TC04011

Appeal number: TC/2013/02795

VAT – output tax – motor yacht acquired, intended to be used for chartering business with some private use – input tax on purchase of vessel recovered in full – no material records of private use – whether appropriate to apply Lennartz method of accounting for output tax – whether input tax should instead have been apportioned – whether assessment out of time under s 73(6)(b) VATA – appeal allowed in part

FIRST-TIER TRIBUNAL
TAX CHAMBER

T J CHARTERS LLP **Appellant**

-and-

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

TRIBUNAL: **JUDGE KEVIN POOLE**
MISSCHRISTINE OWEN FCA

Sitting in public in Temple Court, Bull Street Birmingham on 8 and 9 May 2014

Timothy Brown of counsel instructed by Hamlins LLP, for the Appellant

Patricia Roberts, Presenting Officer of HMRC, for the Respondents

DECISION

Introduction

1. This appeal mainly concerns the extent of the Appellant's output VAT liability in relation to a motor cruiser which had been purchased for the purposes of a chartering business on the basis that there would also be some personal use on the part of a member of the Appellant LLP. The issues were essentially whether the so-called *Lennartz* method of accounting for output tax was appropriate at all (rather than an apportionment and partial disallowance of input tax – which would now be out of time); and if it was, whether the calculation of that liability performed by HMRC was correct.

2. The appeal also considers the extent to which the assessment raised by HMRC was out of time under section 73(6)(b) Value Added Tax Act 1994 ("VATA").

The facts

Introduction

3. We received a bundle of documents in evidence. We also received witness statements and heard oral testimony from:

(1) Antony Rowbotham ("AR") (a member of the Appellant LLP) and Keith Zambra (a partner in Ormerod Rutter, accountants to the Appellant) on behalf of the Appellant, and

(2) Alison Sumner, Senior Officer of HMRC (specialising, at the relevant time, in VAT aspects of boats and aircraft), who led HMRC's consideration of the matters the subject of this appeal from March 2010 until February 2012, Louise Donaldson, a Higher Officer of HMRC (who took over Officer Sumner's role in this case from February 2012) and Kathryn Jenkins, a Higher Officer of HMRC, who carried out a review of Officer Donaldson's decision in this case.

4. From the evidence before us, we find the following facts.

Background and acquisition of the Lady Louise

5. AR had been involved in property letting and development through a company Leaton Estates Limited ("Leaton") and in 2007 he decided to use some of the profits he had made from that activity to buy a motor cruiser (having "always enjoyed boats and being out on the water"). He bought a 42 foot boat called "Oscar Blue" in May 2007 for some £300,000. It was registered jointly in his and his wife's names. It was a purely private purchase, intended for personal pleasure.

6. Having initially moored Oscar Blue in Chichester, AR (who lived in the Midlands at all relevant times) moved it to Southampton, where he had a berth at the mouth of the marina. He noticed other boats setting out from there with charter parties on board and after some discussion with friends and contacts he formed the

idea that he would like to use Oscar Blue partly to carry on a similar business, as well as having it available for personal use from time to time. He understood that another luxury vessel he saw being used in this way was being hired out for as much as £3,000 to £4,000 per day. He rapidly established that Oscar Blue was too small for such a business and decided to upgrade to a larger boat. He saw a 50 foot boat at the Boat Show in September 2007 and decided it would be suitable. He finally placed an order with Sealine (the manufacturer) in February 2008 and paid a deposit.

7. AR told HMRC at a meeting that he chose to purchase his new boat through a limited liability partnership because the salesman at Sealine advised him that was a good way to do it. He was vague about the benefits of this structure. He claimed not to have taken any formal advice on the matter apart from the conversation with the Sealine salesman and a short meeting with a specialist adviser recommended by him.

8. AR incorporated the Appellant LLP on 19 May 2008. He and his wife became members of it on incorporation and his company Leaton became a member on 21 May 2009. The reason for the delay before Leaton became a member was not explained to us.

9. On 28 May 2008 Sealine invoiced the Appellant for the purchase of the new vessel, called "Lady Louise". The total invoice amount was £469,671 plus VAT of £82,192.87 (total £551,863.47). It was paid for as to just over 50% by Leaton and as to the balance by AR and his wife, partly by trading in Oscar Blue against the new vessel. Lady Louise was delivered then or shortly afterwards. It so happened that AR was about to go away on holiday for three weeks, so Lady Louise sat unused in Ocean Village Marina, Southampton for a while. It took until 9 October 2008 to get the vessel appropriately licensed by Southampton City Council for charter use, so effectively the Appellant had "missed" the 2008 season by the time it was ready.

Application for VAT registration and initial advice on VAT

10. In the meantime, on 4 July 2008, the Appellant's appointed VAT advisor VATease Limited submitted on its behalf an application to be registered for VAT on a voluntary basis, with effect from its incorporation date. In its application form, it described its intended business activities as "yacht charter", giving an estimated annual turnover of £100,000.

11. On 14 July 2008, HMRC sent what appears to be a standard form "request for information" in response to the application for VAT registration, which asked for various details about the intended business. It seems this prompted an exchange of correspondence between AR and his VAT advisers (see [13] below) but it was not until 14 October 2008 that the Appellant submitted its reply to this questionnaire. The questionnaire did not enquire about intended private use of the vessel, but it did ask about the seasonality of the business and the expected charter rates. In reply, the Appellant stated that the business was expected to be seasonal, from April to October (with the vessel being kept at the marina or in dry dock during the close season) and that the intended charter rates were £1200 per half day and £2000 per full day (with potential variations depending on ancillary requirements such as catering).

12. After receiving this reply, on 17 October 2008 HMRC registered the Appellant for VAT with effect from its incorporation date, and required a first VAT return to be submitted covering the period from that date (19 May 2008) up to 31 October 2008.

13. At around the time the VAT registration application was submitted in July 2008, AR was clearly turning his mind to the specifics of VAT recovery. In the first of an exchange of emails between AR and VATease on the subject of VAT, VATease outlined to AR in an email dated 16 July 2008 "the 3 ways in which TJ Charters can account for VAT on any private use of the yacht". The email went on as follows:

> "1) Market rate charge
>
> TT Charters can invoice you at market rate for any use you make of the yacht and declare VAT appropriately.
>
> 2) Restrict input VAT
>
> You can make a estimate of the amount of private use the yacht will have and restrict the VAT to be claimed on the purchase by that percentage.
>
> 3) Lennartz approach
>
> The Lennartz approach requires you to account for VAT on a notional charge for private use based on a write-down of the asset. For assets other than land or property HMRC usually require the write down to assume a notional lifespan of 5 years. On an asset with £10,000 purchase VAT, the write down would, therefore, be £2,000 per year, £500 per VAT quarter. If you had 10% private use in that quarter you would, therefore, account for output VAT of £50 in that quarter.
>
> The advantage of the Lennartz approach over the Market Rate charge is that there is no assumed profit margin by the LLP and, at the end of the 5 years, the adjustments cease."

