, issues arose as to the correct mode of calculation of the sale proceeds, and as to what amounts, including painting and decorating costs, properly fell to be deducted in calculating the net chargeable gain.

10. HMRC raised a discovery assessment on 11 January 2012 for each appellant under section 29 TMA, for the tax year ended 5 April 2007. The assessments were raised outside the usual time limit of four years imposed by section 34 TMA. HMRC's position was that this was permitted because the appellants' carelessness extended the time limit to six years under section 36 TMA. On review, HMRC amended the assessments to allow further expenses, giving the following amounts—

	Taxable capital gain (after adjustment on review)	Adjusted amount charged	Penalty (85% abatement)
Mr Day	£15,043	£3,008.60	£451
Miss Dalgety	£15,043	£6,017.20	£902

11. The appeal is against the discovery assessments as amended and against the penalty and amount of the penalty.

Discovery assessments

12. In order to proceed to consider whether the amounts of the discovery assessments were correct, we first had to be satisfied that the discovery assessments had been made in time. We were satisfied that they were made in time.

13. Section 29 TMA provides so far as relevant that, if HMRC discover that any chargeable gains which ought to have been assessed to capital gains tax have not been assessed, then HMRC may make an assessment of the amount or further amount which ought in their opinion to be charged in order to make good the loss of tax. But, by virtue of section 29(3), (4) and (5), HMRC may make an assessment only if either the situation was brought about carelessly or deliberately by the taxpayer or a person acting on his behalf (section 29(4)) or, at the time when an HMRC officer ceased to be entitled to give notice of intention to enquire into the taxpayer's return, the officer could not reasonably have been expected, on the basis of the information made available to him before that time, to be aware of the situation mentioned in subsection (1).

14. The situation in question here is that the appellants had made chargeable gains on disposing in the tax year in question of the three properties, 64 Wainwright, 14 Somerville, and 52 Blenheim Way and those gains had not been assessed.

15. We accept that the condition in section 29(4) was met. That is to say, we find for the reasons set out below that the situation was brought about carelessly by Mr Day in respect of his own return, and carelessly by him in respect of Miss Dalgety's return. Mr Day accepted that the situation had been brought about by his carelessness. We find also that Miss Dalgety was careless, for the reasons set out below. But, in any event, Mr Day's carelessness suffices in relation to Miss Dalgety's return because section 29(4) includes carelessness by someone acting on the taxpayer's behalf.

16. Section 29(3) is satisfied if just one of the conditions in section 29(4) and (5) is met; section 29(4) and (5) do not both have to be met. Given our finding that the condition in section 29(4) was met, we find that HMRC did have grounds to make the assessments under section 29.

Extended time limit for carelessness

17. Section 34 TMA imposes a time limit of four years for raising an assessment under section 29.

18. However, section 36(1) TMA provides—

> "(1) An assessment on a person in a case involving a loss of income tax or capital gains tax brought about carelessly by the person may be made at any time not more than 6 years after the end of the year of assessment to which it relates (subject to subsection (1A) and any other provision of the Taxes Acts allowing a longer period).
>
> […[1]]
>
> (1B) In subsections (1) and (1A), references to a loss brought about by the person who is the subject of the assessment include a loss brought about by another person acting on behalf of that person.".

19. Mr Day told us that he had completed his tax return himself. He said he had not previously completed a capital gains return. He said he did "not really" consider capital gains when completing the return because he "didn't think they were viable". He said he had "probably" read the notes that came with the return. He was asked "Did you read the return fully?". He replied "Can't say". He was taken to question 8 on page 444 (tailoring of return). This was his actual return for the year ended 5 April 2007. Question 8 said—

> "Capital gains – read the guidance on page 7 of the Tax Return Guide.

[1] Transitional provisions in S.I. 2009/403, which commenced amendments to section 36 TMA, provided that the new subsection (1A)(b) and (c) did not apply where the year of assessment was 2008-09 or earlier, except where negligent conduct was relied on. HMRC did not however rely on those provisions so the transitional provisions do not affect this case.

- If you have disposed of your only or main residence do you need the Capital Gains Pages?

- Did you dispose of other chargeable assets worth more than £35,200 in total?

- Answer 'Yes' if:

  - allowable losses are deducted from your chargeable gains, which total more than £8,800 before deduction and before taper relief, or

  - no allowable losses are deducted from your chargeable gains and after taper relief your taxable gains total more than £8,800, or

  - you want to make a claim or election for the year.".

20. Mr Day was asked whether he had read the question at the second bullet of question 8 on his return. He replied "I can't say. I understood that if I had not made a viable gain, I did not need to complete a capital gains return". He then however accepted that it was likely that he had not read the question in the second bullet of section 8 of his return and in the second bullet of section 8 of Miss Dalgety's return. He was asked "What guidance did you read when preparing the calculations which led you to think there was no chargeable gain?". He replied "I don't know. I didn't have any guidance. I just did some rough calculations". He was asked "Did you refer to anything other than the tax return when completing the return?". He replied "I don't think so. Can't remember".

21. Mr Day accepted that he had been careless in omitting the capital gains pages and disposals from the returns. He accepted that the discovery assessment in respect of his own return was therefore made in time by virtue of section 36(1) TMA. He initially accepted that a penalty was payable by him, although he disputed the amount of the penalty. But later in the hearing he denied negligence. So we are treating him as appealing the penalty as well as appealing the amount of the penalty.

22. The appellants submitted however that, as Mr Day had completed Miss Dalgety's return, and as (which the appellants mentioned for the first time in a letter after the hearing) he is registered as her tax adviser, Miss Dalgety had not been careless in relying on Mr Day's completion of her return.

23. Miss Dalgety told us that she signed her completed return but that Mr Day had done all the calculations and filled it in and she had accepted the form as filled in by him. She was asked "Did you read it before signing it?". She replied "I glanced through it". She was asked "Just glanced?". She replied "No, I read it fully". She was asked "Did you read question 8 on page 444?". Miss Dalgety replied that she could not remember whether she had read question 8. She was asked "Did you look at the other guidance on capital gains?". She replied "No". She was asked "Does Mr Day have an accounting background?". Miss Dalgety replied "He <u>has</u> worked in accountancy firms, but is not AAT [Association of Accounting Technicians] qualified". She said she was aware that Mr Day did not have previous experience of capital gains.

24. Miss Bartup submitted that Mr Day's acceptance of his own carelessness sufficed to mean that his discovery assessment was made in time under section 36(1) TMA. We agree.

25. She submitted also that Miss Dalgety had been careless in accepting Mr Day's figures given her admitted awareness that he had no previous experience of capital gains. She submitted that Miss Dalgety should have read question 8 on the return "Did you dispose of other chargeable assets worth more than £32,500 in total?" and should have answered "Yes".

26. Miss Bartup submitted that both appellants had also been careless in failing to read the guidance on capital gains tax. She submitted that the Notes on Capital Gains discuss what expenses can be deducted and what cannot be deducted. She submitted that, although since abandoned, the appellants' original calculation showed that they had claimed taper relief on the gains because they believed the properties were business assets. However, she submitted that the helpsheet on taper relief would have shown the appellants, had they read it, that taper relief cannot be claimed for a property letting business as it is not classed as a trade for this purpose. Miss Bartup submitted also that, on the appellants' original calculations, a claim had been made to set letting losses against the gain although since then the appellants had accepted that that was not allowable. She submitted that, had the appellants read the Notes on Land and Property, they would have seen that this computation was not allowable.

27. We find that Miss Dalgety did not read the completed return fully before signing it. Her first answer on this was that she had "glanced through it". It was only when that answer was queried that she revised her answer to say she had read it fully. Her change of answer suggested that she changed it to give the answer she thought most helpful to her case, rather than giving the true answer. Given her evidence that she knew that Mr Day had no experience of capital gains, she should not have relied on his completion of her return without checking it for herself. Had she read question 8 and answered it truthfully with a "yes", she would have declared the disposals. The fact that she did not was at the very least careless. The appellants said that they believed the gains for at least 64 Wainwright and 14 Somerville to be below the annual allowance. We find that, if they had carefully read all of the relevant guidance, they would not have believed this.

28. In addition, at the end of the return, just above the signature box, there is a section saying "I have filled in and am sending back to you the following Pages:". There follows a series of boxes to tick, one of which says "CAPITAL GAINS". Given its position just above the signature box, Miss Dalgety cannot have failed to see the capital gains box and to see that it was not ticked. To submit the return without that box ticked, knowing what she did, was at least careless in Miss Dalgety's situation.

29. The appellants' post-hearing letter sent 12 March 2013 said that Mr Day "is registered with HMRC as Miss Dalgety's tax advisor". The appellants had not however mentioned that at the hearing and the letter did not say whether Mr Day was so registered at the time of the preparation of the tax return for the year in question. The appellants submitted no evidence to support their assertion. We do not find that

he was at the relevant time registered as her tax adviser. But even if he were, it was common ground that he was not Miss Dalgety's professional tax adviser and the registration does not alter the fact that Miss Dalgety knew that he was not and knew that he had no capital gains experience. So it would not alter our conclusion that Miss Dalgety was careless.

