



**TC06191**

**Appeal number: TC/2013/06748  
TC/2014/03084**

*INCOME TAX and VAT – assessments – non-disclosure of foreign income, UK rental income and trading income – appellant non-domiciled – extent to which foreign income remitted to UK – extent of entitlement to credit for foreign tax – whether non-disclosure of trading income – whether assessments made in time – penalties – appeal allowed in part*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MEHMET ERDOGAN**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JONATHAN CANNAN  
MR MOHAMMED FAROOQ**

**Sitting in public at Taylor House, Brooke Street, London EC1N 7RS on 5-7 June  
2017**

**Dr Ahmet Mustafa Osam of Zek & Co accountants appeared for the Appellant**

**Mr John Nicholson of HM Revenue & Customs appeared for the Respondents**

## DECISION

5            *Background*

1.     This is an appeal against various assessments to income tax, value added tax and associated penalties. The Appellant, Mr Erdogan was born in Turkey in 1963 and grew up in Turkey. On the death of his father in 1971 he inherited a share in some farmland. Mr Erdogan came to the UK in 1989 seeking asylum. Since then he has run  
10 various businesses in the UK including a supermarket known as Yesil Irmak Supermarket in Peckham and a kebab takeaway business in Nottingham known as the Food Factory. Mr Erdogan also owned a residential property at Higham Road, Tottenham which he rented out from 2006 onwards.

2.     HMRC's enquiries into Mr Erdogan's tax affairs commenced with an enquiry  
15 into his self-assessment tax return for 2008-09. The enquiry was later extended to other tax years. At the conclusion of their enquiries HMRC made various assessments. As at the date of the hearing the assessments may be summarised as follows:

20            (1)     Income tax assessments based on alleged undeclared profits of £68,967 from the Food Factory in years 2007-08 to 2010-11.

              (2)     VAT assessments based on alleged undeclared taxable supplies of £167,056 made by the Food Factory in periods 07/06 to 04/11.

              (3)     Income tax assessments based on agreed undeclared rental income of £28,146 from UK property in years 2006-07 to 2009-10.

25            (4)     Income tax assessments based on alleged income of £250,564 from agricultural land in Turkey remitted to the UK in years 2000-01 to 2009-10.

3.     As a result of the assessments, the additional income tax said to be due is approximately £75,000 and the additional VAT said to be due is approximately £23,000. Penalties notified in relation to the income tax assessments amount to  
30 £37,772 and in relation to VAT amount to £18,682. HMRC accept that these figures for tax and penalties require some adjustment.

4.     We heard oral evidence from Mr Richard Lindley an inspector of taxes on behalf of HMRC and through an interpreter from Mr Erdogan himself. We are very grateful to the interpreter, Mrs Aysun Ozcan for the professional way in which she  
35 carried out her duties. We also had a witness statement which was taken as read from Mr Tevfik Zekai, who is Mr Erdogan's accountant.

5.     We set out below the nature of the enquiries made by HMRC and how Mr Lindley arrived at the various assessments. We then describe the issues and submissions of the parties before making our findings of fact based on the evidence  
40 before us. Based on those findings we consider the validity and quantum of the assessments and the penalties.

*HMRC's Enquiries*

6. HMRC opened their enquiry into Mr Erdogan's self-assessment return for 2008-09 on 28 October 2010. The enquiry was extended under Code of Practice 9 on 29 July 2011 and covered tax years 2000-01 to 2010-11.

- 5 7. In January 2012 Mr Erdogan signed income and expenditure accounts relating to his UK rental income from Higham Road which had not been declared to HMRC. These were provided to HMRC and covered tax years 2006-07 to 2009-10. They showed the following taxable profits which it is accepted were not declared to HMRC and have since been properly assessed to income tax as UK rental income:

| <b>Tax Year</b> | <b>Taxable Profits<br/>£</b> |
|-----------------|------------------------------|
|                 |                              |
| 2006-07         | 9,138                        |
| 2007-08         | 1,992                        |
| 2008-09         | 5,256                        |
| 2009-10         | 11,760                       |
|                 |                              |
|                 | £ 28,146                     |

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8. Mr Erdogan attended two meetings with HMRC accompanied by his representatives on 2 March 2011 and 11 January 2012. During the course of the enquiry Mr Lindley identified various sums which he considered were remittances to the UK of rental income from Mr Erdogan's land in Turkey. The sums were identified on the basis of what Mr Erdogan had told HMRC during the meetings. Mr Lindley also identified what he considered were otherwise unidentified sources of funds. Those unidentified sources of funds included:

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(1) £40,000 used to purchase the Yesil Irmak Supermarket in 2001-02,

(2) £40,000 used to purchase the property at Higham Road in 2004.

