



**TC06937**

**Appeal number: TC/2018/01436**

*EXCISE DUTY and CUSTOMS DUTY – civil evasion penalties – s 8 of FA 1994 and s 25 of FA 2003 – whether engagement in conduct for evading excise duty – the fact at issue regarding whether the bags were searched before the green channel – the test of dishonesty after Ivey & Genting – whether penalty reduction sufficient – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**THOMAS WHITEFORD McTAGGART**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE HEIDI POON  
MR IAN MALCOLM**

**Sitting in public at George House, Edinburgh on 9 January 2019**

**No appearance of or representation for the Appellant**

**Miss Gemma Adams, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

### Introduction

1. Mr Thomas McTaggart ('the appellant') appeals against civil evasion penalties of £3,119 imposed by notice of assessment dated on 28 November 2017. Of the total penalties charged, £2,377 relates to excise duty evasion, and £742 relates to import VAT evasion.
2. The principal issue in this appeal is to determine whether the penalties have been correctly imposed for dishonest evasion of:
  - (a) excise duty under section 8 of Finance Act 1994, and
  - (b) customs duty under section 25 of Finance Act 2003.
3. The secondary issue for determination is whether the reduction of penalties at 40% is sufficient.

### Hearing in appellant's absence

4. The clerk at the hearing venue emailed the appellant on 8 January 2019, the day before the scheduled hearing, to ask if he would confirm his attendance for security purposes. Mr McTaggart replied at 9:50 hours, stating that he would be attending.
5. On the day of the hearing, an email from Mr McTaggart arrived at 9:24 hours, informing the Tribunal that he was unable to attend the hearing as he had been 'up sick with worry and stress all night over this' and that 'it has made [him] not well'.
6. The Tribunal heard HMRC's objection to a postponement of the hearing. Ms Adams and her two colleagues (one assisting and one observing) had travelled from London the day before to attend the hearing, and HMRC's two witnesses had likewise travelled from their usual places of work to give evidence. She mentioned the likelihood of an application for wasted costs if the hearing was to be postponed.
7. The Tribunal adjourned to consider if the hearing should proceed in the appellant's absence. The Tribunal, having regard to Rule 33 and the overriding objective under Rule 2 of the Tribunal Rules, decided that it was in the interests of justice that the hearing should proceed for the following reasons:
  - (1) On the previous day, the appellant had indicated his full intention to attend the hearing the day before, and we are satisfied that the appellant had been notified of the hearing.
  - (2) The appellant fell ill overnight due to stress. Since the reason for his absence was stress caused by the thought of the hearing, it is likely that even if the hearing was postponed to another day, the same problem would recur.
  - (3) The respondents had incurred the costs in time and expenses for travel and overnight accommodation in relation to the various attendees of this hearing. An application for wasted costs would not have succeeded under Rule 10, since the only valid ground for such an application is that the appellant 'has acted unreasonably in bringing, defending or conducting the proceedings', and the appellant falling ill does not give rise to such a ground. Nevertheless, the

overriding objective is to deal with a case fairly and justly, which includes avoiding delay, in ways which are proportionate to the anticipated costs and resources of the parties.

8. The Tribunal also has regard to the need to ensure that the appellant is able to participate fully in the proceedings so far as practicable. An email was sent to Mr McTaggart at 10:25 hours relating HMRC's objection. Mr McTaggart was asked to provide any further information which he wished the Tribunal to take into consideration by email or by telephone.

9. The hearing resumed at 11:00 hours in the appellant's absence. An email from Mr McTaggart arrived at 11:32 hours, and the points he made in the email are taken into consideration as his grounds of appeal in this decision.

### **The Evidence**

10. For the respondents, Officer William Johnstone of UK Border Force, and Ms Claire Gibson of HMRC, each lodged a witness statement. A documents bundle contains the relevant pages of Officer Johnstone's notebook, the relevant seizure notices given out to Mr McTaggart following his interview with Border Force, and the correspondence between HMRC and Mr McTaggart.

#### *Officer Johnstone's evidence*

11. Officer Johnstone has been a Border Force Officer for 36 years. He is designated as a General Customs Official and a Customs Revenue Official under the Borders, Citizenship and Immigration Act 2009 (ss 3 and 11), and as an Immigration Officer under the Immigration Act 1971.

