[2018] UKFTT 352 (TC)

TC06550

Appeal number: TC/2015/04917

PAYE/NIC – VAT – INCOME TAX – Best judgment assessments – Penalties – Assessments based on HMRC finding that Appellant paid unrecorded wages to staff the funds for which came from unrecorded profits from unrecorded sales, and that the Appellant made unrecorded sales of cigarettes – Time limit for making assessments where conduct "deliberate" (s 36(1A) TMA)

FIRST-TIER TRIBUNAL
TAX CHAMBER

TERENCE McCLOSKEY **Appellant**

- and -

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

TRIBUNAL: JUDGE CHRISTOPHER STAKER
MR DAVID MOORE

Sitting in public at Belfast on 12 April 2018

The Appellant in person

Mr P Oborne, Presenting Officer, for the Respondents

DECISION

Introduction

1. The Appellant appeals against assessments and penalties relating to PAYE/NIC, income tax and VAT in respect of all tax years in the period from 1996-97 to 2010-11. The assessments and penalties were originally issued in 2014. They were subsequently varied on review, in three separate HMRC review decisions dated 10 March 2015, the substance of which is the subject of the present appeal.

2. The Appellant is the proprietor of two convenience stores, referred to below as "Sevenoaks" and "Ballymac" respectively. The assessments and penalties were issued after HMRC concluded that he had paid off-record wages to staff from which PAYE and NIC was not deducted, and had made off-record profits on which he had not paid income tax, from off-record sales on which he had not paid VAT.

3. The total amount of the assessments, penalties and interest is well over £500,000.

4. This decision is not a final decision deciding all issues in the appeal. It decides certain matters, and in respect of others it is an in principle decision.

Late appeal

5. The Appellant applied for permission to bring a late appeal, which HMRC did not oppose. The Tribunal granted permission at the hearing.

The hearing

6. The Appellant represented himself at the hearing, accompanied by his wife. Both took a witness oath, and presented oral evidence and submissions. Witness evidence was given by three HMRC officers: Officer Kerr (who undertook a visit of the Sevenoaks shop on 6 December 2009), Officer Hunter (who, as a result of that visit, initially commenced an employer inspection of the Appellant but then subsequently referred the case to the HMRC Fraud Team), and Officer Dillon (the member of the HMRC Fraud Team who subsequently conducted an investigation under HMRC's Code of Practice 9 ("COP9"), and who issued the assessments and penalties under appeal).

7. The Tribunal had before it a 543 page "Appeals & Calculations Bundle", a 703 page "Correspondence Bundle", and an authorities bundle which also contained some additional documentary evidence.

8. In her evidence at the hearing, Officer Hunter said that at a meeting held with the Appellant and his then accountant (Mr Brown) on 11 February 2010, the accountant had made certain "off record" comments to her about the Appellant after the Appellant had left the meeting. The Appellant objected at the hearing that these "off record" comments had not been included in the written notes of that meeting

which Officer Hunter subsequently sent to Mr Brown, and which the Appellant had signed. At the hearing, HMRC produced a separate file note of those "off record" comments, which had not been included in the hearing bundles. The Appellant in turn produced for the first time at the hearing a letter dated 6 February 2017 from Mr Brown, denying that he had made those comments. Ultimately, it was agreed between the parties at the hearing that the evidence of these comments would be disregarded by the Tribunal, and the Tribunal has accordingly not taken them into account in any way in this decision. In view of this agreement reached between the parties, the Tribunal has also disregarded all statements in documents that have been included in the hearing bundles to the effect that Mr Brown made comments of this nature to Officer Hunter.

9. Prior to the hearing, the Appellant requested HMRC to bring to the hearing sound recordings of a meeting that the Appellant had with HMRC, together with the means to play them. This was because the Appellant did not accept the accuracy of the transcript of the recording that had been included in the hearing bundle. The Tribunal communicated to HMRC prior to the hearing that it would be useful if HMRC could comply with the Appellant's request. At the hearing, the representative for HMRC indicated that the audio recording was available if needed. The Tribunal stated that it did not propose to listen to the entire audio recording, but that if the Appellant pointed to specific parts of the transcript of that meeting that the Appellant contended was incorrect, the Tribunal would listen to that part of the recording. Ultimately, the Appellant did not identify any part of the transcript which he claimed was incorrect.

The factual background

10. On 6 December 2009, HMRC Officer Kerr visited the Sevenoaks shop under s°112 of the Customs and Excise Management Act 1979. She came to the conclusion that cigarettes and hand rolling tobacco on which UK duty had not been paid were being sold on the premises. Her evidence is that she also found two pieces of paper hanging on a wall in the premises with handwritten text on them. She says that one of these pieces of paper (referred to by HMRC as a "staff rota") contained a list of 12 names against each of which was stated a number of hours. Officer Kerr says that the other (referred to below as the "note from Lisa") stated as follows: "Terence needs to put people legal at the moment, to volunteer for anything up to 16 hours, sign below, signed Lisa".

11. In consequence of Officer Kerr's visit, on 18 January 2010, HMRC Officer Hunter wrote to the Appellant to advise him that a check of his business records was to be undertaken.

12. On 11 February 2010, a meeting was held, attended by the Appellant, his then accountant Mr Brown, and Officer Hunter. According to notes of that meeting prepared by Officer Hunter, which the Appellant subsequently signed, the Appellant stated the following at that meeting:

(1) He had owned Sevenoaks for 4 years and Ballymac for 10 years.

(2) Both shops are open 07.30 to 22.30 Monday to Friday, 08.00 to 22.30 on Saturday, and 09.00 to 23.00 on Sunday.

(3) There were 9 employees including himself and his wife.

(4) Wages were paid weekly in cash from the till.

(5) He did not keep cashbooks and provided payslips only if an employee asked for one.

(6) His accountants were responsible for completing PAYE returns for submission to HMRC.

(7) He generally did not engage casual staff but would at times engage relatives during the summer months.

(8) His employees were Lisa (supervisor), Maria and Sharon at Ballymac, and John, Rosaleen, Peter, Margaret and Denise at Sevenoaks.

(9) He did not know the names Moira, Ann, Siobhan, Lisa, Angela, Maureen, Jacqueline or Nicole, except that a schoolgirl called Angela had worked for him some time in the past.

(10) The staff rota and note from Lisa did not belong to him but a previous owner called Craig.