14. In reply to this, on a date which was not clear on the face of the documents, AR replied as follows:

> "Thanks for your email outlining the various options. I tend to favour the first as I have purchased the boat out right and by paying the normal charter rate I could pay via the directors loan and just be left to pay the vat each time I use the boat. I have had a meeti *[sic]* this morning with Phil Nicholls who thinks this should work."

Use of the Lady Louise and VAT returns

15. In its VAT return for its first VAT accounting period (from 19 May to 31 October 2008), the Appellant claimed to deduct input tax of £83,299.89 (largely consisting of the £82,192.87 incurred on the purchase of the Lady Louise). It also included £560 of output tax which, it transpires, arose entirely in respect of supplies to

AR which were described on the invoices produced (for the first time) at the hearing as "For Charter". These were for:

Date	Net	VAT	Description
30 July 2008	£1200	£210	Hire with skipper
15 August 2008	£1200	£210	Hire with skipper
1 September 2008	£400	£70	Half day on boat, no fuel
5 October 2008	£400	£70	Half day on boat, no fuel

16. These invoices are the only record of AR's personal use of the Lady Louise. AR told HMRC that he had kept a record in his diary on his mobile phone, but that record had been lost.

17. The net repayment of £82,739.89 reflected in the 10/08 return was authorised by HMRC on 16 December 2008, explicitly on a "without prejudice" basis in contemplation of an expected review of the Appellant's business activities at some point in the following 12 months. The Appellant was reminded at that time, in HMRC's letter dated 16 December 2008, to "ensure that output tax is accounted for on any private use of the vessel."

18. In its subsequent VAT returns, the Appellant did not include any further output VAT in relation to any personal use of the Lady Louise. AR's evidence at the hearing was that he had never used it personally again; he had only stayed on board occasionally overnight when cleaning the vessel or in order to meet engineers there and so on, and this was not really private use as it merely removed the need for him to stay overnight at a local hotel. The amounts of input tax claimed in subsequent periods ranged from nil to as much as £1500 (the larger amounts including roughly £1,000 in respect of VAT on the payment of mooring fees in the period ending 31 January each year)

19. In the 07/09 period return, however, the sole entry was an input tax reclaim of £379.88. This was explained later, in response to enquiries from HMRC (see below) as representing an adjustment to the supposedly overstated output VAT from period 10/08. The intended effect of this adjustment was to reduce the amount of output VAT charged under the *Lennartz* method from the actual amount of £560 originally charged to the Appellant (as reflected in the original return for period 10/08) to an amended amount of £180.12 (calculated as being an output VAT charge for four days' use at a daily rate of £45.03).

20. The chartering business was not a success, at least in the period covered by this appeal. AR described it as seasonal, essentially confined to the summer months. By the time the Lady Louise was ready for charter in 2008, the season had been missed and also the economy had entered a severe recession. The only charter during the

2009 season was one day, generating a fee of £1200 plus £180 VAT. Things improved a little in 2010 (the Appellant provided information that there had been a total of nine days' charter business during the year) and then further in 2011 (the Appellant provided information that there had been 17½ days' charter business during the year). The chartering activity had effectively become a "bareboat" chartering business, renting the vessel to an intermediary who provided a skipper and dealt direct with the customers.

21. The picture painted to HMRC and at the hearing was that the Lady Louise had become something of a white elephant. Because of the economic situation, the bottom had dropped out of the charter market (a crucial part of which was Cowes Week in early August every year), in large part because the financial sector institutions that had provided the bulk of customers in the charter market had pulled out of ostentatious client entertainment activities overnight. The recession had also caused severe problems in AR's other property businesses, which had occupied his attention completely and prevented him from sparing any significant time for the business of the Appellant; the general pressures of work had resulted in health difficulties, culminating in his hospitalisation; and the friends who had previously helped them by skippering Ocean Blue on personal pleasure trips were no longer available in Southampton and neither he nor his wife had the necessary skills and qualifications to skipper the Lady Louise themselves, nor had they the time or inclination to acquire them. In addition, the investigation by HMRC had "taken the shine" off things and his wife wanted nothing further to do with the vessel after she had lost confidence as a result of making some "mistakes with ropes".

HMRC's VAT enquiry and eventual assessment

22. Because one of the issues to be determined is the extent to which any part of the disputed assessment may have been issued out of time, we set out the history of the enquiry in a little more detail than we would otherwise.

23. On 23 March 2010, HMRC wrote to the Appellant to say they were making enquiries "to confirm the correct status of your VAT registration and treatment of your supplies". They had noted that the reported trading activity disclosed by the VAT returns up to that time was "minimal", and they were obviously concerned to establish that the Appellant truly was carrying on a business for which a VAT registration was appropriate, and that VAT was being properly accounted for on any private use of the Lady Louise. At around the same time, they opened a direct tax enquiry into the affairs of the Appellant.

24. Enclosed with HMRC's letter dated 23 March 2010 was a detailed questionnaire about the business. Ormerod Rutter, the accountants for both AR and the Appellant, replied on their behalf by letter dated 17 May 2010, with which the completed questionnaire was returned. The completed questionnaire contained (inter alia) the following information:

(1) It stated that Vatease had "assisted with VAT registration and advice on accounting for private use".

(2) It stated that "A booking diary for 2009 and 2010 is available for viewing on request."

(3) It stated that there had been 8 half-days of private use of the Lady Louise since new, and 12 days of private use was anticipated in the following 12 months. The dates of private use up to that time were said to be "recorded in the booking diary" referred to above.

(4) In reply to the question "What arrangements are in place to account (pay for) private use of the vessel by owners, directors or other persons?" the reply given was "Lennartz accounting".

25. HMRC were not satisfied with the replies and correspondence continued. They were initially sceptical that the Appellant was carrying on a business at all, but they were eventually satisfied on that issue, so we do not consider it further. They did however ask, in their letter dated 11 June 2010, for details of how VAT had been accounted for in relation to private use of the Lady Louise (both by way of output VAT and by way of adjustment of input VAT on expenses). In reply (in a letter dated 16 July 2010), Ormerod Rutter explained that by a combination of the original output VAT of £560 declared in the 10/08 return and the adjustment of £379.88 as supposed input tax in the 07/09 return, appropriate output tax totalling £180.12 had been accounted for under the *Lennartz* mechanism in respect of the four days of private use during the summer of 2008 (which Mr Zambra of Omerod Rutter calculated at a daily rate of £45.03). In the same letter, it was stated that no adjustment had been carried out in relation to any private use element of input tax incurred on repairs, maintenance, etc, as "Mr Rowbottom thought that the Lennartz arrangement was the only required adjustment".

