



[2020] UKFTT 0130 (TC)

TC07627

Income tax – whether non-disclosure of income – burden of proof on taxpayer in relation to amounts assessed by HMRC

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/05984

BETWEEN

MUBIN MERCHANT

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE TRACEY BOWLER
MRS C. DE ALBUQUERQUE**

Sitting in public at Taylor House on 14 January 2020

Mr Mohamed Ayaz Vankad for the Appellant.

Mr J. Kruyer of HM Revenue and Customs for the Respondents

DECISION

INTRODUCTION

1. Mr Merchant is appealing under section 31 Taxes Management Act 1970 (“TMA”) against an assessment to income tax pursuant to a closure notice issued on 4 July 2018 in respect of the tax year 2015-16. HMRC maintain that Mr Merchant understated his income for the tax year 2015-16. Mr Merchant maintains that the amounts identified by HMRC as relating to additional income in fact relate to loans made to companies and/or individuals.

APPLICATION FOR POSTPONEMENT

2. Mr Vankad applied to postpone the hearing in order for a Witness Statement to be prepared for Mr Merchant because Mr Vankad had been going through a difficult divorce. We refused the application for the following reasons.

3. Mr Vankad was Mr Merchant’s duly appointed representative for his appeal and had been since 17 September 2018. He should not have acted in that capacity unless he felt that he was able to carry out the work required and had a sufficient knowledge of Tribunal procedure and general principles of litigation. As we now explain he had had ample time to assist Mr Merchant in preparing a Witness Statement.

4. Directions had been issued by Judge Bailey on 24 January 2019 directing amongst other things that Witness Statements should be filed no later than 5 April 2019. On 9 June 2019 Judge Mosedale issued directions including an “unless order” directing confirmation from Mr Merchant that he wished to proceed and compliance with the previous directions by 24 June 2019 as Mr Merchant had failed to comply with any of the directions issued on 24 January 2019. A response on 10 June 2019 attaching a copy of the same papers which had previously been attached to the Notice of Appeal and a form appointing Mr Vankad as representative was taken to constitute confirmation that Mr Merchant would proceed. Mr Merchant was then given 14 days to comply with the other directions such as the provision of Witness Statements. Mr Merchant submitted a signed Statement of Case as his Witness Statement on 17 July 2019.

5. There was no indication of any problem with preparing an actual Witness Statement as opposed to a Statement of Case in advance of the hearing. Indeed, little reason was given at the hearing. If Mr Vankad had found himself unable to continue to act, Mr Merchant had had ample time to appoint an alternative representative.

6. We were prepared to hear Mr Merchant’s evidence without a Witness Statement from him and were satisfied that it was in the interests of justice and fairness to do so, even though HMRC had not had the opportunity to address Mr Merchant’s evidence in advance of the hearing. We were alive to the issue that HMRC could be “ambushed” by new evidence and would have adjourned if that had become apparent at any time. It did not.

7. We took into account the fact that Mr Vankad and Mr Merchant said that they had not received HMRC’s bundle before the hearing. We clarified that the only item in the bundle which they had not previously seen was Ms Marshall’s Witness Statement. We rose to give Mr Merchant and Mr Vankad the morning to review that Witness Statement and put the hearing back to the afternoon. None of the evidence in that Witness Statement was new. Ms Marshall had simply recounted the meetings, telephone calls and correspondence set out in the bundle.

GROUND OF APPEAL

8. Mr Merchant has appealed on the grounds that:

- (1) he only earned one-off consultancy fees of £4,070 as shown in his tax return together with an additional £1400 which had been carelessly omitted from the return;
- (2) he had lent £40,045.70 to two companies and/or directors or shareholders of those companies and the credits of £27,855 shown in his bank statements are repayments of the loans and are therefore not income; and
- (3) there were no loan agreements for the loans as they were made between longstanding friends based on trust.

THE LAW

9. Under Section 9A TMA where a person files their tax return before the filing date HMRC may enquire into the return at any time within the period of one year from the day after the return was filed.
10. An enquiry is completed under Section 28A TMA when an officer of HMRC issues a final closure notice.
11. If on an appeal the tribunal decides the appellant is overcharged by an assessment the assessment is reduced under Section 50 TMA 1907, but otherwise the assessment stands good.
12. Consequently the burden of proof falls on Mr Merchant. The standard is the usual civil standard of the balance of probabilities.