12. On 17 December 2016, Officer Johnstone was on duty at Prestwick Airport. A flight FR 654 from Tenerife was the only arrival at the airport at the time. At 16:30 hours, Officer Johnstone was in the customs control area operating the X-ray machine.

13. All of the passengers arriving in the Tenerife flight were selected to have their bags X-rayed. Officer Johnstone observed two bags which appeared to have a large quantity of hand rolling tobacco ('HRT').

14. The bags were collected from the machine by a passenger who was subsequently identified as Mr Thomas Whiteford McTaggart.

15. Officer Johnstone instructed Mr McTaggart to move with his luggage to the baggage bench and he asked Mr McTaggart a series of standard questions:

WJ: Are you travelling alone?

TM: Yes.

WJ: Are these all your bags?

TM: Yes.

WJ: Did you pack them yourself?

TM: Yes.

WJ: Do you know what is inside them?

TM: Yes just some tobacco.

WJ: There are certain things you can't bring into the country such as drugs, firearms, explosives, or prohibited items. Do you have anything like this?

TM: No.

16. Both bags were searched and Officer Johnstone removed 20 kilos of Amber Leaf HRT. He then asked Mr McTaggart the following questions

WJ: What are you going to do with the tobacco?

TM: I bought it back to give my nephew for doing work in my house. I don't even smoke.

WJ: How much did you pay for the tobacco?

TM: £2000.

WJ: £2000 – there must be a lot of work for him to do in your home?

17. There was no reply to Officer Johnstone's last question. At 16:35 hours, the HRT was seized. Mr McTaggart was issued with the carbon copy of the Seizure Information Notice on Form BOR 156, and a Warning Letter on Form BOR 162, which were both signed by him. Public Notice 1, which sets out the different allowances for goods being brought in from EU and non-EU countries, and Public Notice 12A, which details the appeal procedure to challenge a seizure, were also issued. The seized goods were bagged and sealed in front of Mr McTaggart.

18. In evidence, Officer Johnstone explained the layout of the customs control area with the aid of copies of enlarged photographs:

(1) Two baggage reclaim carousels operate at Prestwick; carousel number 2 was used for luggage reclaim for the Tenerife flight, which is nearer to the customs control area.

(2) To the right of the luggage reclaim area are the customs clearance channels. There are only two channels at Prestwick: green for 'Nothing to declare', and blue for 'Arrivals from the EU'.

(3) There is no Red channel at Prestwick; instead a big notice board in black and red alerts contains notices and signage in relation to 'Customs enquiries' and 'Goods to declare'. There is a red telephone for contacting Border Force to make an enquiry or declaration.

(4) On approach to the customs control area, a passenger will see the green channel, then the blue channel, and then the notice area with the red phone lined up from left to right.

(5) On 17 December 2016, the blue channel was taped off at the exit end of the channel, but not at the entrance point.

(6) The X-ray machine in use is the same kind as used for airport security checks, and was situated behind a wall after the entrance point of the channels. A passenger on entering the green channels therefore will not see the X-ray machine or the bag search benches until after they have turned left and then sharp right to be behind the wall which faced him on first entering the channel.

(7) On 17 December 2016, passengers' bags from the Tenerife flight were selected for X-ray screening. There was a Border Force officer standing at the front of the conveyor belt of the X-ray machine, and Officer Johnstone was on duty looking at the X-ray images of the contents of the bags.

19. Officer Johnstone confirmed that he would have removed the seized goods into the office immediately after the seizure procedure was completed; that he would have made his notebook entries; that no passengers would have been taken into the office area, as the benches outside the office are where the bags were searched; and that he would not have given any assurance that no further action would be taken as that is clearly contrary to the purpose of the Warning Letter.

20. With the set up and layout of the customs control area at Prestwick, Officer Johnstone confirmed that there were two opportunities for a passenger to make a declaration on the day of the Tenerife flight: (i) the first opportunity was the red phone point signposted to the right of the channels; (ii) the second opportunity was to make a declaration to the officer standing at the front end of the X-ray machine before a bag was put on the conveyor belt.

21. Officer Johnstone also confirmed that the Border Force officers were working behind the wall facing the entrance of the green channel and that no officers were present in the area for baggage reclaim or at the entrance to the customs channels, and that video footage is not retained by Border Force of the passengers passing through the customs control area.

