[2014] UKFTT 0767 (TC)

TC03887

Appeal number: TC/2010/06390
TC/2010/06392

EVASION – VAT civil evasion penalty – sections 60 & 61 VATA 1994 – payment of central VAT assessments over long period – assessments lower than the VAT actually due – whether Appellants knew of the discrepancy – liability of director for penalty – whether HMRC satisfied burden of proof – appeals allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

KENDRICKS PLANNING LIMITED (in liquidation) **Appellant**

- and -

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

JOHN LESLIE BENJAMIN KENDRICK **Appellant**

- and -

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

TRIBUNAL: JUDGE MALCOLM GAMMIE CBE QC
MRS SHAHWAR SADEQUE

Sitting in public at Bedford Square, London WC1 on 12 November 2012

Robert Trevis, counsel, instructed by Wildin & Co for the Appellant

Philip Shepherd, Senior Officer, for the Respondents

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DECISION

Introduction

1. These are appeals by Mr John Kendrick and Kendricks Planning Limited ("**KPL**") against the decision by the Respondents ("**HMRC**") to impose civil evasion penalties under section 60 Value Added Tax Act 1994 ("**VATA**") in respect of the evasion of VAT with conduct involving dishonesty.

2. In the case of Mr Kendrick the penalty relates to VAT periods 03/03 to 03/06 in the amount of £34,083 and in the case of KPL the penalty relates to VAT periods 09/06 to 03/08 in the amount of £28,754. HMRC seek to recover the penalty imposed on KPL from Mr Kendrick under section 61 VATA.

3. HMRC's decision to impose penalties was notified to the Appellants on 6 May 2010 and that decision was upheld on review notified on 8 July 2010, subject to an increase from 30 to 40 per cent in the mitigation allowed.

4. We received in evidence a bundle of documents including correspondence starting in January 2003 and running through to the decision on review. We also heard evidence from Mr Kendrick, Janis Martell (his bookkeeper) and Graham Wildin (his accountant). Mr Philip Gittins, HMRC's officer who conducted the enquiries leading to his decision of 6 May 2010 to impose a civil penalty, and Mr Hyde (the HMRC officer who conducted the review of Mr Gittins' decision) also gave evidence.

The Correspondence

5. We start by summarising the correspondence to provide the background and flavour to the matter. HMRC did so at greater length in their Statement of Case. Our (shorter) summary is drawn from the documents that were produced to us. Not every document referred to was included in the documents produced to us but where material was missing it was possible to derive the detail from other documents.

6. Mr Kendrick applied to be registered for Value Added Tax purposes under the trading name of John Kendrick and Associates on 3 January 1989 (we assume that this should have been 1990). A registration certificate was issued on 12 January 1990, effective 1 January 1990. The business activity was described as "sole proprietor operating from associated companies' premises providing assistance with regard to planning applications and obtaining regional support grants. Also functions as company secretary for 2 associates." We heard no evidence regarding the associated companies concerned or of any company secretarial activities.

7. HMRC made an inspection visit to Mr Kendrick on 12 February 1992. The report of that visit recorded that Mr Kendrick had re-examined his figures for the 1990 and 1991 VAT periods and had found discrepancies. The report recorded the revised figures leading to an adjustment of £479.96. The report also recorded that the records were completed in pencil and that the previously declared figures had been erased. The report noted that some errors had been found but that no reason had been found to doubt the figures declared.

8. On 14 January 2003 HMRC wrote to Mr Kendrick regarding outstanding VAT returns starting with the period 03/01 and VAT arrears of £650. The letter indicated that Mr Kendrick had informed HMRC (evidently in a telephone conversation on 14 November 2002) that he had been made bankrupt but that they had been unable to obtain details of this. This prompted a long letter dated 22 January 2003 from Mr Kendrick in which he explained that he had been made bankrupt in the Herefordshire County Court but that he believed that the bankruptcy order had subsequently been annulled. (A subsequent letter from him of 20 February 2003 suggests that that the bankruptcy order might not yet have been set aside.)

9. The letter of 22 January 2003 continued with an explanation of certain matters that had flowed from his bankruptcy and included reference to a company called Three Counties Town and Planning Consultancy Ltd ("**TCP Ltd**"). It appears that this company had been 'dissolved' by the Registrar of Companies in March 2002 through its failure to file Statutory Returns. The letter also recorded the fact of Mr Kendrick's divorce in 2002 (which he said had prevented him working from home and accessing his business records), the fact that in January 2003 he was about to undergo some hospital investigations and the fact that his business had been 'decimated' by the foot and mouth outbreak. Mr Kendrick said that he had been advised to sue his professional advisers over various matters including those relating to TCP Ltd.

10. Mr Kendrick's further letter of 20 February 2003 (which he signed with the subscript, "Three Counties Planning") confirmed a telephone conversation with HMRC on that day relating to the bankruptcy proceedings, his trading position and accounts and acknowledges "the largesse" being shown to him by HMRC over the effect of the foot and mouth outbreak on his business. (We note in passing that the UK was declared free of the disease in January 2002.) Mr Kendrick promised to be in further touch and clear outstanding matters at the earliest opportunity.

11. It appears from HMRC's letter of 25 March 2003 that this 'promise' was understood as an agreement to submit outstanding VAT returns by 7 March 2003 but that these were not received. In that letter HMRC asked Mr Kendrick to complete the outstanding returns, submit a proposed schedule of payment and confirm that the bankruptcy order had been set aside. A further letter to that effect was sent on 10 April 2003. A letter from Mr Kendrick of 11 April 2003 (in reply to HMRC's letter of 25 March 2003) indicates that a further court hearing (presumably relating to his bankruptcy) was scheduled for 29 April 2003 but said that the VAT returns should be issued to Three Counties Town and Country Planning Consultancy as distinct from himself or John Kendrick and Associates. He promised to be in touch after the 29th April 2003.

12. There is then a break in the documentary record until the record of a further assurance visit that was arranged for 21 July 2004. A note added on 29 June 2005 to the record of the July 2004 visit summarises events between July 2004 and June 2005. It seems that the July visit never took place but Mr Kendrick evidently visited HMRC's Hereford Office (which was responsible for his affairs) on 16 September 2004. This led to the issue of duplicate returns for the periods 03/01 to 12/02 and on 21 October 2004 HMRC received completed returns for those VAT periods. There remained seven outstanding returns.