HMRC'S CASE

13. HMRC submit that £27,855 shown as credits in Mr Merchant's bank statements should be treated as income arising from consultancy work on the basis that there is insufficient evidence to demonstrate that they were repayments of loans which Mr Merchant says he made to two companies called Asba Meats Ltd and RQHM Ltd (referred to as "Asba Meats" and "RQHM").
14. It is submitted that a letter from Mr Zaman of RQHM is inadequate to show that the amounts were loan repayments because the letter was not signed, it did not state the amount of the loan to RQHM, the terms of such a loan, when it was repaid and which payments made to Mr Merchant were loan repayments and which were consultancy fees.
15. HMRC submits that Mr Merchant has failed to provide a consistent breakdown showing which amounts of payments into his accounts were loan repayments and which were consultancy fees. The responses provided by Mr Vankad to questions asked by HMRC have been inconsistent in numerous respects. It has been claimed that Mr Merchant was self-employed and it has been claimed that he was not. The amount of his self-employed income has been changed on several occasions. Certain transactions which were initially described as loan repayments by Mr Merchant were then described as loan repayments to him, despite being debits from his account; and payments which were initially described as self-employed income were later described as loan repayments. Mr Merchant has no records relating to the payments made to him to keep track of what is income and what is loan repayment.
16. HMRC submits that as a result of the inconsistencies, the lack of evidence and the lack of records, Mr Merchant is unable to identify which payments give rise to taxable income.
17. In relation to the lack of documentation for the claimed loans, HMRC relies on the cases of *Baretto v HMRC* [2017] UKFTT 101 (TC) and *Erdogan v HMRC* [2017] UKFTT 0784 (TC).

18. At the hearing Mr Kruyer submitted that account should be taken of Mr Merchant's oral evidence that he had destroyed his records showing what the payments into his bank account reflected. The analyses provided by Mr Vankad have been unreliable, even to the extent that the latest one referred to at the hearing by Mr Vankad and Mr Merchant was recognised by Mr Vankad to contain errors. Therefore given the lack of evidence Mr Merchant had not discharged the burden of proof on him.

MR MERCHANT'S CASE

19. Mr Vankad submits that Mr Merchant proactively declared his one-off consultancy income.

20. He submits that there are clear differences between the situation in *Barreto* and Mr Merchant's case. Mr Barreto was self-employed on a long-term basis whereas Mr Merchant was only self-employed in 2015/16; Mr Barreto was receiving loan repayments of monies lent 10 years previously and they were deposited as cash in his account which did not give rise to an audit trail, whereas Mr Merchant transferred the amounts of the loans electronically from his bank account and received repayments electronically thereby giving a clear audit trail. Mr Merchant's bank statements show unambiguous evidence that loans were made to RQHM and Asba Meats during 2015/16 and repayments were received during the same year from the borrowers.

21. Mr Vankad also submits that there were clear differences between Mr Merchant's situation and that in the case of *Erdogan* as Mr Erdogan gave evidence for the first time at his hearing that some of the deposits into his bank account were repayments of loans which he had never previously told his accountant about. Mr Vankad submits that in contrast to the *Erdogan* case there is a clear audit trail provided for the payments made to Mr Merchant.

22. Mr Vankad also submits that HMRC have behaved unreasonably, pursuing the case to the tribunal without any intelligible basis and incurring unnecessary costs for Mr Merchant and therefore applied for a costs award.

FINDINGS OF FACT

23. We were provided with a bundle prepared by HMRC. Evidence from Mr Merchant was attached to his Notice of Appeal and Statement of Case. Ms Karen Marshall, an officer of HMRC, gave evidence and was cross-examined. Mr Merchant also gave evidence and was cross-examined.

24. Taking into account all of the evidence we made the following factual findings. These findings include a detailed description of the correspondence between Mr Merchant and his agent through the enquiry by HMRC, as that history is relevant to the assessment of Mr Merchant's evidence, as we explain later.

25. Mr Merchant submitted his tax return for the tax year 2015-16 on 6 October 2016.

26. Ms Marshall opened an enquiry into Mr Merchant's tax return on 27 March 2017 under Section 9A TMA.

27. On 21 April 2017 Mr Merchant's agent requested an extension of 60 days to provide the information required. This was refused by HMRC on 24 April 2017, but HMRC agreed to issue an information notice under Schedule 36 Finance Act 2008 which would provide a further 30 days for compliance.