13. According to this record, when the Appellant was asked if all employees were accounted for on the payroll and if there was anything further he wanted to disclose, the Appellant responded "no".

14. According to this note, the Appellant's accountant Mr Brown stated the following at that meeting:

(1) Mr Brown knew what figures to use for the PAYE documentation (P11s and end of year returns) because the employees worked the same hours and days each week and are paid the national minimum wage.

(2) The employees do not pay any tax or National Insurance as they are all under the limit.

(3) The accountant had his own folder which contained P11s, P45s and earlier year's summaries.

(4) The Appellant rarely uses a cheque book and deals mainly in cash.

(5) The accountant would have prepared returns on the basis of information provided by the Appellant.

15. A 29 March 2010 letter from the Appellant's accountant to HMRC added that:

(1) The note from Lisa was put up by the Appellant after he took over the business from a previous owner.

(2) The staff rota was for both shops at a time when the Appellant, his wife, and Rosaleen Deery and John Deery were unable to work due to family

circumstances, which would explain why none of these people were on the staff rota, and this was for a 1 week period only.

16. In a letter dated 8 April 2010, Officer Hunter stated that it seemed unlikely that the Appellant would take on an additional 8 employees for a 1 week period only, and that it seemed unlikely that the note from Lisa was put up by a previous owner when the Appellant had owned the Sevenoaks business for some 4 years. The letter invited further comment from the Appellant, and foreshadowed that assessments would be made if the Appellant did not co-operate.

17. There followed further communications between HMRC and Mr Brown.

18. Subsequently, on 30 June 2010, the HMRC Local Compliance Civil Investigation of Fraud team advised the Appellant that his personal tax affairs would now be investigated under COP9. On 26 October 2010, the Appellant was further advised that HMRC Officer Dillon would be taking over the investigation. A pre-opening COP9 meeting was held on 25 November 2010, the attendees of which included the Appellant, Mr Brown, Officer Dillon, and HMRC Officer Rae.

19. There followed further communications between HMRC and the Appellant and/or Mr Brown over a period of some 18 months, in which attempts were made to arrange an opening meeting for the COP9 investigation. There was no agreement on the venue for such a meeting. At one point, the Appellant expressed unwillingness to meet with HMRC Officer Rae. The Appellant expressed dissatisfaction with how long the investigation was taking.

20. In a letter to the Appellant dated 22 February 2012, HMRC stated that as it had not been possible to agree on arrangements for a meeting, HMRC proposed to issue estimated tax assessments.

21. In separate letters dated 20 April 2012, HMRC gave notice of proposed VAT and income tax assessments.

22. The Appellant subsequently indicated his willingness to meet with HMRC, and an opening meeting of the COP9 investigation was held on 25 July 2012, the attendees of which included the Appellant and two other HMRC officers (Officer Dillon not having been available on that date).

23. Following further exchanges, a further COP9 meeting was held on 30 January 2013, attended by the Appellant, Officer Dillon and another HMRC officer. That meeting was recorded on 3 tapes. Transcripts of the second and third tapes only have been included in the hearing bundle.

24. Following further exchanges, a further COP9 meeting was held on 5 December 2013, attended by the Appellant, Officer Dillon and another HMRC officer.

25. In a letter to the Appellant's accountant dated 12 December 2013, HMRC advised that in the absence of agreement between the parties, HMRC proposed to issue formal assessments.

26. On various dates in May 2014, HMRC issued the assessments and associated penalties.

27. In a letter dated 23 June 2014, the Appellant appealed against the assessments and penalties.

28. Following further exchanges, on 10 March 2015, HMRC issued three separate review decisions.

29. The Appellant then appealed to this Tribunal, originally by way of two separate proceedings (TC/2015/04917 and TC/2015/07317) which were consolidated by a direction of the Tribunal dated 9 May 2016.

The evidence of HMRC Officer Kerr

30. The witness statement of Officer Kerr states amongst other matters as follows.

31. On 6 December 2009, at about 14.30, she entered the Sevenoaks shop under s°112 of the Customs and Excise Management Act 1979 to inspect the fiscal marks on any tobacco products on the premises. She spoke with the shop assistant on duty, Sharon McCloskey, who confirmed that she was a cousin of the Appellant. There were two tills in operation, each of which had a button for cigarettes.

32. A blue holdall found at the counter of the shop contained 60 Palace cigarettes together with 7 empty containers for 200 Palace cigarettes each, and 2 empty containers for 200 L & B cigarettes each. A green holdall found at the bottom of the cigarette display stand in the shop contained 50 grams of Golden Virginia hand rolling tobacco and two empty hand rolling tobacco packages. The Palace cigarettes and Golden Virginia tobacco did not bear UK duty paid fiscal marks. Sharon McCloskey advised Officer Kerr that the cigarettes were sold for £2.60 per packet and were rung into the till under any button.

33. In a store room off the main shop there was a handwritten document stating "Terence needs to put people legal at the moment, to volunteer for anything up to 16 hours, sign below, signed Lisa". There was also a handwritten staff rota, stating the following: "Moira 19 ½ hours, Margaret 18 ½ hours, Peter 24 hours, Ann 8 hours, Sharon 21 ½ hours, Siobhan 16 hours, Lisa 16 hours (manageress), Angela 9 hours, Maureen 18 ½ hours, Jacqueline 5 ½ hours, Denise 20 ½ hours, Nicole 4 ½ hours".

34. Officer Kerr advised Sharon McCloskey that she was satisfied that an offence had been committed as non-UK duty paid cigarettes and hand rolling tobacco were being sold on the premises. The tobacco goods were seized. Sharon McCloskey read and signed Officer Kerr's notes in her notebook.

35. In examination in chief, Officer Kerr stated as follows. At the time she was in the shop, there was no one else present who worked there, and she cannot recall how many customers were present. Sharon McCloskey had no qualms about signing her notebook.

36. In cross-examination, Officer Kerr stated as follows. The cigarettes and tobacco found in the shop would have been destroyed after 30 days. No photographs were taken at the time. It was due to the location of the shop that she left for her own safety before the Appellant arrived, despite knowing he was on his way. Although there was a police station within a couple of hundred metres, she was not accompanied by police, and did not consider it safe to stay. No photograph was taken of the "staff rota"; she just made a handwritten note of what it said. It just contained a list of names and a number of hours next to each name. The "staff rota" gave shifts, but she does not recall whether it contained times of day. She cannot recall if it contained any other information. She did not ask the Appellant what this document meant. She was not familiar with how many staff worked at the shop, so it would be speculative for her to comment on the number of staff hours required to run the shops. The documents were found 8 years ago, so she cannot remember the precise location in the shop where they were found.

