Neutral Citation: [2022] UKFTT 00171 (TC)

Case Number: TC08498

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal reference: TC/2020/00106

CAPITAL GAINS TAX – calculation of gain upon disposal of shares in company – costs of disposal – Section 38(1)(b) TCGA 1992 – Appellant repaid company debt prior to share sale – whether this constitutes expenditure on the shares that is reflected in their state or nature at disposal – Aberdeen Construction and Blackwell applied – held "no" – appeal dismissed

Heard on: 20 and 21 January 2022
Judgment date: 27 May 2022

Before

TRIBUNAL JUDGE BAILEY

Between

IGNATIUS TEDESCO

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

The Tribunal determined the appeal on 20 and 21 January 2022 without a hearing under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, with both parties having given their consent to the matter being decided without a hearing.

DECISION

INTRODUCTION

1. This appeal is the Appellant's appeal against a notice closing an enquiry into his tax return for 2016/17 that increases the amount of Capital Gains tax that is due from him for that year as a result of his disposal of a number of shares.

2. The parties are agreed on the disposal proceeds from the share sale. The point in dispute between the parties is the proper construction of Section 38(1)(b) Taxation of Chargeable Gains Act 1992 ("TCGA 1992"), and whether, when calculating the capital gain that accrued to the Appellant, the Appellant's repayment of a debt owed by the company qualifies as an allowable incidental cost incurred by the Appellant when disposing of his shares in that company.

PRELIMINARY POINT – WHETHER TO ADMIT THE APPEAL OUT OF TIME

3. The review decision the Appellant wishes to appeal against was dated 20 November 2019. As set out at the conclusion of that decision letter, if the Appellant wished to appeal then he was required to notify his appeal to this Tribunal within 30 days of the date of the decision. On 5 December 2019, the Appellant instead appealed to the Respondents. At some point it seems that the Respondents reiterated to the Appellant that any appeal must be made to the Tribunal. On 6 January 2020, the Tribunal received the Appellant's appeal. As it was 17 days late, the first decision I must make is whether to admit this late appeal for consideration.

4. In the context of the time permitted to appeal being 30 days, a delay of 17 days is neither "serious" nor "significant". The Respondents were aware within the 30 days of the Appellant's intention to appeal, and they do not object to permission to appeal out of time being given by this Tribunal. The Appellant has explained that he appealed first to the Respondents, and there is evidence of that (in-time) appeal. Although not a point made by the Appellant, I take into account that there were likely to have been delays in communication between the parties at that time of year due to Christmas and new year staff absences. Weighing all the relevant factors, as required by *Martland v HMRC* [2018] UKUT 0178 (TCC), I have decided to admit this late appeal.

5. I now consider the substantive appeal made by the Appellant.

EVIDENCE BEFORE ME

6. The evidence before me was contained in a bundle of documents prepared by HMRC containing the documents provided by the parties. As the Appellant requested that this hearing take place on the papers, no oral evidence was given by either party. The bundle includes a witness statement from Officer Rebekah Parry, upon which the Appellant's agent provided submissions but no comments on the facts contained within the statement. The Appellant chose not to provide any witness evidence in support of his appeal although he provided a letter from a Dr Saad Al Adhami. The Appellant provided some correspondence and a copy of the relevant sale agreement but he did not provide company accounts or other company documentation.

FACTS

7. On the basis of the evidence before me in the documents bundle, I find as follows:

8. Everscot Limited ("Everscot") is a Scottish company registered under the Companies Acts and with a registered address in Glasgow.

9. On an unknown date, Everscot borrowed an unknown amount of money from the Royal Bank of Scotland ("RBS"). There is no evidence before me about how any of this money was spent by Everscot, if it was spent, and so I am unable to make any findings in this regard.

10. From an unknown date, Everscot owned a property in Kennedy Street. There is no evidence as to how this property came into Everscot's possession, the purchase price (if any), the state of the premises at that time or whether there were any leases in place when the property came into Everscot's possession. I am unable to make any findings on any of these matters.