13. Over time HMRC raised assessments and imposed default surcharges in respect of the outstanding periods and Mr Kendrick duly paid them. On 1 December 2004 Mr Kendrick wrote to HMRC to make some payment proposals. These involved paying of the current debt of £3,609.75 in three instalments: an initial payment £1,609.75, £1,000 by the end of January 2005 and a further £1,000 at the end of February 2005. His letter included a complaint regarding a conversation with an officer of HMRC and the failure of HMRC ever to reply formally over a period of virtually four years to the matters that he had raised. He asked that the default surcharge be cancelled. HMRC investigated Mr Kendrick's complaint and responded with a detailed reply on 12 January 2005. This recorded (again more fully than our summary) the course of events from HMRC's letter of 14 January 2003. It rejected his request that HMRC cancel the default surcharges and provided material explaining the "reasonable excuse" provisions.

14. HMRC's reply did not satisfy Mr Kendrick and on 10 February 2005 he wrote suggesting that he was entitled to leniency following the foot and mouth epidemic and making proposals for dealing with the outstanding returns for 2003 in a 'summary' fashion. The letter said that there were other matters in connection with 2004 that Mr Kendrick wished to discuss and he requested a meeting. The letter is headed "Three Counties Planning" but contains no details of TCP Ltd and incorporates Mr Kendrick's VAT number. HMRC replied on 17 February 2005 refusing to re-address the foot and mouth issue and pointing out that at a meeting on 16 September 2004 Mr Kendrick had promised to submit the outstanding 2003 and 2004 returns as soon as possible after the 2001 and 2002 returns. HMRC said that the returns had to be based on accurate records. At this point in time it also appears that no VAT debt was outstanding (because Mr Kendrick had by then paid HMRC's assessments). On 18 March 2005 Mr Kendrick indicated that he hoped to submit all outstanding VAT returns no later than the end of April or beginning of May 2005.

15. This did not happen and on 29 June 2005 HMRC issued additional assessments (notified on 4 July 2005) for the outstanding periods 03/03 to 03/05 totalling £4,166 plus interest of £349.97 and surcharge of £506.25. Mr Kendrick replied on 12 July 2005 enclosing a cheque for £1,389.00 and suggesting payment of the balance in two instalments. He also suggested that he should be exempt from VAT penalties until 26 May 2005 on account of the foot and mouth outbreak. He derived this date from a letter of that date which he had received from the Inland Revenue confirming that the foot and mouth concession in his regard had now finished. HMRC responded on 21 July 2005 pointing out that time to pay arrangements would only be agreed in exceptional circumstances and when all VAT returns had been rendered. It asked for evidence of exceptional circumstances and also drew Mr Kendrick's attention to the various flat rate, cash and annual accounting schemes and bad debt relief.

16. Mr Kendrick paid a further £1,389.00 on 29 July 2005 and said that his 2003 returns would be ready no later than the end of August. We assume he intended August 2005. This did not happen. On 6 February 2006 Mr Kendrick's accountant, Graham Wildin of Wildin & Co, sent completed VAT returns for 2003 to Mr Kendrick. They do not appear, however, to have been submitted to HMRC until the VAT inspection visit of 6 June 2008.

17. On 5 January 2006 Mr Kendrick wrote to HMRC referring to the "now defunct" TCP Ltd. It appears from that letter that Mr Kendrick had utilised his VAT registration number for trading with that company. He notified HMRC that he now intended to incorporate a new company, Kendrick Panning Ltd ("**KPL**"), and, unless he heard otherwise from HMRC, he intended to use his VAT registration "with regard to accounting practices". HMRC say that they never received this letter, a copy of which was produced to them on 6 June 2008. It was following the inspection visit on that date that HMRC took action to register KPL for VAT purposes with effect from 1 June 2006 and to de-register Mr Kendrick from the same date. KPL was separately registered for VAT on 3 September 2008 with effect from 1 June 2006.

18. On 25 January 2008 Wildin & Co sent Mr Kendrick VAT returns for 2006, "which we have completed from the information you have provided". It also requested information for 2007 to facilitate completion of the VAT returns 03/07 and 06/07 and of accounts for KPL from 1 June 2006 to 31 January 2007.

19. By telephone call on 14 April 2008 HMRC arranged a VAT inspection visit for 9 May 2008. On 18 April 2008, however, Mr Kendrick wrote to Mr Wildin saying that this would probably not take place because he would be in Canada until after 19 May 2008. That letter indicates that since 1 June 2006 Mr Kendrick had traded as KPL but used his sole trader VAT registration number. He referred to his letter to HMRC of 5 January 2006. The letter says that, "I have VAT returns for J.K. but do now need to produce them in the usual way that you do for [KPL]." He enclosed returns for quarters ending June 2006 through to March 2008, indicating that those for 2006 had been completed by Wildin & Co. The VAT inspection visit was rearranged for 6 June 2008.

20. The report of that visit indicates that there were still missing returns from 03/03. A note (added to the report on 29 July 2008) expressed the view that Mr Kendrick was paying deliberately inflated assessments and the accompanying default surcharges but that the true amount of tax might be higher than the paid assessments. The outstanding returns for periods 03/03 to 12/07 had been obtained on 6 June 2008 and showed a liability (after taking off central assessments and additional assessments) of £105,425.86. The return for the period 03/08 remained outstanding and was eventually submitted on 2 July 2008 (incorrectly recorded in the note as 04/07/07). The note also records telephone calls with Graham Wildin and an interview with Mr Kendrick's bookkeeper, Janis Mantell (*sic*). The officer concerned in the visit also completed an Evasion Referral Form on 29 July 2007.

21. The officer concerned followed up her inspection visit by letter on 10 June 2008 and Mr Kendrick replied on 25 June 2008 indicating that the information requested would be supplied following a meeting he had arranged with Wildin & Co and no later than the week beginning 30 June 2008. He did so by letter dated 30 June 2008 (although this does not appear to have disposed finally of everything requested by HMRC on 10 June 2008). On 25 June 2008 Mr Kendrick also acknowledged a notice of 23 June 2008 and asked for a detailed breakdown of the figures and indicating that he would need time to pay. HMRC replied on 27 June 2008 with the requested breakdown of the outstanding balance of £122,541.43 and asking Mr Kendrick to submit a time to pay proposal.

