Neutral Citation: [2022] UKFTT 00402 (TC)

Case Number: TC08630

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2016/00032

INCOME TAX, NATIONAL INSURANCE CONTRIBUTIONS AND VALUE ADDED TAX – appeals against a number of assessments to the above taxes and penalties in respect of those taxes – none of the grounds of appeal was relevant in relation to the underlying tax assessments apart from those of the VAT assessments which were made in respect of prescribed accounting periods ending more than four years before the relevant VAT assessments were made – held that those VAT assessments were made in time - the time limit for issuing them was twenty-years and not four years because the errors giving rise to the assessments had been made deliberately by the Appellant - in relation to the penalty assessments, the Appellant alleged that the penalties were excessive because the Respondents had failed properly to take into account various relevant mitigating factors – held that none of those factors suggested that the penalties had been inadequately abated – appeals dismissed

Heard on: 26 October 2022
Judgment date: 03 November 2022

Before

TRIBUNAL JUDGE BEARE
MS SUSAN STOTT

Between

MR PATRICK DOWDS

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Ms Judith McConnell of Kearney Sefton

For the Respondents: Mr Dermot Ryder, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. With the consent of the parties, the hearing took place on video although, as a result of difficulties on the day of the hearing for Ms McConnell in connecting to the First-tier Tribunal's video hearings system, Ms McConnell attended by telephone.

2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

3. The hearing related to a number of different assessments, determinations and penalties imposed pursuant to the Taxes Management Act 1970 (the "TMA 1970"), the Finance Act 2007 (the "FA 2007"), The Income Tax (Pay As You Earn) Regulations 2003 (the "PAYE Regulations 2003"), the Social Security Contributions and Benefits Act (Northern Ireland) Act 1992 (the "SSCBA (NI) 1992") and the Value Added Tax Act 1994 (the "VATA"), as set out in the tables below.

Income tax and related penalties

Tax year ending	Issued	Legislation	Description	Amount charged
05/04/2002	3/09/2015	Section 29 of the TMA 1970	Revenue assessment	£ 2,565.20
05/04/2003	3/09/2015	Section 29 of the TMA 1970	Revenue assessment	£11,546.40
05/04/2004	3/09/2015	Section 29 of the TMA 1970	Revenue assessment	£22,136.34
05/04/2005	3/09/2015	Section 29 of the TMA 1970	Revenue assessment	£33,882.35
05/04/2006	3/09/2015	Section 29 of the TMA 1970	Revenue assessment	£54,368.63
05/04/2007	3/09/2015	Section 29 of the TMA 1970	Revenue assessment	£35,715.68
05/04/2008	3/09/2015	Section 29 of the TMA 1970	Revenue assessment	£25,722.36
05/04/2009	3/09/2015	Section 28 of the TMA 1970	Revenue amendment	£65,245.47
05/04/2013	3/09/2015	Section 29 of the TMA 1970	Revenue assessment	£50,888.28
Total income tax				**£302,070.71**
05/04/2002 to 05/04/2008	11/09/2015	Section 95 of the TMA 1970	Penalty determination	£120,886.00
05/04/2009 to 05/04/2012	11/09/2015	Schedule 24 of the FA 2007	Penalty assessment	£ 49,586.00
Total income tax-				**£170,472.00**

related penalties				
Grand total income tax and related penalties				**£472,542.71**

PAYE and national insurance contributions and related penalties

Tax year ending	Issued	Legislation	Description	Amount charged
05/04/2001	4/09/2015	Regulation 80 of the PAYE Regulations 2003	PAYE determination	£4,852.98
05/04/2002	4/09/2015	Regulation 80 of the PAYE Regulations 2003	PAYE determination	£4,852.98
05/04/2003	4/09/2015	Regulation 80 of the PAYE Regulations 2003	PAYE determination	£4,852.98
05/04/2004	4/09/2015	Regulation 80 of the PAYE Regulations 2003	PAYE determination	£4,925.36
05/04/2005	4/09/2015	Regulation 80 of the PAYE Regulations 2003	PAYE determination	£4,925.36
05/04/2006	4/09/2015	Regulation 80 of the PAYE Regulations 2003	PAYE determination	£4,925.36
05/04/2007	4/09/2015	Regulation 80 of the PAYE Regulations 2003	PAYE determination	£4,925.36
05/04/2008	4/09/2015	Regulation 80 of the PAYE Regulations 2003	PAYE determination	£4,925.36
05/04/2009	4/09/2015	Regulation 80 of the PAYE Regulations 2003	PAYE determination	£4,347.80
05/04/2010	4/09/2015	Regulation 80 of the PAYE Regulations 2003	PAYE determination	£4,347.80
05/04/2011	4/09/2015	Regulation 80 of the PAYE Regulations 2003	PAYE determination	£4,347.80
05/04/2012	4/09/2015	Regulation 80 of the PAYE Regulations 2003	PAYE determination	£4,411.80
05/04/2013	4/09/2015	Regulation 80 of the PAYE Regulations 2003	PAYE determination	£4,411.80
Total PAYE				**£61,052.74**
05/04/2001 to 05/04/2013	4/09/2015	Section 6 of the SSCBA (NI) A 1992	National insurance contributions decision	£ 68,019.26
05/04/2001 to 05/04/2008	11/9/2015	Section 98A of the TMA 1970	Penalty determination	£ 52,193.00
05/04/2009 to 05/04/2013	11/9/2015	Schedule 24 of the FA 2007	Penalty assessment	£ 37,064.00
Grand total				**£218,329.00**

PAYE, national insurance contributions and related penalties				
Grand total income tax, PAYE, national insurance contributions and related penalties				**£690,871.71**

The penalties under Section 98A of the TMA 1970 of £52,193.00 referred to above are broken down tax year by tax year in the table below:

Tax year ending	Issued	Legislation	Description	Amount charged
05/04/2001	11/09/2015	Section 98A of the TMA 1970	Penalty Determination	£6,294.00
05/04/2002	11/09/2015	Section 98A of the TMA 1970	Penalty Determination	£6,294.00
05/04/2003	11/09/2015	Section 98A of the TMA 1970	Penalty Determination	£6,280.00
05/04/2004	11/09/2015	Section 98A of the TMA 1970	Penalty Determination	£6,665.00
05/04/2005	11/09/2015	Section 98A of the TMA 1970	Penalty Determination	£6,665.00
05/04/2006	11/09/2015	Section 98A of the TMA 1970	Penalty Determination	£6,665.00
05/04/2007	11/09/2015	Section 98A of the TMA 1970	Penalty Determination	£6,665.00
05/04/2008	11/09/2015	Section 98A of the TMA 1970	Penalty Determination	£6,665.00
Total Section 98A of the TMA 1970 penalties				**£52,193.00**