30. In any event, Mr Day admitted his own carelessness in completing the returns. By virtue of section 36(1B), the time limit is 6 years even if the situation is brought about by the carelessness of someone acting on Miss Dalgety's behalf, rather than by Miss Dalgety's own carelessness.

31. We find therefore that the time limit for raising the assessment for each appellant was 6 years after the end of the tax year ended 5 April 2007. The assessments raised on 11 January 2012 were raised within that time so were raised in time.

32. This means we may proceed to consider whether the amounts of the assessments were correct.

Computation of the gain

The legislation

33. Capital gains tax is charged under the Taxation of Chargeable Gains Act 1992 (c.12, "TCGA").

34. Section 1 TCGA provides—

> "**1.**—(1) Tax shall be charged in accordance with this Act in respect of capital gains, that is to say chargeable gains computed in accordance with this Act and accruing to a person on the disposal of assets.
>
> (2) [Not relevant].".

35. Section 2(2) TCGA provides—

> "(2) Capital gains tax shall be charged on the total amount of chargeable gains accruing to the person charged in the year of assessment…after deducting—
>
> (a) any allowable losses accruing to that person in that year of assessment…".

36. Section 3 TCGA provides—

> "**3.**—(1) An individual shall not be chargeable to capital gains tax in respect of so much of his taxable amount for any year of assessment as does not exceed the exempt amount for the year.".

37. Section 15 TCGA provides—

> "**15**.—(1) The amount of the gains accruing on the disposal of assets shall be computed in accordance with this Part, subject to the other provisions of this Act.

(2) Every gain shall, except as otherwise expressly provided, be a chargeable gain.".

38. Section 38 TCGA provides—

"**38.**—(1) Except as otherwise expressly provided, the sums allowable as a deduction from the consideration in the computation of the gain accruing to a person on the disposal of an asset shall be restricted to—

(a) the amount or value of the consideration, in money or money's worth, given by him or on his behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to him of the acquisition or, if the asset was not acquired by him, any expenditure wholly and exclusively incurred by him in providing the asset,

(b) the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by him in establishing, preserving or defending his title to, or to a right over, the asset,

(c) the incidental costs to him of making the disposal.

(2) For the purposes of this section and for the purposes of all other provisions of this Act, the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent or legal adviser and costs of transfer or conveyance (including stamp duty or stamp duty land tax) together—

(a) [not relevant], and

(b) in the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by this Act.

(3) Except as provided by section 40, no payment of interest shall be allowable under this section.

(4) [Not relevant].".

39. Section 40 TCGA provides—

"**Interest charged to capital**

40.—(1) Where—

(a) a company incurs expenditure on the construction of any building, structure or works, being expenditure allowable as a deduction under section 38 in computing a gain accruing to the company on the disposal of the building, structure or work, or of any asset comprising it, and

(b) that expenditure was defrayed out of borrowed money,

the sums so allowable under section 38 shall, subject to subsection (2) below, include the amount of any interest on that borrowed money which is referable to a period or part of a period ending on or before the disposal.

(2) Subsection (1) above has effect subject to section 39 and does not apply to interest which is a charge on income.

(3) In relation to interest paid in any accounting period ending before 1st April 1981 subsection (1) above shall have effect with the substitution for all following paragraph (b) of—

"and

(c) the company charged to capital all or any of the interest on that borrowed money referable to a period or part of a period ending on or before the disposal,

and the sums so allowable under section 38 shall include the amount of that interest charged to capital.";

and subsection (2) above shall not apply.

(4) In consequence of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) and CTA 2009 (Part 5 of which re-enacts that Chapter) this section does not have effect in relation to interest referable to an accounting period ending on or after 1st April 1996.".

64 Wainwright

40. It was common ground, and we find, that the appellants purchased 64 Wainwright on 29 April 2005 for £99,500 and sold it on 25 August 2006 for £114,995, and that it was a rental property.

41. In order to calculate the gain on the sale of 64 Wainwright, the first question, derived from the first line of section 38(1), is what "consideration" was paid for it? From that consideration, certain deductions can then be made in accordance with section 38.

42. The issues on 64 Wainwright were—

(1) whether the consideration to be used as the starting point under section 38 should be the selling price monies net of amounts paid direct out of those monies by the appellants' solicitor to someone other than the appellants;

(2) whether the acquisition costs to be deducted from the consideration under section 38(1)(a) should be net of amounts borrowed by the appellants to fund those costs; and

(3) whether mortgage fees are deductible as incidental costs of disposal under section 38(1)(c) and (2) TCGA.

(1) Whether the consideration to be used as the starting point under section 38 should be the selling price monies net of amounts paid direct out of those monies by the appellants' solicitor to someone other than the appellants

43. We found above that the price for which the appellants sold 64 Wainwright was £114,995.

44. However, the appellants contended that that figure was not the consideration to be used as the starting point under section 38. Rather, they said, the consideration to be used as the starting point was the money the appellants received after deduction of the amount required to redeem the mortgage, including the mortgage fees and mortgage redemption fee, and deduction of the amount of legal costs. The relevance of those amounts according to the appellants was that they had been deducted by their solicitor and paid out direct by the solicitor without first being paid over to the appellants. Then, any items paid by the appellants after they had received the remainder from their solicitor would, they contended, be deducted as an expense under section 38. An example of such an expense was, they said, the estate agent's fees. But, said the appellants, if the estate agent's fees had been paid direct by their solicitor to the estate agent out of the selling price before paying the remainder of the selling price to the appellants, then those fees too would reduce the consideration to be used as the starting point under section 38(1).

45. On this basis, the appellants had calculated the consideration for 64 Wainwright to be £24,721.25. This was the selling price of £114,995 less the £90,207 required to redeem the mortgage and less the legal costs of £66.75.

46. HMRC contended that that approach was wrong. They submitted that the consideration to be used as the starting point under section 38 must be the price which the purchasers paid for the property.

47. We agree. That one party must give consideration to the other is a fundamental requirement of a contract. The question for determining what was the consideration is "what did the purchaser give or give up in return for what he received, or what detriment did he suffer in return for what he received, or what benefit did he confer in return for what he received?"[2]. In the present case, it was money that the purchasers gave up. The fact that the seller has certain items which he needs to use that money for, such as redeeming a mortgage, is not within the control of the purchaser and does not alter what the purchaser gave up. Another way of looking at it is that the whole purchase price was paid to the appellants. It was paid to their agent, their solicitor, which amounts to being paid to the appellants. When the solicitor then redeemed the appellants' mortgage and paid other items out of the monies received, he did so on behalf of the appellants out of money which belonged to the appellants. (The method

[2] For example: *Currie v Misa (1875) L.R. 10 Ex. 153, 162*. See also *Barber v Fox (1670) 2 Wms.Saund. 134*, n.(e); *Cooke v Oxley (1790) 3 T.R. 653, 654*; *Jones v Ashburnham (1804) 4 East 455*; *Bainbridge v Firmstone (1838) 8 A. & E. 743, 744*; *Thomas v Thomas (1842) 2 Q.B. 851, 859*; *Bolton v Madden (1873) L.R. 9 Q.B. 55, 56*; *Gore v Van der Lann [1967] 2 Q.B. 31, 42*; *Argy Trading Development Co Ltd v Lapid Developments Ltd [1977] Lloyd's Rep. 67, 75*; *Midland Bank & Trust Co Ltd v Green [1981] A.C. 513, 531*; *R. v Braithwaite [1983] 1 W.L.R. 383, 391*; *Johnsey Estates Ltd v Lewis Manley (Engineering) Ltd [1987] 2 E.G.L.R. 69, 70*; *Guiness Mahon & Co Ltd v Kensington & Chelsea Royal B.C. [1999] Q.B. 215 at 236*; *Modahl v British Athletics Federation Ltd [2001] EWCA Civ. 1447, [2002] 1 W.L.R. 1192*.

by which the appellants said their total gain on 64 Wainwright should be calculated is at Annex A(1) to this decision.)

48. If any outstanding mortgage interest was paid to the lender along with the repayment of the mortgage capital, we find for the same reasons as set out above that the amount of that interest does not go to reduce the consideration to be used as the starting point under section 38.

49. We agree therefore with HMRC that the consideration to be used as the starting point under section 38 TCGA for 64 Wainwright is the selling price of £114,995.

(2) Whether the acquisition costs to be deducted under section 38(1)(a) from the consideration should be net of amounts borrowed by the appellants to fund those costs

50. The next issue is whether, as the appellants contend, the acquisition cost to be deducted under section 38(1)(a) from the consideration should be net of the mortgage amount of £84,325 which the appellants had borrowed to part-fund their purchase of 64 Wainwright. On this basis, the appellants say that the cost of acquisition of 64 Wainwright was £15,175; this is the purchase price of £99,500 that they had paid less their mortgage of £84,325.