22. The correspondence then alternates between HMRC's National Registration Services in Grimsby, HMRC's Debt Management Unit in Northampton and the VAT office in Hereford dealing with Mr Kendrick's affairs. Broadly, HMRC in Grimsby required the outstanding VAT debt to be cleared before reviewing Mr Kendrick's application to reallocate his VAT registration number to KPL. In the event the request for reallocation was refused on 3 September 2008 because there were unpaid VAT debts on the file. At the same time KPL was separately registered under a new registration number with effect from 1 June 2006 and Mr Kendrick's VAT registration was cancelled.

23. Mr Kendrick, by telephone call and letters to the DMU in Northampton referred to his letter of 5 January 2006 and records various other matters which possibly (it is not entirely clear to us) may reflect Mr Kendrick's view that from 1 September 2006 the VAT due should be KPL's liability. There are two almost identical letters from Mr Kendrick to the DMU, one dated 16 July 2008 and the other 27 July 2008. It is unclear whether one or both were despatched.

24. On 29 July 2008 Janis Martell acknowledged a letter from the Hereford VAT Office of 28 July 2008, providing some further information and suggesting a meeting. There is also a letter dated 30 July 2008 stated as from Janis Martell (but clearly signed by a different person to that of 29 July 2008) that is in very similar terms but offers some slightly different or further information about one of the matters raised by HMRC in their letter of 10 June 2008. The letter of 30 July 2008 is stated to reply to a letter of 7 July 2008 from the Hereford VAT Office.

25. HMRC raised a further assessment on 29 July 2008 for VAT and interest of £1,211.87 in respect of the period 12/07 and the VAT account at 4 August 2008 showed a total balance of VAT, surcharge and interest of £127,368.10. The assessment of 29 July 2008 against Mr Kendrick's sole trader VAT registration number was withdrawn on 13 August 2008, to be replaced by an assessment under the new VAT registration number to be issued to KPL. The Statement of Account was presumably issued by HMRC's Business Centre in Shrewsbury to which Mr Kendrick wrote on 18 August 2008 formally disagreeing with the statement and indicating that he would want a "local" reassessment and would want to make all necessary appeals. On 19 August 2008, he wrote again to the HMRC in Shrewsbury appealing an assessment of 8 August 2008 in the sum of £110,870.17. On 26 August 2008 Mr Kendrick wrote to HMRC's Central Regional Appeals Team in Birmingham recording that his accountant had entered an appeal and a request for reconsideration.

26. On 18 September 2008 HMRC informed Mr Kendrick that the matter had been referred back to the Hereford VAT office and action by HMRC's DMU suspended. Nevertheless, on 7 October 2008, HMRC in Grimsby wrote to Mr Kendrick as a sole trader under his previous VAT registration number asking for written authority for "any declaration/monies submitted after [1 June 2006] to be transferred to the new VAT registration number [i.e. KPL's number]." Mr Kendrick acknowledged this on 20 October 2008 and asked for a schedule of payments under both VAT registration numbers. This was followed on 28 October 2008 by a letter from HMRC's default surcharge reconsideration team to KPL cancelling surcharge notices for periods 06/06 to 03/08. And then on 14 November 2008 HMRC's Large Debt Unit in Northampton wrote acknowledging Mr Kendrick's letter of 20 October 2008. This refers to a letter

from HMRC of 24 October 2008, which Mr Kendrick noted in his reply of 17 November 2008 that he had never received. As it is not in our papers or further referred to we assume it disappeared without trace, if it ever existed.

27. Then on 3 December 2008 HMRC Grimsby wrote with further details of what was needed to credit payments made under Mr Kendrick's VAT registration number to KPL's registration number and on 10 December 2008 HMRC Large Debt Unit provided a schedule of payments and asked for written authority to transfer the tax liability from Mr Kendrick's registration to KPL's registration. On 12 December 2008 the Advice Team in HMRC's Liverpool office wrote to KPL to tell it about ways in which HMRC might be able to help its business, in particular in minimising the administrative burden of VAT. As a result Mr Kendrick appears to have booked a place on a course for newly registered traders on 13 January 2009. One might be forgiven for thinking that this should not have been a necessary course for Mr Kendrick to attend, having been first registered some 19 years previously.

HMRC's enquiry under CoP9 and subsequent appeals

28. On 28 January 2009 Mr Gittins from HMRC's Wolverhampton office dealing with Civil Investigation of Fraud intervened to tell Mr Kendrick that he proposed to investigate his personal income tax affairs on the basis that his returns and accounts may have been incorrect. Its enquiries were being conducted under HMRC's Code of Practice "*Civil Investigation of Suspected Serious Fraud*". This was followed by a meeting on 9 April 2009 between Mr Kendrick and Mr Wildin and Mr Gittins and a colleague conducted under Code of Practice 9 (2005). The note of that meeting indicates that the matters in issue concerned both direct taxes and national insurance contributions and VAT. In answer to the questions on VAT Mr Kendrick confirmed (for himself and KPL) that—

> (1) No transactions had been omitted from or incorrectly recorded in the books and records of John Kendrick or KPL;
>
> (2) The books and records that he was required to keep for John Kendrick or KPL were complete and correct to the best of his knowledge and belief;
>
> (3) All the VAT returns of John Kendrick or KPL were correct and complete to the best of his knowledge and belief; and
>
> (4) He was not aware that any of the VAT returns were incorrect or incomplete at the time they were submitted.

The only qualification was that "there has been confusion regarding the trading of myself and the limited company." There was also some mention of "conditional fees", which were not in the accounts but which may or may not have been paid.

29. Mr Gittins then enquired in some detail into Mr Kendrick's business and financial affairs. His enquiries and Mr Kendrick's answers are set out in the note of the meeting but need not be covered here. Mr Gittins arranged a further meeting, to include Janis Martell, and this took place on 12 May 2009. No separate note of that meeting was produced to us but from Mr Gittins' letter of 16 July 2009 it appears that adjustments to the VAT ledgers were agreed at that meeting to take account of the legal entity. Following those adjustments, the ledger balance for Mr Kendrick was

£57,098.66 (comprising VAT of £48,575.53 and default surcharge of £8,523.13) and for KPL was £91,328.45 (comprising VAT of £91,301.91 and interest of £26.54).