Indirect Taxes

VAT period	Issued	Legislation	Description	Amount charged
01/00 - 01/09	03/09/2015	Section 73(1) of the VATA	VAT assessment	£276,863.00
04/09	03/09/2015	Section 73(1) of the VATA	VAT assessment	£13,920.00

07/09	03/09/2015	Section 73(1) of the VATA	VAT assessment	£13,920.00
10/09	03/09/2015	Section 73(1) of the VATA	VAT assessment	£13,920.00
01/10	03/09/2015	Section 73(1) of the VATA	VAT assessment	£16,518.00
04/10	03/09/2015	Section 73(1) of the VATA	VAT assessment	£17,817.00
07/10	03/09/2015	Section 73(1) of the VATA	VAT assessment	£17,817.00
10/10	03/09/2015	Section 73(1) of the VATA	VAT assessment	£17,817.00
01/11	03/09/2015	Section 73(1) of the VATA	VAT assessment	£18,241.00
04/11	03/09/2015	Section 73(1) of the VATA	VAT assessment	£18,453.00
07/11	03/09/2015	Section 73(1) of the VATA	VAT assessment	£18,453.00
10/11	03/09/2015	Section 73(1) of the VATA	VAT assessment	£18,453.00
01/12	03/09/2015	Section 73(1) of the VATA	VAT assessment	£28,025.00
04/12	03/09/2015	Section 73(1) of the VATA	VAT assessment	£32,811.00
07/12	03/09/2015	Section 73(1) of the VATA	VAT assessment	£13,296.00
10/12	03/09/2015	Section 73(1) of the VATA	VAT assessment	£52,326.00
01/13	03/09/2015	Section 73(1) of the VATA	VAT assessment	£10,937.00
Total VAT				**£599,587.00**

01/00 - 01/09	11/09/15	Section 60(1) of the VATA	VAT penalty	£179,960.95
04/09	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£10,579.20
07/09	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£10,579.20
10/09	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£10,579.20
01/10	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£12,553.68
04/10	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£13,540.92

07/10	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£13,540.92
10/10	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£13,540.92
01/11	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£13,863.16
04/11	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£14,024.28
07/11	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£14,024.28
10/11	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£14,024.28
01/12	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£21,299.00
04/12	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£24,936.36
07/12	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£10,104.96
10/12	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£39,767.76
01/13	11/09/15	Schedule 24 of the FA 2007	VAT penalty	£8,312.12
Total VAT penalties				**£425,231.19**

4. For completeness, we should note that the tables set out above originally included an income tax-related penalty under Schedule 24 of the FA 2007 for the tax year ending 5 April 2013 in the amount of £38,674.00. At the hearing, Ms McConnell pointed out that the previous litigator at the Respondents with responsibility for the appeal had conceded that that penalty had been issued in error and would be withdrawn by the Respondents. Mr Ryder, who was now acting for the Respondents in connection with the appeal, was unaware of that concession and undertook to investigate the position after the hearing. In an email of 31 October 2022, he confirmed that, although the Respondents considered that that penalty had been properly charged as a matter of law, they were prepared, because of the prior concession but without prejudice to the other penalties and assessments which were the subject of the appeal, to withdraw the penalty in question. The tables set out above accordingly do not take that penalty into account and it is not addressed further in this decision.

BACKGROUND

5. The Appellant is a haulage contractor and has been trading as such for many years.

6. Following an enquiry by the Respondents into his tax affairs in respect of the tax year ending 5 April 1999, the Appellant admitted that he had acted fraudulently in obtaining false invoices to support deductions in computing his trading income and agreed to a settlement in September 2002 in the amount of £20,000.00.

7. On 6 May 2011, the Respondents issued a notice of enquiry into the Appellant's self-assessment return in respect of the tax year ending 5 April 2009.

8. On 3 May 2012, following the initial stages of the investigation, the Respondents suspected the Appellant of fraud and invited the Appellant to make full disclosure of the irregularities in his tax affairs under the civil process by participating in the Respondents' Contractual Disclosure Facility (the "CDF") and Code of Practice 9 ("COP 9"). On 22 June 2012, the Appellant's then representative, McKeague Morgan & Co, wrote to the Respondents on the Appellant's behalf. In that letter, the Appellant declined the offer of participating in the CDF – on the basis that he had not committed any fraud – but said that he would co-operate with the COP 9 investigation.

9. On 1 October 2012, the Appellant disclosed to the Respondents certain VAT errors made in respect of the VAT periods 07/08 to 04/12 (which he attributed to his bookkeeper) and enclosed a bank draft in respect of those errors. On 18 October 2012, Officer Paul Dillon of the Respondents wrote to the Appellant's representative to say that the Respondents did not accept that the matters in question were errors and that the bank draft would be retained as a payment on account pending the outcome of the COP 9 investigation.

10. On 7 March 2013, Officer Dillon and a colleague attended a meeting with the Appellant's representative at which the representative disclosed various matters pertaining to the Appellant's tax affairs - such as reclaims of amounts in respect of Irish VAT deposited in undeclared offshore bank accounts, claims to set off amounts incurred in respect of Irish VAT as VAT input tax in his VAT returns, VAT output tax omitted from his VAT returns and undeclared trading and interest income. It was agreed that these matters should be addressed at the opening COP 9 meeting.

11. That opening meeting was held over two days – starting on 22 May 2013 and then continuing on 18 June 2013. At the meeting:

(1) the Appellant blamed his bookkeeper for the errors which had been disclosed up to that point;

(2) admitted to having fraudulently entered false supplier invoices into his cheque journal and then encashed the relevant cheques in order to generate cash to cover other expenses over a period extending back prior to 2003; and

(3) it was agreed that the Appellant's representative would produce a draft disclosure report under COP 9.

12. Further meetings in relation to the draft disclosure report were held on 19 December 2013 and 12 May 2014 and, on 8 January 2014, the Appellant made a further payment of £115,000 to the Respondents on account of his tax liabilities.

13. On 3 September 2014, the Appellant's representative issued the final version of the disclosure report under COP 9 (the "Disclosure Report") and, on the same day, the Appellant formally adopted that report.