#### *Ms Gibson's evidence*

22. Ms Gibson has been working as an HMRC officer since April 2004. She was based in the Customs International Trade and Excise Operations team ('CITEX') and raised the assessment for penalties on Mr McTaggart.

23. The chronology of correspondence from HMRC to Mr McTaggart is as follows:

(1) By letter dated 3 October 2017, HMRC opened an enquiry in relation to the goods seized on 17 December 2016. Mr McTaggart was invited to co-operate with the enquiry 'by making a full and prompt disclosure' within 30 days, providing full details of any involvement in the smuggling or attempted smuggling of alcohol and/or tobacco products into the UK between 17 December 2015 and 3 October 2017. Public Notices 300 and 160 were enclosed to inform Mr McTaggart of the benefit of co-operation.

(2) On 16 October 2016, the response deadline was extended to 13 November 2017, following a phone call from Mr McTaggart.

(3) In an undated one-page letter of four paragraphs, received on 17 November 2017, Mr McTaggart provided a partial response to the enquiry.

(4) On 28 November 2017, Ms Gibson raised the penalty assessment in the total sum of £5,199, being 100% of the penalties imposable for customs and excise duty evasion in relation to seizure event on 17 December 2016. A schedule of calculation accompanied the notice.

(5) The penalties were given an overall reduction of 40% for co-operation and disclosure, with the overall maximum being at 80%. The lack of a complete response was Ms Gibson's reason for not giving full reduction.

(6) In an undated letter received on 29 December 2017, Mr McTaggart requested a review of the decision.

(7) On 7 February 2017, HMRC issued their review conclusion, upholding the penalty assessment.

*The appellant's responses to HMRC's enquiry*

24. In reply to HMRC's invitation to make disclosure, Mr McTaggart gave the following information in November 2017:

'... in no way I thought I was smuggling tobacco into the UK for gain. I have visited Tenerife a few times and with that knowledge, a few friends at work had asked me to bring back some tobacco for their use as it was retailed cheaper there.

I was wrongly under the impression that as Tenerife is associated with Spain, and with Spain being in the EU alongside the UK, that I was allowed to bring back tobacco as long as I was not selling it on. ...

When stopped at customs and asked if I had anything to declare, I immediately stated what I had before they had looked through my case or investigated me further.

Once the tobacco had been confiscated, ... the custom (sic) officer stated several times there would be no further action taken from this ...'

25. In his letter requesting a review, Mr McTaggart made the following points:

'I totally disagree with the amount that I have been fined. ... I lost over £2000 already by losing the tobacco and feel the further fine is not justified as I made it clear I wasn't aware of the legislation stating I cannot bring that amount into the UK from a Spanish country. ... That would total £5000 I would have to pay for a case full of tobacco.

... In the area of case collection, before the declare zone, the UK boarder (sic) force were in this area asking to search cases for those who had them. I did not reach this area as was stopped before this. ... If I had reached this area, I would have gone through the declare area to declare the tobacco as I had nothing to hide. ... when they asked me if I had anything to declare, I said yes, as I had intentions to declare it.

I would also like to make you aware of the amounts of times I have been on holiday throughout my life. This tobacco was not for gain; it was for personal use with no intention of exchanges of money involved.

26. Mr McTaggart referred to the penalty amount as 'obscene', that it has placed him in a 'horrible financial situation', and would be leaving him 'in a very bad financial state'.

**The appellant's grounds of appeal**

27. By notice of appeal dated 18 February 2018, Mr McTaggart appealed against the review conclusion decision on the following grounds:

(1) HMRC stated that 'I entered the nothing to declare zone was untrue as I was stopped before I had a chance to enter this area'.

(2) 'When directed to the office, the boarder (sic) control officer asked if I had anything to declare which I answered yes I have tobacco in my case.'

(3) 'After the officer searched my case he informed that I had exceeded the limit and the would have to confiscate it, it was also stated that no further action would be taken against me if I agreed with that decision.'

(4) 'evidence from the airport security camera [will] show that I had in fact not entered the nothing to declare zone. When viewing the footage, it will show boarder (sic) control instructing those with cases to stand aside.'

28. On the day of the hearing, and in response to the Tribunal's communication to provide any information for consideration in the event that the hearing proceeded in his absence, Mr McTaggart sent the following by email:

'... I could see the border control we're (sic) stopping everyone with large bags from where I collected my bag.

