



[2020] UKFTT 0083 (TC)

TC07577

INCOME TAX – Discovery assessment and penalty - appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/05463

BETWEEN

MARK OKUSANYA

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE DAVID BEDENHAM
DUNCAN MCBRIDE**

Sitting in public at Taylor House, London on 7 October 2019

The Appellant appeared in person

**Beverley Levy, litigator of HM Revenue and Customs' Solicitor's Office, for the
Respondents**

DECISION

INTRODUCTION

1. This is an appeal by Mr Okusanya against:
 - (1) Discovery assessments made under s 29(1) of the Taxes Management Act 1970 (“TMA 1970”); and
 - (2) Penalties issued under Schedule 41 of the Finance Act 2008 (“FA 2008”).
2. The assessments were made on 11 September 2015 because HMRC formed the view that the Appellant had income from rental properties and market trading which gave rise to a liability to income tax which he had failed to notify to HMRC. HMRC also formed the view that the Appellant had a liability to tax resulting from a capital gain arising from the disposal of a residential property and this was included in the assessment for the year ended 5 April 2010. The Schedule 41 penalties were issued on 27 June 2016 because HMRC formed the view that the Appellant had failed to comply with the obligation imposed by s7(1) TMA 1970 to notify HMRC of chargeability to income tax and capital gains tax.
3. On 10 May 2018, HMRC revised its position. HMRC accepted that the Appellant was not liable to capital gains tax and also significantly reduced the amount said to be due as a result of rental income from properties and market trading. There was a corresponding reduction in the amount said to be due by way of penalty.
4. The table below sets out the initial and revised assessment figures:

Year ended	Initial amount assessed	Revised amount
5/4/2010	£102,672.80	£3,305.00
5/4/2011	£18,672.80	£0
5/4/2012	£18,409.75	£0
5/4/2013	£18,849.55	£4,944.55
5/4/2014	£19,374.05	£4,664.05
	£177,978.95	£12,913.60

5. For the year ended 5 April 2010, the assessment is based on the Appellant having received rental income in the amount of £23,000. This rental income relates to properties at Dudley Court and Duke Street Mansions. The Appellant also owned other properties but it is accepted by HMRC that the Appellant did not receive any rental income from these other properties.
6. For the year ended 5 April 2013, the assessment is based on the Appellant having received profit from self-employment of £25,000. This self-employment income relates to the Appellant’s market trading activities.
7. For the year ended 5 April 2014, the assessment is based on the Appellant having received profit from self-employment of £25,000. This self-employment income again relates to the Appellant’s market trading activities.
8. The table below sets out the initial and revised penalty figures:

Year ended	Initial penalty amount	Revised amount
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5/4/2010	£54,496.76	£1,735.12
5/4/2011	£10,456.76	£0
5/4/2012	£10,309.46	£0
5/4/2013	£10,555.74	£2,595.88
5/4/2014	£10,849.46	£2,448.62
	£177,978.95	£6,779.62

9. At the hearing we had before us a bundle of documents and we received live evidence from HMRC officer Maureen Cross and from the Appellant.

10. A significant amount of correspondence has passed between the parties (the key parts of which we summarise below). Ultimately, however, the issues for us to determine are relatively simple.

BACKGROUND: COMPLIANCE CHECK AND APPEAL

11. On 13 October 2014, Officer Cross wrote to the Appellant notifying him that she was commencing a compliance check into his tax affairs for the years ended 5 April 2010 to 5 April 2013. Officer Cross requested that, by 12 November 2014, the Appellant provide her with certain information and documentation including:

- (1) confirmation of the date that the Appellant commenced self-employment as a market trader;
- (2) accounts for all years since commencement of self-employment;
- (3) details of all properties in which the Appellant had an interest; and
- (4) details of any rental income.

12. On 8 December 2014, no information or documentation having been received from the Appellant, Officer Cross issued an information notice under paragraph 1 of Schedule 36 to the FA 2008. This required the information and documentation previously requested by way of the 13 October 2014 correspondence to be provided by 8 January 2015.

13. On 12 January 2015, Officer Cross wrote to the Appellant at Flat 15 Duke Street Mansions, 60 Duke Street, W1K 6JS enclosing copies of the 13 October 2014 and 8 December 2014 correspondence. Officer Cross stated that she was reissuing this correspondence because the address she had previously used was incomplete. Officer Cross extended time for compliance with the information notice to 12 February 2015.

14. On 26 February 2015, the required information and documentation not having been provided, Officer Cross issued to the Appellant a penalty for non-compliance with the information notice.

15. On 5 March 2015, an HMRC officer visited the Appellant at his market stall. The Appellant is recorded as having told the visiting officer that he had not responded to HMRC's correspondence because "his accountant had gone out of business and he was in the process of getting another agent to sort matters out. He confirmed that he was still at the same address...he said [business was] very quiet, he said he only took £20 that day and the rent is £25".

16. On 21 April 2015, Officer Cross sent a further copy of the information notice to the Appellant. Officer Cross also notified the Appellant that she had raised daily penalties totalling £600 for non-compliance with the notice.

17. On 2 June 2015, Officer Cross sent a further copy of the information notice to the Appellant. Officer Cross also notified the Appellant that she had raised further daily penalties totalling £1,800 for non-compliance with the notice.

18. On 21 July 2015, an HMRC officer again visited the Appellant at his market stall in relation to the correspondence sent to the Appellant by Officer Cross.

19. On 7 August 2015, Officer Cross again wrote to the Appellant stating that if the requested information and documentation was not provided by 7 September 2015, she would proceed to assess the Appellant based on her estimates of the income received and gains made.

20. On 11 September 2015, Officer Cross wrote to the Appellant stating:

“In the absence of any reply from you to my enquiries, I have today raised assessments for the tax years 2009/10 to 2013/14 inclusive. These assessments are based on HMRC estimates of your income for all of the above years. I have also included the capital gain made on the disposal of Flat 3, 38 Upper Brook Street, London.”

21. On 22 January 2016, Officer Cross wrote to the Appellant stating “you have not appealed against these assessments. I will therefore assume that you have agreed them. Please contact me if you wish to discuss the position or send in a late appeal.” Officer Cross also stated that she was considering issuing penalties under Schedule 41 FA 2008.

