



TC04215

Appeal number: TC/2011/09788

Income tax – closure notices, discovery assessments and penalty – errors in Appellant’s tax returns – whether Appellant had provided evidence to displace HMRC’s figures in closure notices and assessments – no – whether error due to carelessness on the part of the Appellant – yes – appeal dismissed and penalties confirmed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

IVOR OSBOURNE

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE MICHAEL S CONNELL
 MR DAVID E WILLIAMS CTA**

Sitting in public at 45 Bedford Square London WC1B 3DN on 14 August 2014

The Appellant in person

Mr Goulding, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by Ivor Osbourne ('the Appellant') against:

- 5 (i) closure notices and amendments to self-assessments under s 28A Taxes Management Act 1970 for the years 2001-02, 2002-03 and 2003-04;
- (ii) discovery assessments made under s 29 TMA for the years ended 1997-98, 1998-99, 1999-2000, 2000-01 and 2004-05;
- (iii) penalty determinations under s 7(8) TMA for the years 1997-98 and 1998-99;
- 10 (iv) penalty determinations under s 95 TMA for the years 1999-2000 to 2004-05 inclusive.

2. The increased tax due under the s 28A TMA Closure Notices is:

Year	Closure Notice Issued	Increased tax due
2002	17 October 2007	£27,195.00
2003	18 September 2008	£27,834.29
2004	17 October 2007	£19,440.08

3. The tax due under the s 29 TMA Assessments is:

Year	Profit	IFP	Tax due
1998	£6,000	£1,000	£591.00
1999	£7,000	£2,240	£1,031.35
2000	£9,000	£9,088	£3,056.39
2001	£39,187	£10,433	£16,897.01
2005	£15,000	nil	£4,500.00

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4. The Penalty determinations appealed by the Appellant, issued by HMRC on 13 March 2008, are :

1998 and 1999 s 7 TMA 1970 £649

2000-2005 s 95 TMA 1970 £38,223

20 5. The matters at issue are

- i. Whether the Appellant has been overcharged in the closure notices.
- ii. Whether the assessments are competent as to discovery.
- iii. Whether the penalty determinations are correct and appropriate

Appeal Background

6. HMRC issued the Appellant with the s 29 TMA assessments on 17 October 2007 and the Closure Notices were issued on the dates as stated above. The Appellant appealed these on 22 October 2007. The Penalty Determinations were issued on 13
5 March 2008 and were appealed by the Appellant on 27 March 2008.

7. On 25 March 2009 the General Commissioners of Income Tax dismissed the Appellant's appeal. The Clerk to the Commissioners advised the Appellant that if he wished to appeal the decision the appeal route was to the High Court by way of asking the General Commissioners to produce a "Case Stated" which the Appellant would
10 then have the right to appeal, but on a point of law only.

8. The Appellant did not lodge a notice of appeal of The General Commissioners decision until 14 November 2011 and therefore was out of time to make the application.

9. An application was made by the Appellant to the General Commissioners under
15 Regulation 17(1) of the General Commissioners (Jurisdiction and Procedure) Regulations 1994 [SI 1994/1812], to set aside the decision of the General Commissioners and for permission to allow a late appeal.

10. The General Commissioners found that an administrative error had been made on the part of the Clerk in not advising the Appellant of the transitional arrangements
20 whereby it was possible to apply to the General Commissioners for the decision to be set aside under Regulation 17 of the 1994 Regulations and the appeal adjourned for that purpose to allow the Appellant a further opportunity of presenting evidence in support of his case and for that reason allowed the application. The decision of the General Commissioners of Income Tax of 25 March 2009 was set aside and the
25 Appellant's application to make a late appeal allowed.

11. The Tribunal issued Directions that (so far as relevant to this appeal), no later than 13 February 2013, each party should send to the other party and the Tribunal, a list of the documents on which that party intended to rely. The Appellant was specifically directed to include copy Bank statements, mortgage statements and such
30 other material information as was in his possession or control and which evidenced his income for the years ended 1997-98 to 2004-05 inclusive. The Directions included a requirement that information provided by the Appellant had to include details of properties owned by him in respect of which he received rental income, together with the dates of ownership of those properties.