The evidence of HMRC Officer Hunter

37. The witness statement of Officer Hunter described matters contained in the documentary evidence, referred to in paragraphs 11-17 above, in particular the details of the 11 February 2010 meeting.

38. In examination in chief, Officer Hunter repeated and expanded upon some of the information in her witness statement.

39. In cross-examination, Officer Hunter stated amongst other matters that she does not have an accountancy background, and could not comment on whether the number of hours stated in the staff rota was realistic.

The evidence of HMRC Officer Dillon

40. The witness statement of Officer Dillon described the COP9 investigation, including the matters referred to in paragraphs 18-28 above, in particular the meetings on 25 July 2012, 30 January 2013 and 5 December 2013.

41. In examination in chief, Officer Dillon stated amongst other matters as follows.

42. Originally, the Appellant had wanted the meeting with HMRC to take place at his business premises, which HMRC considered unsuitable. Later, the Appellant proposed to meet at a Sinn Féin constituency office, which HMRC considered to be a security risk. The Appellant made a complaint that was referred to the HMRC complaints team. HMRC told the Appellant in February 2012 that the meeting could be at an HMRC office of his choice or at his accountants' office, otherwise HMRC would just proceed to issue estimated assessments.

43. After HMRC issued pre-assessment letters, the Appellant reengaged in the process. The Appellant asked for the 30 January 2013 meeting with HMRC to be recorded, which was not usual practice, but HMRC agreed as a matter of goodwill. At a meeting on 5 December 2013, HMRC advised the Appellant that the total

assessments, penalties and interest that HMRC may issue could be in excess of £600,000. However, HMRC took a pragmatic approach, and proposed settlements in a lower amount, based on the Appellant's ability to pay. The Appellant declined to accept a number of offers made by HMRC. The Appellant himself made an offer which HMRC rejected as substandard. The Appellant was advised throughout that if he did not cooperate, HMRC would proceed to issue formal assessments, which is what HMRC ultimately did.

44. Officer Dillon then gave further explanations of how the penalties had been calculated.

45. In cross-examination, Officer Dillon stated amongst other matters as follows. In calculating the penalties, the Appellant had been deemed to be at the high end of co-operation, but he was not give full credit for cooperation because there were some delays. Officer Rae had little involvement in the case, which was handled mainly by Officer Denholm. The Appellant's offer of settlement would never have been accepted.

The Appellant's evidence

46. The Appellant complained of the conduct of HMRC in various respects. He considered that his premises have been repeatedly targeted for search operations, that HMRC Officer Rae was prejudiced against him, that HMRC had not made satisfactory arrangements for the recording of his meetings with them, that HMRC had refused to hold meetings at his premises, that HMRC had delayed in sending notes of meetings to him, that the HMRC investigation had taken too long, and that HMRC had sought to intimidate and bully him.

47. The Appellant contends that he cooperated with HMRC fully throughout, at considerable cost to himself. The "staff rota" did not belong to him and did not relate to his business; that document refers to the cleaning of ovens/deli equipment, etc, which the Appellant's business does not have. The Appellant considers that the whole investigation may have been brought about due to the fact that he purchased a villa in Spain, as a joint venture with his brother and sister. He contends that the HMRC figures are based on conjecture and no evidence, and are fictional for a small corner shop run by family members.

48. At the initial meeting with HMRC, he suggested that the "staff rota" might have been from a period when he was rushed to hospital. A few days later he realised that it was from a previous owner of the store, which the previous owner subsequently confirmed.

49. The sale on non-UK duty paid tobacco products in his shop had nothing to do with him. The employee was acting on her own in an abuse of her position. His shop has been checked many times and illegal tobacco products have never been found there before. The sale of illegal tobacco has been a very common problem in the area, but there is no way that the Appellant himself could have done this as his shops are in a nationalist area and this would not be tolerated by the community there.

50. The Appellant has never been without an accountant. He used a top accountant and expected that the accountant would provide whatever was needed.

51. In cross-examination, the Appellant said amongst other matters as follows. He believed all his returns were truthful and accurate, and any mistakes were not deliberate. When asked what records he provided to his accountant, he said "whatever he asked for", and that every 3 weeks he sent the accountant all receipts and bills in a box. The accountant used the same figures each week for the employees unless the Appellant informed the accountant of a change in hours. Most of the work in the shops was done by the Appellant himself and his wife, who took no wages. On a typical day at the Ballymac store, which is 200 yards from his home, his wife opens the store at 07:30, and was there until 2 hours before closing. He kept no cash book, and had no record of wages other than the hours worked. His VAT returns were based on receipts. He did not know what figures his tax returns were based on as his accountant did them. He cannot remember after such a long time if he asked his accountant any questions. It was near impossible to keep accurate records in these types of shops. It was near impossible for him, not for his accountant. He did the best he could. The note from Lisa was put up at a time when the Appellant was in hospital. People were coming to the shop asking for work and the note was a warning that only people who were legal should be given work, that is to say, people who are on the PAYE record.

The statement of Mr Doherty

52. The Appellant has provided a letter from a Mr Doherty which states as follows. Mr Doherty had sold the Appellant the Sevenoaks property. Mr Doherty recognised the "staff rota" note as a document belonging to him, and recognised the names on it as staff that previously worked for Mr Doherty, prior to the sale of the property to the Appellant. Mr Doherty did not attend the hearing to give evidence.

The Appellant's case

53. The Appellant's case is as set out in the paragraphs above detailing the evidence of the Appellant and Mr Doherty.

The HMRC case

54. The Appellant did not keep proper records. When the Appellant did start to keep proper records, the figures for which records exist are much larger. HMRC has done its best to come up with reasonable figures in order to make a best of judgment assessment. HMRC accept that the Appellant and his wife work very long hours, but this does not exempt them from the requirement to keep proper records. The penalties have been imposed correctly in accordance with the legislation.

The appeals against the assessments: applicable law

55. HMRC did not present arguments at the hearing on the law applicable to best of judgment assessments, but the Tribunal considers these to be well established.