22. On 24 February 2016, Officer Cross spoke with the Appellant on the telephone. The Appellant confirmed he has received the assessments in September 2015. The Appellant stated he had appointed an accountant, Charles Luff & Co, to deal with the assessments, and that he was going to borrow some money to pay Charles Luff & Co. Officer Cross advised the Appellant to appeal as soon as possible if he did not agree with the assessments. The Appellant asked Officer Cross to email him the most recent correspondence and requested that he be given two weeks in which to respond.

23. On 24 February 2016, Officer Cross emailed to the Appellant copies of her 13 October 2013 letter and the more recent correspondence. The Appellant confirmed receipt and said he would “address all matters ASAP and refer back...”

24. In late February and early March 2016, the Appellant and Officer Cross exchanged emails. The Appellant informed Officer Cross that “all my properties were repossessed by the bank...”, that he had no access to documentation relating to the repossession of his properties, and was “working on updating you with my current affairs of me as a market trader.” Officer Cross acknowledged the Appellant’s statements in relation to the repossession of his properties and made clear that she required all of the information requested in the information notice not just details of the Appellant’s income from market trading.

25. On 26 April 2016, Officer Cross emailed the Appellant highlighting that she had still not received an appeal against the assessments and not received any of the information requested. The Appellant replied as follows:

“I have replied you stating that I do not agree with the assessment and I am surprised that you have not heard from my accountant to this date I will be contacting the firm immediately – Charles Luff & Co – to see what their position is. In the mean time, and for the record, I do not agree with the assessment for the same reasons I explained in my previous email to you.”

Officer Cross then emailed the Appellant to ask him to provide her with a copy of the previous correspondence by which the Appellant said he had notified her of an appeal.

26. On 9 May 2016, Officer Cross sent the Appellant a notice of the penalties that she intended to charge (totalling £99,668.18).

27. On 27 June 2016, HMRC issued the Appellant with the Schedule 41 penalties.

28. In October 2016, HMRC served a statutory demand on the Appellant relating to the assessments, penalties and interest. HMRC subsequently petitioned for the Appellant's bankruptcy. The Appellant filed a witness statement in which he stated that the debt claimed by HMRC was disputed. It was not made clear to us how these bankruptcy proceedings were ultimately disposed of save it was confirmed to us that the Appellant was not a bankrupt.

29. On 29 August 2017, Charles Luf & Co wrote to HMRC as follows:

“Further to our previous appeal about our above-named client...we hereby clearly appeal against the assessment for individual years as follows:

...

Year to 5 April 2010 - £133,297.18 – the income made in this tax year was £0.00, the sum indicated is therefore irrelevant and has no bearing to the actual circumstances and reality of the client financial affairs. The Client's only and main residence was repossessed and disposed of by the lender for which the client made no gain but losses.

Year ended 5 April 2011 - £21,748.72 - this figure is based on estimate.

Year ended 5 April 2012 - £21,848.64 – this figure is an estimate and does not reflect the chargeable income tax of the client.

Year to 5 April 2013 - £23,740.00 – this figure is an estimate to continue the string of inspectors best of judgment on the reality of our client's taxable income, which is £1,253.20.

Year to 5 April 2014 - £24,329.69 – this is also an estimate which is different to the taxable income of £6302.97

...”

30. On 10 October 2017, Officer Cross wrote to Charles Luf & Co stating that she was willing to accept the 29 August 2017 letter as a late appeal against the assessments. Officer Cross stated that if the Appellant also wished to appeal against the penalties, this should be made clear within 30 days.

31. On 4 December 2017, Officer Cross re-issued (by email) the 10 October 2017 letter to Charles Luf & Co because Charles Luf & Co informed her that the original copy had not been received.

32. On 6 December 2017, Charles Luf & Co emailed Officer Cross stating that the Appellant did wish to appeal against the penalties. By the same email, Charles Luf & Co also provided copies of accounts for the years 2012/13 (profit of £1,253 shown), 2013/14 (profit of £6,305 shown), and 2014/15 (profit of £4,482 shown),. No supporting records were provided. Charles Luf & Co also stated “the issue of rental income has not been fully documented yet as our client is yet to provide us with the probable rental income received and also the confirmation of existence of those properties that you alleged in your email.”

33. On 21 December 2017, Officer Cross acknowledged receipt of the 6 December 2017 email and asked that she be provided with:

- (1) Records to support the accounts provided;
 - (2) Self-employment accounts for the years 2009/10, 2010/11, 2011/12 and 2012/13;
- and

(3) Rental accounts for all years from 2009/10 to 2013/14.

34. On 23 January 2018, the Appellant telephoned Officer Cross and told her, amongst other things, that he had been homeless for some time and had lost relevant records. Officer Cross requested the Appellant provide a detailed explanation of the purchase and later repossession of each of his former properties.

35. On 24 January 2018, the Appellant emailed Officer Cross stating that in 2009/10 he was not trading. Officer Cross replied and asked the Appellant to produce bank statements in support of this assertion.

36. On 26 January 2018, Officer Cross emailed the Appellant and Charles Luf & Co. In that email she stated that the bankruptcy hearing was now listed for 18 April 2018. Officer Cross went on to state:

“ Please let me have the outstanding rental and sole trader accounts together with supporting bank statements by the very latest 18 March 2018...I will also need a detailed narrative from Mr Okusanya explaining exactly what happened with his properties (how the purchases were funded and how he could afford to make the mortgage repayments etc)...”

37. On 1 March 2018, the Appellant emailed Officer Cross asking for further time to provide documentation. Officer Cross replied stating that she was not willing to extend time as she needed adequate opportunity to consider any further material before the bankruptcy hearing on 18 April 2018.

38. On 19 March 2018, the Appellant provided HMRC with a copy of a letter from Barclays in which Barclays said it was unable to provide the Appellant with bank statements from 2009 and 2010 because they no longer held those statements.

39. On 20 March 2018, Officer Cross issued to the Appellant a “view of the matter” letter as follows:

“As you know, I raised assessments for the tax years 2009/10 to 2013/14 on 11 September 2017 based on estimates of rental income, foreign income and sole trader income in the absence of information from you. I also assessed a capital gain the year 2009/10.