30. On 24 November 2008 Mr Wildin had written to HMRC's Hereford Office claiming that the three year cap applied in Mr Kendrick's case (something that Mr Kendrick had alluded to in previous correspondence). Hereford Office had replied on 27 November 2008 to the effect that the cap did not apply to late submitted VAT returns. Mr Wildin disagreed and on 27 February 2009 HMRC's Birmingham office upheld the Hereford office's decision on review. Mr Wildin appealed the decision on Mr Kendrick's behalf. His appeal was heard on 2 June 2009 by Judge Khan (LON/2009/0634), who concluded that there was no appealable issue to engage the Tribunal's jurisdiction and invited further representations on the issue by the parties.

31. This generated further correspondence and in a letter of 1 July 2009 to Mr Wildin HMRC's Appeals Unit in Birmingham set out its views of the Hereford Office's action following the submission of the late VAT returns. The letter concluded as follows—

> "… in this instance the returns in question had been completed but not sent. The returns were made available by your client's bookkeeper and were in no sense forcibly obtained. Further, your client was aware of his VAT liability and aware that this liability was substantially in excess of the amounts centrally assessed.
>
> The current amount of debt shown on your client's ledger account is £108,578.00. Of this amount, £5274.65, being the amount of further default surcharged assessed is currently under appeal, £35,164.61 being the additional value of the returns liability against the centrally issued assessments from March 2003 to March 2005 was, but is no longer, under appeal whilst the remaining balance of £68,138.74 was not at any juncture under appeal. This last amount is due and payable immediately."

These figures presumably did not take account of the adjustments recorded in Mr Gittins' letter of 16 July 2009.

32. Subsequently a further appeal hearing on the issue was arranged for 27 November 2009 but Mr Kendrick was not notified of the hearing, which was accordingly adjourned. The Tribunal (Judge Poole and Michael James) issued directions for the future conduct of the appeal. The appeal was listed to be heard on 23 June 2010 but on 21 June 2010 Mr Kendrick withdrew his appeal.

33. On 11 December 2009 Mr Gittins received a report from Harrisons relating to the insolvent liquidation of KPL. In its Estimated Statement of Affairs as at 16 November 2009, HMRC were listed as the main creditor in respect of outstanding corporation tax, PAYE and VAT. Thereafter, Mr Gittins pursued his enquiries with Harrisons and Wildin & Co until on 6 May 2010, he wrote to Mr Kendrick notifying him of HMRC's decision to impose a civil penalty. The letter explained—

> (1) That Mr Kendrick had failed to account for the full amount of VAT due between 1 January 2003 and 31 May 2006;

(2) His conduct amounted to evasion through dishonesty of VAT amounting to £56,814;

(3) This was a result of his deliberate action in accepting and paying centrally raised assessments without notifying HMRC that they were too low;

(4) On average the centrally assessed figures were less than 15 per cent of the true liability (the assessments ranging from 7 to 34 per cent of the true liability);

(5) The penalty (£39,770.00) had been set at 70 per cent of the amount believed to have been evaded.

34. A similar letter of 6 May 2010 was sent to KPL and explained—

(1) That KPL had failed to account for the full amount of VAT due between 1 July 2006 and 31 March 2008;

(2) Its conduct amounted to evasion through dishonesty of VAT amounting to £47,927.00;

(3) This was a result of its deliberate action in accepting and paying centrally raised assessments without notifying HMRC that they were too low;

(4) On average the centrally assessed figures were less than 15 per cent of the true liability (the assessments ranging from 10 to 26 per cent of the true liability);

(5) The penalty (£33,549.00) had been set at 70 per cent of the amount believed to have been evaded.

35. Mr Gittins' decision to impose a civil evasion penalty was subject to review and his decision was upheld on 8 July 2010 but the level of mitigation was increased from 30 per cent to 40 percent. In Mr Kendrick's case this reduced the penalty from £39,770 to £34,083 and in KPL's case from £33,549 to £28,754. HMRC also decided to recover the penalties sought from KPL from Mr Kendrick as a director of KPL during the relevant VAT periods. On 3 August 2010 Mr Kendrick and KPL lodged their appeals with the Tribunal.

The Respondents' witness evidence

36. Mr Gittins gave evidence on his investigation of this matter, the main elements of which we have set out above, and was cross-examined by Mr Trevis for Mr Kendrick. In summary, Mr Gittins confirmed his reasons for concluding that Mr Kendrick had been guilty of civil evasion. He noted the length of time that the returns had been outstanding and the fact that Mr Kendrick had a long history of paying centrally issued assessments that consistently understated his liability to VAT. He noted that over the period in question the HMRC assessment was never in excess of the actual liability and that the average figure was 16.65 per cent. He considered this to be too low to be regarded as reasonable; over 20 VAT returns Mr Kendrick has paid only between 7 and 35 per cent of his actual liability. He also referred to the fact that the invoices from Wildin & Co indicated that they had charged for preparing VAT returns

but that the returns had not been submitted. He also drew attention to the VAT creditor figure in the accounts and he relied on the liquidator's papers for KPL.

37. Mr Trevis pressed Mr Gittins on his reasons for suspecting fraud in this case. Mr Gittins agreed that Mr Hyde had fairly summarised HMRC's position when he had said in his review letter that on the available evidence Mr Kendrick understood the non-declaration of his true VAT liability and its implications and that while the VAT returns were to be submitted once the business records had been sorted out, Mr Kendrick knew that it was his responsibility to render returns and pay VAT. Mr Gittins maintained that it did not seem credible that for such a long period of time Mr Kendrick was unaware that the central assessments were not an accurate reflection of his business turnover. Mr Gittins referred to the Wildin & Co invoices and the accounts. Mr Trevis put to Mr Gittins that this did not amount to a strong case for suspecting fraud.

38. Mr Gittins indicated that there were other issues that in his view merited a CoP9 enquiry relating to discrepancies in Mr Kendrick's self-assessment returns and also a transaction in Bracknell. Those other risk areas had not materialised but Mr Gittins said that he had followed the normal processes in the enquiry and denied that it just his mindset in dealing with fraud that had led him to initiate the CoP9 procedure and to reach his conclusion. He accepted that the figures in the VAT returns had been accepted. He denied that there were no fraud indicators or strong grounds for suspecting fraud. He said that the taxpayer's behaviour could be an indicator and require explanation. He accepted that Mr Kendrick had agreed to meeting and had cooperated in his enquiry. As regards KPL, he said that Mr Kendrick was KPL and had received substantial dividends. He did not think it credible that he was unfamiliar with its financial affairs.