12. The Appellant's list of documents was not received by 13 February 2013 as
35 directed, and accordingly on 27 February 2013, further directions were issued that the Appellant should deliver to the Tribunal and to the Respondents, within not more than 42 days, the list of documents set out in the Tribunal's Directions of 2 January 2013 and that if the Appellant did not deliver his list of documents and copy documents in
40 accordance with the Directions, he would not be permitted to rely at the hearing on

any documents other than those included in the bundles of documents already delivered by HMRC unless the Tribunal orders otherwise.

13. Despite the two sets of Directions issued by the Tribunal, and repeated requests by both the Tribunal and HMRC, the Appellant failed to provide any further evidence in support of his appeal.

14. On 9 July 2014 HMRC made an application to the Tribunal to strike out the appeal under Rule 8(3)(c).

Evidence before the Tribunal

15. The evidence before the Tribunal consisted of copies of the Appellant's tax returns for 2001 to 2005 inclusive; copy correspondence with the Appellant and his agent; a schedule of properties owned by the Appellant (prepared by HMRC); a schedule of loans secured on those properties; a list of other properties in respect of which the Appellant had claimed overhead costs; copy bank statements; HMRC's working notes; notices of assessment for the years ended 5 April 1998 to 2001 inclusive and notices of closure for the years ended 5 April 2002 to 2004 inclusive and a notice of assessment for the year ended 5 April 2005. The investigating HMRC officer, Richard Hadley, provided a witness statement. The Appellant gave oral evidence to the Tribunal.

Background to the Closure Notices and Assessments (as extracted from the witness statement of HMRC's investigating officer Mr Hadley)

16. In his tax returns for the years ended 5 April 2001 to 5 April 2005, the Appellant declared gross income, property rents, expenditure and after adjustments net income, as follows:

Year	Income £	Expenses £	Net income £	Rental £	Expenses £	Net income £
2000 - 01	31,080	26,489	4752	36,300	28,789	2,525
2001 - 02	39,642	33,396	6,394	110,029	128,504	(18,295)
2002 - 03	47,711	38,933	9,033	164,508	183,708	(19,200)
2003 - 04	59,238	38,340	20,986	292,860	269,680	(4106)
2004 - 05	29,174	21,688	7,560	274,378	298,299	(23,889)

25 Interest and finance charges for each year which were included in 'rental income expenditure', were as follows:

2000-01 - £4,097 2001-02 - £79,869 2002-03 - £118,775
2003-04 - £185,264 2004-05 - £227,954

17. Information relating to rental income, repairs and other expenditure provided in October 2003 by the Appellant's accountants, for 2001-02, indicated that the
5 Appellant owned twelve properties, and that each of these were in mortgage.

18. Further information provided by the Appellant's agent in respect of expenditure incurred on furniture fittings and equipment related to a total of nineteen properties. No immediate explanation was provided as to why expenditure had been incurred on nineteen and not twelve properties.

10 19. With regard to 2001-02, capital allowances of £7,980 had been claimed in addition to a 10% 'wear and tear' allowance of £11,021 for furnished properties. The total of £19,001 and net losses on the rental of £18,295 resulted in a declared loss of £37,296, which had been offset against total income from all sources and carried forward to the following year.

15 20. On 3 October 2003 Mr Hadley, the HMRC officer dealing with matters, considered that the oddities in the Appellant's 2001-02 tax return were sufficient to warrant the opening of an aspect enquiry into the return.

21. From information provided by the Appellant's agent, HMRC determined that capital allowances had been incorrectly claimed on items of furniture and it was
20 apparent from information gathered from the Land Registry that the purchase dates of four of the Appellant's properties (that were not included in the twelve properties which the Appellant said he owned) had been purchased after the accounting date and therefore should not have been included. This showed that accurate records had not been kept and that the accounts had been drawn up much later.

25 22. On 27th November 2003, the agent agreed that a claim could not be made for both capital allowances and the wear and tear and that the claim to set off the loss against total income for the year was also incorrect.

23. HMRC made further enquiries regarding the expenses claimed and requested the Appellant's business records and copy bank statements but were told that they had
30 been destroyed in a fire at the agent's office in October 2002. However, the agent said that they still had their working papers and correspondence files together with schedules of rents received, costs of repairs and a breakdown of other costs and services.