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(3) Unidentified cash bankings of £42,845 in the period from November 2004, when the Yesil Irmak Supermarket was sold, to 31 March 2006 when the Food Factory was purchased.

(4) Bank transfers from Turkey to Mr Erdogan's bank in the UK of £2,944 and £9,828 in 2005-06.

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(5) Bank transfers from Turkey to Mr Erdogan's bank in the UK of £24,800 and £2,994 in 2008-09.

(6) Other deposits into Mr Erdogan's UK bank accounts for tax years 2006-07 onwards which were over £250 and apparently unaccounted for.

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9. During the course of the enquiry HMRC obtained information from four suppliers to the Food Factory pursuant to letters of authority provided by Mr Erdogan.

The four suppliers were Pukka Pies, a food manufacturer and supplier of pies; Erned Ltd trading as “Anadolou” which was the sole supplier of kebab meat to the Food Factory; H & A Potatoes a supplier of chips; and Hyperama which supplied products including drinks, sausages, mayonnaise and bread.

5 10. Information was obtained from these suppliers as to purchases by the Food  
 Factory in 2008-09. The total value of supplies made by the suppliers was £22,567  
 excluding VAT. However, Mr Erdogan had only declared purchases from these  
 suppliers of £7,146. Mr Lindley considered that the scale of that discrepancy was such  
 10 that Mr Erdogan must have known that the records were incorrect and that the  
 omission of purchases from the records was a deliberate act on the part of Mr  
 Erdogan. He estimated undeclared purchases for the Food Factory in other years on  
 the basis that the way in which the business operated had not changed. He identified  
 the ratio of undeclared purchases in 2008-09 to what he considered were unexplained  
 15 deposits in 2008-09, after deducting deposits which he considered to be Turkish  
 income, UK rental income and deposits in relation to the operation of a cash vending  
 machine called “Omnicash”. He then used that ratio to estimate undeclared purchases  
 in the other years by applying it to the unidentified bank deposits in those years.

11. Mr Lindley analysed Mr Erdogan’s bankings for tax years 2006-07 to 2010-11.  
 After taking into account sums estimated as income remitted from Turkey, UK rents  
 20 and transactions involving Omnicash there were still unidentified deposits exceeding  
 Mr Erdogan’s drawings each year from the Food Factory business. Mr Lindley  
 concluded that the unidentified deposits represented undeclared income from the Food  
 Factory. Further, that the undeclared purchases were funded by undeclared cash sales.

12. On this basis Mr Lindley estimated what he considered to be undeclared profits  
 25 of the Food Factory as follows:

| <b>Tax Year</b> | <b>Omitted<br/>Net Profits<br/>£</b> | <b>Declared<br/>Profits/(Losses)<br/>£</b> | <b>Revised<br/>Profits<br/>£</b> |
|-----------------|--------------------------------------|--|----------------------------------|
|                 |                                      |  |                                  |
| <b>2006-07</b>  | 7,880                                | (11,244)                                   | (3,364)                          |
| <b>2007-08</b>  | 22,593                               | (2,222)                                    | 20,371                           |
| <b>2008-09</b>  | 21,765                               | 1,662                                      | 23,427                           |
| <b>2009-10</b>  | 5,656                                | 1,627                                      | 7,283                            |
| <b>2010-11</b>  | 11,073                               | (1,631)                                    | 9,442                            |
|                 |                                      |  |                                  |
| <b>Total:</b>   | 68,967                               | (11,808)                                   | 57,159                           |

13. Mr Lindley’s conclusions, as described above, led him to make assessments for  
 Turkish rental income remitted to the UK, UK rental income, understated profits from  
 the Food Factory and understated output VAT due on sales. Those assessments were  
 30 made on various dates between 2012 and 2016. Penalties were also notified to the  
 Appellant as set out below.

14. Mr Erdogan's accountants provided certain further information and explanations and there was a further meeting on 7 May 2015. Some of the information received caused Mr Lindley to revise his computations of the undeclared profits.