The share sale agreement

11. On an unknown date, the Glasgow MENA Cultural and Welfare Trust (the "Trust") entered into discussions with the Appellant for the sale of the shares in Everscot. The Appellant, on behalf of himself and the other shareholders at that time, and Dr Saad Al Adhami, on behalf of the Trust, agreed that the Trust would purchase the entire share capital of Everscot for £1.5 million. Dr Al Adhami states (in his letter dated 25 August 2021) that his understanding was that the price he and the other trustees were paying for Everscot was based upon:

> the valuation of the company's premises and the leases in force at that date

12. I find, on the balance of probabilities, that the premises referred to by Dr Al Adhami was the Kennedy Street property. I find that there were leases in place by the time of the discussions, and that the Trust considered the leases and the property to be of value.

13. The Appellant and Dr Al Adhami agreed that the sale of Everscot would be staggered, with 132 shares in Everscot (described as "Sale Shares A") being sold at First Completion, and the remaining 138 shares in Everscot (described as "Sale Shares B") being sold at Second Completion which could be up to a year later.

14. At the date of the share sale agreement, the issued share capital of Everscot was 270 ordinary shares. The Appellant held 218 of these shares with the remainder held by Carol Tedesco (37 shares) and Ignatius Tedesco junior (15 shares). Together Carol Tedesco and Ignatius Tedesco junior are referred to as the "remaining sellers".

15. Dr Al Adhami understood (as set out in his letter dated 25 August 2021) that it was a term of the sale that all shares in Everscot would be bought by the Trust free of any secured debt. This understanding is reflected in clause 2 of the share sale agreement that provided that the Trust would buy the shares of Everscot free from any encumbrance. Pursuant to clause 5.4.5 of the sale agreement, the Appellant and the remaining sellers were required to exhibit searches immediately prior to First Completion demonstrating that the only floating charge granted by Everscot at that time was the charge granted to secure the borrowing from the RBS.

16. By the date of the share sale agreement, the cost of repaying the amount borrowed by Everscot from RBS was £693,285.79.

First Completion

17. On 21 December 2016, the Trust paid £800,000 to Macfarlane & Co, the Appellant's solicitor, pursuant to the share sale agreement and in consideration for the transfer of 132 shares.

18. Clause 5.5 of the share sale agreement required Macfarlane & Co. to provide the Trust with evidence that the floating charge in favour of RBS had been discharged. In a letter dated 19 November 2019 from Macfarlane & Co. to the agent acting for the Appellant in this appeal, it was stated:

> There is no doubt in fact that as a condition of the sale of Everscot Limited the sellers had to undertake to repay from the first funds from the buyer all of the company's secured borrowings from The Royal Bank of Scotland. I understand that was at the insistence of the bank who were not prepared to allow the loan facility to remain in place for the future.

19. Similarly, clause 5.7 required Macfarlane & Co. to provide the Trust with evidence that the "Van HP agreements" and the "Renovations Loan" had been redeemed/repaid.

20. I find that the parties had agreed (and documented in the share sale agreement) that the funds received by Macfarlane & Co. from the Trust at First Completion were to be used in paying off Everscot's secured borrowings to RBS (and to settle other debts of Everscot) before any remaining proceeds could be passed to the Appellant and the remaining sellers. I find that this was in accordance with the wishes of the Trust and RBS and that, as Macfarlane & Co. stated, RBS was not prepared to allow Everscot's loan facility to remain in place following the change in shareholders.

21. On or shortly after 21 December 2016, Macfarlane & Co. discharged Everscot's borrowing of £693,285.79 from RBS, and paid various other amounts due in relation to the share sale. £96,500 was then transferred from Macfarlane & Co. to the Appellant.

22. Following First Completion the Appellant held 138 shares in Everscot and the Trust held the remaining 132 shares. As a 49% shareholder, the Trust was entitled to appoint one director, and to receive 49% of Everscot's net profit. This right derived from the share sale agreement and was not as a consequence of any change to the rights conferred by the shares.

Second Completion

23. On an unknown date after 21 December 2016, the Trust paid £700,000 to Macfarlane & Co. pursuant to Schedule 5 of the sale agreement. In consideration, the Appellant's remaining 138 shares in Everscot were transferred to the Trust. The Appellant ceased to be a shareholder or director of Everscot.