56. Such assessments involve HMRC exercising their powers in such a way that they make a value judgment on the material which is before them. The exercise of that function by HMRC must be honest and bona fide, and there must be some material before HMRC on which they can base their judgment. However, bearing in mind that the primary obligation is on the taxpayer to make a return, HMRC should not be required to do the work of the taxpayer in order to form a conclusion as to the amount of tax which to their best judgment is due.

57. In an appeal against a best of judgment assessment, the burden of proof is on the taxpayer to establish the correct amount of tax due. In such an appeal, the HMRC officer's conclusions are *prima facie* right and remain right until the taxpayer shows that they are wrong and also shows positively what corrections should be made in order to make the assessments right or more nearly right. It is not for the Tribunal to treat an assessment as invalid merely because it disagrees as to how the judgment should have been exercised.

The appeals against the assessments: general matters

58. The amounts declared in the Appellant's tax returns as his profit from self-employment in the years 1996-97 to 2010-11 are as follows:

2010-11: £45,000

2009-10: £45,000

2008-09: £45,000

2007-08: £33,019

2006-07: £31,196

2005-06: £32,510

2004-05: £26,728

2003-04: £21,963

2002-03: £18,890

2001-02: £17,764

2000-01: £18,515

1999-00: £15,045

1998-09: £13,462

1997-98: £10,055

1996-97: £8,079

59. The Appellant was treated by HMRC as having only 1 shop (Ballymac) until 2004-05, and as having 2 shops (Ballymac and Sevenoaks) from 2005-06 onwards. The periods in which the Appellant had 2 shops are accordingly indicated in bold in the paragraph above.

60. The original assessments included two additional amounts, which were subsequently withdrawn by HMRC as a result of the 10 March 2015 review decisions.

61. The first of these additional amounts was based on the following findings by HMRC.

62. HMRC observed that the Appellant's profit was in the region of £31,000 to £33,000 in the 3 years 2005-06 to 2007-08, and that the profit then jumped to £45,000 in the 3 years 2008-09 to 2010-11. HMRC considered that this sudden increase in profits had not been adequately explained by the Appellant, and HMRC concluded that in the years prior 2008-09, the Appellant had been under-declaring his profits in his tax returns. HMRC originally issued assessments which assumed that the Appellant had made a profit of £45,000 (adjusted for inflation) for the entire period that he had two shops.

63. HMRC also observed that in 2004-05, the last year in which the Appellant had only one shop, his profit as declared in his tax return was £26,728, which was considerably higher than in previous years. HMRC considered that this jump had also not been adequately explained by the Appellant, and HMRC also originally issued assessments which assumed that the Appellant had made a profit of £26,728 (adjusted for inflation) for the entire previous period that he had one shop.

64. However, the 10 March 2015 review decisions found that there was insufficient evidence to support these assessments, and they were withdrawn. Accordingly, the Tribunal proceeds in this appeal on the basis that the Appellant's profits are as stated in paragraph 58 above.

65. The second of the additional amounts included in the original assessments was based on HMRC's conclusion that the Appellant had had unrecorded drawings in two years. This assessment related to a villa in Spain of which the Appellant is or was a co-owner. The 10 March 2015 review decision also found that there was insufficient evidence to support this assessment.

66. What remain following the 10 March 2015 review decisions are the assessments and associated penalties in relation to the following matters.

67. The first matter is the HMRC finding that the Appellant paid off-record wages to staff, without deducting and paying to HMRC the relevant PAYE and NIC. HMRC has made an assessment of the PAYE/NIC payable by the Appellant on those wages.

68. The second and third matters flow directly from the first.

69. The second matter is HMRC's finding that funds used to pay these off-record wages must have been obtained from additional off-record profits. HMRC has thus assessed the Appellant to income tax on those undeclared profits.

70. The third matter is HMRC's finding that these additional off-record profits must have been earned through additional off-record sales. HMRC has thus assessed the Appellant to VAT on those undeclared sales.

71. The fourth matter is the finding that the Appellant made off-record sales of cigarettes in his shop. HMRC has thus assessed him to VAT on those sales, and to income tax on the profit from those sales.

Appeal against the PAYE and NIC assessments: 2006-07 to 2010-11

72. The PAYE summaries produced by HMRC for 2007-08 to 2012-13 show the employees that the Appellant is on record as having employed during those years. The summaries for 2007-08 to 2011-12 give the total amount of wages that the Appellant is on record as having paid to employees during those years. The document for 2012-13 does not. HMRC have not produced PAYE summaries for all of the years prior to 2007-08, but it appears to be accepted that the Appellant was registered for PAYE and submitted PAYE documentation during all of the years to which this appeal relates. HMRC have not in any event asked the Tribunal to proceed on the basis that this is not the case.

73. The PAYE/NIC assessments are said to be based on the HMRC conclusion that the Appellant employed staff for a total of 182 staff hours per week (in the period in which the Appellant had 2 shops) or for 91 person hours per week (in the period in which the Appellant had only one shop), for 52 weeks a year, and paid these staff the national minimum wage (or, in the period before the national minimum wage came into force, £3 per hour in 2000-01 and £2.75 per hour prior to that).

74. HMRC have provided details of the amount of the minimum wage in the relevant years. For instance, in 2011 it was between £3.68 (under 18) to £6.08 (over 21). In 2012 it was between £3.68 (under 18) to £6.19 (over 21). According to the 2011-12 PAYE summary, the Appellant paid £49,828.72 in wages that year. If that figure is divided by 9,464 (182 hours per week x 52 weeks), that gives a figure of £5.27, which is a reasonable average of the various minimum wages set for 2011 and 2012. Similarly, if the figure for total wages in the 2010-11 PAYE summary (£49,593.32) is divided by 9,464, that gives an almost identical result for that year.

75. The application of that methodology would therefore lead to the conclusion that the Appellant's PAYE returns for 2010-11 and 2011-12 were correct, and that he paid no "off record" wages in those years.

76. Indeed, at the hearing, HMRC argued that after Officer Kerr's visit in December 2009, the Appellant realised that he was under investigation by HMRC, and so took steps to ensure that his documentation for subsequent tax years was in order. HMRC rely on the returns and documentation from these later years as evidence that the

earlier documentation and returns, which contain significantly lower figures, were incorrect.

77. This further suggests that the application of the HMRC methodology described in paragraph 73 above leads to a result that is reasonable in relation to 2010-11 and 2011-12. The Tribunal accepts that methodology in relation to those years.