So if I was being dishonest as they say I was why would I lift my bag and walk over to them knowing I was going to be searched.

Also the blue line was busy and I was directed to come thro (sic) the green zone my (sic) officer in charge.

If they got the video evidence that I asked for it would clearly show this.' (sub-paragraph divisions added)

### **HMRC's submissions**

29. Ms Adams submitted that the appellant's actions were dishonest in an attempt to import the tobacco for the purposes of evading the duty and tax in question:

(1) The appellant had entered the green channel, which was making a declaration that he had nothing to declare.

(2) He was found to be in possession of 20kg of HRT, which was much in excess of the duty-free allowance of 250g.

(3) The appellant had opportunities to declare the goods prior to being stopped and questioned by Border Force by seeking assistance via the red telephone prior to entering the channels.

(4) The appellant was a frequent traveller and have been experienced in entering customs channel.

(5) The large quantity of tobacco carried is contrary to the reply given that he was carrying 'just some tobacco'.

(6) The blue channel was closed off at the relevant time on 17 December 2017, which would have made a person aware that Tenerife is not within the EU customs union. There are also numerous signs in the airport highlighting which countries are within the EU.

(7) The appellant has been inconsistent in giving the reasons for carrying the tobacco: it was for 'his nephew' initially and changed to for his 'work friends' later.

30. In terms of penalty reduction, the appellant was invited to co-operate and was advised of the benefit of co-operation by the Public Notices 300 and 160. The appellant has been given reduction at 20% for co-operation, and at 20% for disclosure, when the maximum that can be given for each category is 40%. In view of the quality of disclosure and the extent of co-operation, the overall reduction percentage is sufficient.

## **The Relevant Law**

### *Travellers' Allowances Order 1994 (SI 1994/955)*

31. The statutory instrument provides for the personal allowances for dutiable goods to be imported from a third country. For smoking tobacco, the duty-free allowance for a person entering the UK from a third country is 250 grammes.

### *Excise duty penalty*

32. Section 8 of FA 1994 provides as follows:

#### **8 Penalty for evasion of excise duty**

(1) Subject to the following provisions of this section, in any case where –

(a) any person engages in any conduct for the purpose of evading any duty of excise; and

(b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),

that person shall be liable to a penalty of an amount equal to the amount of duty evaded or, as the case may be, sought to be evaded.

33. Under s 16(1B) FA 1994, there is a right of appeal to the Tribunal against a 'relevant decision', which is defined to include a decision that a person is liable to a penalty under s 8.

34. Under s 8(4) of FA 1994, on an appeal the Tribunal 'may reduce any penalty to such amount (including nil) as they think proper', but not on the grounds of inability to pay.

### *Customs duty and import VAT penalties*

35. The provisions for the imposition of penalties for the evasion of customs duty and import VAT under s 25 of FA 2003 are, in all material respects, identical to those set out above for the evasion of excise duty under s 8 of FA 1994.

## **Discussion**

### *Burden of proof*

36. Whilst penalty proceedings of the nature at issue in this appeal are 'criminal' for the purposes of article 6.2 of the European Convention on Human Rights ('ECHR'), it is established that such penalty proceedings are civil proceedings under domestic law, see *Khawaja v HMRC* [2008] EWHC 1687 (Ch), and *Khawaja v HMRC* [2012] UKFTT 0183 (TC).

37. Under article 6.2: 'Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law'. The relevance of an appellant's Convention rights under article 6.2 in a penalty case therefore concerns the burden of proof, in that HMRC have the onus to establish that the evasion of duty involves dishonesty for the penalty to be imposable.



38. The burden of proof in establishing ‘conduct involving dishonesty’ therefore lies with HMRC as provided under s 16(6) of FA 1994 (for excise duty), and similarly for customs duty and import VAT under s 33(7)(a) of FA 2003. Otherwise, the appellant has the burden to show the grounds on which the appeal is brought.

39. The standard of proof is the civil standard of the balance of probabilities. See *Khawaja v HMRC* [2008] EWHC 1687 (CH) at [25], and *Krubally N’Diaye v HMRC* [2015] UKFTT 0380 at [53] - [83].

#### *Findings of fact*

40. From the oral evidence of Officer Johnstone and Ms Gibson, and from the documents provided, we make the following findings of fact:

(1) By his own admission, the appellant has travelled a few times to Tenerife.