51. We agree with HMRC that this is not the way to calculate the acquisition cost. The amount that the appellants paid to buy 64 Wainwright was £99,500. The question for the purposes of section 38(1)(a) is "What was the amount of the consideration, in money or money's worth, given by the appellants or on their behalf wholly and exclusively for the acquisition of the asset?". As we discussed above in relation to the meaning of "consideration", the consideration is what the purchaser gives or gives up in return for what he receives, or it is the detriment that he suffers in return for what he receives, or it is the benefit that he confers in return for what he receives. Here, what the appellants gave, which was also the benefit they conferred, was the £99,500 purchase price (they also suffered the detriment of parting with that money). The fact that £84,325 of that was lent to the appellants in order for them to use it towards the purchase price does not stop it being part of what they gave, or part of the benefit they conferred, exclusively for the acquisition of the asset.

52. We agree therefore with HMRC that the acquisition cost to the appellants of 64 Wainwright was the full £99,500 that they bought it for.

53. The next issue is whether mortgage costs are deductible under section 38(1)(c) and (2) from the consideration.

(3) Whether mortgage fees are deductible under section 38(1)(c) and (2) TCGA as incidental costs of disposal

54. In addition to deduction of the acquisition cost, section 38 allows the incidental costs of acquisition and incidental costs of disposal to be deducted from the consideration that the purchasers paid to buy 64 Wainwright from the appellants. Section 38(1)(a) provides for deduction of the incidental costs to the appellants of

their acquisition of 64 Wainwright. Section 38(1)(c) provides for deduction of the incidental costs to the appellants of their disposal of 64 Wainwright. Section 38(2) defines "incidental costs" for the purposes of section 38(1)(a) and (c).

55. HMRC accepted that certain costs could be deducted under section 38. They also accepted that the amount that the appellants paid to buy 64 Wainwright, including the amount required to redeem the mortgage, was also deductible under section 38; that is to say, deductible from the amount of the consideration, not before calculating the consideration.

56. But HMRC submitted that mortgage fees of £807.50 and the mortgage redemption fee of £5074.50 are not deductible under section 38(1)(c) from the selling price because they are not listed in section 38(2).

57. We agree. Section 38(2) lists the costs which are "incidental costs" of the acquisition or disposal of the asset. Miss Bartup submitted that the incidental costs allowed under section 38 are of acquisition and disposal of the asset, not acquisition and disposal of the mortgage. We think that distinction is right. But even if there were doubt as to whether that distinction sufficed, that doubt is answered by the fact that section 38(2) goes on to list what costs are "incidental costs" of the acquisition and disposal of the asset.

58. Miss Bartup submitted quite simply that mortgage fees are not listed in section 38(2) and cannot be deducted.

59. The appellants argued nevertheless that section 38(2) was inclusive not exhaustive. We disagree. If section 38(2) were inclusive, it would say "incidental costs shall include". But it does not say that. It says "incidental costs shall consist of". The plain and ordinary meaning of that phrase is that, if the cost is not then listed, that cost is not part of the incidental costs. We see no reason to go behind the plain and ordinary meaning of the phrase "shall consist of", especially given that the subsection goes on to give a detailed list of what the incidental costs consist of. Such a detailed list suggests an intention that the list be exhaustive not inclusive. There is nothing in the legislative context of section 38 to suggest otherwise.

60. The appellants further argued that section 38(2) allows for deduction of fees for the professional services of an agent. They submitted that the mortgage lender was their agent and that the mortgage redemption fee was therefore the fee of their agent. We do not accept that this analysis brings the mortgage redemption fee within section 38(2). Section 38(2) refers to "fees…paid for the professional services of any…agent". Even if the mortgage lender is the appellants' agent for certain purposes, we do not find that the redemption fee is a fee for the lender's services as agent. We were given no evidence of the exact reason for the imposition of the redemption fee in the present case. On the balance of probabilities, it is more accurately defined, in our judgment, as the price that the appellants have to pay in relation to ending their agreement with the lender. But if we are wrong on this, we find that the mortgage redemption fee and other mortgage fees are nevertheless not allowable deductions because we accept Miss Bartup's submission that they are

incidental costs of acquisition or disposal of the mortgage and not of acquisition or disposal of the asset.

61. We accept therefore that mortgage costs are not "incidental costs" within the meaning of section 38(2) because they are not listed in section 38(2). They cannot therefore be deducted from the consideration in calculating the gain for 64 Wainwright.

62. We also find that, if any outstanding mortgage interest was paid to the lender along with repayment of the capital out of the selling price monies, that mortgage interest cannot be deducted from the consideration as an allowable deduction under section 38. Section 38(3) prohibits this unless allowed by section 40. Section 40 allows deduction of interest only for companies. The appellants did not suggest that they borrowed their mortgage monies as a company and we find that they did not so borrow them.

63. These were the only issues in relation to 64 Wainwright. We set out at paragraph 184 below our resulting computations. For now, we turn to the next property, 14 Somerville.

14 Somerville

64. It was common ground, and we find, that the appellants purchased 14 Somerville on 18 February 2005 for £47,000 and sold it on 31 January 2007 for a purported selling price of £66,300. It was common ground, and we find, that they had also "gifted" the deposit of £3,315 on 14 Somerville to the purchasers and that 14 Somerville was a rental property.

65. The issues on 14 Somerville were—

(1) whether the consideration to be used as the starting point under section 38 should be the selling price monies net of amounts paid direct out of those monies by the appellants' solicitor to someone other than the appellants;

(2) whether the acquisition costs to be deducted under section 38(1)(a) from the consideration should be net of amounts borrowed by the appellants to fund those costs;

(3) whether mortgage fees are deductible under section 38(1)(c) and (2) TCGA as incidental costs of disposal; and

(4) whether the £3,315 gifted deposit goes to reduce the amount of consideration to be used as the starting point under section 38 or is an allowable deduction under section 38.

Issues (1), (2) and (3): 14 Somerville

66. The first three issues on 14 Somerville are identical to the issues we decided in relation to 64 Wainwright, although the amounts involved are different.

67. The method by which the appellants said their total gain on 14 Somerville should be calculated is at Annex B(1) to this decision.

Consideration: 14 Somerville

68. For the same reasons as set out above in relation to 64 Wainwright, we find that the consideration to be used as the starting point under section 38 for 14 Somerville is the amount the purchasers paid for it. For the reasons set out at paragraphs 73 to 79 below, we find that amount in substance to have been £62,985 and not £66,300.

Acquisition cost: 14 Somerville

69. The appellants argued that the cost of acquisition of 14 Somerville was £1,525; this is the purchase price of £47,000 that they had paid less the mortgage amount of £45,475 which the appellants had borrowed to part-fund their purchase of 14 Somerville. We disagree. We find, for the same reasons as set out under 64 Wainwright above, that the acquisition cost to be deducted under section 38(1)(a) from the consideration should not be net of that mortgage amount of £45,475.

70. This means that the acquisition cost of 14 Somerville to be deducted under section 38(1)(a) from the consideration is £47,000. We accept also that the other costs accepted by HMRC as deductible for 14 Somerville are to be deducted under section 38.

Mortgage fees: 14 Somerville

71. But we find, for the same reasons as set out under 64 Wainwright above, that the mortgage fees of £335.42 and mortgage early redemption fee of £2,290.20 are not deductible under section 38 for 14 Somerville. In addition, it was common ground that the mortgage redemption fee for 14 Somerville was not merely a redemption fee, but an early redemption fee. We find that this is even more clearly than for 64 Wainwright a case of a fee relating to ending the appellants' relationship with the lender. In this case, it was the fee for the appellants to be let out of their agreement to keep the mortgage for a fixed term.

Mortgage interest: 14 Somerville

72. If any outstanding mortgage interest was paid to the lender along with the repayment of the mortgage capital, we find for the same reasons as set out under 64 Wainwright above that the amount of that interest does not go to reduce the consideration to be used as the starting point under section 38 for 14 Somerville. Nor is it an allowable deduction under section 38, for the same reasons as set out above under 64 Wainwright.

(4) Whether the £3,315 gifted deposit goes to reduce the amount of consideration to be used as the starting point under section 38 or is an allowable deduction under section 38

73. We do however accept that the gifted deposit of £3,315 must be deducted from the purported selling price of £66,300 on 14 Somerville, to give a consideration of £62,985 as the starting point under section 38.

74. It was common ground, and we find, that the appellants effectively paid the deposit to themselves purportedly on behalf of the purchasers under a scheme called the Vendor Paid Deposit Scheme with the Halifax Building Society. This was, said the appellants, a formal scheme run nationwide. They told us that at least one other lender, RBS, was doing this at that time. It enabled lenders, said the appellants, to purport to give a 95% mortgage without the purchasers having to come up with the deposit. The appellants told us that the way it operated in their case was that the purchasers simply paid the purported selling price of £66,300 minus the amount that would have been the deposit, the £3,315. So the purchasers paid £62,985.

75. We accept that this was a formal scheme run by the Halifax and that it was operated in this case in the way that the appellants told us. HMRC did not dispute that this is what had happened in this case. They accepted that "In cash terms, the effect was the same but the crucial difference was that the building society appeared to be lending only 95% of the price paid rather than 100%".

76. HMRC also accepted that the sale was at arms length and that section 17 TCGA was not therefore relevant.

77. A previous HMRC officer had been willing to accept that the consideration to be used as the starting point under section 38 was the true amount paid, that is the £62,985, rather than the purported selling price of £66,300. HMRC however changed their mind on this. They relied on the First-tier Tribunal's decision in *Symonds v HMRC* [2012] UKFTT 197 (TC), paragraphs 25 and 26 in particular. HMRC argued before us that, because the completion statement and the land registry showed the price to be £66,300, then that is the amount of consideration to be used as the starting point under section 38.