26. In their reply dated 26 August 2010, HMRC asked for an explanation of the very sketchy *Lennartz* calculation contained in Ormerod Rutter's letter of 16 July 2010, and pointed out that an adjustment of input tax claimed on running expenses in respect of the private use element of the vessel was also required, in addition to the *Lennartz* liability for output tax. They provided some calculations of their own in relation to the *Lennartz* liability, as follows:

> "Life of asset, 60 months.
>
> **Period 10/08**
>
> 1st use within period 10/08, 5.35 months.
>
> 5.35 x £82192.47 = **£7328.82** output VAT due under Lennartz
> 60
>
> **Periods 01/09 and 04/09, no use, no adjustment.**
>
> **Period 07/09**
>
> No business use declared due to cash accounting, but actual business use 1 day. As previous year's private use was 4 days over the summer,

best judgment would anticipate similar use in 2009. 2 days private use to be accounted for. Percentage of private use therefore 66.66%

As no use during periods 01/10 and 04/10, those periods to be brought into calculations, (Information Sheet 14/07 paragraph 2.10.2), so 9 months adjustment.

9/60 x £82,192.47 = £12328.87 x 66.66% = **£8218.42** VAT due under Lennartz

Period 10/09

No business use. As previous year's private use was 4 days over the summer, best judgment would anticipate similar use in 2009. 2 days private use to be accounted for.

Percentage private use therefore 100%

3/60 x £82192.47 = **£4109.62** VAT due under Lennartz.

No further adjustments due until 07/10 unless there has been private use before this period."

27. It can readily be seen that for periods 10/08 and 10/09, HMRC assumed 100% private use and for the extended nine month period ending 31 July 2009, they assumed two thirds private use.

28. In a letter to the Appellant on the same date (26 August 2010), HMRC sent a copy of their letter to Ormerod Rutter and explained that they would "need to send you an assessment", but asked for any response to their calculations or further information by 24 September 2010 before they would do so.

29. In response, Ormerod Rutter wrote to HMRC on 21 September and again on 18 October 2010.

30. In the first of the two letters, they did not provide any new information, they simply expressed disagreement with HMRC's technical approach, giving some arguments (based on information previously supplied) as to why they considered HMRC were overstating the size of the liability (both in relation to the original input VAT claim on purchase of the vessel and in relation to the "private use" adjustment to the input VAT claim on running costs). In relation to the former, they proposed a very slightly amended *Lennartz* calculation (but argued that the resulting output liability, £45.66 per day, should only be applied in relation to days on which the vessel was actually being used privately); in relation to the latter, they referred to HMRC's proposed disallowance of 80% of the running costs as "clearly unreasonable".

31. In the second of the two letters, they responded to some specific requests for information from HMRC, but the new information supplied was minimal and much of

the letter was either effectively repetition of statements that had already been made or an expression of disagreement with the conclusions that HMRC were drawing.

32. HMRC replied to Ormerod Rutter on 3 December 2010, setting out their continuing concerns in a long letter. They clearly still had not accepted that the Appellant was carrying on a business at all, but they also set out their position on the output tax position, if a business activity was accepted. This focused purely on the *Lennartz* calculations and did not address the input tax apportionment on running costs at all. In relation to the *Lennartz* calculations, the only passages from this letter which could be said to request new information were the following:

> "If there is a period when the boat would not be available for private use due to cleaning and tidying between charters this may be considered if it can be evidenced…
>
> I understand your clients may have stayed on the yacht during their visits to Southampton. If this is so, it does not appear to have been reflected within the private use declared. Please can you clarify this point. If there has been such use please quantify it…
>
> In addition you state that the partners in the LLP have neither time, inclination nor expertise to utilise the boat to any great degree for private use and have relied on friends to assist them in taking the boat out. This is despite their previously owning a boat wholly for private use. How did this work when they owned a boat wholly for private use? Were they entirely reliant on others even then?"

33. The direct tax enquiry was clearly also progressing at that time. Included within the bundle was a copy of a letter from Ormerod Rutter to HMRC dated 7 March 2011. In that letter, the following paragraphs were included:

> "39. The enclosed computations and invoices mentioned elsewhere in this letter show relevant private use adjustments. Also, it should be noted that it takes two full days to clean the boat thoroughly and longer if it is cleaned inside at the same time. It takes two days to clean the teak decking alone. As a result, and in order to minimise costs such as hotel expenses, the Partners have stayed on the boat but in a business capacity only. It costs £200 to clean a boat and by doing it themselves, the Members keep costs to a minimum.
>
> 40. The boat owned previously by the individual partners in the LLP was smaller and, as a result, easier to manage. Friends did however assist on this boat also, given the relevant lack of experience the partners had in running boats of this size. Mrs Rowbottom is particularly concerned on this boat, given its size, and although she does help with the cleaning, does not have the inclination to use it personally. She has lost some confidence using ropes following a couple of minor errors…"

34. With the same letter, Ormerod Rutter submitted tax computations for the LLP for the periods ended 30 September 2009 and 2010 showing, inter alia, a partial

disallowance of capital allowances on the boat based on 1/12th private usage (these were included in the bundle before us, attached to the relevant letter). They also suggested a joint direct tax/VAT meeting with HMRC.

35. The meeting eventually took place on 18 November 2011. Officer Sumner attended it. From the notes of the meeting produced to us, it is apparent that no material new information was provided at the meeting in relation to private use of the vessel.

36. Correspondence continued on the direct tax side of the investigation, but there does not then appear to have been any further contact in relation to VAT for some months. On direct tax, HMRC sent a letter to Ormerod Rutter dated 6 December 2011, shortly after the meeting, in which the following questions were included under the heading "Private use of boat":

> "11. Please advise of all occasions from May 2008 to date where Mr or Mrs Rowbottom have stayed on the Lady Louise for any reason.
>
> 12. Please advise on how you calculated private use in respect of the members using Lady Louise. Please forward these calculations. Please advise of any assumptions made in determining this figure."

37. In reply, Ormerod Rutter's letter dated 19 April 2012 said:

> "11. The private use of the boat was discussed at the year end with our client. We have already discussed the fact supporting records are not available. However, again, the private use adjustment seemed reasonable, possibly excessive, given the seasonal business of the trade and the small amount of time Mr and Mrs Rowbottom have spent on the boat.
>
> 12. As above."