24. Copy bank statements were provided on 1 March 2004 for a Lloyds Business
35 account and a Lloyds Select account.

25. A review of the statements and information indicated that deposits into the accounts exceeded the rents returned, expenses claimed had not all been paid for out of the Lloyds accounts and some of the expenditure described as being repairs was capital in nature and therefore not allowable against rents received.

26. The total deposits in the Lloyds business account, was £141,072, of which £30,000 may have been loans, leaving a balancing figure after other adjustments of £110,340 rent. This figure was higher than the rents declared on the 2002 return and therefore HMRC asked for details of the deposits and an explanation as to how expenses had been paid for.

27. The Lloyds business account also showed that a transfer of £8,968.76 had been made on 4 October 2001, but the corresponding account for this had not been provided. This account was provided later and it was shown that the account was a loan account and not a deposit account

28. Total deposits of £190,736 had been paid into the Lloyds Select account and some of the rents were deposited into this account. At least £113,209 of the deposits were in large round sums and a deposit of £36,230 in September 2001 was in relation to Fast Flow Mortgages, which had not previously been disclosed by the Appellant

29. The Appellant's agent said that a lot of the deposits related to loans from individuals, for example a loan of £20,000 had been taken from a Ms Rhonda Questelles on 1 February 2002. However there was no deposit corresponding to that figure in the bank accounts provided and no documentation in relation to loans from other individuals was provided.

Bank deposits

30. In July 2004 HMRC asked for any other bank accounts to be disclosed, but the agent said in a letter dated 9 May 2005, that the Appellant only had the two accounts that had been disclosed, which were used for both his self-employment income and for the rental income. However, amongst the documents provided with this letter were statements relating to three First Direct accounts.

31. These First Direct accounts had not been provided to the agent by the Appellant who apparently felt that they were not required and so had not been used in the preparation of his 2002 return.

32. A First Direct High Interest Savings account showed that two £1,000 deposits had been made in relation to one of the Appellant's properties (not one of the twelve) as well as a transfers totaling £107,000 from a First Direct Cheque account. This account also showed a total of £37,851.60 banker's drafts had been issued in favour of the High Interest Savings account.

33. An analysis of the First Direct cheque account showed that a further possible £20,119 was deposited that may have been either rents or self-employed income. This account also showed a number of deposits from solicitors as well as two deposits from the Nationwide and RBM.

34. A First Direct savings account had a balance of £1,000 that had been transferred into the First Direct cheque account in June 2001.

35. When the deposits for all accounts were added up, excluding inter-account transfers, monies received from solicitors or loans where evidence had been provided, the total unexplained deposit figure was £271,965.

5 36. The only explanation that has been given by the Appellant and his agent is that the deposits were loans from individuals. No evidence has been provided to substantiate these claims and without this evidence HMRC treat the deposits as income.

10 37. In correspondence with HMRC, the Appellant's agent said that the Appellant had introduced £5,000 capital, which was partly from his savings and partly from his parents and had been brought in as cash. Subsequently the agent said that the money had come from a Valerie Tabaton, but no evidence was provided of this. Reference was made by the agent to a Jamaican bank, but no evidence has ever been provided regarding this account.

15 38. HMRC prepared a summary of loans and amounts from solicitors, which shows six deposits totaling £185,385. It was claimed by the agent throughout the enquiry that these deposits were from re-mortgaging a property already held to purchase another property. However it was clear that the mortgage payments had not significantly increased between April 2001 and April 2002. If more money had been borrowed, one would expect to see an increase in payments. In fact most actually finished the year on lower payments than what they started with.

20 39. HMRC obtained authorisation from the Appellant to contact the lenders direct and asked the lenders, using the schedule of properties in mortgage (the twelve referred to previously) if any extra funds had been borrowed.

25 40. All the lenders, apart from one, confirmed that no extra funds had been borrowed in the period April 2001 to April 2002. HMRC therefore concluded that if the funds had not come from re-mortgages on known properties it was possible that they had come from either properties that were not known to HMRC or from another business.

30 41. There was a deposit of £36,230 on 9 September 2001 into the Lloyds Select account, from Fast Flow mortgages. This deposit did not have any corresponding interest payments. The lender also did not appear on the agent's schedule of disclosed properties. The concern was therefore that the deposit related to an undisclosed property.