78. We disagree. The purported selling price of £66,300 was merely a label. It was not disputed that the true amount paid by the purchasers was £62,985. That then was in our judgment the substance of the contract. Another way of looking at it is that, in contract, the consideration must move from the promisee (or at least, not from the promisor to himself). This is another of the fundamental principles of contract law[3]. In this case, the 5% deposit moved not from the promisee (the purchaser), but from the promisors (the appellants) to themselves. That amount was not therefore part of the consideration paid for 14 Somerville in our judgment.

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[3] *Barber v Fox (1670) 2 Wms.Saund. 134*, n.(*e*); *Thomas v Thomas (1842) 2 Q.B. 851, 859*; *Tweddle v Atkinson (1861) 1 B. & S. 393, 399*; *Pollway v Abdullah [1974] 1 W.L.R. 493, 497*; *cf. Dickinson v Abel [1969] 1 W.L.R. 295*; *Customs and Excise Commissioners v Telemed [1992] S.T.C. 89*.

79. If the appellants had fraudulently paid the deposit in order to help the purchasers obtain a 95% mortgage, we might well not have been persuaded that the appellants could rely on that fraud to reduce their tax liability. However, there was no suggestion of fraud in relation to the gifted deposit and we have accepted that it was a formal scheme run by the lender.

80. Given our decision that the gifted deposit reduces the amount of consideration to be used as the starting point under section 38, we would not then allow it to be deducted a second time as an allowable deduction under section 38. We would not allow it as an allowable deduction in any event, but this is not strictly essential to our decision.

81. We set out at paragraph 184 below our resulting computations on 14 Somerville. For now we turn to the third and final property in the appeal, 52 Blenheim Way.

52 Blenheim Way

82. It was common ground, and we find, that the appellants purchased 52 Blenheim Way on 16 June 2006 for £70,000 and sold it on 18 August 2006 for £91,000. It was common ground, and we find, that they had spent £3,522 on renovating the property, and that £1,200 of that was on painting and decorating.

83. The issues on 52 Blenheim Way were—

(1) whether the consideration to be used as the starting point under section 38 should be the selling price monies net of amounts paid direct out of those monies by the appellants' solicitor to someone other than the appellants;

(2) whether the acquisition costs to be deducted under section 38(1)(a) from the consideration should be net of amounts borrowed by the appellants to fund those costs;

(3) whether mortgage fees are deductible under section 38(1)(c) and (2) TCGA as incidental costs of disposal;

(4) whether the sale is covered by private residence relief for Mr Day under sections 222 and 223 TCGA; and

(5) whether the £1,200 painting and decorating cost claimed as an enhancement cost is deductible under section 38(1)(b).

Issues (1), (2) and (3): 52 Blenheim Way

84. The first three issues on 52 Blenheim Way are identical to the issues we decided in relation to 64 Wainwright and identical to the first three issues we decided in relation to 14 Somerville. But the amounts involved on 52 Blenheim Way are different.

85. The method by which the appellants said their total gain on 52 Blenheim Way should be calculated is at Annex C(1) to this decision.

Consideration: 52 Blenheim Way

86. For the same reasons as set out above in relation to 64 Wainwright, we find that the consideration to be used as the starting point under section 38 for 52 Blenheim Way is the selling price of £91,000.

Acquisition cost: 52 Blenheim Way

87. The appellants argued that the cost of acquisition of 52 Blenheim Way was £10,500; this is the purchase price of £70,000 that they had paid less the mortgage amount of £59,500 which they had borrowed to part-fund their purchase of 52 Blenheim Way. We disagree. We find, for the same reasons as set out under 64 Wainwright above, that the acquisition cost to be deducted under section 38(1)(a) from the consideration should not be net of that mortgage amount of £59,500.

88. This means that the acquisition cost of 52 Blenheim Way to be deducted under section 38(1)(a) from the consideration is £70,000. We accept also that the other costs accepted by HMRC as deductible for 52 Blenheim Way are to be deducted under section 38.

Mortgage redemption fee: 52 Blenheim Way

89. But we find, for the same reasons as set out under 64 Wainwright above, that the mortgage redemption fee of £525.99 is not deductible under section 38.

Mortgage interest: 52 Blenheim Way

90. If any outstanding mortgage interest was paid to the lender along with the repayment of the mortgage capital, we find for the same reasons as set out under 64 Wainwright above that the amount of that interest does not go to reduce the consideration to be used as the starting point under section 38. Nor is it an allowable deduction under section 38, for the same reasons as set out under 64 Wainwright.

(4) Private residence relief: 52 Blenheim Way

91. Private residence relief is governed by sections 222 and 223 TCGA. They provide, so far as relevant—

> "**Relief on disposal of private residence**
>
> **222.**—(1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in—
>
> (a) a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence, or
>
> (b) [not relevant].
>
> [Subsection (2) onwards are not relevant].

Amount of relief

223.—(1) No part of a gain to which section 222 applies shall be a chargeable gain if the dwelling-house or part of a dwelling-house has been the individual's only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last 36 months of that period.".

Appellants' evidence: private residence relief

92. The appellants' oral evidence was as follows. Unless stated otherwise, we are merely citing the appellants' evidence and not making findings.

93. Up until 27 December 2005, Mr Day and Miss Dalgety had been living at their joint home, which we call simply "Riverside", since buying it in 2001. They had bought Riverside as joint tenants. Mr Day and Miss Dalgety had a massive fall-out at Christmas 2005 so decided that they were each permanently going to do their own thing. Mr Day moved out on 27 December 2005 and went to live with his son and his son's family. His son had two children, aged 6 and 4, at the time Mr Day moved in. His son's house had three bedrooms. Mr Day started looking for a property to become his main residence on a permanent basis. The appellants did not sever the joint tenancy on Riverside.

94. On moving out of Riverside and into his son's house, Mr Day left his possessions at Riverside and just took clothes and daily items. He intended to fetch his possessions when he found a new place to live. Miss Dalgety was happy to store his belongings until he could collect them.

95. Mr Day started looking for a new residence for himself in the new year of 2006. He looked at a few but could not afford much. In February 2006, he found a 20-year-old terraced house with one bedroom and one reception room. This was 52 Blenheim Way. It was very dilapidated. But he could see that he could make something of it and it was all he could afford.

96. Mr Day told us "We bought it for £69,000. We bought it together". Miss Dalgety told us "The reason we bought it together was because Mr Day could not get a mortgage in his own name. His income was about £16,000 gross at the time; he was an admin clerk. I went on the mortgage with him to help. Also, I paid £5,000 of my own money. Not a loan, just a gift". Mr Day said he thought the joint savings remained untouched. Miss Dalgety said however that she thought they used some of those savings to get the property.

97. The appellants completed their purchase of 52 Blenheim Way on 16 June 2006. But they had a key undertaking from the vendor and Mr Day actually moved in a month earlier, on 16 May 2006. He collected his stuff from his old house. He was then able to supervise the works on 52 Blenheim Way. The works started even before exchange of contracts on the purchase. Mr Day moved out of 52 Blenheim Way the day before completion of the appellants' sale of it. He moved from there back into Riverside where Miss Dalgety still lived. The appellants had decided at probably the end of June to get back together as a couple. But Mr Day did not move back into

Riverside straight away. This was because the appellants were in discussions with each other to see if Miss Dalgety could forgive Mr Day for what he had done. She decided she felt able to forgive him. She could not remember when she decided this, but she supposed in August.

98. Mr Day said "I had work done by professionals for me to live there permanently. It was my main residence". He was asked "Main residence or only residence?". He replied "Only residence at the time". He told us he had decorated 52 Blenheim Way only once while he lived there, and that the appellants used their joint savings to do it up. He said "If we had intended to do it up and sell, we'd just have painted it".

99. We asked if Mr Day had evidence of having lived there, such as council tax bills or utility bills. He replied "At the time, we didn't think to retain the bills. We didn't think we needed to".

100. Mr Day told us that the invoice from Howden's for the kitchen fittings was addressed to Riverside because it was delivered there. He said the reason it was delivered there rather than to 52 Blenheim Way was because there was no garage at 52 Blenheim Way. But, he said, the invoice for the fitting of the kitchen was sent to 52 Blenheim Way. Miss Bartup showed us the invoice at page 161; we find it was addressed to Riverside. Mr Day, on seeing this, said "Oh yes, I was mistaken". Mr Day told us there was no invoice addressed to 52 Blenheim Way. The invoice (page 163) for supplying and fitting the carpets and vinyl was, we find, addressed to Miss Dalgety at Riverside. It was addressed only to her, and not also to Mr Day. Miss Dalgety explained this: "Probably 'cause I know the tradesmen and 'cause I was helping out with the financing".