38. The next contact from HMRC on the VAT side was a letter dated 31 May 2012 from Officer Louise Donaldson (who introduced herself as having taken over the case from Officer Sumner, who had changed teams). She referred back to Officer Sumner's letter of 3 December 2010, in particular the explanation of how *Lennartz* calculations should be carried out. She recorded the fact that no records of private use had been provided, apart from the four days reflected in the 10/08 return; and that there did not appear to have been any adjustment to the input tax on running costs to reflect private use. She said she therefore proposed to raise a "best judgment" assessment based on the one twelfth private use that had been put forward on behalf of the Appellant. She enclosed a detailed calculation and said that she would be issuing an assessment on that basis if she did not receive any correspondence within 30 days disputing the figures.

39. Her methodology was to assume that all private use was spread evenly over the two quarters ending 31 July and 31 October in each year (the summer months). She therefore attributed 15 days of private use to each of those quarters. She then looked at each quarter individually, and treated each known invoiced charter day as a day of

business use. For each quarter, she therefore had a number of days' actual business use and a number of days' assumed private use. She then split the quarter between "business" and "private" use in proportion to those respective figures, resulting in a range of "private use" proportions from nil to 100% in each quarter. By way of example, if there was one day's charter hire recorded for a summer quarter, her calculation assumed that for the entire quarter there was 16 days' actual use (1 day of actual business use and 15 days of assumed actual private use), resulting in an overall "private use" proportion for that quarter of 15/16ths (or 93.75%).

40. She allocated the total input VAT claimed on purchase of the vessel (£82,192.47) across all VAT accounting periods over five years. For a typical three month accounting period, the allocation was £4,109.62. She then charged as output VAT the "private use" proportion of that figure for each VAT quarter. So, for the example quarter given above, she charged £4,109.62 x 93.75% = £3,852.77. Where the vessel was not used at all (either for business or private purposes) in a quarter, the £4,109.62 was carried forward and aggregated with the same figure for the next quarter, and an output VAT liability was calculated on the combined amounts by reference to the "private use" proportion of the later VAT quarter.

41. So far as the input VAT disallowance on the running costs was concerned, she simply took the overall percentage of private use over the whole period calculated as above (76.73%) and disallowed that proportion of all input VAT.

42. The net result was an overall *Lennartz* liability to output tax for the period from 19 May 2008 to 31 January 2012 of £43,558.69 and an input tax disallowance over the same period of £5,523.67.

43. In their reply dated 25 June 2012, Ormerod Rutter disputed the basis upon which Officer Donaldson had done her calculations, and also asserted that since "there has been no new evidence of fact presented since Mrs Sumner's letter of the 26th August 2010 therefore many of your proposed assessments would appear to be out of time."

44. There followed some detailed correspondence on the time limits issue, and then in a letter dated 10 August 2012 HMRC indicated that assessments had now been raised and "will be issued to your client in due course". In fact, the main assessment was dated 17 August 2012 and received by the Appellant on 3 September 2012. It covered the VAT periods from 10/08 to 10/11 inclusive. HMRC also wrote a separate letter to the Appellant dated 10 August 2012 (from Officer Graham Jones) which referred to the input tax claim for period 01/12 (though it referred, wrongly, to the "period 1st December 2011 to 29th February 2012"). This letter stated that the input tax claimed for that period was being disallowed in part (being reduced from the £1,500.97 claimed on the return to £349.32) and that there was therefore net tax due for the period of £25.68 (compared to the original repayment claim of £1,125.97). It went on to say "this letter is our assessment of the tax due".

45. On 26 September 2012, Ormerod Rutter wrote to HMRC to ask for a "local review" of the 17 August 2012 assessment, effectively repeating in summary form the representations that had previously been made.

46. The matter was passed to Officer Kathryn Jenkins for a statutory review. In her letter dated 26 November 2012, she effectively upheld both the assessments, subject to one point. She considered that the *Lennartz* calculations should be carried out on the basis that the one twelfth private use should not be spread over the summer months alone, but should be spread over the entire period when the vessel was available for use. The input VAT disallowance should then be recalculated to tally with the new overall private use percentage so found.

47. Officer Donaldson, in carrying out the recalculation, took the view that the evidence available to her pointed to the vessel being available for use all year round, as a result of which she recalculated her figures but allocated 7.6 days of private use to each quarterly VAT period. This resulted in an increase in the *Lennartz* output VAT liability figure (from £43,558.69 to £53,150.36) and an increase in the overall "private use" percentage (from 76.73% to 78.28%). There was thus a slight increase in the input VAT disallowance on the running costs – from £5,523.68 to £5,635.64. She wrote with these details on 21 December 2012.

48. Ormerod Rutter complained that the statutory review did not appear to cover the "out of time" argument, and Officer Jenkins later confirmed that she upheld the earlier view of HMRC on this. They also asked for Officer Donaldson's new calculations to be reviewed, and following various further correspondence, a further review decision was issued by Officer Jenkins on 13 March 2013. In this letter, she indicated certain further adjustments which needed, in principle, to be made to the calculations. She referred the matter back to Officer Donaldson once more for those calculations to be carried out.

49. Officer Donaldson issued a further letter dated 26 March 2013, putting into effect the instructions of Officer Jenkins in the review letter. The basic methodology remained the same, only she now took out of account certain days on which she was satisfied that the vessel was not available for use at all, she reverted to allocating the private use across only the summer VAT periods, and she recalculated the output liabilities for each period by reference to the applicable VAT rate for that period, rather than by reference to the original 17.5% rate incurred when the vessel was bought.

50. The final conclusion was therefore that, in respect of the total period from purchase of the vessel up to 31 January 2012, the *Lennartz* output VAT due was reduced to £38,544.41 (reflecting total private use of 63.27% over the period), and the disallowance of input VAT on running costs was reduced to £4,554.81. A summary of those final *Lennartz* calculations is set out in the schedule to this decision.

51. On 12 April 2013, the Appellant notified the current appeal to the Tribunal.

Extent of actual private use

52. The accounts for the Appellant for the period 19 May 2008 to 30 September 2009 disclosed losses for accounting purposes (divisible amongst the members) of some £69,000 on total turnover of £4,580 (£4,200 of which was represented by the fees charged to AR for his personal use in late summer 2008 as mentioned above). In a letter sent to HMRC on 7 March 2011 enclosing the tax computations, it was proposed that the adjusted loss for tax purposes should be £140,265 (much of the difference arising from adding back depreciation on the vessel at 5% per annum and claiming capital allowances at 25% per annum, less a one-twelfth "private usage" adjustment).