35 42. There were also two deposits from Nationwide and RBM into the First Direct Cheque account. Again these loans had no corresponding interest payments, which suggested that they were paid from another account. When this was put to the Appellant and his agent they said that these were loans from a friend. However no evidence was provided to substantiate this and furthermore there was no evidence of any repayments having being made. This suggested that further undisclosed bank accounts were held by the Appellant.

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Rental income

43. HMRC could not reconcile the returned rental income against bank deposits and the copy tenancy agreements provided.
44. A breakdown of the rents received for each property was provided by the agent but was clearly incorrect because the tenancy agreements showed dates when properties were let, whereas the agent's schedule showed the properties to be empty.
45. The tenancy agreements provided gave the figure of rent per month. From this HMRC was able to calculate the rent that each property could generate throughout the year.
46. The expenses figure on the 2002 return included £28,439 for repairs and £18,477 as services, and in the latter figure, an amount of £14,675 was included for casual wages. However the business records did not include any receipts in relation to this work (according to the agent, due to the fire at his office). The bank accounts also did not show what amount was paid, to whom and for what purpose.
47. HMRC therefore requested records for the following year in order to see how expenses were paid, and also what type of expenses were being claimed.
48. A review of the expense receipts showed that various building works had been completed which included structural work and new kitchens. The nature of the work suggested that the properties had been in a dilapidated state when purchased.
49. The Appellant confirmed in the meeting with HMRC on 22 September 2005 that properties were bought that required some renovation. He said that he would not purchase any property that did not require modernisation. The type of expenditure incurred by the Appellant was therefore capital, and not revenue in nature, and should not have been included to reduce rental profits.
50. A total of £46,916 for both repairs and services had been claimed on the 2002 return. HMRC disallowed £15,000 of repairs and £7,312 of services giving a revised total of £24,604. It was clear that certain costs would be incurred on repairs for the properties and therefore, despite no evidence, HMRC decided that some relief should be given. The figures arrived at were based on HMRC's best estimate.
51. The 2002 return included a claim of £79,869 for mortgage interest, and a breakdown provided by the agent detailed how much interest was paid to each financial institution in relation to each property. From this, HMRC was able to match the payments to the relevant bank statements.
52. One of the properties had no further mortgage payments after June 2001. Information provided by the agent showed that a mortgage had been taken with Mortgage 5 Limited. However, the bank accounts provided showed no payments to Mortgage 5. This suggested to HMRC that payments were being made using another bank account that had not been disclosed. Despite repeated requests, no evidence was

provided as to how repayments on this mortgage were paid. HMRC concluded that the Appellant must have had other bank accounts and possibly other properties.

53. During the enquiry it came to light that the Appellant first started letting property from October 1997. However at no time did he notify HM Revenue and Customs of this source of income. A 2000 return had been issued to the Appellant, but was returned showing no income at all. It was clear however that at this time he was letting out three properties.

54. Based on the entries on the 2000 return, a 2001 return was not issued. However, at this stage HMRC say that the Appellant was letting out at least seven properties as well as undertaking his mortgage brokerage business.

55. Rental figures in a schedule provided by the agent for the period 1998 to 2001 inclusive, did not match known information in respect of properties owned in those years. This showed that the schedule and information provided by the Appellant to his agent were unreliable.

56. HMRC say that in respect of the years under enquiry, they were able to ascertain what properties were owned in each year as well as the rents charged. They therefore worked backwards to determine costs and income for the years concerned.

57. HMRC re-calculated the assessable rents for 2002 at £140,250 and reduced the expenditure claimed as previously referred to. The revised assessable profit for 2002 was £20,462. However, despite the unsubstantiated explanations, the increased rents did not include all the unidentified deposits in order to allow the Appellant some benefit of the doubt.

58. HMRC's assessments for the 2002 return increased rents from £110,209 to £140,250, and self-employment income from £36,300 to £63,300. These increases totaled £56,741 and did not take account of all unexplained income. A total of £65,373 was still unaccounted for and this had not been included in any assessment. HMRC say that this would cover any loans received from family or friends.

Self-employed income as mortgage broker

59. From the bank statements provided, HMRC identified a total of £78,150 paid into the Lloyds Select account that could have related to monies received from financial institutions such as Halifax and Nat West.

60. HMRC say that at a meeting with the Appellant on 12 October 2006, it was agreed by him that the returned figure of income of £39,000 did appear to be on the low side and that the actual figure would be around £60,000. No working papers were provided by the agent as to how the declared income figure had been arrived at.