101. In cross-examination, Mr Day was asked whether he and Miss Dalgety had discussed putting the property in his sole name at a later date. Mr Day did not answer the question. The question was put again. This time he said "No". He was asked "Did you register for council tax when you moved into the property?". He replied "I don't know, I didn't keep any records". The question was put again. This time he replied "No, I didn't own it at that point". He was asked "Well, when you completed the purchase, did you put the council tax in your name?". He said "I think so". He was asked "Do you think or know?". He said "Yes I did".

102. Mr Day was asked whether the address for his bank account was changed to 52 Blenheim Way. He said "No, it was Mandy's [Miss Dalgety's] account. No, I did not create my own account. My salary was paid into Mandy's account". He was then asked "At the time you separated, did you get a bank account in your own name?". He replied "No". The question was put again. This time Mr Day replied "Yes. I had an Abbey National account". Asked "When?", he replied "In early January. I used my son's address. Yes I received bank statements at my son's address". Mr Day told us he did not have copies of bank statements and that it was six years ago.

103. In his letter to HMRC dated 14 March 2011 (page 259), Mr Day had said "Of course I notified all the relevant agencies of my new address, but that is something I

would not have had the forethought to keep copies of as I could never have imagined needing them for anything".

104. Mr Day was asked at the hearing "Is it correct that you did not inform HMRC of your change of address?". He said "Yes, I didn't realise it was necessary". He was then asked "When did you start filing self-assessment returns from lettings. He replied "I don't know. It is all in the bundle". He was asked "When did you start letting properties?". He replied "Don't remember. 2003 maybe. Yes, I have completed self-assessment returns since 2003". It was put to him "So you had to notify your change of address". He replied "No, they were online returns". This answer was queried "In 2006?". He accepted "No, paper".

105. Mr Day was asked "Is it correct that you did not inform your employer of your change of address?". Mr Day replied "Not correct. Of course I informed my employer. I can't remember who was my employer at that time". When this answer was queried, he said "I was working for Andrews and Co Chartered Accountants". He then told us "I thought I had told my employer but perhaps I didn't". Miss Bartup told him "I have a document suggesting you didn't inform your employer of your change of address. Do you accept that you didn't?". Mr Day replied "I wouldn't tell them because it was private information about our breakup and I wouldn't want to tell them". Miss Bartup said "But they need to know as your employer". Mr Day replied "I was not aware of their records". He was reminded that he had said he was an admin clerk. He replied "But I was not aware of payroll records".

106. Mr Day was asked whether he had a TV licence at 52 Blenheim Way. He replied that he didn't get a TV.

107. He was asked why the invoice for removal of the old kitchen and fitting of the new one (page 161) was addressed to him at Riverside. He replied "As Mandy explained earlier, she had had contact with these people earlier on other properties, so they sent it to her there". It was pointed out to him that the invoice was addressed to him, not to Miss Dalgety. He replied "I suppose he got the addresses mixed up". Miss Bartup put to Mr Day that the reason it was not invoiced to him at 52 Blenheim Way was because he was not living at 52 Blenheim Way at the time. Mr Day replied "No". He was asked who paid for the kitchen and for the fitting of the kitchen. He replied "Who paid for them? I suppose technically Mandy paid for them. Paid by cheque 'cause the bank account was in Mandy's name". He was asked "What about the Abbey National account?" Mr Day replied "It had nothing in it".

108. Mr Day was asked who had made the arrangements for the work to be done on 52 Blenheim Way; who had made the calls. He replied "I'm not sure exactly. But Mandy had dealt with these people".

109. Mr Day was asked what furniture he moved into the property in May 2006. He told us that he moved in a bed, a wardrobe, lounge furniture including a two-seater sofa and bits and pieces such as a kettle and toaster. He told us that he had got the furniture from the appellants' joint home, Riverside. He said that, although he took a

two-seater sofa, that still left at Riverside a three-seater sofa plus chairs so far as lounge furniture went.

110. He was asked whether the reason they did not take a fixed-term mortgage on 52 Blenheim Way was that they were planning to sell the property. Mr Day replied "No".

111. HMRC said that they had made a telephone call to an estate agent. A note of that telephone call of 11 April 2011 was at page 437. HMRC said they had discovered from that call that 52 Blenheim Way was shown on Rightmove's website has having been put on the market on 19 June 2009, three days after the appellants completed their purchase of it. Miss Bartup put to Mr Day that the appellants had already decided to sell 52 Blenheim Way when they bought it. Mr Day said that was not the case, that the estate agent was disreputable and that that telephone call was the only evidence that HMRC had that the property had been put on the market on 19 June. He said that the property was not put on the market until the beginning of July. He told us that he did not have a copy of the contract with the estate agent for the marketing of the property. He accepted that "I am a bit of a hoarder for paperwork. But when you think you don't need anything, you have to have a sort out".

112. Mr Day told us that the appellants put 52 Blenheim Way on the market at the beginning of July because "we were in discussions about getting back together and because it takes such a long time to sell. We thought we would put it on the market as soon as possible".

113. Miss Dalgety was also cross-examined about 52 Blenheim Way. She said she thought that she was the one who had arranged for it to be valued to sell it. She accepted too that she had arranged for the new floor coverings and that it was "likely" that she had paid for them.

114. Miss Dalgety told us that the kitchen units and fittings were delivered to Riverside. She said she could not recall whether the floor coverings had been delivered directly to 52 Blenheim Way but that "they would have been" delivered to Riverside given that the kitchen was delivered to Riverside.

115. Miss Dalgety told us that Mr Day moved a settee, hoover, toaster, wardrobe and single bed out of their shared home at Riverside.

116. At the end of the hearing, we gave Mr Day the opportunity to supply documentary evidence of his having lived in 52 Blenheim Way. We had canvassed with Mr Day during the hearing the possibility of offering him this opportunity. His initial reaction had been that there was no point.

117. Later however he accepted that offer and supplied a letter from the council dated 4 March 2013, that is, dated after the hearing. It said "Dear Mr Day Further to our conversation earlier today I write to confirm that our records reflect that you were the sole occupier at the above property from the 16 June 2006 to the 17 August 2006".

118. We said above that Miss Dalgety had originally claimed private residence relief for 52 Blenheim Way, although she had abandoned that claim by the time of the hearing. The letter dated 7 January 2011 (page 253) signed by both appellants said this—

> "Further to your latest letter regarding a Capital Gains computation in respect of the disposal of the property at 52 Blenheim Way, as we have already explained it was purchased as a main private residence for Mr Day in joint names as Mr Day did not have the financial resources to make a purchase on his own.
>
> On the basis it was both a main residence for Mr Day and a second home for Miss Dalgety.".

119. That letter made no mention of the appellants having split up.

Appellants' submissions: private residence relief

120. We asked the appellants for their response to HMRC's position that the appellants were lying about having split up and about having bought 52 Blenheim Way as a home for Mr Day.

121. Mr Day said "Why would we go to all that trouble and expense only to sell? We would have paid far less for the units and I would have fitted it [the kitchen] myself. I didn't do that because I wanted it done professionally. The units cost about £1,180 including VAT. This was not cheap for the size of the kitchen. And if you look at the list of items on page 157, it is not a list of items you would include if renting out. For example, the posh tap, the plug waste".

HMRC's submissions: private residence relief

122. Miss Bartup submitted that the appellants were lying about having split up and that they were lying about Mr Day having occupied 52 Blenheim Way. She submitted that, even if Mr Day did stay at 52 Blenheim Way, he did not do so with the intention required by the case of *Goodwin v Curtis* [1998] STC 475 CA, 70 TC 478. *Goodwin* held that to qualify for the relief a taxpayer must provide evidence that his residence at a property showed some degree of permanence, some degree of continuity or some expectation of continuity. Factors which Miss Bartup cited in support of her submission that there was no such permanence or continuity, or expectation of continuity, were that the bank account remained in Miss Dalgety's name, that the appellants did not discuss changing the property into Mr Day's name, that the invoices were addressed to Riverside and that one of the invoices was addressed only to Miss Dalgety. Miss Bartup submitted that this was very much a partnership.

Findings and reasons: private residence relief

123. We accept that Mr Day moved a kettle and a toaster into 52 Blenheim Way. We accept that he registered with the council as sole occupier. But we have no evidence, and make no finding therefore, as to whether he effected that registration at the time

of his alleged occupation or only after the hearing of this appeal. We are not persuaded that he moved a bed, sofa or wardrobe into 52 Blenheim Way. But even if Mr Day did move a bed, sofa and wardrobe into 52 Blenheim Way, and even if he spent some nights there, and even if he did at, at the time of his alleged residence, register with the council as sole occupier, the question is whether that occupation amounted to residence within the meaning of sections 222 and 223 TCGA.

124. We do not accept that Mr Day occupied 52 Blenheim Way with any degree of permanence or continuity or any expectation of continuity as required by *Goodwin v Curtis*. We do not accept therefore that any occupation of 52 Blenheim Way by Mr Day amounted to "residence" for the purposes of sections 222 and 223 TCGA. We say that for the following reasons.