53. Clearly where combined business and private use of an asset such as a luxury motor yacht is under consideration, the scope for abuse of the VAT system is great. In that situation, a taxpayer seeking to justify a claim for deduction of input tax could be expected to be particularly sensitive about ensuring that he has the appropriate records and evidence to justify his position. The Appellant in this case has shown a cavalier disregard of any such requirements. When AR has failed to keep even the most basic records of overall use of the yacht, he can hardly be surprised that HMRC find incredible his assertion that he has made no private use of it from June 2008 to January 2011 apart from four days. We share their scepticism. In the absence of any detailed evidence, we consider entirely justified HMRC's stance that the one twelfth private use first declared by the Appellant in its direct tax computations sent to HMRC on 7 March 2011 should be carried over to the VAT position.

54. To put things in more technical terms, we consider that HMRC have exercised their best judgment when assessing the extent of the private use of the vessel as being one twelfth. The Appellant has produced no reliable evidence to suggest that this is wrong and therefore we accept it as an appropriate basis for calculating the liability. We do not however agree with HMRC's interpretation of how this finding should be followed through in computing the relevant liability, nor therefore do we agree with their calculation. This aspect is considered further below.

55. There were two issues between the parties in this appeal. The main issue related to the computation of the assessment that had been raised by HMRC, but there was also an issue about whether the original assessment was, to any extent, made outside the applicable time limits. We address these two issues in turn. It is convenient to address the "out of time" issue first.

The "out of time" issue

The law and parties submissions

56. Section 73(6) VATA contains the relevant time limits, and reads as follows:

> "An assessment under subsection (1), (2) or (3) above of an amount of VAT due for any prescribed accounting period must be made within the time limits provided for in section 77 and shall not be made after the later of the following –

(a) 2 years after the end of the prescribed accounting period; or

(b) 1 year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge,

but (subject to that section) where further such evidence comes to the Commissioners' knowledge after the making of an assessment under subsection (1), (2) or (3) above, another assessment may be made under that subsection, in addition to any earlier assessment."

57. In the present case, the main assessment (for periods from 10/08 up to 10/11 inclusive) was made on 17 August 2012 (with the 01/12 period assessed by separate letter dated 10 August 2012).

58. Clearly, therefore, periods from (and including) 10/10 were in time for assessment in August 2012 under subsection 73(6)(a) VATA; equally clearly, the earlier periods (up to and including 07/10) were out of time for assessment under that provision and could therefore only be validly assessed if subsection 73(6)(b) applied to them on the basis that they were made within one year of the relevant evidence coming to HMRC's knowledge.

59. HMRC submitted that the one year period in subsection 73(6)(b) ran from "the date on which the last piece of relevant evidence was communicated to HMRC in order to justify the making of the assessment… This is the evidence considered necessary by the officer making the assessment to justify the making of the assessment that they are making, or preparing to make." They also submitted that "if a query is raised with a business or their representative, asking for further information to inform the calculation of the assessment which is under consideration, and the reply states that no such information exists, that very information might itself be said to constitute further evidence of fact."

60. They also submitted that the word "sufficient" in this context meant sufficient to enable a calculation to be performed to an officer's best judgment, not just sufficient to indicate that something was wrong (or might be found to be wrong, on the basis of further available records).

61. Finally, they submitted that the phrase "comes to their knowledge" implied actual personal knowledge, such that "only the assessing officer can say when the necessary evidence was obtained"; if information was available but HMRC failed to recognise its significance, that was insufficient to set the one year clock running under section 73(6)(b).

62. The last piece of relevant evidence communicated to HMRC which was "sufficient in Officer Donaldson's opinion to justify the making" of the assessment was, HMRC argued, contained in the letter dated 19 April 2012 from Ormerod Rutter to HMRC referred to at [37] above.

63. HMRC argued that the "further, relevant information" provided with the 19 April 2012 letter was "copies of the year ending 2009 and 2010 Trade Profit (Loss) Computations. It was in these that that 1/12 private use of the yacht was recorded. This was the first time that the private use had been quantified by the Appellant and notified to HMRC."

64. Mr Brown on behalf of the Appellant submitted that "[t]he test for a Tribunal is to ascertain what facts the Officer relied upon to make the assessment, and determine when the last piece of evidence sufficient to justify the making of an assessment was communicated to the Commissioners." He went on to submit (citing *Pegasus Birds Limited v CCE* [1999] STC 95 and *ERF Limited v HMRC* [2012] UKUT 105 (TCC)) that "the knowledge of all Officers is relevant, not just the assessing Officer".

65. In Mr Brown's submission, HMRC had made their intentions clear in their letter dated 26 August 2010: they considered that the vessel was being put to private use, that output tax should be accounted for on the basis of the *Lennartz* principle, and they had provided the calculations upon which they proposed to proceed. Thus, their failure to issue the assessment on what he submitted was essentially the same basis until nearly two years later rendered them out of time.

66. We consider that the appropriate reference point is the decision of Dyson J in *Pegasus* (which was followed and adopted by the Upper Tribunal in *ERF*). He set out six principles, as follows:

> "**The legal principles to be applied**
>
> 1. The commissioners' opinion referred to in s 73(6)(b) is an opinion as to whether they have evidence of facts sufficient to justify making the assessment. Evidence is the means by which the facts are proved.
>
> 2. The evidence in question must be sufficient to justify the making of the assessment in question (see *Customs and Excise Comrs –v– Post Office* [1995] STC 749 at 754 per Potts J).
>
> 3. The knowledge referred to in s 73(6)(b) is actual, and not constructive knowledge (see *Customs and Excise Comrs –v– Post Office* [1995] STC 749 at 755). In this context, I understand constructive knowledge to mean knowledge of evidence which the commissioners do not in fact have, but which they could and would have if they had taken the necessary steps to acquire it.
>
> 4. The correct approach for a Tribunal to adopt is (i) to decide what were the facts which, in the opinion of the officer making the assessment on behalf of the commissioners, justified the making of the assessment, and (ii) to determine when the last piece of evidence of these facts of sufficient weight to justify making the assessment was communicated to the commissioners. The period of one year runs from the date in (ii) (see *Heyfordial Travel Ltd –v– Customs and Excise Comrs* [1979] VATTR 139 at 151, and *Classicmoor Ltd –v– Customs and Excise Comrs* [1995] V&DR 1 at 10).