14. Following the production and formal adoption of the Disclosure Report, the Respondents met with the Appellant's representative to discuss the outstanding liabilities on 17 December 2014 and then, at the Appellant's request, with the Appellant alone on 2 February 2015. At the latter meeting, the Appellant informed the Respondents that:

(1) from the mid-1990s, he had acted as an informant to the Respondents in relation to illegal operations in Belfast docks;

(2) his contact at the Respondents was a man called Mr Jim Sloan;

(3) Mr Sloan had subsequently been dismissed by the Respondents and received an eighteen-months suspended sentence in December 2007 for disclosing information in his possession as a Crown servant without lawful authority;

(4) the Appellant had also "moved stuff" for Mr Sloan but had not received any payment for doing so;

(5) Mr Sloan had compromised the Appellant to other people working in the area and, as a result, the Appellant had been compelled to make regular protection payments in order to be able to carry on his business unhindered;

(6) this meant that the Appellant had been financially compelled to conceal his income and divert the hidden monies into meeting his protection obligations; and

(7) consequently, the Appellant considered that the Respondents were to blame for the concealment and diversion of his income.

15. The Respondents explained that the choices which the Appellant had made were his own and that, in any event, Mr Sloan had been dismissed by the Respondents in 2003 and convicted in 2007.

16. Following that meeting, the assessments, determinations and penalties which are the subject of the present appeal were issued. The substantive assessments and determinations – by which we mean the assessments and determinations other than those relating to penalties - were based on the figures set out in the Disclosure Report. The only adjustment made to those figures was a disallowance of 50% of the amounts claimed as deductions for cash payments to third parties and to lorry drivers for repairs.

GROUNDS OF APPEAL

17. Although the Appellant has appealed against each of the assessments, determinations and penalties, Ms McConnell made it clear at the hearing that the Appellant accepts the figures on which the substantive assessments and determinations are based. In other words, the Appellant is not seeking to:

(1) renege on his earlier agreement to the figures set out in the Disclosure Report; or

(2) challenge the 50% disallowance for the cash payments referred to in paragraph 16 above.

18. There are essentially four grounds of appeal.

19. The first is that any inaccuracies in the Appellant's accounting records were due to the Appellant's association with Mr Sloan. The Appellant submitted in his notice of appeal that "[this] association affected my ability to focus on my accounting systems and any errors were not of a deliberate or fraudulent nature". At the meeting on 2 February 2015, the Appellant blamed Mr Sloan for the inaccuracies in a slightly different way, maintaining that his association with Mr Sloan led to his having to make protection payments to third parties and

that this had required him to disguise the full extent of his tax liabilities (see further on this in paragraph 14 above).

20. The second is that the Appellant relied excessively on his inexperienced bookkeeper.

21. The third is that the Respondents inspected his accounting records in 2002, 2006, 2007 and 2010 and did not notify him of any inaccuracies at that point.

22. Finally, the Appellant relies on various medical reports which have been produced over the period since the assessments, determinations and penalties were issued in relation to the Appellant's fitness to attend the hearing of the appeal. We were referred to:

(1) a referral letter from Dr Ciaran Neeson, a general practitioner, dated 24 April 2018;

(2) two reports by Dr Joanne Minay, a consultant psychiatrist, dated 9 May 2018 and 29 August 2018; and

(3) a report by Dr Brian Mangan, a consultant psychiatrist, dated 13 November 2020.

23. Dr Neeson's referral letter mentioned that the Appellant was under a great deal of stress and was "experiencing anhedonia, poor concentration, poor memory, insomnia and general feelings of anxiety".

24. In her first report, Dr Minay opined that the Appellant reported feeling under considerable strain as a result of the Respondents' investigation. The Appellant had told her that he had been struggling to compile evidence for the First-tier Tribunal hearing and found it difficult to make decisions. The Appellant felt that "his personality has changed; he was previously a very decisive man and now [founds][sic] he struggles to make even the most simple choices…The symptoms he describes are at odds with his premorbid personality. He suggests he was previously a well organised and high functioning individual". The Appellant reported that these symptoms had been ongoing for 7 to 8 years. She concluded that the Appellant was suffering from an "Adjustment disorder – prolonged depressive type…leading to a reduction in ability to cope at work". Dr Minay's second report confirmed her earlier diagnosis that the Appellant was suffering from an adjustment disorder and was not fit to attend the hearing of the appeal.

25. Dr Mangan diagnosed the Appellant as having a "generalised anxiety disorder" which had been exacerbated by the pandemic. He noted that the Appellant had difficulties in falling and remaining asleep, found it difficult to relax and had impaired concentration. He concluded that the Appellant was unfit to attend the hearing of the appeal.

DETERMINATION OF THE APPEALS AGAINST CERTAIN OF THE SUBSTANTIVE ASSESSMENTS AND DETERMINATIONS

26. None of the grounds of appeal set out in paragraphs 17 to 25 above is relevant to the validity or quantum of the substantive assessments and determinations so far as they:

(1) relate to income tax, PAYE and national insurance; or

(2) relate to VAT and were made within the four-year time limit from the end of the prescribed accounting period to which they relate (as that is the time limit set out in Section 77(1) of the VATA).

27. The grounds of appeal are instead solely relevant to:

(1) the validity of the VAT assessments which were made under Section 73 of the VATA outside the four-year time limit set out in Section 77(1) of the VATA. Under Section 77 of the VATA, an assessment under Section 73 of the VATA can be made outside that four-year time limit (and within a twenty-year time limit instead) only where

the relevant taxpayer has acted deliberately in bringing about the VAT loss in question; and

(2) the validity and/or quantum of the penalties in relation to income tax, PAYE, national insurance and VAT.

28. At the hearing, Ms McConnell accepted that the above was the case.

29. Accordingly, we hereby dismiss the Appellant's appeal to the extent that it is in respect of the substantive assessments and determinations so far as they:

(1) relate to income tax, PAYE and national insurance contributions; or

(2) relate to VAT and were made under Section 73 of the VATA within the four-year time limit set out in Section 77(1) of the VATA.