I received a late appeal from your agent dated 29 August 2017 which was accepted by HMRC.

...my final deadline for the outstanding information was 18 March 2018.

As this deadline has now passed I have detailed below my view of the matter under appeal.

Capital Gain

I have documentary evidence that you purchased Flat 3, 38 Upper Brook Street, London on 1 June 2007 for £1,395,000 and paid stamp duty of £55,800. I also have evidence that the price paid by the purchaser following your eviction on 11 November 2019 was £1,835,000.

The fact that you mortgaged this property and owed proceeds of sale does not alter the fact that a capital gain was made on the above sale.

A further gain may have arisen in 2009/10 on the transfer of a maisonette flat at 18 Hertford Street to a BVI Offshore Company, Gouray Ltd. You have not provided information on this matter.

Rental Income

UK

I have evidence that you purchased 77 & 102 Dudley Court on 3 January 2008 and you had a buy to let mortgage. I estimated rental income based on a 5% return for the years 2009/10 and 2010/11 up to the date that these properties were repossessed, in the absence of information from you. You have still not provided any information to me.

Foreign

Rents have been estimated using internet data in respect of 18 Herford Street for the years 2009/10 to 2013/14. You have not provided any evidence or provided any explanation of what happened to this property.

Market Trader

You have confirmed that you have been working as a Market Trader for a number of years however you have not declared this income on tax returns. Your agent has produced accounts for the tax years 1012/13, 2013/14 and 2014/15 however you have not provided any supporting documentary evidence to enable me to check these. Accounts and supporting documentation for 2009/10-2011/12 are still outstanding.

The tax due as a result of my review is £177,976...

40. On 20 March 2018, the Appellant emailed Officer Cross as follows:

“...I am now at a loss as to why you have sent your letter/email today, when you can see that I am clearly cooperating with your investigation. I had sent a breakdown of how I financed my property purchases to my accountant about a month and a half ago...but as we were still awaiting my bank statements...that information was on hold as it will look messy with little pieces of information to you. So I am rather shocked at this sudden knee jerk reaction. You require information that is nearly 10 years old, so that is reason for any hold ups, plus you were kept in the loop of my current update.

As it appears that you would rather have information in little amounts, I have now requested that my accountant send you my statement of events as I can remember.

May I remind you that I am still homeless, lost both my parents in the past year and separated from my family. Plus the hearing is on 18/04/18.

I am doing my best and I can only apologise if the information seems to be slow coming. As I explain, access into the lobby to pick up my mail was only achieved on 19 March and the information I received was immediately sent to you.

I will have the letter emailed to you with reference to my account of my property purchases, which is the only outstanding matter at hand.”

41. On 22 March 2018, Officer Cross emailed the Appellant acknowledging his email of 20 March 2018 and stating “I have detailed in my letter all the outstanding matters at hand and await your fill reply.”

42. On 23 March 2018, the Appellant forwarded to Officer Cross an email he sent to Charles Luf & Co on 19 January 2018. In that email, the Appellant sought to explain how he had financed various properties, specifically Upper Brook Street, Hertford Street, Duke Street and two flats in Dudley Court. The Appellant went on to state:

“I can confirm that I resided at Upper Brook street until we were evicted then we moved to a rental apartment in the area, but when we could not afford the rent, I had to make Duke Street vacant and so we stayed there until we were evicted. From there the family became homeless and dissolved...

I can also confirm that the rents of the two flats in Dudley Court just about covered the rent when they were rented and the same was for Duke Street for the short time it was rented, but when things went wrong I had little choice but to use the rent from the Dudley Court flats to survive with my family until they were eventually repossessed.

Hertford Street was repossessed and sold for £1m and I owed the bridging company money and I also owed the second lender money as they had funded me on most of my development/refurbishment funding of all my properties.”

43. On 23 March 2018, the Appellant emailed Officer Cross stating:

“For the periods mentioned on all fronts, there was no rental income as all the properties had been repossessed from late 2008. Further, Hertford Street was in the process of refurbishment when it was repossessed, so it was never rented out as it was not habitable.”

44. On 26 March 2018, the Appellant sent Officer Cross a copy of his driving licence which showed his address as Flat 3, 38 Upper Brook Street.

45. On 28 March 2018, Officer Cross wrote to the Appellant stating:

“Thank you for sending me a copy of your driving licence which shows your registered address as Flat 3, 38 Upper Brook Street at 24 June 2009. I do not hold any further evidence of your occupation or confirmation that this property was your family residence throughout your period of ownership and that it was never let.

You have confirmed that you were in receipt of rents from 77 and 102 Dudley Court for your period of ownership and Duke Street up to the date your family moved in which was presumably 2010. I have still not received confirmation of the rents received for all years...

I need a more detailed explanation of what happened with the flat at 18 Hertford Street...I do not hold any evidence that this property was repossessed. I require bank statements or any other evidence to support our statement that no rents were received from this property...

I have still not received accounts and supporting evidence of your income as a market trader for all the enquiry years. You provided some bank statements to your agent to enable him to complete the later year's accounts however I have still not seen these.”

46. On 29 March 2018, Officer Cross wrote to the Appellant and Charles Luf & Co suggesting that the parties meet.

47. On 29 March 2018, the Appellant telephoned Officer Cross. A meeting was arranged for 10 April 2018.

48. The Appellant met with Officer Cross on 10 April 2018. Following that meeting, the Appellant signed a certificate of full disclosure. The Appellant also provided Barclays bank statements for the period January 2013 to May 2015.

49. On 18 May 2018, Officer Cross issued a “view of the matter” letter. In relation to Flat 3, 38 Upper Brook Street, Officer Cross accepted that as this property was the Appellant's Principal Private Residence, there was no taxable gain made on it. In relation to Hertford Street,

Officer Cross accepted that the property was repossessed and the Appellant made no capital gain on it. Officer Cross further accepted that the Appellant did not receive any rental income from this property. In relation to the two Dudley Court properties and the Duke Street property, Officer Cross stated:

“77 and 102 Dudley Court

You have confirmed that you let the two properties and for part of the period of ownership you did not pay the mortgage up to the date the properties were repossessed. You have not provided any evidence of rents received.