125. The appellants' own evidence was inconsistent with Mr Day's asserted intention of permanence or continuity, making it implausible in our judgment that Mr Day had such an intention. Mr Day's evidence also contained internal inconsistencies. The implausibility and inconsistencies led us to conclude that Mr Day was not being truthful about his intention in relation to 52 Blenheim Way. They also led us to conclude that the appellants were not being truthful about having split up so seriously as to make Mr Day buy a property with the intention of occupying it permanently as his only or main residence. We accept that the appellants may have had a row, and possibly even a temporary absence from each other with Mr Day staying at his son's house. But it is axiomatic that a row and an absence do not at the time they occur necessarily herald a permanent split. So they do not necessarily lead to a conclusion that Mr Day bought a property with his asserted intention of living there permanently as his only or main residence.

126. The following factors made Mr Day's asserted intention implausible in our judgment—

(1) There was no invoice addressed to 52 Blenheim Way. All were addressed to Riverside.

(2) One invoice, the one for supplying and fitting the carpets and vinyl (page 163) was not even addressed to Mr Day at all, but only to Miss Dalgety, again at Riverside.

(3) On Mr Day's own admission, the appellants had not discussed putting the property in his sole name at a later date.

(4) The appellants' first explanation to HMRC about 52 Blenheim Way was that it was a main residence for Mr Day and a second home for Miss Dalgety (see paragraph 118 above). Its being a second home for Miss Dalgety was not consistent with the appellants having split up.

(5) The appellants' own evidence was, and we find, that they bought the property jointly and spent money on it jointly. Miss Dalgety even said that it was likely that she had paid for the new floor coverings. We find that she did pay for them, and that they were not bought jointly with Mr Day.

(6) The appellants' own evidence was, and we find, that Miss Dalgety arranged for the renovation works.

(7) Miss Dalgety told us that she thought that she was the one who had arranged for 52 Blenheim Way to be valued to sell it. We find that she was.

(8) At points in his evidence, Mr Day referred to "we" in relation to 52 Blenheim, in a way that we find he probably would not have done had he occupied the property with the intention of living in it as his main residence having split from Miss Dalgety. For example, he said "At the time, we didn't think to retain the bills. We didn't think we needed to".

(9) We find that Mr Day did not create his own separate bank account after splitting up with Miss Dalgety. His first answer on that point was "no". It was only after that answer was queried that he changed his answer to "yes". Even then, he later said that there was no money in that account.

(10) We find that Mr Day did not tell his employer that he had changed his address to 52 Blenheim Way. We do not accept that the only reason he did not was that he did not want his employer to know about the breakup with Miss Dalgety. Mr Day turned 60 in 2006 and had been employed before then. We do not accept that a man of his age and experience would not know that he had to inform his employer of the change of address. We find that, if he had had an intention to live at 52 Blenheim Way permanently, as he told us, he would have told his employer of his change of address.

(11) We find, based on Mr Day's own evidence, that Mr Day did not tell HMRC that he had changed his address to 52 Blenheim Way. We do not accept that he did not know that he had to; that is inconsistent with the fact that this was not the first year he had submitted tax returns. It is in any event implausible for a man of his age and experience.

127. The following internal inconsistencies further tainted Mr Day's credibility, in our judgment—

(1) Mr Day told us that he did not create his own separate bank account on splitting up with Miss Dalgety. But then he changed his evidence when it was queried and said he did create his own separate account.

(2) Mr Day told us that he did inform his employer of his change of address but then said he did not. This could not be put down to mere poor memory or a mistake; Mr Day gave a reason for why he did not tell his employer. That suggests, and we find, that when he told us a few seconds earlier that he did tell his employer, he knew that he was not telling the truth.

128. We have considered whether the appellants' other evidence balanced out the adverse factors at paragraphs 126 and 127 above. In particular, Mr Day had said that he would not have spent so much on the kitchen units or bought the posh tap or the plug waste had he not intended to live there permanently as his home. He also said

that he would have fitted the kitchen himself. There is also the council tax letter he submitted after the hearing.

129. As to the cost of the kitchen units, all but one were discounted by 60% according to the invoice at page 157. The unit bought separately is shown on page 159 to have been bought at a 55% discount. In any event, we were given no evidence of how much cheaper units could have been bought for. The total of the invoice of £1,096.93 including VAT and delivery, and the invoice of £75.07 including VAT, does not seem particularly expensive. Even if the cost of the kitchen is indeed more expensive than might have been achieved, it was not so expensive in our judgment as to outweigh the factors adverse to Mr Day's case set out at paragraphs 126 and 127 above.

130. As to the posh tap, it is listed on the invoice at page 157 as a "Chrome Hi-tech monobloc tap". It was discounted by 66.3% to arrive at a price of £41.13 including VAT. Even if that is considered expensive for a tap, investors doing up a property to sell do not always go for the very cheapest option. As to the plug waste, the price for that after discount was £2.94 including VAT. That is in our judgment a negligible amount in relation to the cost of the kitchen as a whole.

131. As to Mr Day's assertion that he would have fitted the kitchen himself, the total cost of both removal of the old kitchen and fitting of the new one was only £500 according to the invoice at page 161. And that was expressed to include materials too: "Labour and Materials = £500.00". So the cost of the fitting alone was, we find, less than £500. That is not in our judgment so expensive as to be incurred only if one is intending to live in the property permanently, as Mr Day had alleged.

132. The appellants spent only £3,522 on the entire renovation. That is not in our judgment an excessive amount to pay if one is doing up a property to sell as opposed to doing it up to reside there. For this reason, as well as those at paragraphs 122 to 125 above, the amount spent on the renovation does not of itself suggest that Mr Day occupied 52 Blenheim Way with any degree of permanence or continuity or any expectation of continuity.

133. As to the council tax letter, after careful consideration we conclude that it does not persuade us that Mr Day had occupied 52 Blenheim Way with some degree of permanence, some degree of continuity or some expectation of continuity. We accept that the letter shows that Mr Day informed the council that he was the sole occupier of 52 Blenheim Way. There is however no evidence to show when Mr Day told the council this; he could have told them this only after the hearing of this appeal. Even if we accept that he told the council this at some point during his period of ownership of the property, the letter still only shows what he told the council; it does not show that what he told the council was true. Even if it is true that Mr Day spent some nights at 52 Blenheim Way, we find that he did not do so with the necessary intention. We say that because the preponderance of adverse factors which taint Mr Day's credibility (paragraphs 126 and 127 above) strongly outweigh the council's letter.

134. We did consider whether, if Mr Day were telling the truth about having painted the bedroom blue and the lounge pink at 52 Blenheim Way (see paragraph 140

below), that showed that he was also telling the truth about his intention in relation to residing there. Some property developers might paint all the rooms in a neutral colour, or at least all the same colour, if they were doing it up to sell. We were initially doubtful that Mr Day was telling the truth about the colour they painted the walls in those two rooms. However, we give him the benefit of the doubt and find that they did paint them in those colours. But that does not suffice in our judgment to negate all the factors listed at paragraphs 126 and 127 above which we found tainted Mr Day's credibility. Not all property developers paint throughout in neutral. In any event, Mr Day's evidence was to the effect, and we find, that the rest of walls were neutral.

135. Incidentally, we took no account of the evidence from HMRC as to an estate agent having told them that 52 Blenheim Way was marketed in June 2006. The factors adverse to Mr Day's credibility at paragraphs 126 and 127 above led us to disbelieve his asserted intention regardless of when the appellants put 52 Blenheim Way on the market.

136. Those adverse factors led us to conclude that, if Mr Day stayed at all at 52 Blenheim Way, he did not do so expecting to make it his permanent or continuing home. We find that he was being untruthful when he told us that that had been his intention.

137. For the above reasons, we find that sections 222 and 223 TCGA did not apply. Private residence relief was not therefore available to Mr Day.

(5) Whether the £1,200 painting and decorating cost claimed as an enhancement cost is deductible under section 38(1)(b)

138. It was common ground, and we find, that at 52 Blenheim Way the appellants fitted a new kitchen, new carpets and new vinyl and that they painted and decorated. We accept that this included filling holes in walls and sanding down woodwork.

139. Mr Day said that the decorating must have increased the value of 52 Blenheim Way given that the appellants got a better price for it when they sold it. He told us that when they bought it, the carpets were completely rotten, it had been smoked in and the ceilings were stained orange from the smoke. He said there were holes in the walls from nails. The new carpets they had fitted were, he told us, Burgundy and gold. He said the appellants chose the kitchen vinyl to match the kitchen worktops. He told us they painted the walls "dirty magnolia". He said the appellants did not have the property replastered because there was no peeling wallpaper. He said they did not need to sand the skirting boards, doors and door frames, except to get dirt off. They just had them painted, he told us. He said he left it to the decorator to decide how much rubbing down and filling to do.

140. Mr Day told us that he had the lounge painted pink, the bathroom painted light beige and the bedroom painted light blue. He said there was no wall left to paint in the kitchen and that he could not remember what colour he had painted the stairwell, hall and landing. They had all the woodwork painted white. He said the property was not smoked in after the appellants had it decorated and before the appellants sold it.

141. The total claimed as enhancement costs was £3,522 (page 151). It was not disputed, and we accept, that the appellants spent this on the renovation of 52 Blenheim Way. It was made up as follows—

New kitchen purchase	£1,172
New kitchen fitting and removal of old kitchen	£500
Painting and decorating	£1,200
New flooring	£650
=	£3,522.