78. Nevertheless, while HMRC's methodology may be reasonable, it appears that something has gone wrong in HMRC's application of that methodology. Paragraph 60 of the witness statement of Officer Dillon sets out the figures for unrecorded wages for each year that have been used for calculating the amount of the assessment. If the relevant amount for each year is divided by the number of staff hours per year (9,464 in the years when the Appellant had 2 shops, and half that in the years when he had only one), that gives a wages per hour figure that is very significantly greater than the national minimum wage.

Year	A. Unrecorded wages (per para 60 of Officer Dillon's statement)	B. Staff hours per year used in HMRC calculation	A ÷ B (ie, pay per hour on the figures used by HMRC)	National minimum wage in the year in question
1996-97	£26,000	4,732	£5.49	£2.75
1997-98	£26,000	4,732	£5.49	£2.75
1998-99	£26,000	4,732	£5.49	£2.75
1999-00	£26,000	4,732	£5.49	£2.75
2000-01	£28,392	4,732	£6	£3
2001-02	£30,264	4,732	£6.40	Not in evidence
2002-03	£33,124	4,732	£7	Not in evidence
2003-04	£34,060	4,732	£7.20	Not in evidence
2004-05	£35,880	4,732	£7.58	£3 to £5.05
2005-06	£77,604	9,464	£8.20	£3 to £5.35
2006-07	£80,392	9,464	£8.49	£3.30 to £5.52
2007-08	£84,229	9,464	£8.90	£3.40 to £5.73
2008-09	£87,068	9,464	£9.20	£3.53 to £5.80
2009-10	£90,272	9,464	£9.54	£3.57 to £5.93
2010-11	£91,416	9,464	£9.66	£3.64 to £6.08

79. Furthermore, the staff hours per year figure in the table above is the figure for the *total* staff hours, according to the HMRC methodology, for which the Appellant paid wages in the year in question. However, credit needs to be given for those staff hours that the Appellant did in fact declare in his PAYE returns. It is not apparent

that the HMRC assessments give any credit at all for this. If credit had been given, HMRC's unrecorded wages figure for 2010-11 should have been zero, or in the region of zero, for the reasons given in paragraphs 74-75 above, such that the amount of unpaid PAYE/NIC in 2010-11 would also have been zero, or in the region of zero. Yet, according to paragraph 60 of the witness statement of Officer Dillon, the assessment was issued on the basis that in 2010-11, the Appellant had "unrecorded" wages of £91,416, on which he was assessed to PAYE/NIC of £8,413.20. That simply cannot be correct, if the HMRC methodology described above has been applied.

80. The Tribunal therefore finds that the PAYE/NIC assessments are wrong (indeed, plainly and obviously wrong).

81. For the reasons in paragraphs 74-77 above, the Tribunal therefore allows the appeal against the PAYE/NIC assessment for 2010-11, and that assessment is set aside.

82. For 2008-09 and 2009-10, the Tribunal is satisfied that there is a shortfall in the PAYE/NIC paid by the Appellant. In those two years, the amount he spent on wages according to the PAYE summaries was £18,720 and £24,853. That is half or less than the figure for 2010-11, which seems very difficult to explain given that the Appellant was operating the same 2 shops and making exactly the same profit as in 2010-11 (see paragraph 58 above). The Appellant said in his evidence that he took on more staff as his parents became too old to provide the assistance they had previously given, but this evidence was vague and lacking in dates and other detail. The Tribunal finds that the Appellant has not established a sufficient reason why he would have required so many fewer staff hours in 2008-09 and 2009-10 than in 2010-11. Furthermore, the Tribunal accepts Officer Kerr's evidence that Sharon McCloskey was in charge of the Sevenoaks shop when she visited on 6 December 2009, yet the PAYE summary shows Sharon McCloskey's start date as being only 20 December 2009, after Officer Kerr's visit. This casts doubt on the reliability of the Appellant's PAYE return for 2009-10.

83. The Tribunal is satisfied that the *total* (declared and undeclared) wages paid by the Appellant in 2008-09 and 2009-10 was the same as his *declared* wages in 2010-11 (49,593.32 *2011* pounds) appropriately adjusted for inflation. From that *total* figure for each of those years, the amount of *declared* wages for each of those years needs to be deducted, in order to determine the amount of *undeclared* wages.

84. In 2006-07 and 2007-08, the Appellant's profit was only some 70 or 73 percent of what it was in 2008-09 to 2010-11 (see paragraph 58 above). This suggests that his business was less busy in 2006-07 and 2007-08 than in the following years. This suggestion appears to be confirmed by his VAT returns, which show that his outputs from 06.07 to 03.08 were significantly lower than the average for all following periods. If that is so, he is likely to have employed fewer staff hours in 2006-07 and 2007-08 than in the subsequent two years. However, the Tribunal does not assume that there is a direct correspondence between the amount of profit made by a shop and the staff hours required to run it. Although profit in 2006-07 and 2007-08 may have

been only 70 or 73 percent of what it was in the subsequent 3 years, staff hours are unlikely to have been as low as 70 or 73 percent of what they were in the subsequent 3 years.

85. The Tribunal finds that a better estimate of the *total* (declared and undeclared) wages paid by the Appellant in 2006-07 and 2007-08 would be 85% his *declared* wages in 2010-11 (49,593.32 ***2011*** pounds) appropriately adjusted for inflation. From that *total* figure for each of those years, the amount of *declared* wages for each of those years needs to be deducted, in order to determine the amount of *undeclared* wages.

86. Finally, once the amount of undeclared wages for these years has been ascertained, it is necessary to consider at what rate PAYE/NIC should have been deducted from those undeclared wages. The Appellant's case is that all of his employees earned less than the income tax threshold, so that there would have been no PAYE to deduct, in any event. Of course, if the Appellant has kept no records to demonstrate this, HMRC in making a best judgment assessment will not be bound to accept that this is so. However, one way or another, HMRC will need to give conscious consideration to the rate of tax to be applied to the undeclared wages. On the material before it, it is not clear exactly what conclusion HMRC came to, and on what basis.