Duke Street Mansions, 60 Duke Street

You have confirmed that this property was let until you and your family moved in after you were evicted from Upper Brook Street. You did not pay the mortgage on this property up to the date you were evicted. You have not provided any evidence of rents received.

I have researched the mortgage interest rates applicable for the years of letting (which were 5-6%) and was able to get rental values for these properties.

My calculation of rents assessable using this information is higher than the method used by me for the original assessments therefore it is to your advantage to accept the original calculation of rent for 2009/10 of £23,000 and £2,500 for 2010/11. I am therefore willing...to leave the original calculation of rents assessable as they stand.”

50. In relation to income from market trading, Officer Cross stated:

“You have confirmed that you have been working as a market trader since 2012. You have not provided any books and records to enable me to calculate your taxable income for the tax years 2011/12, 2012/13 and 2013/14.

You have confirmed that you were paid by cash, cheques or credit card and advised us in our recent meeting that the cash paid into the bank was after payment of expenses for hire of the stall, storage facilities, taxis etc.

After reviewing your Barclays bank statements, I find that my original calculation of self-employment income was reasonable and in the absence of other evidence, I have decided to leave the market trader income at £25,000 per annum for 2012/13 and 2013/14 (the 2011/12 figure has been apportioned for three months only).”

51. In relation to the penalties, Officer Cross stated that for tax years 2009/10, 2012/13 and 2013/14, she had issued the penalties on a deliberate and prompted basis, with a 50% reduction for disclosure. The penalties were therefore calculated at 52.5% of the potential lost revenue.

52. On 18 May 2018, the Appellant emailed Officer Cross as follows:

“Please refer back to my email which clearly states that Duke Street was refurbished as was Dudley Court. Duke Street took about five or six months to be refurbished and was rented out for only a couple of months when a tenant was finally obtained i.e. several months passed after the work was finished before it was rented out as I had to be a long let, plus my mortgage was paid until the major issues of Hertford Street property destroyed my property portfolio.

You have, for only reasons known to you, chosen to ignore the fact that the properties were refurbished (which cost about £170k approximately for Duke Street and Dudley Court), my mortgage payment on Duke Street alone was £4500 approximately...[which] means that I made a total loss on all my portfolio.

...

Regarding my market activities in the years mentioned, I also sent you a break down of what I took and my expenses. There are several days in the week where I have zero takings..."

53. On 22 May 2018, Officer Cross emailed the Appellant as follows:

"Rental income

You purchased the Duke Street and Dudley Court properties in January 2008. I have taxed rents for one year only 2009/10 which is 14 months later. I have therefore taken into consideration an extensive refurbishment period.

According to internet research, the rental range is as much as £6,950-£8,550 per month on 60 Duke Street and as much as £1,750 - £2,400 per month on the Dudley Court properties. Even if I accepted your mortgage interest figures (without any evidence) of £4,300-£4,500 per month for Duke Street and £1750 for the Dudley Court properties, you would still make a profit in excess of the amount assessed.

It can reasonably be assumed that you were not paying the mortgage on 77 Dudley Street in the year 2009/10 because it was repossessed in April 2010. Rents on this property alone would be at least £1,750 per month which is £21,000 for the year.

In the absence of any documentary evidence from you to support your statement, my revised figures stand.

Market Trader

The accounts prepared by your accountant were based on bank statements for a part period only. Also, expenses have been claimed in these accounts without any supporting evidence. I find that the expenses claimed are excessive on the grounds that my colleague Stuart Small made a note of a statement made by you at the London meeting during which you stated that you used cash receipts (before payment into the bank) to pay for your expenses, stock and transportation.

You have been given ample time to provide evidence of any additional expenses incurred..."

54. On 22 May 2018, the Appellant emailed Officer Cross as follows:

"Kindly explain what figure you used to deduct my property development expenses as the total development cost including flat 3, 38 Upper Brook, my residential property, was in excess of £400k. The rental figures you refer to are figures for prime Mayfair areas...ie Park Lane (which Duke Street is not) plus they are current rental figures...and the figures for Dudley Court are also incorrect as they refer to prime Marylebone area, which is near the Selfridges area.

These properties, as I have stated before, were not rented out for long periods due to my financial circumstances...plus you have not allowed for building/refurbishment times, time for agents to advertise for a long term tenant which were not easiest to find...Common sense can see that it was zero profit made due to all the disasters and losses that took place on my personal and business portfolio. All these properties are worth at least double what I paid for them, so why would I jeopardise them by not paying my mortgage...

...

I did not make a penny profit on renting any of my flats and that is fact.

...

...the most rented time was with the Dudley Court flats after refurbishment which was a total of 6 months, for about £1300 per month, and Duke Street was for two months after refurbishment as we had to move into the flat and return some rent to the tenants. The rent was £4200 per month approximately. Both rents hardly covered the mortgage which meant I had to add to the mortgages when I was paying my mortgage..."

55. On 24 May 2018, the Appellant emailed to Officer Cross screen shots from a lettings website. The screen shots showed two properties priced at £595 per week and £1450 per week respectively. The Appellant's cover email stated that these screenshots "demonstrate that your rental figures of some 1 year ago were optimistic and unrealistic."

56. On 8 June 2018, the Appellant requested that HMRC undertake a review of Officer Cross's decision.

57. On 20 July 2018, the Appellant was notified of the conclusion of HMRC's review. The review officer upheld the decision to raise the assessments and issue the penalties.

58. On 20 July 2018, the Appellant emailed the review officer as follows:

"...As I have maintained throughout this investigation, I, my three children and wife, at the time, were made homeless which, in any sane persons mind, is a very traumatic experience and many people lose their minds, end up on unemployment benefit etc. Despite the above, my circumstances, to you, are not severe, though till this day I am still homeless.

...

...my statement has been misconstrued as I do take from the funds paid into the bank to pay my rent of the market stall, buy stock, my travel expenses, storage and anything else that I am legally entitled to deduct, which all amounted to about £20,000pa. Hence why I had to borrow from friends as my turnover was around £17,000pa.

...

My point is that I agree that an amount should be paid, but that needs to reflect the true amount that I owe.