142. HMRC accepted that all of these costs except the £1,200 painting and decorating cost were deductible under section 38(1)(b) TCGA as enhancement costs.

143. Section 38(1)(b) provides, so far as relevant, for deduction of "the amount of any expenditure wholly and exclusively incurred on the asset by [the appellants] or on [their] behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal".

144. Miss Bartup accepted that the first part of section 38(1)(b) was satisfied in relation to the £1,200 painting and decorating cost. In other words, she accepted that it was expenditure wholly and exclusively incurred on the asset by the appellants for the purpose of enhancing the value of 52 Blenheim Way. That acceptance was consistent with her submission that Mr Day did not occupy the property with the intention or expectation required by *Goodwin v Curtis*.

145. We accept that the £1,200 claimed as an enhancement cost is expenditure wholly and exclusively incurred on the asset by the appellants for the purpose of enhancing the value of 52 Blenheim Way. We so find for two reasons. First, the appellants themselves effectively asserted that this was their purpose in order to claim that the £1,200 was deductible under section 38(1)(b). Second, we have found that, if Mr Day did stay at the property, he did not do so with the intention or expectation of making it his permanent or continuing home. The renovations were not therefore done for that purpose. The other most obvious purpose would be to increase the value of the asset. We find that that was the purpose of the renovations.

146. Miss Bartup did not however accept that the remainder of section 38(1)(b) was satisfied in relation to the £1,200 painting and decorating cost. In other words, she did not accept that that cost was reflected in the state or nature of the asset at the time of the disposal. She submitted that that expenditure did not improve the saleability of the property and was revenue in nature. Miss Bartup submitted that the painting and decorating was "just touching up" and that she personally thought that the allowance by another HMRC officer of the kitchen and flooring costs was generous. She submitted that, had the property been cleaned, that might have had the same effect.

147. We do not accept that submission. We find that the £1,200 painting and decorating expenditure was reflected in the state or nature of 52 Blenheim Way at the time of its disposal by the appellants, for the following reasons.

148. We accept the appellants' evidence as to the state of disrepair that 52 Blenheim Way was in when they bought it. Although we have found not credible Mr Day's asserted intention about making his home there, we accept his evidence that the property was in poor repair. The reason we accept it is that it is consistent with the appellants having bought the property intending to make a profit from it (which is what we find they intended) and with the price that the appellants paid for it. It is also plausible, and we find, that the ceilings were smoke-stained, that the walls contained holes, and that the doors and doorframes were rubbed down to remove dirt. We accept that the appellants decorated 52 Blenheim Way only once and fitted flooring there only once. The appellants had bought it in June 2006 for £70,000. They sold it only two months later for £91,000, giving a £21,000 profit. Although market fluctuations can account for price rises (and falls) without any work being done to a property, there was a time lapse of only two months in this case. We find, on the balance of probabilities, that the state of the walls and woodwork was such that the painting and filling of the walls, and the sanding of the woodwork, contributed to increasing the market value of the property.

149. We do not accept that mere cleaning would have had the same effect on the value. It would not have achieved the freshly-painted look and would not have achieved the sanding down and filling in that we accept was done.

150. We find therefore that the £1,200 so far not allowed by HMRC is an allowable deduction under section 38(1)(b) as part of the cost of enhancing the value of 52 Blenheim Way.

151. Our resulting computation of the gain for each appellant is set out at paragraph 184 below.

Penalty

152. HMRC imposed a penalty under section 95 TMA on each appellant in respect of the failure to disclose the disposals and failure to disclose the gains. In accordance with their published policy, HMRC applied abatements to what would otherwise be the full penalty. Miss Bartup asked us to uphold the abated amount of penalty.

153. We accept that a penalty is payable by each appellant under section 95 TMA, for the reasons set out below. We have reduced the amount of the penalty because we have revised the computation of gain. We uphold the 85% abatement contended for by HMRC.

Penalty: The legislation

154. Section 95 TMA provided, in relation to the tax year in question—

> "95.—(1) Where a person fraudulently or negligently—
>
> (a) delivers any incorrect return of a kind mentioned in section 8 or 8A of this Act (or either of those sections as extended by section 12 of this Act), or

(b) makes any incorrect return, statement or declaration in connection with any claim for any allowance, deduction or relief in respect of income tax or capital gains tax, or

(c) submits to an inspector or the Board or any Commissioners any incorrect accounts in connection with the ascertainment of his liability to income tax or capital gains tax,

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

155. Subsection (2) provided that the difference was the difference between the amount of tax payable and the amount of tax that would have been payable had the information given by the taxpayer been correct.

Penalty: Negligence

HMRC's submissions: negligence

156. Miss Bartup submitted that the appellants had each negligently submitted an incorrect return and that section 95(1)(a) was therefore satisfied. HMRC had said in their letter of 13 February 2012 that negligence means omitting to do something which a prudent and reasonable man would do, citing *Blyth v Birmingham Waterworks Company* [1856] EWHC Exch J65, (1856) 11 Exch 781, 156 ER 1047.

157. Miss Bartup submitted that Mr Day's negligence lay in not having read question 8 on the returns, not having sought professional advice, not having read the capital gains notes and not having looked at other guidance. She submitted that Miss Dalgety's negligence lay in having accepted Mr Day's figures despite Miss Dalgety's awareness that he had no experience in capital gains, and in not having read the capital gains guidance.

Appellants' submissions: negligence

158. Mr Day accepted that he had been careless but not that he had been negligent. He submitted that Miss Dalgety should not be found to have been negligent because she had relied on Mr Day's completion of her return.

Findings and reasons: negligence

159. We considered the appellants' evidence and our findings about completion of the returns (paragraphs 19 to 29 above).

Mr Day

160. We find that Mr Day was not merely careless but negligent. He had a duty to take reasonable care to be accurate in completing his return. On his own evidence, he had done "some rough calculations", had read no guidance and had not even read the question on the form properly. That was not reasonable or prudent in our judgment. It was in particular unreasonable, knowing as he did that he had disposed of the three properties, for Mr Day to fail to read and to answer accurately question 8 on the return. We find therefore that he breached his duty to take reasonable care and was

therefore negligent in his inaccurate completion of the return. Our finding of Mr Day's negligence for these reasons applies to all three disposals, although we have an additional reason in relation to private residence relief.

161. That additional reason is that we have found Mr Day to have been untruthful about his intention regarding 52 Blenheim Way. We find that being untruthful was not taking reasonable care (HMRC did not rely on fraud). Mr Day was at the very least negligent for this reason too in relation to the part of the gain for which private residence relief was claimed.

162. Section 95 TMA is therefore satisfied in relation to Mr Day and a penalty is payable by him.

Miss Dalgety

163. We accept too that Miss Dalgety was negligent. She had a duty to take reasonable care to ensure that the return she submitted was accurate. She did not even properly read the form before signing it. For the reasons set out at paragraph 29 above, the appellant's post-hearing assertion that Mr Day is registered as Miss Dalgety's tax adviser does not lead us to conclude that Miss Dalgety was not required to read the form properly before signing it. Not reading the form properly when she knew that Mr Day had no capital gains tax experience was not reasonable or prudent in Miss Dalgety's situation, knowing as she did that she had disposed of the three properties. That failure to read the form properly was in our judgment a clear breach of her duty to take reasonable care.

164. It was in any event not taking reasonable care to submit the return when Miss Dalgety must have seen the unticked capital gains pages box just above the signature box (see paragraph 28 above).

165. We find therefore that Miss Dalgety was negligent in her submission of an inaccurate return.

166. Section 95 TMA is therefore satisfied in relation to Miss Dalgety and a penalty is payable by her.

Abatement of penalty amount

167. The maximum penalty that HMRC could impose is 100% of the additional tax due. Neither appellant had declared any of the disposals or gains on the self-assessment returns as originally submitted. So no tax at all had become due on the gains according to their self-assessment returns as originally submitted.

168. In Mr Day's case, the additional tax due in light of our decision is £2,657. In Miss Dalgety's case, the additional tax due in light of our decision is £5,314.

169. HMRC however imposed a penalty of only 15% of the additional tax due for each appellant. In other words, they gave each appellant an 85% abatement.

170. Under HMRC policy, there were three criteria for abatement: (1) disclosure, (2) co-operation and (3) seriousness.

(1) Disclosure

171. A maximum 20% abatement could be given under HMRC's policy depending on the level of disclosure. HMRC had allowed the full 20% for disclosure. Miss Bartup asked us to uphold that. We think that abatement was generous but have decided not to interfere with it.

(2) Co-operation

172. Under HMRC's policy, a maximum 40% abatement could be given for co-operation. HMRC had allowed 35% of the possible 40%. Miss Bartup submitted that the appellants should not get the full 40% abatement because HMRC had had to use their formal powers under the legislation on two occasions in order finally to obtain full disclosure in relation to 52 Blenheim Way. She asked us to uphold the 35% abatement.

173. The papers before us showed that HMRC requested disclosure of a further disposal on six separate occasions before the appellants even acknowledged 52 Blenheim Way: HMRC's letters of 4/2/10, 7/4/10, 7/5/10, 18/6/10, 6/7/10 and 12/8/10 refer.