5 15. The detailed income tax assessments and penalties in dispute at the date of the hearing were summarised in HMRC's statement of case as follows, although HMRC acknowledge that the calculations of additional tax and penalties will be subject to further amendment:

| <b>Tax Year</b> | <b>Turkish Income (£)</b> | <b>UK Rental Income (£)</b> | <b>Business Profits (£)</b> | <b>Additional Tax (£)</b> | <b>Penalty (£)</b> |
|-----------------|---------------------------|-----------------------------|-----------------------------|---------------------------|--------------------|
| 2000-01         | 2,000                     |                             |                             | 257                       | 64                 |
| 2001-02         | 45,000                    |                             |                             | 12,482                    | 3,120              |
| 2002-03         | 32,000                    |                             |                             | 2,665                     | 1,332              |
| 2003-04         | 8,000                     |                             |                             | 3,910                     | 1,955              |
| 2004-05         | 15,303                    |                             |                             | 3,058                     | 1,529              |
| 2005-06         | 49,500                    |                             |                             | 11,759                    | 5,879              |
| 2006-07         | 5,935                     | 9,138                       |                             | 1,950                     | 975                |
| 2007-08         | 31,830                    | 1,992                       | 17,007                      | 12,688                    | 6,344              |
| 2008-09         | 27,794                    | 5,256                       | 23,427                      | 14,656                    | 9,405              |
| 2009-10         | 33,202                    | 11,760                      | 7,283                       | 10,953                    | 5,475              |
| 2010-11         |                           |                             | 9,442                       | 2,186                     | 1,694              |
| <b>Total</b>    | <b>250,564</b>            | <b>28,146</b>               | <b>57,159</b>               | <b>76,568</b>             | <b>37,772</b>      |

10 16. There was no issue on the appeal as to the assessment of UK rental income of £28,146, but the associated penalties were in issue.

17. The VAT assessments and penalties in dispute at the time of the hearing may be summarised as follows:

| <b>Accounting Periods</b> | <b>Omitted Gross Sales (£)</b> | <b>Output Tax (£)</b> | <b>Omitted Input Tax (£)</b> | <b>Additional VAT (£)</b> | <b>Penalty (£)</b> |
|---------------------------|--------------------------------|-----------------------|------------------------------|---------------------------|--------------------|
| 07/06 to 04/11            | 167,056                        | 24,480                | 875                          | 23,599                    | 18,682             |

#### *Issues and Submissions*

15 18. Where assessments are made within normal time limits the burden is on the appellant to satisfy us that those assessments are wrong or excessive. Where assessments are made by reference to extended time limits and rely on a finding of careless, negligent, deliberate or dishonest conduct the burden is on the respondents to establish that conduct. Thereafter, the burden is on the appellant to establish that the amount of the assessments are excessive. In relation to penalties, the burden is on the

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respondent to satisfy us that the conditions for imposing a penalty have been satisfied. In all cases the standard of proof is the balance of probabilities.

19. We will consider separately the technical validity of the assessments and penalties. In particular whether relevant conditions were satisfied in relation to  
5 discovery assessments and whether the assessments were made in time.

20. HMRC seek to maintain the assessments and the penalties broadly on the basis of Mr Lindley's approach, described above.

21. Mr Erdogan's case is essentially as follows:

10 (1) Mr Lindley's estimates of Turkish income remitted to the UK were not reliable, both in relation to the underlying income and as to the amounts remitted to the UK.

(2) There was no understatement of profits from the Food Factory business.

(3) The unidentified bankings may be explained by repayment of loans made by Mr Erdogan to friends.

15 (4) Any misdeclarations were careless and not deliberate or dishonest

(5) The penalties are too high and do not take into account that Mr Erdogan has done everything he could to assist HMRC.

22. Mr Erdogan also seeks to argue on this appeal that his income from Turkey has already suffered tax in Turkey and therefore it is not taxable in the UK. We do not  
20 accept that is the case and no basis for that submission was put forward. At best Mr Erdogan would be entitled to credit for any Turkish tax paid in relation to the income.

23. The issues on the appeal are factual. They are not straightforward, nor was the identification and presentation of those issues by both parties. During the hearing we sought to guide both parties in presenting their cases as best we could.