61. The Appellant said that he worked from home, part-time and alone. His return showed a claim for interest of £6,898 but no business loan had been taken out. Strictly therefore the whole of the interest claim should have been disallowed, but HMRC allowed £1,500 costs as relating to general business activities.

62. The return also showed a claim for employee costs of £11,662. This had been described as being in relation to casual wages. However there was no record of a PAYE scheme and the business records showed no evidence of any payments. When asked for employee details, the Appellant said that the individual was self-employed and paid £250 per week. It was also not clear as to the type of work that was undertaken by the individual. Rather than disallow the total claim for employees, HMRC allowed £2,000 to cover any incidental expenditure on casual labour.

63. Despite some of the claimed costs relating to the home of the Appellant, HMRC allowed 'repairs', 'premises', 'legal and administrative' as claimed, totaling £6,218 to cover incidental expenditure for any work undertaken at home. A private use adjustment of 20% was agreed for both motor costs and the capital allowances.

64. Information provided by the Appellant in 2004 showed that he had been a finance broker for seven years. This means that he would have commenced in 1997. However, the first notification HMRC received of the Appellant's business was in his 2001 self-assessment return.

65. HMRC calculated the net profit figures for the years 1998 to 2000 based on living costs and assessments, and amendments to the Appellant's self-assessments were issued on 17 October 2007.

Capital Gains

66. While the information concerning the Appellant's properties was being checked, Land Registry details showed that one of the properties owned by the Appellant had been sold. The property, 115 Third Avenue, North Kensington, London was sold for £207,000 in February 2005 after being bought for £49,500 in September 1997.

67. Upon reviewing the Appellant's 2005 return, there had been no capital gain disclosed. Throughout the enquiry the Appellant did not disclose that any of his properties had been sold. Therefore a discovery assessment was issued on 17 December 2008 in relation to this gain. The capital gain was calculated including estimated costs of purchase and sale. No appeal was been received in relation to this assessment.

Penalties

68. Penalties were considered under s 95 TMA, relating to submission of an incorrect return, and under s 7 TMA, relating to a failure to notify.

69. The maximum penalty under these sections would be 100% of the additional duties, but mitigation of the maximum penalty was considered under the headings of disclosure, co-operation and seriousness.

70. There is a maximum abatement of 20% for disclosure. During meetings and in correspondence the Appellant had not made a full disclosure of his business income from all sources. There had however been a partial disclosure, concerning rents and sales income, and on that basis an abatement of 10% was considered reasonable.

71. The maximum abatement for co-operation is 40%. There had been good co-operation in attending meetings as well as providing a mandate, but there had been limited information provided in relation to the unexplained deposits. On this basis HMRC considered an abatement of 25% to be reasonable.

5 72. The maximum abatement for seriousness is 40%, and in cases which do not involve fraud the minimum is 15%. The adjustments on both closure notices and discovery assessments were considered to be significant given the substantial potential lost revenue. On that basis, an abatement of 25% was allowed.

10 73. The overall abatement applied by HMRC is therefore 60%. The penalty, loading is therefore 40%.

The Appellant's contentions

15 74. On 8 March 2012 at the application to set aside the General Commissioners' decision of 25 March 2009, the Appellant established to the satisfaction of the Tribunal that at least two properties which HMRC claimed were owned and let out by him, 22 Northway Road London and 42 Wynclyff Road, London, were not and had never been in his ownership. He said that contrary to HMRC's assertions, in respect of one of the properties in his ownership, he had never received any rent from May 2003 to the end of 2006. He said that these errors and incorrect assumptions by HMRC had led to incorrect assessments of his income for the years under appeal.

20 75. The Appellant said that he had engaged his accountants to deal with matters before the Commissioners and it was intended that Mr Ogundana, an accountant with Bayoor Accountants of Bradford, would attend the General Commissioners hearing and represent him. However, due to a last minute dispute over fees Mr Ogundana did not attend. The Appellant says that Mr Ogundana had all the 'evidence' relating to his 'defence' and for that reason he had been unable to show that HMRC's estimates were inaccurate, although some of his records including receipted invoices for refurbishment works undertaken had been destroyed in the fire at his accountants office in October 2002.