87. The Tribunal reaches the conclusions above in relation to the PAYE/NIC assessments on the basis of the reasons above. In contrast, HMRC arrived at its figure of 182 staff hours per week on the basis of the "staff rota" and the note from Lisa (see the HMRC letters of 20 April 2012 and 10 March 2015). The Tribunal notes that the evidence of the "staff rota", to the extent that any weight can be placed on it, may lend support to the reasons in paragraphs 73-77 above. However, the evidence of the "staff rota" and the note from Lisa, of itself, is evidence of limited weight. Neither document was produced at the hearing. It seems that Officer Kerr did not photograph them or take a copy of them when she visited the Appellant's premises. She merely made notes describing them. In her evidence, she could not recall all of the details of the "staff rota" (for instance, whether it stated specific times of day). Her departmental notebook does contain a contemporaneous note, but gives limited information, and in her oral evidence she confirmed that she could not recall further details after such a long passage of time.

88. The PAYE/NIC assessments were made under regulation 80 of the Income Tax (Pay as Your Earn) Regulations 2003/2682 (the "PAYE Regulations").

89. By virtue of regulation 80(5) of the PAYE Regulations, these assessments are subject to the time limits in ss 34 and 36 of the Taxes Management Act 1970 ("TMA"). The ordinary time limit within which HMRC must make such an assessment is not more than 4 years after the end of the year of assessment to which it relates. However, where the loss of tax is brought about carelessly, the time limit is extended to 6 years after the end of the year of assessment to which it relates (s 36(1)), and where the conduct is deliberate, the time limit is extended to 20 years after the end of the year of assessment to which it relates (s 36(1A)).

90. The Tribunal finds that the Appellant did not keep proper tax records. It finds that errors in his PAYE returns due to failure to keep proper records were at the very least careless, within the meaning of s 36(1) TMA. The PAYE/NIC assessments were originally issued in May 2012. The assessments dealt with in paragraphs 82-85 above were within the s 36(1) 6 year time limit.

91. Separate consideration is given below to whether assessments can be made in relation to even earlier years under s 36(1A) TMA.

Appeal against the PAYE and NIC assessments: Earlier years

92. The Tribunal finds that the burden of proof is on HMRC to establish, on a balance of probability, that the Appellant's conduct was "deliberate" within the meaning of s 36(1A) TMA.

93. At the hearing, HMRC did not present detailed submissions directed to the distinction between "deliberate" and "careless" behaviour for purposes of s 36 TMA, and no authorities on the question were cited in argument. This is particularly unfortunate, given that there are different views that can be taken on the question, two of which were recently set out (in a statutory context other than s 29 TMA) in *Lyth v Revenue and Customs* [2017] UKFTT 549 (TC) at [23]-[24]:

> 23. As to the meaning of deliberate HMRC referred to various FTT decisions. From these it can been there are two broadly differing conceptions of the definition of "deliberate". In *Auxilium Project Management v HMRC* [2016] UKFTT 249 (TC) the tribunal, noting that the legislation did not further define the word "deliberate", took the view (at [62]) that "a deliberate inaccuracy occurs when a taxpayer knowingly provides HMRC with a document that contains an error with the intention that HMRC should rely upon it as an accurate document". The tribunal emphasised this was a subjective test and that the question was not whether a reasonable taxpayer might have made the same error or even whether the taxpayer failed to take all reasonable steps to ensure that the return was accurate, "it is a question of knowledge and intention of the particular taxpayer at the time." In *Salim Miah v HMRC* [2016] UK FTT 644 (TC) put the meaning in a similar way (at [44]); something was "deliberate" if it had been "thought about". The penalty there (which concerned a sale which should have been reported on a VAT return was deliberate if the appellant "knew that the sale should been reported on…the…return but decided that it should not be". Similarly in *Bhagya Raj Subbrayan t/a Swiss Cottage Diet Clinic v HMRC* [2013] UKFTT 161 (TC) the tribunal, in finding the taxpayer's conduct there had been deliberate because "she must have known that the amount of taxable income shown on her return was less than her actual income…", used a test of knowledge of the inaccuracy.
>
> 23. However in *Anthony Clynes v HMRC* [2016] UKFTT 644 (TC) the tribunal considered (at [86]) that an inaccuracy "may also be held to be deliberate where it is found that the person consciously or intentionally

> chose not find out the correct position, in particular where the circumstances are such that the person knew that he should do so."

94. These two views (the "*Auxilium Project* view" and the "*Clynes* view") were also considered, for instance, in *Baloch v Revenue and Customs* [2017] UKFTT 665 (TC) at [116]-[138], in which the former view was preferred. There may be other views, additional to these, as to the correct interpretation of "deliberate".

95. In the specific context now under consideration, this raises amongst other matters the question whether it would be sufficient, to establish "deliberate" conduct, that the Appellant consciously knew that he was omitting from his PAYE returns employees who he knew he was employing and who were required to be included in the PAYE return. Or alternatively, would it also be necessary to show further that the Appellant consciously knew that the omission of those employees from the PAYE returns would lead to a loss of tax (for instance, by showing that the Appellant knew that the income of the employees from all their employments was above the income tax threshold)?

96. The latter view is supported by the text of s 36(1A) TMA, which speaks of "a case involving a loss of income tax … brought about deliberately by the person". This suggests that a deliberate failure to file correct returns is not enough, and that the Appellant must know that the inaccuracies in the return will in fact in practice result in a loss of tax.

97. Another question is whether, in determining whether conduct is "deliberate", it is possible to take into account that a best of judgment assessment has been made by HMRC in respect of more recent years falling within the normal time limit, or the extended 6 year time limit under s 36(1). In other words, in this case, in determining whether the Appellant acted deliberately in 2005-06 and earlier years, can the Tribunal take into account that a best of judgment assessment has been made that he understated the wages paid by him in the years 2006-07 to 2009-10?

98. It seems to the Tribunal that in principle, the answer to that question should be negative. There is no burden of proof on HMRC when making a best of judgment assessment; on the contrary, the burden is on the Appellant to show not only that the HMRC assessment is wrong, but that there is a more reliable assessment that should be made. On the other hand, the burden of proof *is* on HMRC to show that conduct was deliberate for purposes of s 36(1A) TMA. It would seem inconsistent with the notion of a burden of proof if it could be discharged, in whole or in part, by a mere exercise of best judgment by the very party bearing that burden.

99. The normal time limit for assessments is 4 years, which in the case of careless conduct can be extended to 6 years, that is to say, one and a half time the ordinary time limit. The extension to 20 years for deliberate conduct is 5 times the ordinary time limit, and over 3 times the extended time limit applying to careless conduct. The very magnitude of the extension of the time limit for deliberate conduct is in itself an indication that a finding of deliberate conduct should not be found overly lightly.