> 5. An officer's decision that the evidence of which he has knowledge is insufficient to justify making an assessment, and accordingly, his failure to make an earlier assessment, can only be challenged on *Wednesbury* principles, or principles analogous to *Wednesbury* (see *Associated Provincial Picture Houses Ltd –v– Wednesbury Corp* [1947] 2 All ER 680, [1948] KB 223) (see *Classicmoor Ltd –v– Customs and Excise Comrs* [1995] V&DR 1 at 10-11, and more generally *Jon Dee Ltd –v– Customs and Excise Comrs* [1995] STC 941 and 952 per Neil LJ).
>
> 6. The burden is on the taxpayer to show that the assessment was made outside the time limit specified in s73(6)(b) of the 1994 Act".

67. Dyson J also went on to consider whose opinions are significant for these purposes, and said (at p 102):

> "The person whose opinion is imputed to the commissioners is that person who decided to make the assessment. It does not matter that he or she may not be the person who first acquired knowledge of the evidence of the facts which are considered to be sufficient to justify making the assessment."

68. HMRC accepted in their submissions that for the purposes of section 73(6)(b), the date on which "evidence of facts, sufficient… to justify the making of the assessment" came to their knowledge should be fixed as "the date on which the last piece of relevant evidence was communicated to HMRC" and not, for example, the date on which that evidence was communicated internally within HMRC to the officer making the assessment. This must be correct; were it otherwise, the time limit in section 73(6)(b) could be circumvented at will by the simple expedient of passing a time-barred enquiry for action to a new officer within HMRC.

Our findings and conclusion

69. By reference to the approach laid down by Dyson J and referred to at [66] above, we find as follows.

70. We find that the basic facts which, in the opinion of Officer Donaldson, justified the making of the assessment were (broadly) that input VAT on the purchase of Lady Louise by the Appellant had been recovered in full and without any restriction, as had input VAT on the running costs; the vessel had been privately used as well as being used for the purposes of the Appellant's chartering business; and there had been no output tax accounted for in respect of any private use of the vessel (with the possible exception of the private use in the summer of 2008).

71. All these facts had been established to the satisfaction of HMRC at a very early stage – probably as early as 20 July 2010, when HMRC received a long and detailed letter from Ormerod Rutter dated 16 July 2010 which resulted in a response from Officer Sumner in two letters dated 26 August 2010 in which she set out what she considered at that stage to be her "best judgment" calculations of the tax due.

72. It is clear however that Officer Sumner was at that stage still seeking further information; she made it clear that she still required "the actual amount of private use to be declared". In the absence of some further information on this point, we find she was at that time still of the (quite justifiable) opinion that she had insufficient evidence of facts to justify the making of an assessment.

73. It then becomes clear, when considering the correspondence in detail, that the crucial final piece of information which justified the making of the assessment in the opinion of Officer Donaldson was the fact that the Appellant had disclosed one twelfth private use of the Lady Louise in its tax computations submitted to her direct tax colleague. This becomes clear from her letter dated 31 May 2012 when she took over the case. In that letter, she recited the fact that the Appellant had not, despite a request, provided any records to support the claimed absence of private use (beyond the initial four days in 2008 referred to above); and she went on to say:

> "I intend, therefore, to raise a best judgment assessment to account for the private use of the yacht. I understand you have submitted to Mr P Blunkett my direct taxes colleague on 19th April 2012 the trade profit/loss commutations *[sic]* for the year ended 30th September 2010 which reflect 1/12th adjustment for private use…
>
> I have used the 4 days private use as per your letter dated 16th July 2010, and applied the same 1/12th private use over the remainder of the seasons… The private use adjustment on the running costs has been calculated using the proportion of business and private use days over all the VAT return periods."

74. Thus it is clear that the last crucial piece of evidence that she considered justified the making of the assessment was the disclosure to HMRC of a 1/12th private use estimate from the Appellant, which she considered to have been received in the Ormerod Rutter letter dated 19 April 2012.

75. The difficulty we see with HMRC's point of view as summarised above is that Ormerod Rutter had notified the 1/12th private use figure to HMRC at a much earlier stage than 19 April 2012. As stated at [34] above, it was specifically referred to in the material sent to HMRC on 7 March 2011. That material had formed the basis for the meeting which had taken place on 18 November 2011, and one of the purposes of the letter from HMRC (direct tax) to Ormerod Rutter dated 6 December 2011 following that meeting was to pick up on the information previously supplied and seek further detail. However, there is no suggestion that this further detail was crucial to Officer Donaldson's decision to assess; the key fact was (as was stated in HMRC's letter dated 31 May 2012) the disclosure of 1/12th private use by the Appellant, and that disclosure had in fact been made to HMRC in March 2011.

76. Given this fact, we do not consider that the Appellant has a "high hurdle" to surmount (in the words of Dyson J in *Pegasus* Birds). This is not a case in which there is substantial dispute about what facts should have been, in the opinion of the relevant HMRC officer, sufficient to justify the raising of an assessment (where it is clear that it will be difficult to displace the opinion actually held by the officer); in

this case, HMRC say the last relevant piece of information was the disclosure of the one twelfth private use in the tax computations submitted to them, and the simple fact is that this disclosure was made to them in March 2011 (explicitly covering the entire period up to the end of September 2010).

77. It follows that the one year "window" to assess under subsection 73(6)(b) VATA in respect of the accounting periods up to and including 07/10 had expired by March 2012, and therefore the assessment made on 17 August 2012 is out of time insofar as it concerns those periods. The assessment for periods 10/10 and later was made within the 2 year period set out in section 73(6)(a) VATA and is therefore in time under that provision, irrespective of its status under section 73(6)(b) VATA.

The amount of the assessment

The law and the submissions of the parties

78. Both parties referred extensively to the ECJ case of *Lennartz v Finanzamt München III* [1995] STC 514, but drew very different conclusions from it. It is worth briefly summarising the key parts of that case.

79. *Lennartz* concerned a German taxpayer who purchased a car partly for business use and partly for private use (he was an employee but with a small self-employment business as well). A number of questions were referred to the ECJ, some of which related to peculiarities of German VAT law and practice. But one crucial question before the Court concerned the extent of the right to deduct input tax on the acquisition of goods which were to be used only partly for the purposes of the taxpayer's business. In relation to that question, the ECJ ruled as follows:

> "A taxable person who uses goods for the purposes of an economic activity has the right on the acquisition of those goods to deduct input tax in accordance with the rules laid down in art 17 of the Sixth Directive, however small the proportion of business use."

80. In giving this ruling, the Court pointed to the fact that the Directive also provided that the subsequent private use of business assets on which input VAT had been deducted at the time of purchase would amount to a (taxable) supply of services by the business.