25 *Findings of Fact*

24. Mr Erdogan does not speak English and his evidence was given through an interpreter. He arrived in the UK in 1989 at the age of 26 seeking asylum. He was unemployed until 1993 at which time he obtained a job in a textile factory in Enfield, North London. From 1997 until about 2001 he was employed in an off-licence. In  
30 about 2001 he purchased and ran the Yesil Irmak Supermarket until it was sold in 2004. There was no evidence as to what Mr Erdogan then did, until 2006 when he purchased the Food Factory in Nottingham. He rented a property in Nottingham to live in.

25. In or about 2004 Mr Erdogan also bought a residential property at Higham Road. Mr Erdogan has two children, one born in 1996 and the other in 1998. He is divorced. We understand that the property at Higham Road was his matrimonial home  
35 between 2004 and 2006. Thereafter it was rented out.

26. In 2008 Fontella Ltd was incorporated and was used by Mr Erdogan to purchase another supermarket and off licence business called the Robin Hood Supermarket in Nottingham. We are not concerned with Fontella Ltd in the present appeal.

27. Mr Erdogan operated various bank accounts, separately designated as business accounts and as personal accounts. No payments from Mr Erdogan's bank accounts appear to cover general living expenses and we find that those expenses were paid by Mr Erdogan in cash.

*(1) UK Rental Income*

28. Mr Erdogan failed to disclose his UK rental income to his accountants and the income was not included on his self assessment returns.

29. Mr Erdogan first disclosed to HMRC that he had UK rental income at the meeting on 2 March 2011 and subsequently provided details to HMRC. The tenants paid rent directly into Mr Erdogan's bank account. During the course of the meeting on 11 January 2012 there was a break during which Mr Erdogan and his accountant left the room for Mr Erdogan to sign the accounts for UK rental income. The accounts were provided to HMRC when Mr Erdogan returned to the meeting. In fact the accounts for each year are dated 4 January 2011. It is not clear why that should be the case but nothing turns on the date.

30. The rental income, expenditure and profits were as follows:

| <b>Tax Year</b> | <b>Income<br/>£</b> | <b>Expenditure<br/>£</b> | <b>Taxable<br/>Profits<br/>£</b> |
|-----------------|---------------------|--------------------------|----------------------------------|
| 2006-07         | 13,750              | 4,612                    | 9,138                            |
| 2007-08         | 15,000              | 13,008                   | 1,992                            |
| 2008-09         | 15,000              | 9,744                    | 5,256                            |
| 2009-10         | 15,000              | 3,240                    | 11,760                           |
|                 |                     |                          |                                  |
|                 |                     |                          | £ 28,146                         |

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31. Mr Erdogan accepted that he had failed to disclose his UK rental income to HMRC. It was put to him that he had done so deliberately. Mr Erdogan maintained that it was an error on his part, but not deliberate. We are satisfied that Mr Erdogan was aware that he needed to tell his accountants and HMRC about his UK rental income. The level of that income is substantial. Given the level of profits together with our findings in relation to the Food Factory profits set out below we consider it likely that the failure by Mr Erdogan to disclose the UK rental income was deliberate, to avoid tax on that income.

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*(2) Turkish Income*

32. Mr Erdogan failed to disclose that he was in receipt of Turkish income remitted to the UK from 2000 onwards. He first disclosed that income at the meeting on 2 March 2011 when he was challenged about the availability of income to fund household expenses.

33. There is no dispute that Mr Erdogan was UK resident for tax purposes in all the periods under consideration, and also that he retained his domicile in Turkey. As such he was taxable on his UK income and on any Turkish income remitted to the UK, subject to relief for any tax paid in Turkey.

34. Mr Erdogan was 8 years old when he inherited his father's land. In his witness statement he said that his father's "agricultural land and farming business" was managed by his uncle Tevfik Erdogan, his father's brother. At the age of 23, following a period of national service, Mr Erdogan helped his uncle in the business. Turkish family culture meant that his uncle remained in control of the land and business. No accounts were prepared. In his witness statement Mr Erdogan described his uncle as a "trustee" of the land due to Mr Erdogan's absence from Turkey. Mr Erdogan says that he executed a power of attorney in 1996 enabling his uncle to deal with his Turkish bank account and other matters in connection with the land. There was no copy of that power of attorney but there was a power of attorney dated 24 August 2006.