100. The Tribunal therefore considers what other evidence there is of deliberate conduct on the part of the Appellant in relation to the period prior to 2006-07.

101. There was no evidence before the Tribunal of the size of the two shops. There was no evidence of how many staff hours are typically required to operate a business of that nature. HMRC did not dispute that the Appellant and his wife worked long hours in the shops without drawing wages, and that they were assisted to a degree by other family members. There was no evidence dealing directly with the question whether it would be unrealistic to suggest that the business could have been run by the Appellant, his wife and other family members, with only such staff assistance as was recorded in his PAYE returns.

102. As noted above, HMRC do not dispute the figures stated by the Appellant in his tax returns for his profit from self-employment. In 1996-97, when he had only one shop, his profit was £8,079 (or £13,978 in 2017 terms, according to the Bank of England inflation calculator at https://www.bankofengland.co.uk/monetary-policy/inflation). In 2004-2005, the last year in which he had only one shop, his profit was £26,728 (or £37,940 in 2017 terms). Thus, his profit from a single shop almost tripled over that period of some 10 years. It cannot be assumed that his staffing needs were the same throughout that period. It may be (the Tribunal has no way of knowing) that originally few or no paid staff were needed, and that his employment of staff grew over time. HMRC have not put into evidence all of the Appellant's PAYE records for these years, and it is therefore not possible to form any view on the plausibility of what might be stated in those returns.

103. On its consideration of the evidence as a whole, the Tribunal finds that HMRC have not discharged the burden of proving, on a balance of probability, that the Appellant acted deliberately or dishonestly in the years prior to 2006-07.

104. The Tribunal adds for completeness that it would not have reached a different conclusion, even if it had taken into account the evidence of off-record comments made by Mr Brown (see paragraph 8 above). Mr Brown did not give evidence as a witness and was not cross-examined. Only very limited weight can be placed on notes made by an HMRC Officer as to what Mr Brown said, which is hearsay evidence. Although hearsay evidence may be admissible in Tribunal proceedings, the fact that it is hearsay will necessarily go to the weight it is given. A finding that the Appellant acted deliberately or dishonestly would have serious consequences for him, extending the time limit under s 36 TMA from 6 years to 20 years. Evidence of this kind is unlikely to be sufficient to prove a fact of such seriousness. Furthermore, the evidence is that in 2010 Mr Brown said to Officer Hunter that he had been telling the Appellant certain things "for years", but the evidence does not report Mr Brown as stating specifically that he said anything to the Appellant during any period prior to 2006-07. Statements reportedly made by Mr Brown that the Appellant had been "burying his head in the sand" and was "negligent" also do not necessarily equate to *deliberate* behaviour or *dishonesty* in the sense described above.

105. The appeal is therefore allowed in relation to the PAYE/NIC assessments relating to the years 1996-97 to 2005-06 on the basis that the assessments are out of time.

Appeal in relation to the off-record cigarettes: general

106. According to paragraph 52 of the witness statement of Officer Dillon, the assessment relating to the tobacco products excluded hand rolling tobacco, and related to the cigarettes only. The Tribunal accordingly leaves hand rolling tobacco out of consideration.

107. Having considered the evidence, the Tribunal makes the following findings of fact.

108. The Tribunal accepts the evidence of Officer Kerr referred to at paragraphs 31-32 above. At the time of Officer Kerr's visit in December 2009, Sharon McCloskey who was in charge of the shop at the time freely admitted that the cigarettes were being sold there. The Appellant maintains that Sharon McCloskey was acting on her own account in an abuse of her position. However, according to the PAYE summaries, the Appellant was still employing her throughout 2012-13, which he would not be likely to have done if she had been selling illegal cigarettes on her own account at his shops. The Tribunal is satisfied on the evidence that non-UK duty paid cigarettes were at the time of Officer Kerr's visit being sold by the Appellant at his Sevenoaks shop.

109. The evidence of Officer Kerr is that she saw 60 Palace cigarettes together with 7 empty containers for 200 Palace cigarettes each, and 2 empty containers for 200 L & B cigarettes each. If the empty containers had been full, they would have contained a total of 1,800 cigarettes (90 packets). The obvious inference is that the 60 Palace cigarettes that were found were the remnants of the contents of one of the empty containers.

110. According to paragraph 52 of the witness statement of Officer Dillon, HMRC's finding was that the Appellant sold 15 packets a day (300 cigarettes). This means that the empty containers found at the time of the visit, if full, would have provided stock for 6 days' sales. The Tribunal considers that to be a reasonable finding.

111. HMRC further found that that level of sales was made 7 days a week, 52 weeks a year. The Tribunal also considers that to be a reasonable finding. HMRC found that the cigarettes were being sold for £2.60 a packet. That is consistent with the evidence.

112. HMRC additionally found that identical levels of sales were being made in both of the Appellant's shops. The Tribunal does not consider that to be a reasonable finding. There is no evidence of any non-UK duty paid cigarettes or tobacco being found at the Ballymac store. The Tribunal therefore allows the appeal to the extent that it relates to VAT on sales of cigarettes at the Ballymac store.

113. It is also noted that the Appellant did not own the Sevenoaks store prior to 2005-06, so that the appeal against the assessments in relation to cigarette sales in those earlier years is allowed in full.

114. Paragraph 60 of Officer Dillon's statement indicates that the HMRC assessments are based on a finding that the Appellant also made off-record sales of cigarettes in 2010-11. The Tribunal considers that this is not a reasonable finding. There is no evidence to suggest that such sales of cigarettes continued after Officer Kerr's visit on 9 December 2009, and it is unlikely that they would have. The Tribunal therefore finds that the last of such sales occurred on 9 December 2009.

Appeal against the income tax assessments

115. It is difficult to understand, even after the explanation given by HMRC at the hearing, the way in which the assessment to income tax has been calculated.

116. There is a table in paragraph 60 of Officer Dillon's statement that gives for each tax year a figure for "off record cigarettes", and a figure for "unrecorded wages". These two figures are then added, and the sum is given in a third column entitled "total omissions". From this figure, somehow a profit is calculated upon which income tax is charged.

117. For instance, for 2009-10, HMRC have determined that sales from cigarettes were £29,000, and that unrecorded wages were £90,272, giving "total omissions" of £119,272. HMRC have then determined that the Appellant made a profit of £25,217 (some 21% of the "total omissions"). HMRC have then assessed the Appellant to income tax on this profit in the sum of £10,338.97 (some 40% of the profit).