(2) On 17 December 2017, he returned from Tenerife and was in possession of 20kg of HRT, packed in two separate pieces of luggage.

(3) The appellant was asked by a Border Force Officer to put his bags onto the X-ray machine.

(4) The appellant was stopped after he collected his bags from the X-ray machine by Officer Johnstone, who was monitoring the screen of X-ray images of the contents of passengers’ bags.

(5) The appellant was directed by Mr Johnstone to go over to the search benches for his bags to be searched.

(6) The appellant replied to Mr Johnstone that he packed his bags and when asked if he knew what was inside them, he answered: ‘Yes, just some tobacco’.

(7) The appellant has signed the Warning Letter along with the Seizure Information Notice. The Warning Letter states that HMRC ‘may take action against you such as issuing you with an assessment for any evaded tax or duty or a wrongdoing penalty’.

#### *Whether the appellant engaged in any conduct for the evasion of duty and tax*

41. Having made the above findings of fact, there remains a central fact which is in dispute, and of which the Tribunal has to make a finding of fact based on the balance of probabilities. Mr McTaggart’s appeal is staked on the fact that he did not enter the green channel, but that he was stopped before he had a chance to enter the green channel.

42. From the various accounts, Mr McTaggart did not dispute that: (i) he put his bags onto an X-ray machine, (ii) he lifted his bags from the X-ray machine; and (iii) his bags were searched by a Border Force officer. What Mr McTaggart sought to assert is that all these steps happened in an area before the green channel.

43. The critical fact is therefore whether the X-ray machine could have been located *before* the customs clearance channels.

44. We accept the evidence from Officer Johnstone of the layout of the customs control area, and that the X-ray machine was located behind the wall facing the entrance of the green channel. A passenger would have passed through the green channel before he could see the X-ray machine.

45. We also take judicial notice that if X-ray screening is to take place of the luggage of passengers arriving in the UK, the purpose of such screening is to detect any illegal import of prohibited items or dutiable goods. The need for such detection is to identify such an import where voluntary declaration has not been made. For this purpose, the X-ray machine can only be located after the green channel has been entered.

46. Officer Johnstone described the location of the X-ray machine at Prestwick airport being behind the wall beyond the entrance to the green channel; this is consistent with the uniform design of customs control in other airports.

47. By design, the uniform customs clearance channels are used in airports to streamline the process of proving a person's engagement in any conduct for the evasion of duty and tax. If a traveller is found to be in the green channel in possession of excess dutiable goods, then this element is readily proved.

48. The green channel is a mechanism for proving the engagement of conduct for the evasion of duty by establishing two essential facts: (i) being in possession of excess duty goods; (ii) no intention of declaring the duty on the excess.

49. Since Mr McTaggart did not dispute that he was with his bags containing the 20kg of HRT on approaching the X-ray machine, on the balance of probability, Mr McTaggart must have come down through the green channel to be at the X-ray machine on 17 December 2017. We reject Mr McTaggart's assertion that he was stopped and his bags were searched before he could enter customs control area.

#### *Whether the appellant's conduct involves dishonesty*

50. Mr McTaggart's first ground of appeal is a factual challenge. His second ground of appeal, as advanced by email on the day of hearing, is to say that he was not being dishonest as he had lifted his bags and walked over to Border Force officers 'knowing [he] was going to be searched'.

51. Until recently, the test of dishonesty apposite to civil proceedings was distinguished from the two-stage test in *Ghosh*<sup>1</sup> applicable in criminal proceedings. The Supreme Court decision in *Ivey v Genting*<sup>2</sup> makes it clear that *Ghosh* is no longer good law, even for criminal proceedings. Following *Ivey v Genting*, the test of dishonesty to be applied in both criminal and civil proceedings is Lord Nicholls' test in *Tan*<sup>3</sup> as clarified by Lord Hoffmann in *Barlow Clowes*<sup>4</sup>.

---

<sup>1</sup> *R v Ghosh* [1982] 2 QB 1053

<sup>2</sup> *Ivey v Genting Casino (UK) Ltd t/a Crockfords* [2017] UKSC 67

<sup>3</sup> *Royal Brunei Airlines v Tan* [1995] 2 AC 378

<sup>4</sup> *Barlow Clowes v Eurotrust International Ltd* [2006] 1 WLR 1476

52. That the civil test of dishonesty is essentially objective is confirmed by Lord Hoffmann in *Barlow Clowes*, where it is stated at [10]:

‘Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant’s mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards.’