THE ISSUES

30. The only outstanding issues between the parties therefore relate to:

(1) the VAT assessments made under Section 73(1) of the VATA in relation to the submission by the Appellant of incorrect VAT returns in respect of prescribed accounting periods ending more than four years before the relevant assessments were made; and

(2) the various penalties listed in the tables set out in paragraph 3 above. Those penalties have been imposed under four distinct sets of legislative provisions, as follows:

(a) Section 95(1) of the TMA 1970;

(b) Regulation 73(10) of the PAYE Regulations and Section 98A of the TMA 1970;

(c) Schedule 24 of the FA 2007; and

(d) Section 60(1) of the VATA.

THE LAW

Section 77 of the VATA

31. As we have already noted, Section 77 of the VATA provides that an assessment under Section 73 of the VATA cannot be made more than four years after the end of the prescribed accounting period to which it relates unless the loss of VAT in question was brought about deliberately.

Section 95(1) of the TMA 1970

32. Prior to its repeal, Section 95(1) of the TMA 1970 provided that, where a person fraudulently or negligently delivered an incorrect self-assessment return under Section 8 of the TMA 1970, he was liable to a penalty not exceeding the difference between:

(1) the amount of income tax and capital gains tax payable for the relevant years of assessment by the said person (including any amount of income tax deducted at source and not repayable); and

(2) the amount which would have been the amount so payable if the relevant return as made or submitted by him had been correct.

Regulation 73(10) of the PAYE Regulations and Section 98A of the TMA 1970

33. Regulation 73(10) of the PAYE Regulations and Section 98A of the TMA 1970 together provide that, where an employer fails to make a return containing certain specified information in relation to all payments made by the employer to his employees during the tax year to which the return relates, he is liable to a penalty of the "relevant monthly amount" (as defined in

Section 98A(3) of the TMA 1970) for the first twelve months over which the default continues and, thereafter, to a penalty not exceeding so much of the amount payable by him under the PAYE Regulations for the tax year to which the return relates as remained unpaid at the end of 19 April following the end of that tax year.

Schedule 24 of the FA 2007

34. Schedule 24 of the FA 2007 provides that, where a person carelessly or deliberately files an incorrect self-assessment return or VAT return, he is liable to a penalty the amount of which depends on:

(1) whether the inaccuracy was "careless", "deliberate but not concealed" or "deliberate and concealed"; and

(2) in the case of inaccuracies in returns relating to tax periods commencing after 5 April 2011, whether the inaccuracy falls within "category 1", "category 2" or "category 3".

35. In relation to inaccuracies in returns relating to tax periods commencing on or before 5 April 2011, the maximum penalty for a deliberate and concealed inaccuracy is 100% of the additional amount of tax falling due as a result of correcting the inaccuracy. In relation to inaccuracies in returns relating to tax periods commencing after 5 April 2011, the maximum penalty for a deliberate and concealed inaccuracy falling within category 1 is 100% of the additional amount of tax falling due as a result of correcting the inaccuracy. (In this case, the relevant inaccuracies all concerned either domestic UK matters or, to the extent that they did not, related to activities carried on in the Republic of Ireland, which is a category 1 territory for the purposes of Schedule 24 of the FA 2007 pursuant to paragraph 2 of The Penalties, Offshore Income etc. (Designation of Territories) Order 2011 (SI 2011/976) or pertained to VAT, a tax other than income tax or capital gains tax. Consequently, the inaccuracies all fell within category 1).

36. The schedule makes provision for a reduction in the relevant penalty for disclosure. The extent of the reduction depends on:

(1) whether the disclosure was "prompted" or unprompted"; and

(2) the quality of the disclosure – that is to say, the timing, nature and extent of the disclosure.

37. In a case where the inaccuracy was deliberate and concealed, so that the maximum penalty is 100% of the additional amount of tax falling due as a result of correcting the inaccuracy, the penalty is to be reduced to:

(1) a lower percentage, not below 30%, of that additional amount of tax, in the case of an unprompted disclosure; and

(2) a lower percentage, not below 50%, of that additional amount of tax, in the case of a prompted disclosure,

in each case, depending on the timing, nature and extent of the disclosure.

38. The schedule makes provision for a greater reduction in a penalty in the case of "special circumstances". Those do not include, inter alia, the ability to pay the penalty.

Section 60(1) of the VATA

39. Prior to its repeal, Section 60(1) of the VATA provided that, where a person took or omitted to take any action for the purpose of evading VAT and his conduct involved dishonesty, he was liable to a penalty equal to the amount of VAT evaded, or sought to be evaded, by his action or omission.

THE RESPONDENTS' PRACTICE

40. Schedule 24 of the FA 2007 is different from the other penalty provisions set out above in that it expressly lists the characteristics ("telling" – telling the Respondents about the inaccuracy - "giving" – giving the Respondents reasonable help in quantifying the inaccuracy - and "allowing access" – allowing the Respondents access to records for the purpose of ensuring that the inaccuracy is fully corrected) which are to be taken into account in the mitigation process. The same is not true for the other penalty provisions set out above although:

(1) the Respondents' practice in relation to penalties under Section 95(1) of the TMA 1970 is set out in their guidance entitled "Information about compliance checks for Self Assessment and the old penalty rules - CC/FS15". In that guidance, the Respondents explain that the amount by which they will reduce a penalty under Section 95 of the TMA 1970 depends on "disclosure" – whether the taxpayer tells them everything they need to know about the taxpayer's tax affairs – "co-operation" – how well the taxpayer co-operates with the Respondents throughout the compliance check – and "seriousness" – the overall seriousness of the errors in the taxpayer's tax return or failure to notify them about the taxpayer's liability to tax. The general practice is to reduce the penalty by up to 20% of the difference between the maximum and minimum penalties for disclosure, up to 40% of the difference between the maximum and minimum penalties for co-operation and up to 40% of the difference between the maximum and minimum penalties for seriousness; and

(2) the Respondents' practice in relation to penalties under Section 60(1) of the VATA is set out in paragraph CEP4150 of the Respondents' manual entitled "Civil evasion penalties for Customs, Excise and VAT". In that guidance, the Respondents explain that:

(a) they will reduce the relevant penalty by up to 40% for "disclosure" – an early and truthful explanation as to why the inaccuracies arose – and up to 40% for "co-operation" – embracing and meeting responsibilities during the investigation process;

(b) any further reduction would be made only in exceptional circumstances and, in most case, the resulting penalty would be no lower than 15% of the tax evaded or sought to be evaded; and

(c) the most common reason for any further reduction would be a genuinely-unprompted voluntary disclosure.