30 76. The Appellant further says in his notice of appeal, that the evidence provided by HMRC is factually incorrect and in the most part based on inflated estimates of property values and rental income.

77. At the hearing before the Tribunal the Appellant said that although HMRC now accepted that he had never been the owner of 22 Northway Road and 42 Wynclyff Road, but had not amended their assessments.

35 78. He asserted that he, or his agent, had provided HMRC with a schedule of all the properties, which he owned, together with details of those in mortgage. He had provided copy tenancy agreements and bank statements. He had also given HMRC authority to contact his mortgage providers. Many of the properties which he had purchased were ex-council properties in need of renovation, and after the cost of acquisition and refurbishment, rental income from those properties would have had to be at least 30% more than actual rental income received to achieve the level of profits

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claimed by HMRC. He had provided HMRC with copies of contracts, which he had with Lambeth Council, showing that the average rental income for properties in his ownership in Brixton was approximately £650 a month whereas HMRC's calculations indicated rents received between £2,500 a month per property.

5 79. The Appellant argued that HMRC have made the situation too complicated. He
owned twelve properties at the time of his 2002 return, eleven of which were rented
out, and given that the rental income and mortgage payments for each of those
properties was known, there should have been no difficulty in calculating the net
rental income, which he says would correspond to his declared income from the
10 properties.

80. He said that his initial decision to build up a portfolio of properties, was prompted
by the announcement that London would bid to host the 2012 Olympics which, if
successful, would probably involve a major regeneration of the Stratford area of
London. He borrowed money from his girlfriend to buy properties but discovered that
15 there was no money to be made on rental, and to achieve a real profit he was
dependent upon increases in the capital value of the properties, which would then
allow him to re-mortgage and build up a portfolio. Unfortunately, at the onset of the
recession, rental income was not sufficient to meet mortgage payments and following
repossession claims by a number of mortgagees and bankruptcy proceedings against
20 him, his property business collapsed.

HMRC's contentions

81. Mr Goulding, for HMRC said that the background to the case, (as based on Mr
Hadley's witness statement), much of which was unchallenged, effectively spoke for
itself.

25 82. He said that tax returns include a statement at the end to the effect that
information given in the return is 'correct and complete to the best of the taxpayer's
knowledge and belief'. In each of the years under enquiry the information provided by
the Appellant was incorrect, both with regard to his income as a mortgage broker,
which the Appellant had accepted at a meeting with HMRC in October 2006, and also
30 with regard to rental income and claimed capital allowances.

83. Despite the Appellant's assertion that HMRC's calculations were incorrect, he had
never provided evidence to contradict or refute these. Although the Appellant asserted
that it was not possible to make a profit on rental income after discharging interest
and other finance charges, his tax returns for the years 2002, 2003, 2004 and 2005 all
35 showed a significant profit. The only reason why losses had been returned for those
years was because capital allowances had been incorrectly claimed.

84. Although the Appellant eventually provided copy tenancy agreements, evidence
of open market rents indicated that rent for some of the properties was £1,000 per
month not £650 a month as previously claimed. Furthermore some periods, properties
40 were not empty as claimed. Enquiries of mortgage providers contradicted the
Appellant's assertion that he had remortgaged properties with those lenders. Only one

of nine confirmed that there had been a remortgage. The Appellant had been unable to prove the source of a number of substantial deposits into his account.

5 85. HMRC have been more than reasonable in their estimates of the Appellant's income and the resulting assessments. Mr. Hadley's calculations have also left out of account unexplained deposits of £65,000 paid into the Appellant's bank accounts in order to cover possible loans from friends and family, despite the fact that the Appellant had at no stage proffered any evidence of loans. The Appellant had provided different explanations in respect of a number of significant deposits into his accounts, saying firstly that the monies have been gifted to him by his parents, and
10 then on another occasion loaned to him by his girlfriend. Some of the deposits could not be matched to mortgage/loan interest charges, indicating that there were other bank accounts that had not been disclosed.

15 86. Although deposits into the Appellant's bank accounts and other evidence indicated that the Appellant owned properties which he had not disclosed, because Mr Hadley had not been able to link those deposits directly to the Appellant, he only allocated rent to known properties when estimating the Appellant's rental income. The Appellant failed to provide copy completion statements that he would have received from his solicitors when purchasing a property. The statements would have evidenced the source of funds, with regard to the deposit paid, the balance of purchase
20 monies, stamp duty, solicitor's fees and disbursements.