35. In the latter stages of HMRC's enquiry Mr Erdogan stated that his entitlement in relation to the Turkish land was as a partner with his cousins in Turkey. The land was managed by his uncle who distributed the profits. In oral evidence Mr Erdogan described the relationship between himself and his uncle in terms akin to a partnership. Mr Erdogan provided the land, the seeds and the soil. All expenses such as labour and for ploughing the land were paid by his uncle. At the end of the year the profits would be split. It was not suggested that anything turned on the precise relationship because it was not disputed that Mr Erdogan's share of the profits was taxable in the UK to the extent that it was remitted.

36. A document dated 17 December 2013 shows that the Turkish land was registered with the Turkish Ministry of Food, Agriculture and Livestock in the name of Mr Erdogan who was described as "the farmer" and the land was said to be in his ownership. That document identifies 6 fields. In 2013 two fields were used for wheat production, two for apricots, one for "grass pea" (which we understand to be animal fodder) and one was left fallow. Mr Erdogan said and we accept that there would be crop rotation. The fields were described as dry which we accept means that they were not irrigated and reliant on rainfall.

37. We have no reason to doubt Mr Erdogan's evidence as to the way in which the land was managed and as to the nature of the income it produced. However it tells us little about the amount of income or profits produced by the land or the extent to which those profits were remitted to the UK. As to those issues we must do the best we can, taking into account all the evidence available to us.



38. Mr Erdogan was unable to say either during the enquiry or in evidence exactly how much income arose from the Turkish land and how much was remitted to the UK. At various stages he gave estimates and Mr Lindley himself made estimates based on various assumptions. During the course of his enquiry Mr Lindley had noted that there were substantial deposits into Mr Erdogan's bank accounts which were unexplained. He proceeded on the basis that the unidentified deposits would comprise the Turkish income, the UK rental income and undeclared takings from the Food Factory.

39. At a meeting with HMRC officers on 2 March 2011 Mr Erdogan stated that he received £5-10,000 per year in rent from the Turkish land. He also stated that apart from a couple of bank transfers he usually collected the money when he went to Turkey.

40. In a letter dated 12 May 2011 Zek & Co informed HMRC that Mr Erdogan received approximately £12,000 a year rent from the land in Turkey.

41. At the meeting on 11 January 2012 Mr Erdogan described the Turkish land as a "successful business". He identified specific sums brought to the UK as follows:

| <b>Year</b> | <b>Amount</b> | <b>Method</b> |
|-------------|---------------|---------------|
| 2000        | £ 2,000       | Cash          |
| 2001        | £ 5,000       | Cash          |
| 2002        | £ 40,000      | Bank transfer |

42. Prior to the year 2000 Mr Erdogan had not been able to remit any rental income from Turkey to the UK. In 2000 he had been able to travel to Turkey to inspect the land. He then began remitting the accumulated rent to the UK. Mr Erdogan stated that the rents were between £10-15,000 per year and that they were remitted by bank transfer or cash brought in by himself or family and friends visiting the UK. However, in his oral evidence Mr Erdogan maintained that no funds were brought from Turkey in cash.

43. It was suggested that the different estimates of the Turkish income given by Mr Erdogan in interview could be explained as variations caused by differences in farming conditions, such as rainfall from year to year. Mr Erdogan stated in his witness statement that the reliance on rainfall meant that the production yield of the land was irregular. Further, that the wheat and animal fodder produced by the land was sold to the Turkish state at a price fixed by the state. Clearly there can be considerable variations in the yield of farmland especially where it relies on rainfall. Mr Erdogan also sought to explain the variation in his estimates by reference to exchange rate movements. The current rate is approximately 4.5 TRY to the pound whereas previously it had been as low as 2.5 TRY to the pound. Mr Erdogan did not suggest that the higher figures he estimated would only be in exceptional years. Nor did he make any attempt to quantify the income for any year in Turkish Lira so as to illustrate the effect of exchange rate changes.

44. The evidence showed two further bank transfers from Turkey to Mr Erdogan's Barclays Bank account. One in the sum of £24,800 on 28 July 2008, the other in the sum of £3,000 less commission on 12 August 2008. The credit advice for the first of these transfers was copied to HMRC and included a manuscript note saying "Sister  
5 send the money; rent of land; 2 years". There was no evidence as to whose writing this was, but we think it likely that the information came from Mr Erdogan and also that it is consistent with an income of approximately £12,500 per year.