39. Mr Hyde gave evidence of his review of Mr Gittins' decision. In agreeing with Mr Gittins he considered that it was not feasible, given Mr Kendrick's involvement in the business, that he could have thought the central assessments were a true reflection of the business' VAT liability, given that they averaged below 17 per cent of that liability. Furthermore, he said that Mr Kendrick would have known this from the work that Mr Wildin had done in preparing the VAT returns and records, for which he had been invoiced. Finally Mr Kendrick had received default surcharge notices since period 03/03 and had still not submitted returns or paid the VAT due. He explained that he had increased the level of mitigation allowed by Mr Gittins from 30 to 40 per cent to allow for co-operation in the CoP9 procedure. However, he thought that nil mitigation was appropriate in respect of an early and truthful explanation of the reasons for the under-declaration as in his view no reasonable explanation had been offered.

40. Cross-examined by Mr Trevis, Mr Hyde defended his decision to allow no mitigation for the fact that the returns when submitted were accepted as correct. He noted that this could indicate that Mr Kendrick understood what his true liability was. If the central assessments had been closer to the eventual liability, even if the returns when made had not been accepted as correct, HMRC might not be seeking a civil evasion penalty. Mr Hyde said that the fact of Mr Kendrick's behaviour in failing to submit returns over such a long period could indicate dishonesty. He acknowledged that that went to the question of liability; he had looked at mitigation separately but

given what he had just described he did not believe that Mr Kendrick's explanation for his failure merited further mitigation. Mr Kendrick had offered no early reasonable explanation for his behaviour.

The Appellants' witness evidence

41. Mr Kendrick provided a lengthy witness statement. He had also submitted a detailed defence in response to HMRC's Statement of Case, which he confirmed to be true. He was cross-examined by Mr Shepherd. In his witness statement Mr Kendrick noted that his work involved development sites across the country and that he typically travelled long distances to carry out his work and to meet with clients and others concerned. This, together with preparing for and conducting planning appeals and hearings, absorbed his time. As a result he delegated the financial and bookkeeping side (which had until his divorce been conducted by his wife) to Janis Martell and, in turn, his accountant. He relied upon them for the day-to-day management of the business and all invoicing, payments and tax returns required. He saw his function as to ensure that there was enough money in the bank account to pay staff and overheads and keep the business going. If asked to pay an amount to HMRC, he would do so without question and fully believing that it was compliant with what the law required. At no time did he believe or was he made aware that his VAT liabilities were not being duly attended to by a competent person. Mr Kendrick drew attention to the voluminous correspondence with HMRC over the years, which did not suggest that he was someone seeking to evade tax.

42. Mr Kendrick's defence resurrects TCP Ltd, which he says traded with VAT registration number 535 6772 20. This was the number with which he had originally been registered in 1990 and which he re-assumed under the guise of John Kendrick and Associates following the dissolution of TCP Ltd in March 2002. His main points on this are that HMRC had agreed to cancel the VAT surcharges against this registration number for the tax period 06/06 and thereafter, had agreed to mitigate penalties and surcharges for earlier periods from 03/03 and that his payments to clear the outstanding debt had been disrupted by a letter from HMRC altering the allocation of payments and by the current proceedings. Mr Kendrick claims that he is severely prejudiced in being able to deal with HMRC's action given the passage of time and the difficulty of putting together the necessary documentary evidence and recalling the detail of his trading position, office administration and financial dealings.

43. Mr Kendrick's defence goes on to deal with KPL, which was eventually registered under number 927 3713 14. He makes the point in relation to KPL that he was content to rely on his in-house bookkeeper, Janis Martell, and his accountants, Wildin & Co, to process financial records, comply with the VAT returns and payments and advise Mr Kendrick, in his capacity as a director of KPL, of all relevant issues, cash-flow, payments and problems. Mr Kendrick recalled signing VAT returns and cheques from time to time when presented to him by Janis Martell. Given his limited expertise and time to handle the administrative functions of KPL, however, he relied heavily on the more experienced and specialist support that they offered. It was indicative of this that he did not participate in the meeting on 6 June 2008 when the outstanding VAT returns had been provided. He had left this to Janis Martell. As regards the invoices submitted by Wildin & Co Mr Kendrick said that he was not familiar with them and that they would go to his bookkeeper to deal with.

44. We think it unnecessary to summarise the other aspects of Mr Kendrick's defence and witness statement, which range over a variety of issues and the manner in which they were handled by the Respondents. Cross-examining Mr Kendrick Mr Shepherd put it to him that he must have known that by paying the central assessments he was paying too little VAT given the underpayment that eventually emerged in excess of £100,000. Mr Kendrick said that he did not know whether he should regard that amount as paying too little. It was obvious now that not enough VAT had been paid but he denied that in paying the assessments he knew that or was acting dishonestly. Surprisingly, Mr Shepherd's cross-examination did not go much further. In particular, Mr Shepherd did not seek to take Mr Kendrick through the lengthy correspondence or, for example, challenge Mr Kendrick's explanation how his and KPL's VAT affairs were dealt with.

45. Janis Martell gave evidence on Mr Kendrick's behalf. She started working as bookkeeper for Mr Kendrick in 2005 in a role which included compiling and completing PAYE and VAT returns and dealing with financial data and information. To the extent that there was something that she could not deal with she said that she would refer it to Wildin & Co. She said that this was necessary because the opportunities to raise issues with Mr Kendrick were irregular and brief given his workload which kept his away from the office for most of the time. She confirmed that Mr Kendrick concentrated on his area of expertise as a planning consultant and left the office and financial matters to her and others, relying on them to ensure compliance with company and tax matters and day-to-day financial administration. Mr Kendrick was good at his business but was not a business administrator.

46. From time-to-time she would ask Mr Kendrick to sign a cheque in favour of HMRC. As far as she was concerned it was better to pay HMRC's assessments than not, although she accepted that it was obvious now that there had been an underpayment. She confirmed that she alone had attended the meeting with the Respondents' officer in June 2006 and as far as she was concerned the meeting went well. In that respect she considered it better that Mr Kendrick did not attend as that would just have prolonged the meeting unnecessarily. She regarded Mr Kendrick as honest and hardworking and she supported his unequivocal denial of the dishonesty of which he was accused.