28. On 25 April 2017 an information notice was issued by Ms Marshall under Schedule 36 Finance Act 2008.

29. Mr Vankad provided documents and analysis on 24 May 2017. The documents included bank statements.

30. On 1 June 2017 Ms Marshall requested further information about amounts identified as personal income and an explanation for transactions described as a loan from a company referred to as "RQHM", investments of £32,000, payments from Barking/HFX Barking and payments from another company referred to as "Asba Meats".

31. Mr Vankad replied in an email on 3 July 2017 that the amounts identified under heading of "Personal In" in the spreadsheet analysis were not personal income, but transfers from Mr Merchant's savings account and other accounts. He explained that payments from RQHM and Asba Meats represented repayments of loans the Appellant had made to them and as they were companies belonging to Mr Merchant's friends there were no written agreements. The £32000 related to Asba Meats and the payments from Barking/HFX Barking were deposits made by Asba Meats in relation to loans.

32. On 7 July 2017 Ms Marshall asked about the source of £79,258.87 paid into Mr Merchant's savings account between April 2015 and February 2016 and the nature of Mr Merchant's self-employment declared in his tax return.

33. On 24 July 2017 Mr Vankad wrote to say that Mr Merchant was not self-employed. He also explained that £55,000 of the £79,258.87 was loans from Hitachi, Ratesetter, Halifax and Sainsbury's. £9000 was a loan from Mr Merchant's father and £6,000 was the opening balance.

34. On 2 August 2017 Ms Marshall queried the basis on which it was now said that Mr Merchant was not self-employed given the previous completion of his tax return. Further details were requested regarding Mr Merchant self-employment activity. As Ms Marshall considered that the information suggested that Asba Meats had been making loan repayments to Mr Merchant and paying for services or for investments, Ms Marshall asked for a breakdown of the payments and explanation of the £4070 in an affidavit or sworn testimony from Asba Meats and/or an officer of that company. In addition, Ms Marshall queried further credit and debit transactions: a credit of £1400 from Harlow Harvey Centre, a credit of £1637 from E.ON, £3500 debit to HDFC, £4545 foreign payment debit and £350 debit to Earthport plc.

35. On 6 September 2017 an information notice under Schedule 36 Finance Act 2008 was issued requesting the same information as had been requested in the email of 2 August 2017.

36. On 26 September 2017 Mr Vankad wrote that the £4070 related to one-off consultancy work done for Asba Meats. The E.ON credit was a refund from a utility bill (and this was confirmed by provision of a utility bill later). The HDFC, foreign payment and Earthport plc debits were repayments made by Mr Merchant in relation to RQHM loan repayments. Mr Merchant was checking the details of the payment from Harlow Harvey Centre. An unsigned letter from Mr Zaman of RQHM was attached which stated that Mr Zaman had borrowed money from Mr Merchant for trading of halal meat and over a period of time he had paid him a share of the profit, but Mr Merchant had no long-term investment in his company.

37. On 13 October 2017 Ms Marshall queried why Mr Merchant was making repayments to RQHM if that company had borrowed from him and why payments were made overseas and not direct to RQHM. Ms Marshall also asked for details of the amounts borrowed by Mr Zaman, clarification of whether payments out of profits made to Mr Merchant were for services or as repayment of the loans and what was meant by Mr Zaman in referring to no long-term investment. It was noted that the accounts for Asba Meats and RQHM do not show loans.

38. On 14 November 2017 Mr Vankad sent an email to Ms Marshall stating that the £1400 credit from Harlow Harvey Centre was income from RQHM which had been omitted from his tax return. It was stated that £11,000 was lent to Asba Meats in May 2015 which was repaid

by them later that month; £11,005 was received from RQHM and Asba Meats between 1 and 3 2015 June 2015 which was “repaid on 9 June 2015 Moneycorp”; £5000 was lent to Asba and a further £5000 was lent to Asba via Moneycorp on 3 July 2015 which was repaid in several parts, including the £350 Earthport payment, £3500 HDFC and the £4545 foreign payment as well as a payment of £500 made on 8 January 2016 and £250 made on 15 December 2015.