45. It is not disputed that £40,000 from Mr Erdogan's own resources was used to fund the purchase of Higham Road in or about 2004. There was no evidence of any  
10 source for those funds and Mr Lindley assumed that they were accumulated from remittances of Turkish rent over a period of two years amounting to £32,000 in 2002-03 and £8,000 in 2003-04.

46. There was some evidence from the Turkish tax authorities obtained by Mr Erdogan that he had paid tax on agricultural income from the land in Turkey. A letter  
15 dated 28 October 2013 stated that there was no "withheld tax" on agricultural income in 2011, tax of 312 TRY (Turkish Lira) on gross income of 15,600 TRY in 2012 and tax of 198 TRY on gross income of 9,940 TRY in 2013. It is not clear whether this was tax on crop values/income or on rental income. In any event these years are not the subject of any assessments. Having said that they do at least suggest a level of  
20 income below the estimates given by Mr Erdogan to HMRC on which a small amount of tax was paid in Turkey.

47. Mr Erdogan's accountants suggested in correspondence that certain subsidies were paid by the EU. Mr Erdogan produced a statement for an account in his name with a Turkish bank called Ziraat Bankasi. The statement covered a period from the  
25 opening of the account on 27 September 2004 to 5 June 2013 and showed some deposits in Turkish Lira for "agricultural support" and withdrawals of similar amounts soon after receipt to Tevfik Erdogan who is Mr Erdogan's uncle. We are not satisfied that this account reflects all the income received by Mr Erdogan in that period. In particular sums totalling £27,800 transferred from Turkey in 2008 do not come from  
30 this account.

48. On 11 May 2011 Mr Erdogan certified to HMRC a list of all his bank accounts whether in or out of the UK. The list did not include the bank account in Turkey with Ziraat Bankasi. Mr Erdogan said that this was his farming bank account which had  
35 been opened by his uncle and he had no knowledge of it at the time he certified the list of accounts. The account was opened in 2004 and it is clear that there was a withdrawal on 25 January 2006 which refers to Tevfik Erdogan as Mr Erdogan's attorney. This must have been the earlier power of attorney referred to by Mr Erdogan and we accept that Mr Erdogan's uncle had a power of attorney at the time the account was opened.

40 49. The Turkish tax authorities stated in correspondence to HMRC dated 5 May 2015 that:

(1) Mr Erdogan did not receive any EU grants to support agricultural production between 2008 and 2012.

(2) They were aware that Mr Erdogan rented land to his uncle but had not declared his income to the Turkish tax authorities.

5 (3) They had established that the uncle paid the following amounts in rent to Mr Erdogan:

2008 – 7,000 Turkish Lira (TRY)

2009 – 7,000 TRY

2010 – 9,000 TRY

10 2011 – 11,000 TRY

2012 – 13,000 TRY

2013 – 14,000 TRY

2014 – 15,000 TRY

15 50. Again, translating these amounts to pounds sterling suggests much lower figures than the estimates provided by Mr Erdogan. For example both parties were content to use a current exchange rate of 4.5 TRY to the pound giving an equivalent income in 2008 and 2009 of approximately £1,600 per year. In oral evidence Mr Erdogan stated that these sums had not yet been paid to him by his uncle.

20 51. Mr Erdogan's evidence in his witness statement was that the land and its income were known to the Turkish authorities and they would tax the income based on what they knew. They would monitor what was being planted and also provide agricultural subsidies to subsidise the costs of production. Mr Erdogan's evidence was that some of the produce would be sold to the government at fixed prices, other produce would be sold privately by his uncle.

25 52. It seems likely that Mr Erdogan did receive some state subsidies which were paid into his account with Ziraat Bankasi. However, the credits to that account in 2008-09 total approximately 2,000 TRY. The evidence from the Turkish tax authorities suggests that there was rental income of 7,000 TRY in 2008-09. Mr Erdogan has provided no clear explanation or evidence to establish the amount of  
30 income produced by the Turkish land. Nor are we satisfied that the figures provided by the Turkish authorities are reliable. In particular, we do not know to what extent they have investigated the income produced by the land or Mr Erdogan's share of that income.