53. Whilst the civil test of dishonesty is primarily objective, Lord Nicholls has remarked on the subjective element that remains relevant to the test as follows:

‘Honesty, indeed, does have a strong subjective element in that it is a description of a type of conduct assessed in the light of what a person actually knew at the time, as distinct from what a reasonable person would have known or appreciated. Further, honesty and its counterpart, dishonesty, are mostly concerned with advertent conduct, not inadvertent conduct.’

54. In respect of how this ‘subjective element’ is to be taken into account by the court, Lord Nicholls’ guidance is:

‘Likewise, when called upon to decide whether a person was acting honestly, a court will look at all the circumstances known to the third party at the time. The court will also have regard to personal attributes of the third party such as his experience and intelligence, and the reason why he acted as he did.’

55. The question for the Tribunal to determine is therefore: was the appellant’s behaviour dishonest according to normally accepted standards of behaviour, having regard to his personal attributes, experience and intelligence?

56. The test of dishonesty is essentially objective for a civil evasion penalty. For the purposes of this appeal therefore, there is no requirement that HMRC prove dishonesty by establishing that the appellant *knew* what he was doing was dishonest.

57. Mr McTaggart was not present to give evidence for us to ascertain what subjective attributes he has which would be relevant to his appeal. From his own admission, he had been to Tenerife a few times. It is not unreasonable that a regular traveller like Mr McTaggart, if intending to bring in a large quantity of HRT, would have acquainted himself with any customs restrictions.

58. The sheer volume of HRT carried of 20kg is 80 times of the duty-free allowance of 250g. The quantity was not ‘just some tobacco’ as he replied to Officer Johnstone. Nor is it a quantity that is reasonable to assume to be for personal use as Mr McTaggart sought to claim in his various submissions to HMRC, especially if he is not himself a smoker as he has also claimed.

59. The account given by Mr McTaggart as to why he came to buy such a quantity of HRT has not been consistent. To Officer Johnstone, he had said that it was for a nephew who had worked on his house. On request for a review of HMRC’s decision to raise the penalty assessment, the HRT was for work friends. The inconsistencies undermined the credibility of the account.

60. Mr McTaggart said that he had lost £2,000 with the goods being seized, and that the penalty would mean that it would cost him £5,000 altogether. However, Mr McTaggart must have realised that if the same quantity of tobacco had been purchased in the UK legally, its retail value would have been inclusive of duty at a rate of £198.10 per kg, plus VAT at 20%, which was calculated at £5,199. In other words, it would have cost Mr McTaggart more than £7,000 altogether to purchase 20kg of Amber Leaf legally in the UK.

61. If Mr McTaggart was intending to declare the goods as he subsequently claimed, it would mean that he was prepared to pay the £5,199 excise duty and VAT, on top of the £2,000 for the purchase of the goods. He has not provided any evidence that he intended to declare the goods by using the red telephone, or have the funds available to meet the duty and import VAT due on the goods on arrival at Prestwick.

#### *Other grounds of appeal*

62. Mr McTaggart has referred to the penalty as disproportionate to the offence. The Tribunal has no jurisdiction to consider matters regarding fairness and proportionality in the imposition of a penalty which is set down by statute.

63. Another ground advanced by Mr McTaggart is that he would be put in a very bad financial situation if he were to pay the penalty. Insufficiency of funds. However, insufficiency of funds is not a valid ground of appeal that the Tribunal can consider.

#### *Whether reduction applicable*

64. Reduction to the penalties is provided by the legislation where co-operation is given to HMRC in their enquiry, and disclosure is made as requested. Mr McTaggart was given 20% reduction for co-operation and 20% for disclosure. We consider that the overall reduction of 40% to be appropriate in the light of the partial disclosure and co-operation given by Mr McTaggart, who has not submitted any grounds to merit any further reduction.

#### **Decision**

65. For the reasons stated, the appeal is dismissed. The penalty assessment in the total sum of £3,119 is confirmed.

66. 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.

**DR HEIDI POON  
TRIBUNAL JUDGE**

**RELEASE DATE: 18 JANUARY 2019**