39. On 6 December 2017 Ms Marshall wrote to Mr Vankad noting that the HDFC, Earthport and foreign payments had been described as repayments made by Mr Merchant in relation to RQHM loans in the email of 26 September 2017, but receipts of repayments to Mr Merchant from Asba in the email of 14 November 2017. The bank statements had shown the sums as debits from Mr Merchant’s account. It was queried how the payments of £500 and £250 made in December 2015 and January 2016 were now described as loan repayments when they were previously accounted for as payments for consultancy work. In addition Ms Marshall asked why the payments had not been paid directly between Mr Merchant and Asba/RQHM. Further explanations requested in the email of 13 October 2017 regarding Mr Zaman’s letter were again asked for. Ms Marshall asked for a full breakdown of payments made by Mr Merchant as loans to Asba and RQHM and repayments made to him as well as a breakdown of consultancy work payments.

40. Mr Vankad called Ms Marshall on 7 December 2017 to explain that the payment of £1400 was not made by the Harlow Harvey Centre but made in a bank within that shopping centre. It was noted that the spreadsheet analysis previously provided regarding payments to and from Mr Merchant was incorrect. That was followed by an email on 11 December 2017 making the same points and saying that the reference by Mr Zaman about payment of profit referred to Mr Merchant’s consultancy fees which had been declared as self-employed profit, together with the further £1400 which have been identified as having been omitted. An amended spreadsheet was provided.

41. A revised spreadsheet was sent to Ms Marshall by Mr Vankad on 11 December 2017. It was said that the £1400 was a deposit by Mr Merchant at Harlow Harvey Centre and was not a payment by Harlow Harvey Centre and the reference by Mr Zaman to profit was to consultancy fees declared as self-employment income plus the further £1400.

42. On 10 January 2018 Ms Marshall asked for replies to questions previously asked and asked why the revised spreadsheet showed that the self-assessment income had been reduced by £750. Additional questions were asked regarding other payments and a meeting was suggested.

43. Mr Vankad expressed concern with the progress of the enquiry and asked for an independent review by email on 16 January 2018. Ms Marshall responded on 23 January 2018 to explain that a review by an unconnected officer only takes place once an appealable decision has been made. A meeting was suggested again and responses to the previously asked questions were requested. Mr Vankad replied on the same day and maintained that the Appellant had lent approximately £40,000 and had received back approximately £26,000. He recognised that he was required to pay tax on the additional £1400 Harlow deposit in addition to the previously declared self-employment income.

44. On the same day Mr Vankad telephoned. It was noted that the spreadsheet analysis still contained errors. He reiterated that the loans were all verbal agreements between Mr Merchant and his friend. He explained that Asba Meats is based in Ireland and therefore its accounts were unavailable to show that it had received loans.

45. On 6 February 2018 a statutory declaration from the Appellant was emailed to Ms Marshall, in which he stated that in the tax year ended in 2016 his “consultancy i.e. self-

employed income from RQHM/Asba Meats was £4070 plus £1400. In the same tax year he had lent RQHM/Asba Meats £40,000 and they had repaid approximately £26,000.

46. Ms Marshall again offered a meeting in a letter of 20 February 2018, but that was declined as it was said that Mr Merchant preferred to conduct the discussions in writing.

47. On 16 March 2018 Ms Marshall notified Mr Vankad that assessments would be raised. Mr Vankad queried whether penalties and interest would be charged. Ms Marshall confirmed in a letter 24 April 2018 that interest would be applied. However, it was proposed, on a without prejudice basis in order to settle the enquiry, not to impose a penalty. Mr Vankad replied in an email that Mr Merchant would be seeking to appeal the decision. In an email of 14 June 2018 Mr Vankad asked for an independent review within HMRC to be conducted.

48. On 4 July 2018 a closure notice was issued for £11,624.25.

49. On 6 July 2018 Mr Vankad again requested a review by an independent officer. On 26 July 2018 Ms Marshall acknowledged the appeal and postponed the amount of £11,624.25. She also wrote to confirm the basis of the assessment.

50. In a letter dated 30 August 2018 Mr McCue of the Solicitors Office and Legal Services Reviews and Litigation Review Team wrote to confirm that the decision reflected by the closure notice of 4 July 2018 was upheld.

51. Mr Merchant carried out consultancy work for which he was paid fees in the tax year 2015/16.

52. Mr Merchant has not raised any invoices in relation to his consultancy work and has not kept any records relating to that work or the fees charged.