81. In the UK, the relevant provisions imposing that output tax liability are paragraph 5(4) of Schedule 4 VATA (which characterises the relevant situation as amounting to a supply of services), paragraph 7 of Schedule 6 VATA (which provides, in broad terms, that the value of that supply of services is to be the "full cost… of providing the services") and Part 15A (regulations 116A to 116N) of the Value Added Tax Regulations 1995 (which set out how that "full cost" is to be ascertained). These provisions, taken together, set out what is commonly called "the *Lennartz* method" of accounting for output tax.

82. The essence of Mr Brown's argument on behalf of the Appellant was that the *Lennartz* method should not apply at all in this case. In his submission, the *Lennartz*

method was only available if the taxpayer chose to adopt it at the time of acquisition of the asset (28 May 2008) and in this case the Appellant had not done so. It was clear from the evidence, he submitted, that as at 16 July 2008 (when AR consulted VATease – see [13] above) no such decision had yet been taken. If the vessel had been acquired for mixed business and private use it would follow that the appropriate VAT treatment was to apportion the input VAT under section 24(5) VATA in line with the intended proportions of business and private use. However, as all the evidence showed that AR intended at the time to pay a commercial rate for any personal use of the vessel, such use would amount to business use (here he referred to *JNK 2000 Limited v HMRC* [2013] UKFTT 21 (TC), in which the First-tier Tribunal held that personal use of a helicopter was in fact business use because the use was paid for at a commercial rate); and even if the correct approach in principle was to apply an apportionment of input tax, it was in fact appropriate to recover all the input tax, on the basis that the intended use of the vessel was 100% business use. In any event, he added, an assessment to recover overclaimed input tax on acquisition would now be out of time.

83. If we found against him on the question of whether *Lennartz* accounting applied at all, then he also submitted that the output tax liability calculation put forward by HMRC contained fundamental flaws. In particular, he observed that HMRC's internal guidance stated that the calculation must arrive at a "fair and reasonable figure" for the output tax liability; even if it was accepted that HMRC were right to charge output tax on 49 days' actual private use over three years, it was entirely unfair and unreasonable that their calculation should result in an output tax liability equal to 63% of the total input tax recovered. In effect what he was taking issue with was HMRC's allocation to private use of a large proportion of the time when the Lady Louise was lying idle.

84. Ms Roberts, on behalf of HMRC, argued that the Appellant had claimed 100% deduction of input tax on its first VAT return. There was no evidence of any request or attempt to apportion the input tax, indeed all the evidence pointed to the Appellant having operated the *Lennartz* method including (in particular) its specific statement to that effect in response to the questionnaire mentioned at [24(4)] above.

85. As to the calculation of the resulting output tax liability, she submitted that the final calculations (as set out in the schedule to this decision) were entirely correct and in accordance with Part 15A of the VAT Regulations.

Our findings and conclusion

86. The Appellant had been established for the purpose of running a chartering business. It reclaimed in full the input tax incurred on acquisition of the Lady Louise in its first VAT return. There is nothing to indicate that it ever had any thought of doing otherwise, beyond the fact that VATease mentioned the alternative approach of restricting the input tax claim in its short email advice of 16 July 2008 (see [13] above). In the circumstances, we have no difficulty in finding that the Appellant had made a decision, at the time it incurred the input tax on purchase of the Lady Louise,

that it intended to reclaim in full the input tax incurred on the purchase. Inherent in that decision was the intention to allocate the vessel entirely to its business.

87. Having done so, the Appellant was faced with a choice of how to deal with use of the vessel by AR. It could either charge him an arm's length commercial rate for such use (in which case the transaction would give rise to an output VAT liability as part of the Appellant's normal chartering business – like the helicopter in *JNK 2000 Limited v HMRC* [2013] UKFTT 221 (TC)) or it could account for output tax under the *Lennartz* method.

88. In respect of the identified personal use in July to October 2008, the Appellant appears to have initially done the former (it reflected the hire charges in its statutory accounts and accounted for output VAT on its 10/08 VAT return in respect of the hire charges referred to at [15] above, though the VAT invoices were only produced by the Appellant at the hearing). There had however been a subsequent adjustment in the VAT return for period 07/09 to claw back some of the tax that had been paid, evidencing an apparent change of heart – see [19]). In any event, we have already found that any assessment in respect of these VAT periods would be out of time, so we do not consider this point further.

89. The Appellant claims that there has been no other personal use of the vessel by AR. As mentioned above, we do not accept this claim and instead we find that the vessel has been subject to private use by AR for one twelfth of each year. HMRC have formed the view that this use should be spread equally over the two summer quarters (VAT periods ending 31 July and 31 October each year), and the Appellant has not raised any significant objection to this approach as a matter of general principle. In the circumstances, we therefore consider it appropriate to adopt this approach of spreading the personal use equally over the two summer quarters.

90. In respect of this private use of the vessel by AR during the periods 10/10 to 10/11, no payment has been made by AR and no output tax has been accounted for – either under the normal rules or under the *Lennartz* method.

91. The result of this is that an output tax liability is triggered by paragraph 5(4) of Schedule 4 VATA, the value of that output tax liability being set by paragraph 7 of Schedule 6 VATA as the full cost to the Appellant of providing the services. That "full cost" is, in turn, laid down by Regulations 116A to 116N of the VAT Regulations 1995.

92. We would emphasise that it is not, in our view, necessary for the Appellant to have made a specific election to account for output tax under these provisions at the time of acquiring the vessel. It is a fallacy to suggest that these provisions can only be triggered if such an election is made; all that is necessary is that the vessel was allocated wholly to the Appellant's business (as we have found it was) and was then put to private use.

93. We do not however agree with HMRC's computation of the liability. Disregarding periods up to period 07/10 (which are, as we have already found, out of

time for assessment), we are concerned in this appeal with periods 10/10, 01/11, 04/11, 07/11, 10/11 and 01/12.

94. The major point on which we disagree with HMRC is in relation to periods of time when the vessel was lying idle. The terms of the VAT Directive (Article 26) provide that the following is to be treated as a supply of services for consideration:

> "the use of goods forming part of the assets of a business for the private use of a taxable person or of his staff or, more generally, for purposes other than those of his business…"

95. This is the provision which is being implemented in the UK provisions referred to at [91] above. Paragraph 5(4) of Schedule 4 VATA reads as follows:

> "Where by or under the directions of a person carrying on a business goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, that is a supply of services."