You have not shown any justification of why I owe any rental income as I have shown from the internet and bank of England interest rates as at times in question that the mortgage and rental were not sufficient to generate any kind of rental income."

59. On 16 August 2018, the Appellant appealed to this Tribunal.

THE APPELLANT'S CASE

60. The Appellant's "grounds of appeal" run to some 7 pages. The salient points made by the Appellant are as follows:

(1) In or around 2011, the Appellant and his family were evicted from 38 Upper Brook Street. They moved to the Duke Street property (which required the Duke Street tenant to move out after only two months).

(2) Later in 2011, the Appellant and his family were evicted from the Duke Street property.

(3) Since being evicted from the Duke Street property, the Appellant has been homeless – “living from one friend to another”.

(4) The Appellant is sometimes able to access the Duke Street property lobby so as to collect mail that has been sent to him at the Duke Street address.

(5) Due to the evictions and subsequent homelessness, the Appellant has lost much of his documentation.

(6) 2008 to 2011 were very traumatic times for the Appellant and his family.

(7) “Being homeless took its toll on me and in the process I was not able to manage my accounts effectively.” “My main focus was on surviving mentally, finding accommodation, feeding myself and working.”

(8) “I agree that I am due to pay tax for some of the said period, but the figure should not be more than £2,500 of which most of that is a result of the build up of penalties and interest.”

(9) 2008-2011 was the “height of the recession” and the rental market was “tough, as was everything”.

(10) The two Dudley Court flats were rented for no more than 8 months and the Duke Street flat for 2 months.

(11) The mortgage on the Dudley Courts flats was £1,603 per month and the rent received was £1519 per month.

(12) The mortgage on the Duke Street property was £4,350 per month and the rent received was £3,900 per month.

(13) In late 2011 all properties were repossessed.

(14) To rent property in central London the property has to be in good condition so necessarily expenses would have been incurred.

(15) In relation to market trading, “I stated [to HMRC] that I pay [expenses] from the cash I receive and bank what is left over. But that does not represent how all my transactions work. That is just on occasions, as there are many days where I took zero and needed to go to the cash machine to withdraw money to pay my rent, storage, buy stock or pay for my travel.”

(16) The expenses associated with market trading come to £23,556 per annum consisting of rent, storage costs, travel costs, stock costs and loan costs.

61. In the “outcome” box of the Notice of Appeal, the Appellant stated:

“I believe my situation that led me to this position is very severe and so I kindly request the tribunal to assess my tax owing for the period in question at £2,500 in total with a 12 month time to pay my tax off.”

62. The Notice of Appeal also stated that enclosed with it were “some market receipts – 12 items, some court documents – 4 pages”. The Appellant told us that he was confident he had included these documents with the Notice of Appeal but had not kept copies or provided copies to HMRC. We made enquiries with the Tribunal service and were told that there was no record of any such documents being attached to the Notice of Appeal. As explained below, we are not satisfied that the documents were enclosed with the Notice of Appeal.

HMRC'S CASE

63. HMRC's case can be summarised as follows:

- (1) The Appellant received rental income from properties and income from market trading giving rise to a liability to income tax.
- (2) The Appellant failed to give notice of his liability as required by s7 TMA1970.
- (3) Having discovered that the Appellant had received income which ought to have been assessed to income tax but had not been so assessed, HMRC was entitled to issue discovery assessments pursuant to s29(1)(a) TMA 1970.
- (4) The assessments were all issued within the 20 year time limit provided for by s36(1A)(b) TMA 1970. In relation to the years ended 5 April 2013 and 5 April 2014, the assessments (issued on 11 September 2015) were also issued within the 4 years provided for by s 34(1) TMA 1970. In relation to the year ended 5 April 2010, the assessment (issued on 11 September 2015) was issued within the six year time limit provided for by s36(1) TMA 1970.
- (5) "The onus of proof is on the Appellant to show that HMRC's assessments are excessive. HMRC say that the Appellant has failed to provide evidence to show this. Not only was it the Appellant's responsibility to declare his income to HMRC but it was also his responsibility to keep sufficient records to support the income and expenditure figures he has presented in the alternative to HMRC's. HMRC do not think he has been able to do so."
- (6) Where a person fails to comply with his obligations under s7 TMA 1970 a penalty is payable pursuant to paragraph 1 of Schedule 41 FA 2008.
- (7) The Appellant's failure to comply with his obligations under s7 TMA 1970 was deliberate but not concealed.

THE LAW

64. Section 7 TMA 1970 provides in relevant part:

"(1) Every person who –

(a) is chargeable to income tax or capital gains tax for any year of assessment, and

(b) falls within subsection (1A) or (1B),

shall, subject to subsection (3) below, within the notification period, give notice to an officer of the Board that he is so chargeable.

(1A) A person falls within this subsection if the person has not received a notice under section 8 requiring a return for the year of assessment of the person's total income and chargeable gains."

65. Section 29 TMA 1970 provides in relevant part:

"(1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a year of assessment —

(a) that any income, unauthorised payments under section 208 of the Finance Act 2004 or surchargeable unauthorised payments under section 209 of that Act or relevant lump sum death benefit under section 217(2) of that Act which ought to have been assessed to income tax, or chargeable gains which ought to have been assessed to capital gains tax have not been assessed, or

- (b) that an assessment to tax is or has become insufficient, or
- (c) that any relief which has been given is or has become excessive,

the officer or, as the case may be, the Board may, subject to subsections (2) and (3) below, make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax.”

66. Section 34(1) TMA 1970 provides:

“(1) Subject to the following provisions of this Act, and to any other provisions of the Taxes Acts allowing a longer period in any particular class of case, an assessment to income tax, capital gains tax or to tax chargeable under section 394(2) of the Income Tax (Earnings and Pensions) Act 2003 may be made at any time not more than 4 years after the end of the year of assessment to which it relates.”

67. Section 36 TMA 1970 provides in relevant part:

“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).

(1A) An assessment on a person in a case involving a loss of income tax or capital gains tax—

(a) ...

(b) attributable to a failure by the person to comply with an obligation under section 7

...

may be made at any time not more than 20 years after the end of the year of assessment to which it relates (subject to any provision of the Taxes Acts allowing a longer period).”