53. Mr Merchant bought a property in 2007/08 in London with funds given to him by his parents. He lets that property and the rental income generated by the property is £49,700 per year which he has fully declared in his tax return for 2015/16.

54. Mr Merchant lives with his parents.

55. Apart from the activity generating his consultancy income, Mr Merchant did not work on an employed or self-employed basis in the year 2015/16.

56. Mr Merchant borrowed £55,000 from banks on standard commercial terms with interest payable by him.

57. Mr Merchant has invested £32,000 in Asba Meats but the nature of the investment has not been disclosed.

58. There is no loan documentation for any loans which Mr Merchant says he made to Asba Meats or RQHM.

59. Mr Merchant has not kept any records to show to what monies received by him from Asba and RQHM related. He has been unable to provide a consistent explanation for £27,855 of the monies received by him in the tax year 2015/16.

60. The latest spreadsheet analysis of debits and credits in Mr Merchant's bank account included in the bundle from HMRC and referred to by Mr Vankad at the hearing still fails to reflect what the Appellant has claimed to be the correct analysis of payments made to and from him. In particular, Mr Merchant claims that he should be taxed on consultancy income of £4070 included on his tax return, plus an additional £1400. He says that his taxable consultancy income is described as "other income" in the spreadsheet analysis, but that analysis continues to show "other income" totalling only £3320.

61. The bank statements and other evidence provided by Mr Merchant do not show an audit trail of amounts paid to Asba Meats and RQHM and then repaid by them to reflect an activity of Mr Merchant making loans to those companies.

DISCUSSION

62. The table below shows the payments identified in the spreadsheet provided by Mr Vankad as having been made to and received from Asba Meats and RQHM as well as other payments which have been referred to in the evidence as relating to the loans. The “Note” column reflects the spreadsheet notes provided by Mr Vankad and the “Other explanation” column identifies other descriptions of the amounts provided in correspondence and/or at the hearing. The items marked with an asterisk have been treated as additional income by HMRC.

Date	Credit and bank description	Debit and bank description	Note	Other explanation
06/05/15		£11000 Asba	Loan Out	
22/05/15	£8000 Asba *		Loan In	
29/05/15	£3000 Asba *		Loan In	14.11.17 £11,000 lent to Asba on 6.5.17 and repaid 22.5.15 and 29.5.15
01/06/15	£3000 RQHM *		Loan In	14.11.17: £11,005 received from RQHM and Asba Meats between 1/6/15 and 3/6/15 repaid on 9/6/15 via Moneycorp
01/06/15	£3000 RQHM *		Loan In	
02/06/15	£2805 RQHM *		Loan In	
03/06/15	£2200 Asba		Personal In	
09/06/15		£5000 TTT Moneycorp	Loan Out	
09/06/15		£6000 TTT Moneycorp	Loan Out	
15/06/15	£15000 Ratesetter		Loan received	
15/06/15	£10000 CF Faster pay		Loan received	
29/06/15	£10000 Sainsburys		Loan received	

03/07/15		£5000 Asba	Loan out	
03/07/15		£5000 TTT Moneycorp	Loan out	
27/08/15		£4545.70 Foreign Payment	Loan out	26/9/17: Repayment in relation to RQHM loans; 14.11.17 repayment of Asba July loans of £10000
30/09/15		£3500 HDFC	Loan out	26/9/17: Repayment in relation to RQHM loans 14.11.17 repayment of Asba July loans of £10000
09/11/15	£1400 Harlow Harvey Centre		Personal In	14.11.17: Omitted income form tax return 7.12.17 payment made in Harlow Harvey Centre not by it 14.12.17 deposit by Mr Merchant at Harlow Harvey Centre Hearing: deposit made by an unknown customer of RQHM or Asba Meats.
02/12/15	£5000 Asba *		Loan in	
15/12/15	£250 Asba		Loan in	Part of consultancy fee in tax return 14.11.17: repayment of Asba July loans of £10000
07/01/16	£440 Barking		Other income	
	£400 Barking		Other income	
	£810 Barking		Other income	

08/01/16	£500 Asba *		Loan in	Part of consultancy fee in tax return 14.11.17: repayment of Asba July loans of £10000
8/01/16	£1220 Barking		Other income	
12/01/16	£350 RQHM *		Loan in	
21/01/16	£450 HFX Barking		Other income	
09/03/16		£350 Earthport plc	Personal Out	26/9/17: Repayment in relation to RQHM loans 14.11.17: repayment of Asba July loans of £10000

63. On the face of the schedule £11,000 was paid to Asba Meats in May 2015 and received back in the same month. In June credits of £11,005 could be set against £11,000 of debits. However, such a balancing exercise does not reflect the description of Mr Merchant's activities provided in other evidence. We do not accept Mr Merchant's explanation of the amount of £27,855 received by him in 2015/16 as being repayments of loans for the following reasons.