Following the sale

24. On 30 April 2018, the Appellant filed his tax return for 2016/17. In his self assessment, the Appellant claimed Entrepreneurs Relief on the disposal of his shares in Everscot.

25. On 14 February 2019, the Respondents opened an enquiry into the Appellant's self assessment for 2016/17 as they considered that, although the Appellant qualified for Entrepreneurs Relief, the incidental costs of the share sale that had been claimed were high when viewed against (what the parties agree are) the disposal proceeds of £1,114,815. The Respondents' Officer Parry asked the Appellant to supply the documents he relied upon to support his claim for incidental costs of sale amounting to £705,488.

26. On 21 March 2019, the Appellant sent a copy of the State for Settlement prepared for Macfarlane & Co. after First Completion (but apparently prior to Second Completion). This showed the amounts claimed as costs by the Appellant. On 10 April 2019, Officer Parry requested a copy of the Sale Agreement, a complete CGT computation and evidence of the acquisition costs of the shares. On 18 May 2019, Officer Parry formalised this request through an information notice.

27. On 5 July 2019, the Appellant provided the Respondents with a copy of the share sale agreement, and his calculation of the gain he had made. (This calculation appears to refer to the Appellant having held 140 shares, in contrast to the figures in Schedule 3 of the share sale agreement but nothing turns on this point.)

28. On 26 July 2019, Officer Parry emailed the Appellant's agent to inform him of her view that the bank debt of £693,286 could not be claimed as a cost of disposal on the basis that such a cost was not included amongst the items that could be claimed under Section 38 TCGA 1992. Officer Parry sent the Appellant's agent her revised Capital Gains tax calculation, which took account of the acquisition costs (omitted by the agent) but excluded the costs incurred by Everscot in discharging its bank loan.

29. The Appellant's agent emailed Officer Parry later the same day, disagreeing with her conclusion. Both parties' arguments are set out in more detail below. On 14 August 2019, Officer Parry responded to the Appellant's agent, explaining the reasons for her view. On 17 September 2019, Officer Parry chased the Appellant's agent for any response.

30. In the absence of such a response, on 20 September 2019, the Respondents issued a closure notice to the Appellant. The effect of this closure notice was to remove the £693,286 cost of repaying the bank loan from the Appellant's calculation of his costs of disposal of his shares in Everscot. This resulted in an increase of £69,328.60 in the tax payable by the Appellant for the year 2016/17.

31. On 26 September 2019, the Appellant appealed to the Respondents on the basis that repaying the bank loan was an allowable cost of disposal. The Appellant subsequently sought a review of Officer Parry's decision. On 20 November 2019, Officer Andrew Byrne issued the review decision that is the subject of this appeal. Officer Byrne upheld the conclusions of Officer Parry.

RELEVANT LEGISLATION

32. The parties are agreed that the relevant legislation is Section 38 TCGA 1992 but they do not agree on its interpretation. Section 38 provides:

> 38 Acquisition and disposal costs etc
>
> (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) in the case of the acquisition of an asset, with costs of advertising to find a seller, 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) Any provision in this Act introducing the assumption that assets are sold and immediately reacquired shall not imply that any expenditure is incurred as incidental to the sale or reacquisition.

THE PARTIES' SUBMISSIONS

33. The Appellant chose not to file submissions in accordance with the Directions of 18 August 2021. Therefore, my understanding of the arguments he is making in this appeal come from his agent's correspondence with HMRC, and the documents on the Tribunal file.

34. In the agent's letter with contentions to HMRC (26 July 2019), the Appellant's agent argued that the requirements of Section 38(1)(b) had been met because discharging the debt constituted expenditure that was wholly and exclusively incurred "on" the shares, and that the enhancement in the value of the shares was "reflected in the state or nature" of the shares at the time of the sale. The agent argued that the Appellant could either have settled the RBS debt and then sold the shares at an enhanced value, or sold the shares at a lesser value on the basis that the buyer would then settle the RBS debt. The agent argued that the capital gain would obviously be a far smaller amount if the second course had been followed.