68. Paragraph 1 of Schedule 41 FA 2008 provides that a penalty is payable by a person who fails to comply with an obligation under, *inter alia*, s7 TMA 1970. Paragraphs 6(2) and 6A(1) set out how the amount of that penalty is to be calculated. Where the failure is deliberate but not concealed the penalty is 70% of the potential lost revenue. In non-deliberate cases the penalty amount is 30% of the potential lost revenue. Paragraph 13 then provides for reductions to the penalty amount where disclosure is provided in relation to the failure.

69. Paragraph 14 of Schedule 41 FA 2008 provides that if HMRC think it right because of special circumstances they may reduce a penalty.

70. Paragraph 17(1) of Schedule 41 FA 2008 provides that a person issued with a penalty may appeal against the decision that a penalty is payable. Paragraph 17(2) of Schedule 41 FA 2008 provides that a person issued with a penalty may appeal the amount of the penalty.

71. Paragraph 19 of Schedule 41 FA 2008 provides:

“(1) On an appeal under paragraph 17(1) the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 17(2) the tribunal may—

(a) affirm HMRC's decision, or

- (b) substitute for HMRC's decision another decision that HMRC had power to make.
- (3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 14–
 - (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or
 - (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 14 was flawed.
- (4) In sub-paragraph (3)(b) “*flawed*” means flawed when considered in the light of the principles applicable in proceedings for judicial review.”

72. Paragraph 20 of Schedule 41 FA 2008 provides:

- “(1) Liability to a penalty under any of paragraphs 1, 2, 3(1) and 4 does not arise in relation to an act or failure which is not deliberate if P satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the act or failure.
- (2) For the purposes of sub-paragraph (1)–
 - (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,
 - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the relevant act or failure, and
 - (c) where P had a reasonable excuse for the relevant act or failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the relevant act or failure is remedied without unreasonable delay after the excuse ceased.”

73. In relation to the discovery assessments, it is for HMRC to show that they made a discovery and that the assessments were issued within the statutory time limits.

74. It is for the Appellant to show that the assessment should be set aside or reduced.

75. In *T Haythornwaite & Sons v Kelly (HM Inspector of Taxes) (1927) 11 TC 657* at 667, Lord Hanworth MR stated:

“Now it is to be remembered that under the law as it stands the duty of the [Tribunal] who hear this appeal is this: Parties are entitled to produce any lawful evidence, and if on appeal it appears to [the Tribunal] by examination of the Appellant...or by other lawful evidence, that the Appellant is overcharged by any assessment, the [Tribunal] shall abate or reduce the assessment accordingly; but otherwise every assessment or surcharge shall stand good. Hence it is quite plain that the [Tribunal is] to hold the assessment as standing good unless the subject – the Appellant – establishes before the [Tribunal]...that the assessment ought to be reduced or set aside.”

76. In *Johnson v Scott (HM Inspector of Taxes) (1978) 52 TC 383* at 394, Walton J stated of assessments:

“Of course all estimates are unsatisfactory; of course they will always be open to challenge in points of detail; and of course they may well be underestimates rather than overestimates as well. But what the Crown has to do in such a situation is, on the known facts, make reasonable inferences...the fact that the onus is on the taxpayer to displace assessment is not intended to give the Crown carte blanche to make wild or extravagant claims. Where an inference of whatever nature falls to be made, one invariably speaks of a ‘fair’

inference. Where, as in the case of this matter, figures have to be inferred, what has to be made is a fair inference as to such figures may have been. The figures themselves must be fair.”

77. In *Van Boeckel v Customs and Excise Commissioners* [1981] STC 290, a case dealing with “best judgment” VAT assessments, Woolf J cited from Lord Russell’s judgment in *Income Tax Commissioner v Badridas Ramrai Shop* (1937) LR 64 Ind App 102 as follows:

“The officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly or capriciously, because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment...though there must necessarily be guesswork in the matter, it must be honest guesswork.”

78. In *Rahman v Customs and Excise Commissioners* [1998] STC 826, the High Court again considered best judgment VAT assessments and stated:

“...the Tribunal should not treat an assessment as invalid merely because thy disagree as to how the judgment should have been exercised. A much stronger finding is required: for example that the assessment has been reached ‘dishonestly or vindictively or capriciously’ or is a ‘spurious estimate or guess in which all elements of judgment are missing’ or is ‘wholly unreasonable’ ...short of such a finding there is no justification for setting aside the assessment.”

79. In relation to the penalties, the burden is on HMRC, save it is for the Appellant to show any claimed reasonable excuse. Reasonable excise cannot be raised where the conduct giving rise to the penalty was deliberate.

80. In *Kinesis Positive Recruitment v HMRC* [2016] UKFTT 178 (TC), the FTT stated:

“The Tribunal [in a previous case] approached the question of whether behaviour was deliberate by considering whether the action was ‘taken consciously where there was an appreciation that there was a choice.’ We consider that is a useful starting point but that also regard should be had to the ordinary meaning of the word ‘deliberate’ which, according to the Oxford English Dictionary, is as follows:

‘well weighed or considered; carefully thought out; formed, carried out, etc with careful consideration and full intention; done of set purpose; studied; not hasty or rash.’”

EVIDENCE AND FINDINGS OF FACT

81. We heard live evidence from Officer Cross who confirmed the accuracy of her witness statement and provided us with further information. At times, Officer Cross’s evidence was somewhat vague and unclear. Indeed, we took the unusual step of adjourning this matter mid-way through her evidence so that Officer Cross could collect her thoughts. It was also necessary for the Tribunal to ask more questions than it otherwise would have in order to elicit from Officer Cross the information that was needed for proper consideration of the issues in this appeal. In summary, Officer Cross told us:

(1) In the absence of the Appellant providing a breakdown (and supporting documents) in relation to his rental income and expenditure, the rental income for the two Dudley Court properties and the Duke Street property had been calculated as follows:

- (a) the properties were all purchased in January 2008;
- (b) it was assumed that due to refurbishment work the properties were not rented out until 6 April 2009;

(c) The rental income was calculated by someone else within HMRC but Officer Cross understood the calculation to have been based “on a 5% return per annum with a 50% profit rate to take into account [mortgage and other costs]”. We understood this to mean that HMRC had taken the purchase price of each property, assumed a 5% gross return and then assumed that, taking into account mortgage costs and other costs, there was a net return of 2.5%. When it was queried whether this method of calculation should have led to a rental income figure greater than the £23,000 on which the 2009/10 assessment was based, Officer Cross stated she took a “broad brush” approach.