64. Mr Merchant's explanations via Mr Vankad and in his own evidence at the hearing of the amounts shown in the table above have been replete with inconsistencies:

- (1) the table shows that payments have been described as repayments of loans made to RQHM and then the same payments have been described as repayments of loans made to Asba Meats;
- (2) a £250 and £500 payment were initially described as part of the consultancy fees and then as repayment of loans;
- (3) credit amounts are described as "loan in" from RQHM, but Mr Merchant says that he has only lent to RQHM and he has not shown the prior debits reflecting loans made to RQHM. He says that he has borrowed from banks to fund his lending to RQHM and the letter from Mr Zaman of RQHM makes no reference to loans to Mr Merchant;
- (4) an amount paid to Earthport plc has been described as repayment in relation to an RQHM loan, then as a repayment of an Asba Meats loan, but it was a debit in Mr Merchant's bank statement and therefore could not have been a repayment of the loans he says he made to RQHM and Asba Meats;
- (5) none of the evidence shows the payments of money to RQHM to which the amounts described as loans in or repayments from RQHM could refer;

(6) the “Other income” column in the spreadsheet has been said by Mr Merchant and Mr Vankad to reflect Mr Merchant’s taxable consultancy income. The total amount of “Other income” identified in the current spreadsheet is £3320. There is also an additional amount of £1400 identified as “Personal In” which has been recognised by Mr Merchant as consultancy fees which had been omitted from his tax return. However, the £3320 is £750 less than the £4070 originally declared by Mr Merchant as consultancy income in his tax return;

(7) Mr Merchant’s tax return showed income from self-employment in the form of a consultancy fee. On 24 July 2017 Mr Vankad stated in an email that Mr Merchant was not self-employed during 2015/16. Then on 26 September 2017 Mr Vankad wrote in an email that the £4070 declared as self-employment income related to one-off consultancy work for Asba Meats. At the hearing Mr Merchant said that he had earned a small consultancy fee of around £200-£300 for introducing a butcher to Asba Meats or RQHM, but the remainder of the amount he was accounting for as income reflected profit from loans;

(8) Mr Vankad attempted to explain various amounts in an email of 14 November 2017. He described £11,005 having been received from RQHM and Asba Meats between 1 and 3 June 2015, but the spreadsheet now only shows £8805 as “Loan in”. £2200 is described as “Personal In”. There is no explanation for why part of the £11,005 is categorised as “Personal In” instead of “Loan in”. “Personal In” has been described at other times as reflecting transfers made between Mr Merchant’s accounts and monies received from Mr Merchant’s family;

(9) Mr Vankad said that loans to Asba Meats were repaid in several parts including the £350 Earthport payment, the £3500 HDFC payment and the £4545 foreign payment. However, those were all debits from Mr Merchant’s account and therefore cannot have been repayments made by Asba Meats;

(10) Mr Vankad wrote in an email on 14 December 2017 that the amount of £1400 identified as Harlow Harvey Centre was a cash deposit by Mr Merchant, whereas at the hearing Mr Merchant stated that it was a deposit of cash by a customer of Asba Meats or RQHM. He could not identify to which loan the deposit related;

(11) Mr Merchant said at the hearing that he had only started lending money to Asba Meats and RQHM in the tax year 2015/16, but this cannot be correct if the receipts from RQHM he has identified as loan repayments are indeed such because, as the table above shows, there is no loan out to RQHM in that tax year.

65. At the hearing Mr Merchant sought to claim that the income he was declaring was partly made up of a consultancy fee for finding a client for one of Asba Meats and RQHM and partly profit on the loans he has made. However, he has been advised throughout by a professional adviser who assisted with the preparation of his tax return and who has described the income as consultancy fees. His adviser can reasonably have been expected to have understood the difference between consultancy fees and income generated by the loans.