In addition, the Respondents' practice in relation to Schedule 24 of the FA 2007, as recorded in paragraph CH82430 of the Respondents' Compliance Handbook, is to allow up to 30% of the difference between the maximum and minimum penalties for "telling", up to 40% of the difference between the maximum and minimum penalties for "helping" and up to 30% of the difference between the maximum and minimum penalties for "allowing access".

41. Although none of the practices described in paragraph 40 above is statutory, and they are therefore not binding on us, previous First-tier Tribunals have considered them to be a suitable starting point in the consideration of penalty mitigation.

THE PARTIES' SUBMISSIONS IN BRIEF

Section 77 of the VATA

42. As regards the VAT assessments made after the fourth anniversary of the end of the prescribed accounting period to which they relate:

(1) the Respondents submit that those have been made to the best of their judgment based on the figures set out in the Disclosure Report and that the twenty-year time limit for making the assessments set out in Section 77(4) of the VATA applies because the relevant errors were made deliberately by the Appellant; and

(2) the Appellant does not dispute that the assessments have been made to the Respondents' best judgment and does not allege that the figures are incorrect. However, he says that:

(a) the relevant errors were inadvertent and not deliberate because he relied incorrectly on his inexperienced bookkeeper; and

(b) therefore, the four-year time limit for making the relevant assessments set out in Section 77(1) of the VATA (and not the twenty-year time limit set out in Section 77(4) of the VATA) applies.

Section 95(1) of the TMA 1970

43. As regards the penalties under Section 95(1) of the TMA 1970:

(1) the Respondents submit that, notwithstanding the grounds of appeal advanced by the Appellant:

(a) the inaccuracies in question were made fraudulently;

(b) the appropriate reduction for the extent of the Appellant's disclosure, the Appellant's co-operation and the seriousness of the inaccuracies was 35%; and

(c) therefore, the penalty of 65% of the difference between the amount of tax payable by the Appellant and the amount of tax which would have been payable by the Appellant if the relevant returns had not contained the inaccuracies is correct; and

(2) the Appellant submits that, for the reasons set out in his grounds of appeal:

(a) the relevant inaccuracies were inadvertent and not fraudulent; and

(b) the penalties which the Respondents have imposed are too severe and unreasonable. A greater abatement should have been applied.

Regulation 73(10) of the PAYE Regulations and Section 98A of the TMA 1970

44. As regards the penalties under Regulation 73(10) of the PAYE Regulations and Section 98A of the TMA 1970:

(1) the Respondents submit that, notwithstanding the grounds of appeal advanced by the Appellant:

(a) the inaccuracies in question were made knowingly; and

(b) therefore, the penalties have become due; and

(2) the Appellant submits that, for the reasons set out in his grounds of appeal:

(a) the relevant inaccuracies were inadvertent and not knowing; and

(b) the Respondents should not have imposed the penalties.

45. We should say in passing at this point that we do not detect in the language of Regulation 73(10) of the PAYE Regulations and Section 98A of the TMA 1970 any requirement for the inaccuracy in question to have been made knowingly. It seems to us that the combination of those provisions, taken together, is to give rise to the specified penalty regardless of whether the relevant inaccuracy was inadvertent or knowing. However, as neither party appears to have

adopted this approach in making its submissions, we set out below our conclusions in relation to whether or not the inaccuracies in question were inadvertent or knowing.

Schedule 24 of the FA 2007

46. As regards the penalties under Schedule 24 of the FA 2007:

(1) the Respondents submit that, notwithstanding the grounds of appeal advanced by the Appellant:

(a) the inaccuracies in question were deliberate and concealed;

(b) the disclosure of those inaccuracies was prompted;

(c) the appropriate reduction for the quality of the disclosure which was made by the Appellant is 48% of the 50% difference between the maximum penalty and the minimum penalty – that is to say, 24%; and

(d) therefore, the penalty of 76% of the amount of tax falling due as a result of the correction of the inaccuracies is correct; and

(2) the Appellant submits that, for the reasons set out in his grounds of appeal:

(a) the inaccuracies which he made were inadvertent and not deliberate and concealed; and

(b) although he accepts that his disclosure of the inaccuracies was prompted, the penalties which the Respondents have imposed are too severe and unreasonable. A greater abatement should have been applied.

Section 60(1) of the VATA

47. As regards the penalties under Section 60(1) of the VATA:

(1) the Respondents submit that, notwithstanding the grounds of appeal advanced by the Appellant:

(a) the inaccuracies in the Appellant's VAT returns were designed to evade VAT and the Appellant's conduct was dishonest;

(b) the appropriate reduction for the extent of the Appellant's disclosure and co-operation, given all the circumstances, is 35%; and

(c) therefore, the penalty of 65% of the VAT sought to be evaded is correct; and

(2) the Appellant submits that, for the reasons set out in his grounds of appeal:

(a) the relevant inaccuracies were inadvertent and did not constitute dishonest evasion; and

(b) the penalties which the Respondents have imposed are too severe and unreasonable. A greater abatement should have been applied.

DISCUSSION

Introduction

48. We set out in greater detail below the reasons for our conclusions in relation to the remaining issues which we are required to address in the context of the appeal but, in short, we have concluded that:

(1) the Respondents were entitled to issue the assessments under Section 73 of the VATA in relation to prescribed accounting periods ending more than four years prior to the date of the assessments because the errors in question were made deliberately by the

Appellant and that therefore, to the extent that the appeal relates to those VAT assessments, it should be dismissed;

(2) the Respondents were entitled to issue each of the penalties which they have issued, that the amounts of the penalties are perfectly reasonable in the light of the Appellant's conduct and that therefore, to the extent that the appeal relates to those penalties, it should be dismissed; and

(3) although we have the discretion to increase the amounts of the penalties which have been imposed by the Respondents under Section 95(1) of the TMA 1970, Schedule 24 of the FA 2007 and Section 60(1) of the VATA – as to which, see Section 100B of the TMA 1970, paragraphs 15 and 17 of Schedule 24 of the FA 2007 and Section 70 of the VATA, respectively – we do not think that it is appropriate for us to exercise our discretion to do so.