(d) Officer Cross stated that before she issued the assessments (based on the calculations provided by her colleague) she conducted an internet search to see what rent similar properties generated. This internet search gave Officer Cross comfort that the rental income as calculated by her colleague was reasonable. Officer Cross did not keep a record of the internet searches she conducted prior to issuing the assessments. However, Officer Cross stated that later searches she conducted revealed that rental income for the Dudley Court properties would have been at least £1750 per month and the income from Duke Street would have been at least £6950 per month. Officer Cross went on to say that she had no evidence of the mortgage rates or the amount borrowed against each of the properties (although her research showed that during the relevant period the mortgage rates on these properties would likely have been between 5-6%).

(e) The fact that the two Dudley Court properties and the Duke Street property were repossessed suggests that at some point the Appellant stopped paying the mortgages on the properties.

(2) The Appellant’s income from market trading was calculated at £25,000 per annum based on “knowledge held within HMRC” as to the likely levels of income generated from selling furs and leathersgoods. Beyond saying that the “knowledge” was held within a specialist team within HMRC, Officer Cross could not assist us with any detail as to what this “knowledge” consisted of or what assumptions had been made in conducting the income calculation in relation to the Appellant’s market trading.

(3) To date, the Appellant has not provided documentation proving income or expenditure associated with his market trading.

(4) The Appellant had told HMRC that he would sometimes use cash taken on a given day to pay expenses meaning that not all cash received was put through the Appellant’s bank account.

(5) The Appellant provided bank statements for the period January 2013 to May 2015. In the year to 28 March 2014, those statements showed that £21,849 had been received into the Appellant’s bank account. In addition to this figure, Officer Cross added the unknown amount of cash received but not banked (and instead used to pay expenses) and concluded that that the £25,000 originally assessed was reasonable.

82. Ultimately, and despite the issues summarised above, we accept Officer Cross’s evidence. We would, however, comment that if an assessing officer is going to rely upon “knowledge” or calculations provided by another officer or team within HMRC then that assessing officer ought to be able to give some explanation of what that knowledge consisted of and how the calculation was arrived at.

83. We heard live evidence from the Appellant as follows:

- (1) The Duke Street property was a 3 bedroom property of approximately 1200 square feet. It was purchased on 14 January 2008 for £915,000.
- (2) Refurbishment works took longer than expected and were not completed until February 2009.
- (3) The property was marketed from February 2009 but a tenant was not found until summer 2009. The tenant agreed to pay £2,500 per month. The tenant only stayed for two weeks.
- (4) A new tenant was found in September 2009. This tenant paid £4,400 per month. This tenant stayed for approximately 6 weeks (vacating in mid October 2009).
- (5) Between late 2009 and March 2011, the Appellant lived in the Duke Street property. The property was repossessed in or about March 2011.
- (6) The Dudley Court properties were both two bedroom properties of approximately 570 square feet. Both were purchased on 3 January 2008.
- (7) Both Dudley Court properties were rented out from July 2008 (following refurbishment work) at a rent of £1516 per month. The tenants stayed until July 2009.
- (8) The rent received on the Dudley Court properties barely covered the mortgage. In addition, there was a service charge to pay.
- (9) During the period that the properties were rented out, the Appellant paid the mortgages on them.
- (10) The Appellant does not have any documentation to support his account. The documentation he did have has been lost during his evictions and subsequent homelessness.
- (11) The estate agents (two separate firms) that were instructed in relation to the properties have “gone away”, so no information or documentation can be obtained from them.
- (12) The Appellant commenced market trading in mid to late 2012. He only started trading in fur from 2014 or 2015.
- (13) The Appellant’s bank statements for 2013 to 2015 may show almost £22,000 of receipts in a 12 month period but not all of that is income. Some of the receipts related to loans received – this is money that the Appellant has had to pay back.
- (14) The Appellant’s personal and financial problems were building up from 2008.
- (15) The Appellant didn’t file tax returns “because of my personal circumstances. I was just trying to survive.”
- (16) The Appellant is unable to provide the Tribunal with any documents to support the income and expenditure relating to his market trading.
- (17) The Appellant has provided receipts for expenses to his accountant but, despite request the accountant did not provide him with copies for use as part of this appeal.
- (18) The only documents that the Appellant had access to were a limited number of receipts which he enclosed with his notice of appeal.

84. We have carefully considered what the Appellant told us. In particular, we have taken into account the Appellant’s evidence that he was made homeless in 2011 and, as a result, lost relevant documentation. We recognise that the Appellant has suffered real financial and emotional distress arising from the repossession of his home and his property portfolio. We

kept this in mind when assessing the evidence he provided to us. However, for the reasons set out below, we do not accept the Appellant's account in relation to how long the properties were rented for (and dates), rent received, rental expenses, market trading income or market trading expenditure:

- (1) There are inconsistencies in the accounts given by the Appellant. In particular:
 - (a) The Appellant told us that the Dudley Courts flats were rented out for 12 months (July 2008 to July 2009). However, in his notice of appeal the Appellant stated that the Dudley Court properties were "rented for no more than 8 months" and in his email of 22 May 2018, the Appellant stated that the Dudley Court properties were rented for "a total of 6 months".
 - (b) The Appellant told us that the rent received for the Dudley Court properties just about covered the mortgages (and that he used this rent to pay the mortgage costs). However, in his 23 March 2018 email, the Appellant stated "...but when things went wrong I had little choice but to *use the rent from the Dudley Court flats to survive with my family until they were eventually repossessed.*"(emphasis supplied)
 - (c) In his evidence us, the Appellant said that the Duke Street property was repossessed in March 2011. He gave no clear account of when the Dudley Court properties were repossessed but he did say that they were rented out until July 2009. However, in his 23 March 2018 email, the Appellant had stated "there was no rental income *as all the properties had been repossessed from late 2008.*"
 - (d) The Appellant told us that the rent received for the Dudley Court properties just about covered the mortgages. However, on the figures provided in the Appellant's notice of appeal, the monthly mortgage costs exceeded the monthly rent.
- (2) The Appellant has produced no documentary evidence to support his account in relation to the rental properties. We accept the Appellant's account that he lost his hard copy documents. Nonetheless, we consider that the Appellant could have obtained (or at least taken steps to obtain) relevant documentation from other sources. The fact that this documentation was not obtained (and either no steps were taken to obtain it or, save in relation to bank statements, no convincing reason was given for not obtaining it), leads us to further doubt the Appellant's version of events. The sort of documentation that we consider it reasonable for the Appellant to have provided includes:
 - (a) Copies of the tenancy agreements for the properties;
 - (b) Council tax records for the properties (showing who, if anyone, was registered with the local authority as living in the properties at various times);
 - (c) Mortgage statements for the properties;
 - (d) Bank statements; and
 - (e) Correspondence (including emails) relating to the letting of the properties.