66. Mr Merchant said that he was just paid an amount of £200-£300 for finding one butcher’s business. He said that he was asked to do more finding of customers but declined to do so as he was too busy. However, this is a young man who told us that he lives with his parents, rents out one property and does no other work. We therefore find his explanation that he was too busy to carry out further work for Asba Meats and RQHM to be inconsistent with this background.

67. Even taking Mr Merchant's evidence at its highest, he has been unable to provide evidence of any reliable basis for identifying whether amounts paid to him by Asba Meats and RQHM were repayments of loans, or amounts of fees, or other income. Mr Merchant claimed at the hearing that it was an easy matter to identify which amounts were which, but given the fact that the spreadsheet purporting to do so is still incorrect more than two years after the HMRC enquiry started, it is clearly not a simple matter.

68. Mr Vankad described Mr Merchant as having made a note when he received "consultancy fees", but Mr Merchant denied that such notes were made and said that he simply put the cash into his bank account, although he also stated in cross-examination that he would have kept records originally regarding the loans, but he had destroyed them when the loans were repaid. Mr Merchant confirmed that it could not be said that bank transfers represented loan repayments and income from loans or consultancy fees was represented by cash – both were a mixture of transfers and cash.

69. Mr Merchant declared an investment of £32,000 in his tax return for 2015/16. In the email of 3 July 2017 Mr Vankad said that the £32,000 related to Asba Meats. Mr Merchant has not provided a copy of Asba Meats' accounts which could clarify the nature of the investment and has not otherwise clarified its nature. Although it is an Irish company there is no reason shown why Mr Merchant would be unable to obtain a copy of the accounts of the company in which he has invested. However, the fact that there has been an investment which has not been explained in more than the most general terms means that some or all of the monies moving between Mr Merchant and Asba Meats may relate to that investment. Mr Merchant himself has claimed that part of his "consultancy fees" in fact represented profits paid to him by RQHM and Asba, but he has failed to provide any explanation of how amounts are identified as repayment of capital of claimed loans or investments or payment of profit or other income generated by the loans or investments.

70. Mr Merchant told us that he funded his loans to RQHM and Asba Meats by borrowing from high-street banks on standard commercial terms. It has been accepted that he has borrowed £55,000 from such banks. £35,000 was received as loans by Mr Merchant on 15 June 2015 and 28 June 2015, yet much of this is not then shown to have been paid out. After receipt of the commercial loans Mr Merchant paid out £14,395.70 between 3 July 2015 and 9 March 2016, but in that period he has also received a further £10,820. His explanation for the borrowing of the £35,000 as being needed to fund loans to Asba Meats and RQHM is therefore not consistent with the figures.

71. Mr Vankad has submitted that there is a clear audit trail for the loans. We disagree. It would have been an obvious and relatively simple matter to produce the evidence in bank statements to show a clear audit trail whereby the capital value of loans made to Asba Meats and RQHM was easily identified as made and later repaid and additional amounts identified as income. According to Mr Merchant's evidence, this would not have been a particularly onerous task as he only started making the loans in 2015/16 (although this is not consistent with the spreadsheet as described above) and all the loans were repaid in the following year. However, that has not been done.

72. At most, as shown by the table above, the spreadsheet shows that £11,000 was transferred to Asba Meats in May 2015 and later repaid in the same month, but the remaining credit amounts for both Asba Meats and RQHM do not have similarly corresponding debits against which they could be set, given that Mr Merchant says that he has only ever lent to RQHM and has not borrowed from that company and given the issues described above with the payments which have not been identified in the bank statement as made to Asba Meats or RQHM but as made to other organisations.

73. Given the lack of audit trail, the vagueness of identification of the nature of payments, the inconsistencies in the evidence and the fact that there is an investment of £32,000 in Asba for which there is little explanation, we are not satisfied that even the £11,000 payment to Asba Meats and payment from Asba Meats should be treated as a loan and repayment.

74. Mr Merchant relies upon a letter from Mr Zaman, as director of RQHM, dated 15 September 2017. The letter is not signed and we therefore reduce the evidential weight given to the letter. Mr Merchant said at the hearing that Mr Zaman had emailed him the letter as the original signed copy had not been received by him, but the letter is dated 15 September 2017 and was emailed to HMRC on 26 September 2017. Mr Merchant has therefore had more than two years in which to obtain a signed copy of the letter and there is no explanation for this failure to adduce what should be readily available evidence.