The extent of the inaccuracies

49. In order to address the remaining issues, we need to describe in a little more detail the inaccuracies which have given rise to the relevant assessments and penalties. Section 3 of the Disclosure Report sets out numerous instances in which the Appellant failed to account appropriately for his tax liabilities. In particular, it notes that:

(1) from October 2003 until April 2012, the Appellant omitted to include in his VAT returns VAT output tax in respect of certain supplies which he made to one of his customers, Cargo Forwarding Limited ("CFL") (see paragraphs 3.9 and 3.10 of the Disclosure Report). The output tax so omitted amounted in aggregate to £213,751.00;

(2) from and including the financial year ending 30 November 2001 to and including the financial year ending 30 November 2010, the Appellant omitted to include in his VAT returns VAT output tax in respect of certain supplies made to customers other than CFL (see paragraphs 3.14 to 3.17 of the Disclosure Report). The VAT output tax so omitted amounted in aggregate to £15,109.00;

(3) from and including the financial year ending 30 November 2006 to and including the fourteen-month period ending 31 January 2013, the Appellant claimed to deduct as VAT input tax certain amounts in respect of Irish VAT which he had incurred on purchases of fuel in Ireland and then recovered from the Irish tax authorities (see paragraphs 3.4 and 3.5 and Appendix 4 of the Disclosure Report). The amounts in respect of Irish VAT so claimed as VAT input tax amounted in aggregate to £365,982.00;

(4) a review of the Appellant's purchase ledger for the fourteen-month period ending 31 January 2013 revealed that the Appellant over-claimed VAT input tax on other purchases of £47,082.00 (see paragraph 3.6 of the Disclosure Report);

(5) from and including the financial year ending 30 November 2000 to and including the financial year ending 30 November 2008, the Appellant recovered certain amounts in respect of Irish VAT charged on his purchases of fuel and placed them in an undeclared bank account (see paragraphs 3.7 and 3.8 of the Disclosure Report). The amounts so recovered and not declared amounted in aggregate to £294,380.00;

(6) from and including February 2003 to and including 30 November 2008, certain amounts received by the Appellant from CFL were lodged in an undeclared bank account (see paragraphs 3.11 to 3.13 of the Disclosure Report). The amounts so lodged amounted in aggregate to £764,094.00;

(7) from and including the financial year ending 30 November 2001 to and including the financial year ending 30 November 2010, the Appellant omitted to include in his sales

ledger for income tax purposes certain amounts he received from customers other than CFL (see paragraphs 3.14 to 3.17 of the Disclosure Report). The amounts so omitted amounted in aggregate to £86,863.00; and

(8) from and including the financial year ending 30 November 2001 to and including the financial year ending 30 November 2013, the Appellant made certain cash payments to his employees to top up their wages and failed to account for PAYE or national insurance contributions in respect of those payments (see paragraphs 3.19 to 3.22 of the Disclosure Report). The cash payments so made are estimated to amount in aggregate to £195,000.00, which equates to a gross equivalent of £287,452.00.

50. In addition, the Disclosure Report refers at paragraphs 5.2 to 5.4 to failures by the Appellant to include in his tax returns significant amounts of bank interest over the period from and including the tax year ending 5 April 2003 to and including the tax year ending 5 April 2011.

51. Taken together, the above summary of matters highlighted in the Disclosure Report paint a picture of systematic, long-term tax evasion. Moreover, we are cognizant of the fact that these failures followed the creation of false invoices to secure deductions in the tax year ending 5 April 1999 which the Appellant has already admitted were fraudulent (see paragraph 6 above).

Inadvertent or deliberate?

52. We do not see how the various failures to comply with tax obligations which we have outlined in paragraphs 49 to 51 above can possibly be described as "inadvertent" or "careless", as the Appellant has repeatedly alleged. In our view, the frequency with which the relevant inaccuracies occurred, the length of time over which they occurred and the quantum of the amounts involved make it inconceivable that the inaccuracies were inadvertent or careless.

53. Instead, those facts suggest a pattern of deliberate and systematic tax evasion. Consequently, in our view, the only possible description of the behaviour described above is that it was:

(1) so far as concerns Section 77 of the VATA, "deliberate";

(2) so far as concerns Section 95(1) of the TMA 1970, "fraudulent";

(3) so far as concerns Schedule 24 of the FA 2007, "deliberate and concealed"; and

(4) so far as concerns Section 60(1) of the VATA, "dishonest conduct for the purpose of evasion".

54. For the same reason, if, contrary to the view which we have expressed in paragraph 45 above, the penalty under Section 98A of the TMA 1970 is somehow dependent on the relevant failure to account for PAYE being "knowing" and not "inadvertent", it is our view that that failure in the present case was "knowing".

Impact on the above conclusions of the grounds of appeal

55. We do not consider that the conclusions set out in paragraphs 51 to 54 above are altered by any of the grounds of appeal. Specifically:

(1) we do not see how the Appellant's relationship with Mr Sloan can possibly have the effect of making the inaccuracies inadvertent or careless.

We should start by observing that we find it odd that the first time that the Appellant mentioned his relationship with Mr Sloan as being a cause of the various inaccuracies was at the meeting held in private between the Appellant and the Officers of the Respondents on 2 February 2015. This was long after the investigation into the Appellant

commenced and the Appellant was offered the opportunity to make a full disclosure of the irregularities in his tax affairs (3 May 2012) and indeed several months after the finalisation of the Disclosure Report (3 September 2014). We think that it is curious, to say the least, that the Appellant had not seen fit to mention Mr Sloan as a causative factor before that meeting.

There is also no corroboration of the Appellant's evidence as regards the impact of Mr Sloan on the Appellant's tax affairs.

Then there is the fact that Mr Sloan was dismissed from the Respondents' employment in 2003, at a very early stage in the period with which we are concerned.

Leaving the above anomalies aside, the Appellant has put his defence based on the activities of Mr Sloan in two distinct and, we think, inconsistent ways.

The first is that, in his notice of appeal dated 11 December 2015, the Appellant said that his association with Mr Sloan "affected my ability to focus on my accounting systems". No reason was given as to exactly how the relationship with Mr Sloan had had that effect and we do not see how, even if it did, that lapse in focus could have lasted beyond the period in which Mr Sloan was employed by the Respondents or explain the systematic long-term evasion which has occurred in this case. We do not accept that the errors in question were a result of the Appellant's inability to focus on his accounting systems. Instead, the inaccuracies in question were systematic and perfectly deliberate.

This leads on to the second way in which the Appellant seeks to rely on Mr Sloan as a causative factor, which is that, in his meeting with the Officers of the Respondents on 2 February 2015, the Appellant said that:

(a) his relationship with Mr Sloan, once it became generally known, led to his being compromised with other people working in the Belfast docks;

(b) this led to his being compelled to make regular protection payments in order to be able to carry on his business unhindered; and

(c) this in turn meant that he was financially compelled to conceal his income and divert the hidden monies into meeting his protection obligations.