96. Paragraph 5(4), when dealing with private use (as opposed to use for a non-business purpose, such as charitable use, for example), imposes a charge where goods are "put to any private use", which is in line with the Directive's reference to "the use of goods". We do not consider this form of words is apt to impose a charge to output tax simply because there is the possibility of private use because the asset in question is not in actual use for business purposes. VAT is a tax on consumption, not the possibility of consumption. Consider the situation of a car hire business which occasionally allows its staff to use vehicles which are not actually out on hire to customers. It is a logical consequence of HMRC's argument in this case that such a business would have to carry out a calculation each quarter to establish what output liability it had in respect of all the vehicles that were not fully used by customers but were potentially available for use by staff (whether or not they were actually so used). The calculation would be complex because it would involve figures (requiring underlying records) in relation to each vehicle in the fleet for total customer use, total staff use and total "idle time"; and it would result in liabilities that bore no sensible relationship to the actual private use of hire vehicles by staff.

97. In the present case, we see this distortive effect in action when a calculation supposedly based on one twelfth private use results in an output liability of over 60% of the original input tax recovered. This distortive effect is avoided altogether if it is accepted that a business asset which is being kept available (on the forecourt, in the case of a car, or at its mooring in the case of a charter craft) or being prepared for commercial hire is, during that time, being used for the purposes of the business.

98. We consider the correct approach is to calculate the output tax liability for each of the summer quarters (i.e. ending 31 July and 31 October) on the basis of one sixth private use and five sixths business use. In relation to the winter quarters (i.e. ending on 31 January and 30 April), no output tax should be due, as we find no private use took place over that period. This has the benefit of being straightforward and

avoiding artificial distortions of the type resulting from the calculations which HMRC have in fact carried out.

99. The wording of Regulation 116E of the VAT Regulations sets out the formula to be followed in carrying out the relevant calculation. The key part is the definition of "U%" (which effectively determines the proportion of the total cost which is to be taxed in any accounting period), which reads as follows:

> "U% is the extent, expressed as a percentage, to which the goods are put to any private use or used, or made available for use, for non-business purposes as compared with the total use made of the goods during the part of the prescribed accounting period occurring within the economic life of the goods."

100. This wording is clear in stating that the first thing to be considered is the "extent… to which the goods are put to any private use…" (as opposed to the extent to which they are "available for private use"); but this is to be compared with "the total use made of the goods" during the relevant period. In the light of the provisions of Article 26 of the Directive, we interpret "total use made of the goods" in the present case as including not only the time when the vessel was actually being used for private purposes or for charter hire, but also (as mentioned at [97] above) the time when it was being prepared or kept available for commercial charter. If we interpreted it (as HMRC have done) only to refer to the periods when it was actually in use for private purposes or actually out on charter, it would have a severely distortive effect which would, in our view, be entirely inconsistent with the terms of the Directive.

101. We therefore find that the output tax liability of the Appellant in respect of periods 10/10, 07/11 and 10/11 (i.e. all the "summer quarters" covered by the assessment under appeal – insofar as it is in time) should be recalculated on the basis of "U%" being, in relation to each such accounting period, 16.67%, and there should be no output tax liability in respect of the "winter quarters" up to and including 01/12 (on the basis that there was no private use during such periods). As periods 04/12 and later were not covered by the decision under appeal, we can express no binding view on them.

102. So far as the input tax disallowance on running expenses is concerned, the assessments again only covered the periods up to 01/12. The parties appeared to agree that the disallowance should mirror the output tax liability (i.e one twelfth should be disallowed). In the absence of any evidence to show that any part of the input tax was incurred on expenses with a purely business purpose, we agree. It follows that we also consider the disallowance of input VAT on running expenses should be adjusted to disallow one twelfth of all input tax (subject to the fact that the assessment is out of time for periods up to and including 07/10).

Summary

103. We have found that the main assessment, insofar as it relates to VAT accounting periods up to (and including) 07/10, was made out of time (see [77] above). We therefore discharge the assessment insofar as it relates to any such period.

104. We have found that the output tax element of the main assessment for periods 10/10 to 10/11 inclusive should be reduced and recalculated using 16.67% as "U%" in the statutory calculation provided in Regulation 116E of the VAT Regulations (in respect of the summer periods) and 0% in respect of the winter periods (see [101] above).

105. We have found that the disallowance of input tax in respect of periods 10/10 to 01/12 inclusive should be reduced and recalculated so as to disallow one twelfth of the input tax and the assessments for those periods should be reduced correspondingly.

106. By our calculations, this results in the following:

(1) Output tax liabilities under the *Lennartz* provisions:

(a) Period 10/10 - £684.93 (at 17.5%);

(b) Period 01/11 – Nil;

(c) Period 04/11 – Nil;

(d) Period 07/11 - £782.78 (at 20%);

(e) Period 10/11 - £782.78 (at 20%);

(f) Period 01/12 – Nil.

(2) Disallowance of input tax on running costs:

(a) Period 10/10 – Nil (no input tax originally claimed);

(b) Period 01/11 – disallowance of £107.79 (out of original input tax claim of £1,293.53);

(c) Period 04/11 – Nil (no input tax originally claimed);

(d) Period 07/11 – Nil (no input tax originally claimed);

(e) Period 10/11 – disallowance of £36.19 (out of original input tax claim of £434.36);

(f) Period 01/12 – disallowance of £125.08 (out of original input tax claim of £1,500.97).

107. We determine the appeal accordingly and allow it in part to the extent set out above.

108. 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.

KEVIN POOLE
TRIBUNAL JUDGE

RELEASE DATE: 16 September 2014

Schedule

HMRC liability calculations

Period	Period days	Unavailable days	Available days	Private use days	Business use days	% Private to business use	Lennartz use period	VAT rate	VAT due
10/08	138	8	130	4		100%	130	17.5%	£5,854.80
01/09	92		92					15%	£0
04/09	89	3	86					15%	£0
07/09	92	2.5	89.5	7		100%	267.5	15%	£12,328.87
10/09	92		92	8	1	88.46%	92	15%	£3,852.77
01/10	92		92					15%	£0
04/10	89	14	75		1	0%	167	17.5%	£0
07/10	92		92	8	1	88.46%	92	17.5%	£3,852.77
10/10	92		92	8	7	52.27%	92	17.5%	£2,165.87
01/11	92		92					17.5%	£0
04/11	89		89					20%	£0
07/11	92		92	8	1.29	85.6%	273	20%	£12,027.73
10/11	92	8	84	7	15.21	31.52%	84	20%	£1,362.67
01/12	92		92		2.02	0%	92	20%	£0
TOTALS	1,325	35.5	1,289.5	49	28.52	63.27%	1,289.5		£38,544.41

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