47. Mr Shepherd asked Ms Martell whether she took responsibility for the VAT returns, to which she indicated that she may have signed one or two but ordinarily did not do so as she would then be taking responsibility for their accuracy. She acknowledged that one would ordinarily expect someone to submit the VAT returns but said that the failure to do so was not necessarily deliberate. She considered that it was always necessary to keep the business running because otherwise there would be no VAT to pay at all. Asked whether she would be aware that £100,000 was a significant underpayment, she said that she thought that anyone in control of the business might do so but Mr Kendrick was relying on other people in this respect. Ms Martell was not taken through the correspondence or other documents and we therefore have no explanation from her of its content.

48. Mr Wildin confirmed that his firm dealt with the production of annual accounts, self-assessment returns and advice on financial matters. He said that his firm would have normally picked up any disparity between income and the VAT charged to

clients. In particular, in a case such as this where there was an issue regarding proper VAT returns, his firm would have checked the returns to discover any potential discrepancies. He said that in his view there was no evidence to establish that Mr Kendrick had failed to take proper steps to deal with the financial administration of KPL or that he should be held responsible for KPL's failures in this regard.

49. Asked by Mr Trevis about his firm's invoices, he said that the entry "VAT records and returns" did not necessarily mean that his firm had actually prepared the VAT returns. It might cover routine work on VAT, reconciling annual information and working out what outputs or inputs were involved. Mr Trevis asked his whether it was possible to tell from one quarter to the next whether the business was paying too much or too little VAT. Mr Wildin observed that he would expect an accountant to do so but Mr Kendrick was not a numerate person. He commented that Mr Kendrick's tax affairs generally were in a disorganised state and Mr Wildin was always chasing him on matters. He had acted for Mr Kendrick since 1990 and business records had always been a difficult aspect of matters but some periods had been worse than others and the period in question was possibly a worse one. Nothing that Mr Kendrick had said or done, however, suggested to Mr Wildin that he was dishonest.

50. Mr Shepherd cross-examined Mr Wildin briefly but to no particular effect. He was also not taken through the correspondence and other documents and his explanation of his firm's invoices was not challenged.

The Legislation

51. Section 60 VATA provides as follows—

> (1) In any case where—
>
> (a) for the purpose of evading VAT, a person does any act or omits to take any action, and
>
> (b) his conduct involves dishonesty (whether or not it is such as to give rise to criminal liability),
>
> he shall be liable, subject to subsection (6) below, to a penalty equal to the amount of VAT evaded or, as the case may be sought to be evaded, by his conduct.
>
> …
>
> (7) On an appeal against an assessment to a penalty under this section, the burden of proof as to the matters specified in subsection (1)(aq) and (b) above shall lie upon the Commissioners.

52. Section 61 VATA provides as follows—

> (1) Where it appears to the Commissioners—
>
> (a) that a body corporate is liable to a penalty under section 60, and

(b) that the conduct giving rise to that penalty is, in whole or in part, attributable to the dishonesty of a person who is, or at the material time was, a director or managing officer of the body corporate (a "named officer"),

5 The Commissioners may serve a notice under this section on the body corporate and on the named officer.

(2) A notice under this section shall state—

(a) the amount of the penalty referred to in subsection (1)(a) above ("the basic penalty"), and

10 (b) that the Commissioners propose, in accordance with this section, to recover from the named officer such portion (which may be the whole) of the basic penalty as is specified in the notice.

(3) Where a notice is served under this section, the portion of the basic penalty specified in the notice shall be recoverable from the named officer as if he were 15 personally liable under section 60 to a penalty which corresponds to that portion; and the amount of that penalty may be assessed and notified to him accordingly under section 76.

(4) Where a notice is served under this section—

(a) the amount which, under section 76, may be assessed as the amount 20 due by way of penalty from the body corporate shall be only so much (if any) of the basic penalty as is not assessed on and notified to a named officer by virtue of subsection (3) above; and

(b) the body corporate shall be treated as discharged from liability for so much of the basic penalty as is so assessed and notified.

25 (5) No appeal shall lie against a notice under this section as such but—

(a) where a body corporate is assessed as mentioned in subsection (4)(a) above, the body corporate may appeal against the Commissioners' decision as to its liability to a penalty and against the amount of the basic penalty as if it were specified in the assessment; and

30 (b) where an assessment is made on a named officer by virtue of subsection (3) above, the named officer may appeal against the Commissioners' decision that the conduct of the body corporate referred to in subsection (1)(b) above is, in whole or part, attributable to his dishonesty and against their decision as to the portion of the penalty which 35 the Commissioners propose to recover from him.

(6) In this section a "managing officer", in relation to a body corporate, means any manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity or as a director; and where the affairs of a body corporate are managed by its members, this section shall apply

in relation to the conduct of a member in connection with his functions of management as if he were a director of the body corporate.

53. Section 70 VATA provides for mitigation as follows—

(1) Where a person is liable to a penalty under section 60, 63, 64, 67 or 69A or under paragraph 10 of Schedule 11A, the Commissioners or, on appeal, a tribunal may reduce the penalty to such amount (including nil) as they think proper.

(2) In the case of a penalty reduced by the Commissioners under subsection (1) above, a tribunal, on an appeal relating to the penalty, may cancel the whole or any part of the reduction made by the Commissioners.

(3) None of the matters specified in subsection (4) below shall be matters which the Commissioners or any tribunal shall be entitled to take into account in exercising their powers under this section.

(4) Those matters are—

(a) the insufficiency of the funds available to any person for paying any VAT due or for paying the amount of the penalty;

(b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of VAT;

(c) the fact that the person liable to the penalty or a person acting on his behalf has acted in good faith.

54. In relation to the construction of these provisions, section 71 provides that—

(1) For the purpose of any provision of sections 59 to 70 which refers to a reasonable excuse for any conduct—

(a) an insufficiency of funds to pay any VAT due is not a reasonable excuse; and

(b) where reliance is placed on any other person to perform any task, neither the fact of that reliance nor any dilatoriness or inaccuracy on the part of the person relied upon is a reasonable excuse.