We should observe that this explanation for the impact of the Appellant's relationship with Mr Sloan on his various failures to comply with the tax legislation is not consistent with the first explanation in that, whereas the first explanation sought to emphasise that the errors were caused by an insufficient focus on accounting systems, this suggests that the errors were perfectly deliberate but excusable.

In relation to this second explanation, we have some difficulties in accepting that the inaccuracies can be explained solely by reference to financial compulsion.

For instance, we note from the Disclosure Report that:

(i) the Appellant made five lump sum payments from unknown sources over the period from 18 June 2001 to 18 December 2003 in the aggregate amount of £30,782.82 to repay the mortgage on his home;

(ii) the Appellant funded renovations on his home between 2004 and 2006 in the aggregate amount of £58,000.00; and

(iii) the Appellant paid £10,000 as a deposit on a holiday home in Cushendall which was purchased for £100,000 in June 1999 and then made nine lump sum payments from unknown sources over the period from 28

December 2000 to 31 December 2003 in the aggregate amount of £31,039,60 to repay the mortgage on the holiday home.

These various payments are not consistent with the proposition that the Appellant could meet his protection payment obligations only by ignoring his responsibilities under the tax legislation.

However, even if we were to accept that the Appellant felt compelled to evade his tax liabilities in order to fund the protection payments in question, that does not alter the fact that the Appellant chose to evade the taxes and that the inaccuracies in question were deliberate and not inadvertent or careless. Whilst we might sympathise with the Appellant's predicament, that does not alter the fact that he deliberately, fraudulently and dishonestly chose not to comply with his tax obligations;

(2) as for the Appellant's bookkeeper, leaving aside the fact that the Appellant was responsible for the bookkeeper's actions, she could only have worked with the records which were made available to her. She could hardly have been aware of sales which the Appellant chose not to record, bank accounts which the Appellant chose to hide and secret cash payments which the Appellant chose to make. The frequency with which the relevant inaccuracies arose, the length of time over which they arose and the quantum of the amounts involved make it inconceivable in our view that the inaccuracies were attributable to the inexperience of the Appellant's bookkeeper;

(3) we also have some difficulty in seeing how the Respondents' inability to identify these inaccuracies when they inspected the Appellant's records at various points in the past is relevant in this context. The fact that the Respondents did not identify the inaccuracies says nothing about whether the inaccuracies were inadvertent or careless or were deliberate. Moreover, it was not down to the Respondents to identify inaccuracies of which the Appellant was himself very well aware; and

(4) finally, we do not see how the Appellant's current medical condition can possibly explain a course of behaviour which commenced in 1998 and continued over a prolonged period until 2013. The medical reports which were presented to us date from 24 April 2018 and thereafter. They detail the strain which the Appellant has been under as a result of the Respondents' investigation and the current appeals. However, they do not testify to the Appellant's state of mind in 1998, when the inaccuracies started. On the contrary, they suggest that, at that time, and up to around at least 2007 (which was eight years before the first report of Dr Minay) the Appellant was functioning perfectly well. The first report from Dr Minay noted that it was the Respondents' investigation which had led to the changes in the Appellant's personality, and that the Appellant had reported that he had previously been "very decisive", "well organised" and "high functioning". We therefore discount the medical evidence as a reason to conclude that the errors in this case were anything other than deliberate, fraudulent and dishonest.

56. As evidence that the inaccuracies in the Appellant's accounts were not deliberate, Ms McConell referred to the fact that the Appellant had made a voluntary disclosure of certain VAT errors (see paragraph 9 above).

57. We do not see how that disclosure suggests any such thing. By that time, the Respondents' investigation into the Appellant's affairs was well underway and the Appellant would have known that the inaccuracies were going to emerge sooner or later.

Conclusions in relation to the validity of the relevant VAT assessments and the penalties

58. The conclusions set out in paragraphs 52 to 57 above mean that, in our view:

(1) the Respondents were entitled to issue the assessments under Section 73 of the VATA in relation to prescribed accounting periods ending more than four years prior to the date of the assessments and that therefore the appeal should be dismissed to the extent that it relates to those VAT assessments; and

(2) the Respondents were entitled to issue each of the penalties which they have issued and all that remains to be considered is whether the quantum of those assessments is appropriate.

The quantum of the penalties

59. Turning then to the quantum of the various penalties, we would comment as follows.

Section 95(1) of the TMA 1970

60. As regards the penalties under Section 95(1) of the TMA 1970, the Respondents have reduced the penalty to 65% of the difference between the amount of tax payable by the Appellant and the amount of tax which would have been payable by the Appellant if the relevant returns had not contained the inaccuracies. They have done so by giving the Appellant a reduction of 5% (out of a maximum of 20%) for disclosure, 25% (out of a maximum of 40%) for co-operation and 5% (out of a maximum of 40%) for seriousness and have explained their approach as follows:

(1) disclosure - the Appellant did not take up the Respondents' offer to make full disclosure under the CDF and initially denied the fact that he had failed to include in his returns a substantial number of sales over many years. It was only after persistent challenge by the Respondents that the Appellant admitted to the inaccuracies in question;

(2) co-operation – the Appellant initially denied any wrongdoing and blamed his bookkeeper for the inaccuracies. However, he did ultimately co-operate with his representative in the production of the Disclosure Report and provided a statement of his assets and liabilities. He also made a number of substantial tax payments on account and sold his holiday home in order to do so; and

(3) seriousness – the amount of under-declared sales of £764,094.00 was significant and occurred over many years. In addition, the Appellant made efforts to conceal the sales by making unrecorded cash payments.

61. The Appellant submits that, for the reasons set out in his grounds of appeal, a greater abatement should have been applied.