Whilst we acknowledge that the Appellant wrote to Barclays in February 2018 to request bank statements for the period 1 January 2009 to 31 December 2010 only to be told that account data for these years was no longer available, the Appellant did not produce any evidence that he had made any attempt to obtain council tax records or mortgage statements. In relation to the tenancy agreements, the Appellant told us that he attempted to contact the two separate estate agents that assisted in renting out the properties but that

both had “gone away”. Beyond the Appellant’s assertion, no evidence of this was provided to us. The Appellant also stated that he was unable to access electronic copies of correspondence relating to the properties because the email address that he now uses differs from that used at the time. The Appellant did not evidence any attempts that he had made to access (or recover) his old email account. Whilst we acknowledge that the Appellant is, in his words, “living from one friend to another”, he has nonetheless had adequate opportunity (remembering that this compliance check was commenced in 2014) to seek to obtain this documentation.

(3) In relation to the Appellant’s market trading, save for the Barclays bank statements, the Appellant has not provided any documentation to support his account. The bank statements have obvious shortcomings in circumstances where the Appellant does not bank all of the cash received and instead sometimes uses that cash to cover “expenses” (some of which may not be properly deductible expenses). The sort of documentation that we consider it reasonable for the Appellant to have provided includes:

- (a) Purchase invoices (showing levels of stock purchased);
- (b) Cash book or other record of sales made;
- (c) Receipts for rental on market stall;
- (d) Receipts for other expenses associated with the market trading; and
- (e) A witness statement (or other documentation) evidencing that that some of the monies deposited into his account were the result of a loan or loans.

That the Appellant has not provided this documentation (or evidenced any steps taken to obtain this information) leads us to doubt his version of events. As noted above, we do not accept the Appellant’s assertion that there were receipts relating to his market trading attached to his notice of appeal. The Tribunal service has no record of any such documents being included with the notice of appeal and no such documents have ever been provided to HMRC despite the repeated requests for evidence of expenses incurred. In any event, the Appellant knew well before the hearing that the Tribunal did not have copies of these documents and could have taken steps to obtain alternative proof (by, for example, asking the landlord of the market to provide a summary of rent paid).

THE APPEAL AGAINST THE ASSESSMENTS

85. We are satisfied that the HMRC has proved they made a “discovery” and assessed the Appellant within the applicable statutory time limits.

86. We considered whether the assessments were arbitrary or wholly unreasonable such as to mean that we should consider setting them aside (as was consider in *Armoogum Vadamalay* [2019] UKFTT 0241 (TC)). Ultimately, we accept that the assessment cannot be said to be arbitrary or wholly unreasonable. The assessment relating to rental income was broadly based on a formula (net income based on 2.5% of purchase price) that the assessing officer had been provided with by with others within HMRC. Whilst such a formula may not lead to an accurate estimate of net rent in all (possibly even in most) cases, we do not think it can be said that its use leads to an assessment that is arbitrary or wholly unreasonable. Similarly, the assessments relating to market trading were based on calculations provided to the assessing officer by others within HMRC based on specialist “knowledge” held within HMRC. In those circumstances we do not think that the assessments can be said to be “arbitrary or wholly unreasonable”. However, we repeat our observation that where an assessing officer has relied on information or calculations provided by another officer, the assessing officer really ought to be in a position

to readily and clearly explain to the Tribunal what that information consisted of and how the calculation was arrived at.

87. We then considered whether the Appellant had shown that the assessment was wrong in amount. He has not. As set out above, we reject much of the Appellant's evidence.

88. Accordingly, we dismiss the Appellant's appeal against the assessments.

THE APPEAL AGAINST THE PENALTIES

89. We are satisfied that HMRC has established that the Appellant failed to comply with his obligations under s7 TMA 1970 and is liable to a penalty under paragraph 1 of Schedule 41 FA 2008 for each of the periods for which a penalty has been issued.

90. We are also satisfied that HMRC has established that the Appellant's behaviour can properly be categorised as "deliberate".

91. In relation to the year ending April 2010: the Appellant had several properties which he had purchased for the purpose of generating rental income. We have no doubt that he was aware of his obligations to notify HMRC of liability to tax arising from these properties. The Appellant did not suggest otherwise. We acknowledge that the Appellant was suffering financial and other distress during 2010 and 2011. However, the fact remains that he was aware of his obligations and, in our view, took a conscious decision to prioritise other matters above dealing with his tax affairs.

92. In relation to the years ending April 2013 and April 2014: the Appellant was operating a business. We have no doubt that he was aware of his obligations to notify HMRC of liability to tax arising from this business. The Appellant did not suggest otherwise. We acknowledge that the Appellant continued to very difficult times. However, we again conclude that he took the conscious decision to prioritise other matters above dealing with his tax affairs.

93. No challenge was made by the Appellant in relation to the amount of the penalties but, for the sake of completeness, we record that we are satisfied that the penalties were issued in the correct amounts. Further, we conclude that HMRC's view that there were no special circumstances justifying a reduction in the penalty amount cannot be said to be flawed in any way.

94. Accordingly, we dismiss the Appellant's appeal against the penalties.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

95. 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.

**DAVID BEDENHAM
TRIBUNAL JUDGE**

RELEASE DATE: 10 FEBRUARY 2020