The Respondent's submissions

55. Mr Shepherd for the Commissioners drew attention to the basic obligation that fell on a taxpayer to make returns and pay tax. He submitted that Mr Kendrick, for himself and as a director of KPL, had paid the central assessments (increased from 2005 by additional assessments) for the missing VAT returns in the knowledge that they were lower than the VAT which was properly due for the VAT periods in question. Mr Shepherd said that this amounted to dishonesty which resulted in the evasion of VAT. This view was supported by the failure to make returns, the length

of time that it had taken Mr Kendrick to remedy the position and the amounts involved. He submitted that Mr Kendrick must have known the true position.

56. He drew attention to the fact that Mr Wildin had written to Mr Kendrick on 6 February 2006 enclosing the completed returns for VAT periods 03/03 to 12/03 but these had not been submitted to the Respondents and were only received by them when collected on 6 June 2008. Mr Wildin had also invoiced Mr Kendrick for completion and provision of VAT records and returns on 30 March 2007, 17 January 2008 and 18 February 2008. On 25 January 2008 Mr Wildin had written to Mr Kendrick enclosing the completed returns for VAT periods 03/06 to 12/06.

The Appellant's submissions

57. Mr Trevis noted that much of Mr Kendrick's evidence and that of Ms Martell and Mr Wildin was unchallenged. He also noted that both Ms Martell and Mr Wildin had been willing to give evidence supporting Mr Kendrick. He noted that the VAT returns when made had not been challenged and he criticised Mr Gittins for failing to approach Mr Wildin to ascertain whether his firm had undertaken the returns. In the event Mr Gittins' assumptions about what had been included in the invoiced amounts had been wrong. There was nothing to show fraud or dishonesty and Mr Gittins' suggestion of other irregularities had drawn a blank. It was only the submission of the returns that had generated a referral for his consideration.

58. Mr Trevis pointed out that the more serious the allegation the higher the standard of proof required and in this case the evidence available to HMRC was insufficient. In addition, it was self-evident that Mr Kendrick as a director of KPL had in fact appointed an accountant and employed a bookkeeper to take responsibility for this aspect of the company's affairs. There was no failure on his part as a director.

Discussion

59. Mr Shepherd and Mr Trevis referred to various authorities, with which we shall deal first. On the issue of dishonesty, we were referred by Mr Shepherd to the decision of the Privy Council in *Barlow Clowes International Ltd & Anor v Eurotrust International Ltd & Ors (Isle of Man)* [2005] UKPC 37. This makes the point that a dishonest state of mind may consist in knowledge that a transaction is one in which he cannot honestly participate or in suspicion combined with a conscious decision not to make enquiries which might result in knowledge. Most particularly, although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. In other words, if by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant uses a different standard to judge the matter. Mr Trevis did not dissent from this proposition.

60. Mr Shepherd also relied upon *R v Dealy* [1995] BVC 86 for the proposition that 'evasion' (in that case as found in section 39(1) VATA 1983) did not require that a permanent default was intended, i.e. that the taxpayer intended never to pay the tax. Thus, the fact that Mr Kendrick always intended at some stage to submit correct VAT returns and pay the tax would not prevent his conduct amounting to evasion. Again. Mr Trevis did not dissent from this proposition.

61. In *Dealy* the company was found to have kept proper books which showed that the company was working at a loss and was being kept going by using the money owed for VAT, which was more than the sum that had been assessed by HM Customs & Excise. A file was found containing completed but unsigned and unsubmitted VAT returns together with a letter from the company's accountants expressing concern at the taxpayer's conduct and warning of the possible consequences. The taxpayer admitted his failure to submit returns and pay the tax but sought (unsuccessfully) to avoid the charge of being knowingly concerned in the fraudulent evasion of VAT on the basis that it was always intended to pay the VAT.

62. *Dealy* was referred to at length by the VAT Tribunal in LON/97/711 *Bourne Vehicle Hire Ltd* (Decision 15267). This involved rather similar facts, with the taxpayer failing to submit returns for seven consecutive periods and paying the central assessments. The taxpayer's records and accounts were found to be "in impeccable order particularly in relation to VAT matters". Approximately £31,000 of VAT had been underpaid and a civil evasion penalty (with 75 per cent mitigation) was sought. Bourne appealed on the basis that:

> " …'both the input tax and output tax were accurately entered in our account and the liability declared in our audited and published accounts;' and 'The reason that the returns were not sent on time was not through dishonesty, but because we were quit (sic) unable to pay the amounts as they became due. We do not consider that it was dishonest not to pay when we were constanly (sic) faced with our customers failing to pay us'. To those statements, Mr R Edley, Bourne's accountant who appeared to represent it, made the following additional submissions in support of Bourne's claims not to have dishonestly evaded the tax upon which the penalty under appeal had been calculated. He maintained that Mr Charlton is an honest person who finds the word 'dishonest' 'quite repugnant'. He further submitted that the VAT which had not been paid had been applied in paying Bourne's other debts in order to keep its business going, … He submitted that the company should be given some credit for the fact that it had paid all the tax centrally assessed on it, and it should be borne in mind that throughout it had never been approached by the Commissioners on the basis, 'Do you have problems: can we help?' Finally, Mr Edley maintained that Bourne had never made a conscious decision to pay centrally issued assessments because they were made in sums less than its true liability in the various periods to which they relate."

63. At paragraph 9 of the decision, the Tribunal noted that the standard of proof is that of the balance of probabilities but that the Tribunal should not be satisfied with anything less than a high degree of probability (*Gandhi Tandoori Restaurant v Customs and Excise Commissioners* (1989) VATTR 39). The Tribunal then referred to *Dealy* before citing Lord Lane in *R v Ghosh* [1982] 2 All E R 689 at 696:

> "In determining whether the prosecution has proved that the defendant was acting dishonestly, a jury must first of all decide whether according to the ordinary standards of reasonable and honest people what was done was dishonest. If it was not dishonest by those standards that is the end of the matter and the prosecution fails. If it was dishonest by those standards, then the jury

must consider whether the defendant himself must have realised that what he was doing was by those standards dishonest. In most cases, where the actions are obviously dishonest by ordinary standards, there will be no doubt about it. It will be obvious that the defendant himself knew that he was acting dishonestly. It is dishonest for a defendant to act in a way which he knows ordinary people consider to be dishonest, even if he asserts or genuinely believes that he is morally justified in acting as he did. For example Robin Hood or those ardent anti-vivisectionists who remove animals from vivisection laboratories are acting dishonestly, even though they may consider themselves to be morally justified in doing what they do, because they know that ordinary people would consider these actions to be dishonest."