35. In the agent's letter to HMRC and the Tribunal with contentions (14 June 2021), the Appellant's agent argued that the value of the shares was reflected in the value of the Kennedy Street premises and "the medium to long term tenancies which were in place at the date of the sale of the company". The agent continued:

> If the bank debt had been incurred as a result of funding trading losses or financing working capital, then I would agree that it would not be covered by the above extract from the law referred in HMRC's assessment [Section 38(1)(b)]. However, the bank debt in this instance was entirely for the acquisition and enhancement of the premises, and without that bank debt there would have been no value in the shares of the company as there would have been no premises and not tenants for the purchaser to acquire, and resultantly no Capital Gain to be assessed.

36. In this letter, the agent also argues that as the funds held by Macfarlane & Co. from the First Completion were required to discharge the RBS loan, then the Appellant was never in actual receipt of the gross disposal profits declared in the Appellant's computation.

37. In the agent's letter to the Tribunal and HMRC (22 July 2021), the Appellant's agent argues that:

> The bank loan was used in its entirety to purchase and upgrade the company's premises to make them available for lease. The company had no other need for finance other than to acquire and upgrade the property. There were no trading losses, overtrading, debt issues or anything else in the company's day-to-day business which needed external funding. The value achieved by [the Appellant] for the company's shares was 100% attached to the value of the premises and the leases in place, that is how he achieved the sale value.

38. The Appellant's letter of appeal to HMRC (dated 5 December 2019) argues that the cost of repaying the loan was "attached to the gain", and that the disposal proceeds should be reduced to reflect the fact that the Appellant was never in receipt of the proceeds he had declared.

39. No authorities were cited by the Appellant to support his contentions.

40. HMRC's arguments were put in the correspondence but are also set out in their Statement of Case and their additional submissions filed in accordance with the 18 August 2021 Directions.

41. HMRC's case is that the discharge of the RBS borrowing does not meet the requirements of Section 38 because it is not expenditure "on an asset" and the expenditure is not reflected in the "state or nature" of the shares on disposal. HMRC argue that an enhancement in the value of the shares does not constitute expenditure "on the shares" and that, although the shares became more valuable as a result of the Appellant discharging Everscot's debt, the inherent state or nature of the shares did not change because all rights granted by the shares, for example voting rights, remained the same.

42. In support of their arguments, HMRC rely upon *Aberdeen Construction Group Limited v Inland Revenue* 52 TC 281, *Burca v HMIT* [2002] BTC 64 and *Blackwell v HMRC* [2017] EWCA Civ 232.

DISCUSSION AND DECISION

43. In an appeal against a closure notice, the onus is on the Appellant to show that that closure notice is incorrect. The standard of proof is the civil standard of the balance of probabilities.

44. As the onus is upon the Appellant, I begin by considering the arguments he has made in support of his contention that Section 38(1)(b) is satisfied. These are set out above but I consider they can be summarised as the following three broad points:

- The First Completion funds were held by the Appellant's solicitor and, as the Appellant did not ever receive the funds that were used to discharge the RBS debt, those funds cannot have formed part of his capital gain;

- The Appellant and the Trust could have structured the agreement differently so that the shares would be sold for a lower price on the basis that the Trust would take on, and then discharge, the RBS debt. This alternative arrangement demonstrates that the cost of discharging the RBS debt is a cost of the disposal; and

- The increase in the value of the shares arose as a direct consequence of the loan because of the borrowing was for the acquisition and upgrade of the premises, and so the discharge of the loan was "expenditure wholly and exclusively incurred on the [shares] by him or on his behalf for the purpose of enhancing the value of the [shares], being expenditure reflected in the state or nature of the [shares] at the time of the disposal".

45. I take these submissions in turn.

Did the Appellant receive the First Completion funds?