62. We do not consider that there is any reason to increase the aggregate discount of 35% on the basis of the grounds of appeal because:

(1) for the reasons which we have already rehearsed, we do not consider any of the grounds to be credible explanations for the inaccuracies which were made. Consequently, in our view, they do not affect the seriousness of the inaccuracies. In our view, the Appellant is fortunate to have been given a 5% abatement for seriousness. We would not ourselves have been inclined to award that discount although, given the significant quantum of the aggregate tax liabilities to which these proceedings relate and the relatively small difference between our view on this point and the Respondents' view on this point, we do not propose to increase the penalty under Section 95(1) of the TMA 1970 by 5% to reflect our view;

(2) of the four grounds of appeal, only one of them – ill-health- has any potential relevance to disclosure and co-operation;

(3) the Respondents concede that they have made no abatement which is specifically attributable to ill-health but they have pointed out that:

(a) the Appellant made no mention of ill-health until after the penalties had been issued; and

(b) they saw no evidence of ill-health over the process leading to the Disclosure Report;

(4) we sympathise with the Appellant for the ill-health he has suffered, but we note that he has already been given a significant abatement for disclosure and co-operation and we are not persuaded that the level of his disclosure and co-operation would have been significantly greater even if he had been well. When one looks at the medical reports, they are largely focused on his levels of anxiety, decisiveness, mood, temper and ability to interact socially. Whilst those matters may be highly pertinent to the Appellant's ability to attend the hearing of the appeal, it is less clear that they affected his ability to disclose the inaccuracies or to co-operate in the Respondents' investigation into his affairs; and

(5) in the circumstances, we are not persuaded that the Appellant's ill-health justifies an additional abatement.

63. We therefore uphold the penalties under Section 95(1) of the TMA 1970.

Section 98A of the TMA 1970

64. As regards the penalties under Section 98A of the TMA 1970, no abatement was made to the penalties by the Respondents but we do not see anything in the legislation which suggests that they had the power to do so or that we have a discretion to do so. The grounds of appeal are therefore not relevant to these penalties.

65. We therefore uphold the penalties under Section 98A of the TMA 1970.

Schedule 24 of the FA 2007

66. As regards the penalties under Schedule 24 of the FA 2007, the Respondents have assessed the penalties on the basis that:

(1) the disclosure made by the Appellant was "prompted", so that the penalty range is between 50% and 100%;

(2) the penalty should be reduced to 76% of the additional amount of tax falling due as a result of correcting the inaccuracy on the basis that the Appellant is entitled to a reduction of 8% (out of a maximum of 30%) for telling, 25% (out of a maximum of 40%) for helping and 15% (out of a maximum of 30%) for giving. They have explained their approach as follows:

(a) telling - the Appellant did not take up the offer of the CDF and initially denied the fact that he had failed to include in his returns a substantial number of sales over many years. It was only after persistent challenge by the Respondents that the Appellant admitted to the inaccuracies in question;

(b) helping – the Appellant initially denied any wrongdoing and blamed his bookkeeper for the inaccuracies. However, he did ultimately co-operate with his representative in the production of the Disclosure Report and provided a statement of his assets and liabilities. He also made a number of substantial tax payments on account and sold his holiday home in order to do so; and

(c) giving – the Appellant was very reluctant to provide information during the enquiry but did ultimately co-operate in the preparation of the Disclosure Report; and

(3) there are no "special circumstances".

67. The Appellant accepts that the disclosure was prompted but says that the inaccuracies were careless and not deliberate - so that the penalty range was between 15% and 30%. The Appellant also submits that the penalties should have been set at the minimum figure of 15%, which is to say that he should have been given a 100% discount for telling, helping and giving because he made a full disclosure in producing the Disclosure Report as part of the COP 9 process.

68. We do not agree with either of the Appellant's submissions in this regard. In the first place, for the reasons outlined in paragraphs 52 to 57 above, we do not agree that the inaccuracies in this case were careless. Instead, we agree with the Respondents that the inaccuracies were deliberate and that therefore the minimum penalty in each case was 50% and not 15%. In the second place, we agree with the Respondents that the Appellant is not entitled to a 100% discount for the quality of his disclosure. In our view, given the Appellant's refusal to take up the CDF, his persistent denials at the start of the investigation and his attempts to place the blame on his bookkeeper and his relationship with Mr Sloan, the discount of 48% of the difference between the maximum penalty and the minimum penalty (which ultimately resulted in a penalty based on the figure of 76%) was entirely reasonable.

69. We therefore uphold the penalties under Schedule 24 of the FA 2007.

Section 60(1) of the VATA

70. Finally, as regards the penalties under Section 60(1) of the VATA, the Respondents have reduced the penalty to 65% of the VAT evaded or sought to be evaded. They have done so by giving the Appellant a reduction of 10% (out of a maximum of 40%) for disclosure and 25% (out of a maximum of 40%) for co-operation and have explained their approach as follows:

(1) disclosure - the Appellant did not take up the offer of the CDF and initially denied the fact that he had failed to include in his returns a substantial number of sales over many years. It was only after persistent challenge by the Respondents that the Appellant admitted to the inaccuracies in question; and

(2) co-operation – the Appellant initially denied any wrongdoing and blamed his bookkeeper for the inaccuracies. However, he did ultimately co-operate with his representative in the production of the Disclosure Report and provided a statement of his assets and liabilities. He also made a number of substantial tax payments on account and sold his holiday home in order to do so.

71. The Appellant submits that a larger abatement should have been made because of:

(1) the reasons set out in his grounds of appeal;

(2) the fact that he made a voluntary disclosure of his prior VAT errors (see paragraph 9 above);

(3) the fact that he engaged his representative to produce the Disclosure Report; and

(4) the fact that has made instalment payments of the tax that is due and has sold his holiday home in order to do so.

72. We do not agree that a larger abatement should have been made, essentially for the same reasons as we have set out in paragraph 62 above in relation to the penalties under Section 95(1) of the TMA 1970. We would add that, in our view:

(1) the Appellant does not deserve any additional abatement for the fact that he wrote to the Respondents on 1 October 2012 and alerted them to certain prior VAT errors. This is because, at that point, the Respondents had already commenced their investigation into the Appellant. The disclosure was therefore hardly unprompted (see the VAT Tribunal decision in *James Ashworth Waterfoot (Successors) Limited* [MAN/95/782]); and

(2) the Respondents have already taken into account (and made a reasonable abatement for) the facts outlined in paragraphs 71(3) and 71(4) above in reaching their view that a penalty based on 65% of the VAT evaded or sought to be evaded was appropriate.

73. We therefore uphold the penalties under Section 60(1) of the VATA.

DISPOSITION

74. For the reasons set out above, we dismiss the Appellant's appeal and uphold each of the assessments, determinations and penalties listed in the tables set out in paragraph 3 above.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

75. 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.

TONY BEARE
TRIBUNAL JUDGE

Release Date: 03rd NOVEMBER 2022