118. The Tribunal finds that HMRC were entitled to conclude that the Appellant made a profit on the sales of cigarettes, to which he may be liable to income tax. However, it is difficult to see what profit HMRC considered him to have made. The evidence is that the cigarettes were sold for £2.60 a packet, but there is no evidence of what the Appellant bought them for, so that his profit margin on the sales cannot be known. A methodology needs to be articulated for making a best judgment assessment of this.

119. The Tribunal has even greater difficulty understanding how the Appellant could be liable to income tax on the unrecorded wages paid to his employees. These wages were a business *expense*, not profit.

120. The HMRC theory, as the Tribunal understands it, is that the money from which off-record wages were paid must have been obtained from additional off-record profits, derived from additional off record sales.

121. However, even if this was so, there is no reason for assuming that the amount of any additional profits from any off-record sales was any greater than the actual amount required to pay the off-record wages. Indeed, the 10 March 2015 review

decision expressly states that HMRC had withdrawn the "component part of additional sales over and above the amount used to fund off record wages".

122. If so, there would be no income tax to pay on these additional profits from additional off-record sales, since they would all have been used to fund a corresponding business expenses (the off record wages).

123. The Tribunal therefore finds that apart from off-record sales of cigarettes (which are dealt with below), there were no other profits from any other off-record sales on which income tax was assessable.

124. Furthermore, if off-record wages were funded by off-record sales, there is no reason for assuming that they were not funded from the profits from the off-record sales of cigarettes. There is no reason for assuming that the Appellant had any further off-records sales, except to the extent that the profits from off-record sales of cigarettes were insufficient to fund the off-record wages in any given year.

125. If that is so, the gross profit from the off-record sales of cigarettes in each year should be reduced by the amount of the off-record wages paid by the Appellant in that year, in order to calculate any net profit on which income tax is payable. This means that the only part of the profit from off-record sales of cigarettes on which income tax would be payable would be such part as exceeded the total amount of off-record wages paid in a given year.

Appeal against the VAT assessments

126. The methodology applied by HMRC in the VAT assessments is virtually identical to that applied in the case of the income tax assessments.

127. The same table in paragraph 60 of Officer Dillon's statement referred to in paragraph 116 above contains a further column entitled "VAT thereon" (that is, VAT charged on the "total omissions").

128. For instance, for 2009-10, HMRC have determined that sales from cigarettes were £29,000, and that unrecorded wages were £90,272, giving a total of £119,272. HMRC have determined that the VAT on that total figure is £10,965 (some 9.2%).

129. It is difficult to see how HMRC has arrived at that VAT rate on either or both components.

130. It is also difficult to see how HMRC could apply VAT to amounts paid by the Appellant as wages to his staff. These amounts were subject to PAYE, not VAT.

131. The Tribunal's understanding is that HMRC in fact contend the following. The money to pay the off-record wages to staff must have been obtained from additional off-record profits from off-record sales. The Appellant is therefore being assessed to VAT on the value of those additional off-record sales.

132. In principle, this HMRC conclusion is not unreasonable. However, for the reasons given above, there is no reason for concluding that there were any off-record sales apart from the sales of cigarettes, except to the extent that the profit from the sales of cigarettes did not return sufficient profit to cover the off-record wages.

133. Furthermore, apart from the cigarettes, it is not apparent what methodology if any was used to calculate the amount of any such additional off-record sales, or the rate of VAT to be applied to such sales. For every £100 of off-record wages that the Appellant funded through off-record sales, he must have made £100 additional *profit* from those sales. However, VAT is charged not on his profit, but on the entire sale price. To determine the sale price from the amount of his profit, it would be necessary to determine his profit margin on the sales. It would also be necessary to determine what percentages of the Appellant's sales are to be regarded as subject to which VAT treatment. A methodology needs to be articulated for making a best judgment assessment of these matters.

Appeal against penalties

134. The Tribunal considers that the appeal against the penalties cannot be determined at this stage.

Conclusion

135. For the reasons above, the Tribunal:

(1) allows the appeal against the PAYE/NIC assessment for 2010-11, and that assessment is set aside;

(2) finds that the *total* (declared and undeclared) wages paid by the Appellant in each of 2008-09 and 2009-10 was the same as his *declared* wages in 2010-11 (49,593.32 *2011* pounds) appropriately adjusted for inflation, and that from that *total* figure for each of 2008-09 and 2009-10, the amount of *declared* wages for each of those years needs to be deducted, in order to determine the amount of *undeclared* wages;

(3) finds that the *total* (declared and undeclared) wages paid by the Appellant in each of 2006-07 and 2007-8 was 85% of his *declared* wages in 2010-11 (49,593.32 *2011* pounds) appropriately adjusted for inflation, and that from that *total* figure for each of 2006-07 and 2007-8, the amount of *declared* wages for each of those years needs to be deducted, in order to determine the amount of *undeclared* wages;

(4) allows the appeal against the PAYE/NIC assessments for 1996-97 to 2005-06 on the basis that the assessments were out of time, and those assessments are set aside;

(5) finds that the Appellant, in his Sevenoaks shop, made off-record sales of 15 packets of cigarettes a day (300 cigarettes) at £2.60 per packet, 7 days a week, 52 weeks a year, the last of such sales occurring on 9 December 2009;

(6) finds that the Appellant made no off-record sales of cigarettes in his Ballymac shop, and allows the appeal to the extent that it relates to any assessments on sales of cigarettes at the Ballymac store;

(7) finds that apart from off-record sales of cigarettes (dealt with in (8) below), there were no other profits from any other off-record sales on which income tax was assessable;

(8) finds that the profit for each year from the off-record sales of cigarettes should be reduced by the amount of off-record wages paid by the Appellant in the same year, such that the only part of the profit from off-record sales of cigarettes on which income tax would be payable would be such part as exceeded the total amount of off-record wages paid in that year;

(9) finds that there were no off-record sales apart from the sales of cigarettes, except to the extent that the sales of cigarettes did not return sufficient profit to cover the off-record sales.

136. This is an in principle decision. Directions are attached for the further conduct of the proceedings.

137. 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 CHRISTOPHER STAKER
TRIBUNAL JUDGE

RELEASE DATE: 21 JUNE 2018