46. It was a term of the share sale agreement that the sellers, being the Appellant and the remaining sellers, would arrange for the discharge of the RBS debt (and the other debts) and would demonstrate that this has occurred. In other words, the Appellant agreed that proceeds of sale that would otherwise come to him directly would be used for the specific purpose of repaying Everscot's debt. Macfarlane & Co. acted on the Appellant's instruction when they provided some of the First Completion funds to RBS to discharge Everscot's debt before releasing the remainder of the First Completion funds to the Appellant.

47. When considering what was the capital gain made by the Appellant, it is not relevant that some of the proceeds of sale did not go into the Appellant's physical possession – the calculation of a capital gain does not differ depending on whether funds are actually received by a taxpayer, or are paid to that taxpayer's agent to be directed in accordance with his instruction. The Appellant was able to control how the funds were used and, by entering into

the share sale agreement, he agreed that the RBS debt should be satisfied. The Appellant gave an instruction to that effect to Macfarlane & Co. I do not accept the Appellant's first argument.

Does it matter that the Appellant and the Trust could have agreed a different sale agreement?

48. It has been accepted since *Inland Revenue v Duke of Westminster* [1936] 1 A.C. 1 (if not before) that:

> Every man is entitled if he can to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be.

49. However, the converse is also the case, and it can transpire that a person has ordered his affairs in such a way that the tax is more than it might otherwise be. Unfortunately for the Appellant, it is not relevant to the determination of this appeal that a different tax consequence might attach to different facts if the Appellant had instead followed a different course of action.

50. In each case the role of the Tribunal is to find the relevant facts from the evidence before it, and then apply the relevant taxing statute to those facts. It is not necessary to comment on whether there might have been a different outcome here if the parties had chosen a different route because, whether or not there could have been a different outcome on different facts, that does not affect the outcome of this appeal. I do not accept the Appellant's second argument.

Was the expenditure "on the shares" because the borrowing was for the acquisition and upgrade of the premises?

51. The Appellant's third argument is that as the loan Everscot took from RBS was "to purchase and upgrade the company's premises to make them available for lease" then the Appellant's subsequent expenditure in discharging that loan was wholly and exclusively "on the shares".

52. However, and very unfortunately for the Appellant, there is no evidence at all to support the assertions underlying this argument. In the absence of any evidence before me about how the loan monies were spent, I have been unable to make any findings about how Everscot spent the monies that it had borrowed, or about whether there was an increase in the value of the Kennedy Street property as a result of spending by Everscot.

53. The entirety of the Appellant's case in this regard is set out in the assertions of the Appellant's agent during correspondence either to HMRC or to the Tribunal. However, as was made clear in *Qureshi v HMRC* [2018] UKFTT 0115 (TC), the commentary of a person presenting a case does not constitute evidence:

> 15. We also point out what should be obvious to all concerned, which is that assertions from a presenting officer or advocate that this or that "would have" or "should have" happened carries no evidential weight whatsoever. An advocate's assertions and/or submissions are not evidence, even if purportedly based upon knowledge of how any given system should operate.

54. In *Qureshi* the Tribunal was referring to submissions made by HMRC but the position is the same where the submissions are made on behalf of an appellant. Here, the Appellant's agent made the point in correspondence (see paragraph 35 above) that if Everscot had borrowed funds to provide itself with working capital then the repayment of that loan would not meet the requirements of Section 38(1)(b). As the agent understood the importance, for his argument, of demonstrating that what Everscot did with the funds it had borrowed caused the increase in the value of Everscot's shares, it is surprising that no evidence of Everscot's expenditure was put before the Tribunal. Whatever the reasons for that omission, in the absence of any evidence as to how the monies borrowed from the bank were spent, the Appellant has not demonstrated

that the sums borrowed by Everscot were spent in the ways the agent asserts, and so this argument must fail.

55. As the Appellant has failed to satisfy the burden upon him in his appeal, of showing that the closure notice is incorrect, this appeal is dismissed.

Does expenditure that causes share value to increase constitute expenditure "on" the shares?

56. For completeness, I set out briefly my conclusions as to why the Respondents are correct in the way that they have analysed the position and interpreted Section 38(1)(b).