64. Mr Trevis made the point in connection with *Ghosh* that regard had to be had to the totality of the evidence. In *Bourne*, relevantly to Mr Kendrick's case, the Tribunal concluded that:

"…for a period of approaching two years Bourne made no VAT returns at all, but paid tax which was assessed on it centrally as a result of its not having done so. It was not that Bourne did not know its true liability because, e.g. its books and records were incomplete: on the contrary, the evidence shows that throughout its records were maintained impeccably, so that it knew that throughout the period in question it was underpaying the tax due from it. That it should claim, as it did, that because those records were properly maintained it was not intending to be dishonest is perhaps the most disingenuous of the arguments advanced before us. It follows that it is one which we entirely reject."

65. The Tribunal then considered Bourne's other arguments before concluding:

"We then turn to the question of whether Bourne 'for the purpose of evading VAT' did any act or omitted to take any action. Bourne collected the tax due to the Commissioners from its customers, and knew that it should have accounted to them for it, less any input tax entitlement, on a quarterly basis, and, knowing that the tax due had got to be paid, took no steps to pay its true liability. That involved a deliberate decision by those responsible for the running of the company not to make returns and pay the tax due under them. We regard that as clear a case as one could imagine of a person 'omitting to take any action'. We are driven to the conclusion, and hold, that that decision was intended to enable the company to evade tax.

…

We are also satisfied, and hold, that by the ordinary standards of reasonable and honest people, Bourne acted dishonestly. Its course of conduct with regard to the matters with which we are dealing over a period extending towards two years speaks for itself."

66. It is readily apparent that Mr Kendrick's case differs in various respects. Most particularly, in each of *Dealy* and *Bourne*, the taxpayer knew exactly what it was doing. In both cases the taxpayer had collected VAT and had made the deliberate decision not to pay over to HM Customs & Excise the amount that it knew was

properly due. By the ordinary standards of reasonable and honest people, that is acting dishonestly. Some people might regard such action as morally justifiable if, for example, it serves to keep the business in being and secures continuing employment for employees. Like Robin Hood, however, that does not alter the fact that the taxpayer is dishonestly retaining money that should properly be paid to the Crown.

67. In this case, HMRC have in our view failed to establish that Mr Kendrick knew what he was doing. In some respects we think that HMRC have approached the matter on the basis that the length of time that Mr Kendrick had failed to submit returns and the amount of tax involved make the outcome obvious and little more need be done to justify the civil evasion penalties sought. In our view that is incorrect: it is not that Mr Kendrick was out of contact with HMRC for any significant part of that period or that, on the evidence we heard, he did not believe that the amount of the central assessments represented a reasonable approximation of his liability which ensured that he was paying sufficient pending Ms Martell and Mr Wildin sorting matters out.

68. The amount of underpaid tax that built up over the period concerned tells to some extent against Mr Kendrick. One might think that someone in his position must have known that too little was being paid. In this respect, we think that there are several aspects of the on-going correspondence that are unsatisfactory; not least, of course, the fact that Mr Kendrick's promises to deal with matters within certain periods were never fulfilled. Nevertheless, none of Mr Kendrick, Ms Martell or Mr Wildin was cross-examined on any of this; nor was the evidence by all concerned of his general approach to financial matters and business administration challenged. Furthermore, we were left with no clear picture as to how the financial side of the business operated: for example, who was responsible for invoicing clients; what procedures operated between Mr Kendrick and Ms Martell in dealing with this; whether there were zero-rated supplies and, if so, who dealt with those aspects of the business. Such information might have provided a better picture of Mr Kendrick's understanding of the operation of VAT and therefore his potential knowledge of the likely amount of VAT that he would have to be accounting for each quarter. A clearer picture might have indicated that Mr Kendrick was well aware of the income that his or KPL's business was generating and therefore of the likely amount of VAT that should be paid. The only impression we are left with is of someone who was good at his professional activity (whatever its detail may have been) but who lacked a grasp of the financial and administrative requirements of the business (whether conducted as a sole trader or in corporate form), which as a result were in a chaotic state over a long period.

69. It is not enough, however, that this might have been the situation. The burden of proof for a serious allegation such as that envisaged by section 60 VATA is placed on HMRC. HMRC did not seriously challenge in cross-examination the picture that we have just described of Mr Kendrick's and KPL's affairs or establish that Mr Kendrick must have known the true position. We infer, although nothing was said about this, that following his divorce in 2002 until Ms Martell joined him in 2005, Mr Kendrick may have been handling (or, perhaps more accurately, not handling) bookkeeping matters himself. Thereafter, there was a period in which Ms Martell was working hard to restore order to chaos.

70. It may be that if we had known more about Mr Kendrick's and KPL's business and the way in which it was conducted we would have concluded that this is not an accurate reflection of matters. Plainly it is completely unacceptable that taxpayers should neglect their VAT affairs to the extent that Mr Kendrick and KPL did and we reject the suggestion that he was inclined to advance that it was in some way HMRC's fault rather than his. The number of different VAT offices that over time became involved might seem surprising but this would not have arisen if Mr Kendrick had dealt with his and KPL's VAT affairs as he should have done. He is the author of his own misfortune in having to appeal and to defend the accusation of dishonesty that is made against him.

71. Nevertheless, the default surcharge exists partly to penalise such disorganisation. Ultimately, in this case HMRC may have to bear some responsibility for failing to deal with matters effectively before they got out of hand and for allowing the defaults to continue over a long period before taking steps to bring matters to a head. That is not, however, something with which we are concerned. For present purposes in reaching its decision, the Tribunal can only assess matters by reference to the evidence that it has heard and that has properly been examined and where necessary challenged. On that basis HMRC have failed to satisfy us to the requisite civil standard that Mr Kendrick and KPL, despite their failure to conduct their VAT affairs in a satisfactory manner, were acting dishonestly to evade VAT.

Decision

72. We accordingly allow both Mr Kendrick's and KPL's appeal against the civil evasion penalties. The imposition of KPL's penalties on Mr Kendrick therefore also fails.

73. 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.

MALCOLM GAMMIE CBE QC
TRIBUNAL JUDGE

RELEASE DATE: 6 August 2014