174. In their responses to the first five letters, the appellants refused to give even the address of 52 Blenheim Way (appellants' letters 4/3/10, 6/5/10, 9/6/10, 22/6/10 and 5/8/10). It was not until HMRC said in their letter of 12 August 2010 (page 235) that they held information suggesting that the appellants had disposed of a property at 52 Blenheim Way that the appellants finally acknowledged the address of that property (their reply 9 September 2010, page 237). But even then the appellants gave no details of it.

175. HMRC asked, in a seventh request, a series of questions about 52 Blenheim Way (HMRC letter 7 October 2010, page 239).

176. In an eighth request, HMRC chased for a response (letter 16 November 2010, page 241). HMRC finally got a reply from the appellants on 23 November 2010 (page 243). But that reply still did not answer the questions about 52 Blenheim Way.

177. In a ninth request, HMRC chased again for information about 52 Blenheim Way (letter 24 November 2010, page 251). The appellants' response dated 7 January 2011 (page 253) still gave no details; it said that it was a main residence for Mr Day and a second home for Miss Dalgety.

178. HMRC sought the information again in their letter of 17 January 2011 (page 70).

179. This was followed by a formal notice from HMRC to each appellant dated 3 March 2011 under Schedule 36 to the Finance Act 2008 (pages 257 and 381). Further correspondence ensued. But HMRC still had to issue to Mr Day a second

Schedule 36 notice (dated 12 April 2011, page 269), and a final warning (12 April 2011, page 387) to Miss Dalgety, asking for the information that remained outstanding.

180. The appellants finally submitted a computation by letter of 11 May 2011 (pages 271 and 273).

181. Given this repeated non-disclosure, and that HMRC had to issue Schedule 36 notices, we consider that even the 35% abatement given by HMRC was generous. However, we have decided not to interfere with it.

(3) Seriousness

182. Finally, under HMRC policy a maximum 40% abatement could be given depending on seriousness. HMRC had allowed 30% of the possible 40%. Miss Bartup submitted that the appellants should not get the full 40% abatement because not one but three properties had been omitted from the returns, resulting in undeclared chargeable gains of £15,043 each, which she said was a serious amount. She asked us to uphold the 30% abatement.

183. We have reduced the net chargeable gain of each appellant from the £15,043 contended for by HMRC to £13,285. But that reduced figure still represents a serious under-declaration in our judgment. 30% abatement out of a possible 40% was generous but we have decided not to interfere with it.

Computations

184. In view of our above decision, the computation for each appellant for the tax year 2006-2007 is as follows (we have set out at Annexes A(2), B(2) and C(2) how these figures are further broken down)—

Mr Day

	£	
64 Wainwright	6,962	Mr Day's half share of the net gain
14 Somerville	7,247	Mr Day's half share of the net gain
52 Blenheim Way	7,876	Mr Day's half share of the net gain
Total	22,085	
Less annual exempt amount	8,800	
Revised net chargeable gain =	**13,285**	

Revised CGT due is £13,285 @ 20% = £2,657

Mr Day's revised penalty is £2,657 x 15% = £398.55

Miss Dalgety

	£	
64 Wainwright	6,962	Miss Dalgety's half share of the net gain
14 Somerville	7,247	Miss Dalgety's half share of the net gain
52 Blenheim Way	7,876	Miss Dalgety's half share of the net gain
Total	22,085	
Less annual exempt amount	8,800	
Revised net chargeable gain =	**13,285**	

Revised CGT due is £13,285 @ 40% = £5,314

Miss Dalgety's revised penalty is £5,314 x 15% = £797.10.

185. The penalty payable by Mr Day as a result of our decision is therefore reduced from HMRC's figure of £451 to £398.55.

186. The penalty payable by Miss Dalgety as a result of our decision is therefore reduced from HMRC's figure of £902 to £797.10.

Appealing against this decision

187. 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.

Rachel Perez

RACHEL PEREZ

TRIBUNAL JUDGE
RELEASE DATE:

Annex A(1)
to full decision of First-tier Tribunal TC/2012/05860

Appellants' contended mode of computation for
64 Wainwright

Selling price			£114,995.00
Less			
Amount required to redeem existing mortgage			£90,207.00
Less			
Legal costs as per account supplied			£66.75
= Proceeds of sale (or "consideration")			**£24,721.25**

Proceeds of sale (or "consideration")			£24,721.25
Purchase price		£99,500	
Less mortgage loan		£84,325	
Cost of acquisition	=	£15,175	
Incidental acquisition costs			
Solicitor's completion fee	£58.75		
Telegraphic transfer fee	£30.55		
Charge for mortgage lender	£176.25		
Local search	£130.00		
Land charges and registry fee	£108.00		
Sub total		£503.55	
Incidental disposal costs			
Estate agency fee		£1,000.00	
Total costs			£16,678.55
Gain			£8,042.70
50% Share of gain			**£4,021.35**

Annex A(2)
to full decision of First-tier Tribunal TC/2012/05860

Tribunal's mode of computation for
64 Wainwright

Consideration paid by purchasers			£114,995
Acquisition cost		£99,500	
Incidental costs of acquisition			
	Solicitor's fee	£58.75	
	Telegraphic transfer fee	£30.55	
	Charge for mortgage lender	£176.25	
	Local search	£130.00	
	Land registry fee	£108.00	
Incidental costs of disposal			
	Estate agent's fee	£1,000.00	
	Solicitor's fee	£66.75	
Total allowable deductions (after rounding)			£101,071
Net gain			**£13,924**

Annex B(1)
to full decision of First-tier Tribunal TC/2012/05860

Appellants' contended mode of computation for
14 Somerville

Selling price		£66,300.00	
Less			
Amount required to redeem existing mortgage		£48,429.62	
Gifted deposit (paid by seller)		£3,315.00	
Less			
Legal costs as per account supplied		£82.75	
= Proceeds of sale (or "consideration")		**£14,472.63**	

Proceeds of sale (or "consideration")			£14,472.63
Purchase price		£47,000	
Less mortgage loan		£45,475	
Cost of acquisition	=	£1,525	
Incidental acquisition costs			
Apportioned ground rent	£67.79		
Solicitor's fees	£222.03		
Landlord's registration fee	£47.00		
Land registry	£40.00		
Indemnity insurance premium	£30.00		
Sub total		£406.82	
Incidental disposal costs			
Estate agency fee		£1,000.00	
Total costs			£2,931.82
Gain			£11,540.81
50% Share of gain			**£5,770.41**

Annex B(2)
to full decision of First-tier Tribunal TC/2012/05860

Tribunal's mode of computation for
14 Somerville

Consideration paid by purchasers (excludes £3,315 gifted deposit)			£62,985
Acquisition cost		£47,000	
Incidental costs of acquisition			
	Ground rent	£67.79	
	Solicitor's fee	£222.03	
	Landlord's registration fee	£47.00	
	Land registry fee	£40.00	
	Indemnity insurance premium	£30.00	
Incidental costs of disposal			
	Estate agent's fee	£1,000.00	
	Solicitor's fee	£82.75	
Total allowable deductions (after rounding)			£48,490
Net gain			**£14,495**

Annex C(1)
to full decision of First-tier Tribunal TC/2012/05860

Appellants' contended mode of computation for
52 Blenheim Way

Selling price			£91,000.00	
Less				
Amount required to redeem existing mortgage			£60,554.99	
Less				
Legal costs as per account supplied			£87.25	
= Proceeds of sale (or "consideration")			**£30,357.76**	

Proceeds of sale (or "consideration")				£30,357.76
Purchase price			£70,000	
Less mortgage loan			£59,500	
Cost of acquisition		=	£10,500	
Enhancement costs to restore dilapidated property				
New kitchen purchase	£1,172.00			
New kitchen fitting	£500.00			
Painting and decorating	£1,200.00			
New flooring	£650.00			
Sub total			£3,522.00	
Incidental acquisition costs				
Solicitor's completion fee	£58.75			
CHAPS transfer fee	£30.00			
Local search	£238.70			
Land registry fee	£60.00			
Sub total			£387.45	
Incidental disposal costs				
Estate agency fee	£1,200.00			
Solicitor's completion fee	£137.25			
Mortgage redemption fees	£525.99			
Sub total			£1,863.24	
Total costs				£16,272.69
Gain				£14,085.07
Less 50% private residence relief				**£7,042.54**
Capital gain liability				**£7,042.54**

Annex C(2)
to full decision of First-tier Tribunal TC/2012/05860

Tribunal's mode of computation for
52 Blenheim Way

Consideration paid by purchasers			£91,000
Acquisition cost		£70,000	
Incidental costs of acquisition			
	Solicitor's fee	£58.75	
	Telegraphic transfer fee	£30.00	
	Local search	£238.70	
	Land registry fee	£60.00	
Enhancement costs			
	New kitchen purchase	£1,172.00	
	New kitchen fitting (including removal of old one)	£500.00	
	New flooring	£650.00	
	Painting and decorating	£1,200.00	
Incidental costs of disposal			
	Estate agent's fee	£1,200.00	
	Solicitor's fee	£137.25	
Total allowable deductions (after rounding)			£75,247
Net gain			**£15,753**