87. The Appellant had been operating as a mortgage broker prior to 2001 but had filed nil returns. He declared his brokerage business from 2001 but his business actually commenced in 1997.

25 88. The Appellant had a duty to maintain records in order that he could provide full and accurate returns. He had consistently failed to provide primary evidence requested by Mr Hadley.

30 89. Mr Golding said that with regard to the assessments it is only necessary for HMRC to show that on the balance of probabilities their estimates are likely to be more accurate than the amounts shown in the Appellant's returns. It is for the Appellant to produce evidence to support his figures but he has failed to do so. Section 50(6) TMA places the ultimate onus on the Appellant in the appeals against the assessments and closure notices.

Conclusions

35 90. Under s 50(7) TMA70 HMRC have both the power and the duty to increase a self-assessment or HMRC assessment on appeal where it appears to them that it is inadequate.

40 91. Although when submitting his application to set aside the General Commissioners decision of 25 March 2009, the Appellant asserted that he was able to produce evidence to displace the figures in HMRC's closure notices and assessments. However, no meaningful evidence has been adduced by the Appellant to show that HMRC's estimates and assessments are incorrect.

92. The Appellant did not correctly declare all sales income received as a mortgage broker between 1998 and 2000. It is clear that he commenced trading prior to the 2001 start date originally provided.

5 93. For the years 1998 and 1999 the Appellant failed to declare the income that he received from the rental properties, his mortgage business and writing. Evidence shows that he was in receipt of income that was chargeable to income tax, but he failed to complete self-assessment returns.

10 94. With regard to the Appellant's property income, HMRC's enquiry established that various errors occurred in his claims for expenses. The enquiry also established that his income from rents was significantly understated. For the enquiry period there was over £50,000 more deposited in the Appellant's bank accounts than could be matched to revised rents and self-employment income. HMRC conceded these as loans and therefore the discovery assessments were, if anything, lower than they could have been.

15 95. The Appellant failed to provide bank statements for all his accounts. He provided no documentary evidence or meaningful information, whether in the form of business records or otherwise, to substantiate expenses claimed in his returns and claimed rental received.

20 96. In the above circumstances, the primary onus of proof is on the Appellant. He must prove that the amendment or assessment is excessive (s 50(6) TMA70). If the Appellant cannot prove, on the balance of probabilities, that an assessment or amendment is excessive, the assessment must stand good. Taking into account the totality of evidence the Appellant has not discharged that burden.

25 97. There were a number of striking discrepancies in information provided to HMRC by the Appellant. HMRC have therefore had to make assessments to best judgement. It may be that HMRC's conclusions, and the resulting estimates and assessments, do not accurately state the precise amount of the Appellant's undeclared income, but that is an inevitable consequence when HMRC have not been provided with all the information and documentary evidence they need to make objectively accurate
30 assessments. HMRC have provided a copy of all their workings, detailing the figures they proposed using, to formally issue closure notices and raise discovery assessments. The appeal could have been settled by agreement and by an amendment to the Appellant's self-assessment to at least reflect those adjustments, which had been agreed during the course of the enquiry. The Appellant also had the opportunity
35 of providing evidence to show why HMRC's conclusions may have been incorrect but failed to do so.

40 98. The Appellant filed incorrect tax returns for the years 2000 to 2005. There is an obligation to check the accuracy of a return before submitting it to HMRC. The errors contained in the self-assessment return have resulted in a loss of tax, which was attributable to careless behaviour on the part of the Appellant. Consequently assessments are permitted for those years by virtue of s 29 (4) TMA 70. We see no

reason to disagree with the reasoning adopted by HMRC in fixing the abatements outlined in paras 68 – 73 for disclosure, co-operation and gravity.

99. We find that:

- 5 i. The Appellant has not provided any evidence to displace HMRC's figures in the closure notices.
- ii. The discovery assessments were competent and the Appellant has not provided any evidence to displace HMRC's figures.
- iii. The Appellant failed to notify his chargeability to income tax and submitted incorrect returns.

10 100. For the above reasons the appeals are dismissed and the penalty determination confirmed.

15 101. 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.

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**MICHAEL S CONNELL
TRIBUNAL JUDGE**

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RELEASE DATE: 6 January 2015