57. Section 38(1)(b) requires the expenditure in question to have been:

- by the taxpayer or on his behalf,
- on the asset,
- for the purpose of enhancing the value of the asset, and
- being expenditure reflected in the state or nature of the asset at the time of the disposal.

58. I agree with the parties that the asset here is the shares in Everscot. I also agree that the discharge of Everscot's borrowing was expenditure by the Appellant (and potentially the remaining sellers) or on his (or their) behalf.

59. The next point is whether the repayment of the borrowing was expenditure was "on" the shares. This was considered by the Court of Appeal in *Blackwell* where it was held that a payment made to release an obligation was not expenditure incurred "on" the shares. At paragraph 19 the following was said;

> **[19]** … Although of course the value of the shares in Mr Blackwell's hands was enhanced by the payment of £17.5m for the discharge of the 2003 agreement, the question whether this affected the state or nature of the shares does not depend upon whether or not the expenditure affected their value. That might have been decisive in relation to the provisions about part disposal in ss 21 and 22, but a number of decisions, including the *Aberdeen* case itself in the Court of Session, show that it is not decisive for the purposes of s 38.

60. The Court of Appeal concluded that the rights and obligations of the shareholders remained as they had been prior to the payment claimed as a cost of disposal. The value of the shares had changed but this was not sufficient to meet the requirements of Section 38(1)(b). Further clarity was provided by reference to *Aberdeen Construction*:

> **[23]** The *Aberdeen* case, as analysed in the Court of Session, is a case in point. The taxpayer wished to sell its shareholding in its wholly owned subsidiary, which was indebted to it in the sum of £500,000. It agreed to sell the shares to a third party buyer for £250,000, on terms that it waived that debt. Corporation tax was assessed on the basis that the whole of the £250,000 had been received for the disposal of the shares. One of the ways in which the taxpayer sought to mitigate the severity of that analysis was by claiming that the waiver of the debt was expenditure 'on' its shareholding in its subsidiary within the meaning of what is now s 38(1)(b), then para 4(1)(b) of Sch 6 to the Finance Act 1965. The submission made good business sense, because the waiver of the debt plainly increased the value of the shares being sold, and they might otherwise have been worthless.
>
> **[24]** In rejecting that submission, the Lord President (Emslie) said this ([1977] STC 302 at 310–311, 1977 SC 265 at 274):

> 'To describe the making of the loans, or their waiver, as expenditure within the meaning of para 4(1)(b) of Sch 6 is however quite unacceptable. The making of the loan created rights and obligations and the waiver constituted an abandonment of the rights but in neither case was there the kind of expenditure with which para 4(1)(b) is concerned. In any event, by no reasonable stretch of the imagination is it possible to classify the making of the loans or their waiver as expenditure wholly and exclusively incurred "on" the shares and I find it impossible to say that either were reflected in the state or nature of the shares which were sold. The waiver of the loans may well have enhanced their value but what para 4(1)(b) is looking for is, as the result of relevant expenditure, an identifiable change for the better in the state or nature of the asset, and this must be a change distinct from the enhancement of value.'

61. In this appeal there is no evidence that there was any change in Everscot's shares that was "distinct from the enhancement of value" as the Court of Session put it. The only change that has been argued for by the Appellant is the increase in the value of the shares, and *Aberdeen Construction* and *Blackwell* make it clear that a change in the value of a share is not a sufficient change to the state or nature of that share for the purposes of Section 38(1)(b). Something more fundamental, such as a change to the rights that are acquired by holding that share, is required.

62. I conclude that the discharge of Everscot's borrowing was not expenditure "on" the shares, and it was not expenditure that was reflected in the "state or nature" of the shares at either First Completion or Second Completion. Therefore, the cost to the Appellant of repaying Everscot's borrowing does not meet the requirements of Section 38(1)(b) TCGA 1992.

63. The cost of repaying Everscot's loan is not an allowable incidental cost of the Appellant's disposal of his shares in Everscot.

CONCLUSION

64. This appeal is dismissed for the reasons set out above. The figures in the closure notice are confirmed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

65. 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.

JANE BAILEY
TRIBUNAL JUDGE

Release date: 27 MAY 2022