75. In addition, the letter lacks even the most basic description of the claimed loans made by Mr Merchant. It states that Mr Zaman had borrowed money for trading of Halal meat and over a period of time had paid him a share of “the profit”. However, it does not state when money was borrowed, how much was borrowed, or when it was repaid or was due to be repaid. It does not state in what way, if any, the payment of the share of the profit relates to the loan. On the face of the letter it states no more than that Mr Merchant had lent money to Mr Zaman at some time and Mr Merchant had been paid a share of “the profit”.

76. We therefore find that the letter from Mr Zaman adds little to Mr Merchant’s case. There is no letter or other evidence from Asba Meats or any of its directors or shareholders.

77. Mr Merchant maintains that the loans are made without documentation and are based on trust between members of his community. While documentary evidence showing the terms of loans would be a clear way to show their existence, we are satisfied that where there is a clear audit trail shown by bank statements, or otherwise, and the taxpayer’s evidence is otherwise consistent, the lack of documentary evidence of the loans is not determinative. However, in this case there is no clear audit trail and Mr Merchant’s evidence is far from consistent.

78. As a result we do not accept that Mr Merchant has demonstrated that the amount of £27,855 shown as credits in his bank statements and which HMRC seek to tax are not part of his taxable income.

79. HMRC have referred to the cases of *Barreto* and *Erdogan* and Mr Vankad sought to distinguish them. However, neither of those cases purports to set out any more than applications of the principle that the burden is on the taxpayer to show that the tax assessments are incorrect and in determining whether that burden has been discharged the tribunal should consider the totality of the evidence.

80. Mr Vankad sought to argue that, because Mr Merchant has provided bank statements showing a transfer of funds to Asba Meats and RQHM, that evidence is somehow sufficient in the light of *Barreto*, but that is not correct. The tribunal in *Baretto* identified that one of the problems with the evidence in that case was the lack of bank statements showing transfers of funds, but did not suggest that such statements would be sufficient in and of themselves given the other evidence in that case. The bank statements in this case are wholly inadequate to discharge the burden on Mr Merchant for the reasons we have stated.

81. Mr Vankad also sought to argue that different principles should apply to Mr Merchant as (i) he was only self-employed in 2015/16 whereas the taxpayer in *Barreto* had been employed for a long time; and (ii) the taxpayer in *Barreto* had made the loans 10 years previously and was repaid in cash whereas Mr Merchant was repaid more quickly and the loans and repayments were transacted by bank transfer. However, neither of these differences affects the

outcome in Mr Merchant's case, which depends solely on the extent to which he has provided evidence to show that the amounts in question should not be taxed as income and not whether his self-employment lasted a short or long time, or transfers of money were made by bank transfer or in cash. As explained above the use of bank transfers should have made the provision of a clear audit trail a straightforward matter, but this evidence has not been provided.

Penalties

82. Mr Merchant has not appealed the penalties imposed on him by HMRC. His notice of appeal states clearly that he has appealed the amount of tax of £11,624.25. There is no mention of penalties or the penalty amount.

83. We have seen reference in Ms Marshall's letter dated 4 July 2018 to a separate letter regarding penalties for inaccuracies, but Mr Merchant has not provided any further evidence regarding the extent of the penalties. Mr Vankad said at the hearing that it had been decided that if Mr Merchant was unsuccessful in his appeal before us he would then seek to appeal the penalties. If Mr Merchant applies to appeal any penalties which have been imposed he will be seeking to do so outside the statutory time limits. It will be a matter initially for HMRC to address and if the appeal is not accepted by them outside the statutory time limits Mr Merchant can apply to the tribunal to request late admission of the appeal.

84. That is therefore not a matter for us to decide in this appeal, but based solely on the evidence before us, we see little basis on which Mr Merchant would succeed in appealing the penalties which it is most likely that HMRC have imposed for the inaccurate return.

CONCLUSION

For all the reasons set out in this decision we therefore find that the appeal of Mr Merchant is **DISMISSED** and the assessment in the closure notice issued on 4 July 2018 to an additional amount of £11,624.25 of income tax in respect of the tax year 2015-16 is confirmed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

85. 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.

**TRACEY BOWLER
TRIBUNAL JUDGE**

RELEASE DATE: 6 MARCH 2020