35 53. Mr Lindley's estimate of Turkish income remitted to the UK started with an estimate of the total rents at £13,500 per year since June 1991. During his evidence Mr Lindley accepted that figure was wrong and that he should have used a figure of £12,500 per year. At the meeting on 11 January 2012 Mr Erdogan is recorded as having said that he inherited the land in 1991-92. It has since transpired that it was  
40 much earlier. Be that as it may, Mr Lindley looked at the period from June 1991 to 5 April 2010. The total income was therefore £253,125. He then considered the amounts he believed to have been brought into the UK as follows:

| <b>Tax Year</b> | <b>Remitted Income (£)</b> | <b>Basis on which Identified</b>  |
|-----------------|----------------------------|---|
|                 |                            |   |
| 2000-01         | 2,000                      | Specifically identified and accepted by Mr Erdogan  |
| 2001-02         | 45,000                     | Specifically identified and accepted by Mr Erdogan including a £40,000 bank transfer used to finance the purchase of Yesil Irmak Supermarket  |
| 2002-03         | 32,000                     | Part of £40,000 which Mr Lindley assumed was used by Mr Erdogan to purchase Higham Road in 2004   |
| 2003-04         | 8,000                      | Balance of £40,000 used by Mr Erdogan to purchase Higham Road in 2004   |
| 2004-05         | 15,303                     | See below   |
| 2005-06         | 49,500                     | See below   |
| 2006-07         | 5,935                      | Bank deposits at London branches in excess of £250 amounting to £19,685, less income declared for UK rents of £13,750.  |
| 2007-08         | 31,830                     | Bank deposits at London branches in excess of £250 amounting to £46,830, less income declared for UK rents of £15,000.  |
| 2008-09         | 27,794                     | Bank transfers from Turkish bank (Mr Erdogan's representative states in correspondence that this was brought to the UK by his sister and his cousin and deposited in his bank account). It is accepted by Mr Erdogan that it was remitted to the UK |
| 2009-10         | 33,202                     | Bank deposits at London branches in excess of £250 amounting to £48,202, less income declared for UK rents of £15,000.  |
|                 |                            |   |
| <b>Total</b>    | <b>250,564</b>             |   |

54. Other than those identified as accepted, Mr Erdogan disputes the sums Mr Lindley assumes or calculates were remitted from Turkey. He maintains that no sums were brought by hand from Turkey, indeed he said it was illegal to remit funds in cash from Turkey. All sums that were remitted were by way of bank transfer. The explanation for deposits into his bank account was UK rental income. Mr Erdogan also said for the first time in his oral evidence in chief that some of the deposits into his bank account were repayments of loans he had made to family and friends. He said that he had never previously told his accountant about this but that it happened frequently, although the sums involved were not large. There was no evidence to support Mr Erdogan's explanation of sums being paid into his bank account as loan repayments. Given the circumstances in which that explanation was given for the first time in his oral evidence we reject it.

55. Mr Erdogan said in evidence that the £40,000 bank transfer from Turkey in 2001-02 represented approximately 13 years of accumulated income from the land in Turkey. He estimated that in 2001-02 the land produced an income of about £5-6,000.

Since then it had reduced because of currency fluctuations and the income produced was now about £3,000.

56. The Turkish income for 2004-05 and 2005-06 were estimated from what Mr Lindley considered was a “cash shortfall” in the period 1 November 2004 to 31 March 2006 of £42,845. At the beginning of this period the Yesil Irmak supermarket was sold and at the end of the period the Food Factory was purchased.

57. Mr Lindley assumed that as at 1 November 2004 Mr Erdogan had little or nothing by way of available funds in the UK having purchased the Yesil Irmak supermarket and Higham Road in the previous years. The net proceeds of sale of the supermarket were estimated to be £68,471 based on gross sale proceeds of £133,421. In 2005-06 there was a total of £12,772 remitted to the UK by bank transfer so the funds available to Mr Erdogan in this period were £81,243. However the balance on his Nat West bank account in February 2006 was £73,003 and deposits to his Barclays account in the period were £51,085. There was no explanation as to how deposits to the bank accounts were funded and Mr Lindley’s analysis indicated a shortfall of funds in the period amounting to £42,845.

58. In addition, based on bank statements Mr Lindley identified cash withdrawals of £9,790 made by Mr Erdogan in the period 6 December 2004 to 21 January 2006. He estimated that Mr Erdogan’s person cash requirement for everyday living over that period would be £18,976 leaving a shortfall of £9,186. We found Mr Lindley’s evidence as to the precise calculations leading to that shortfall difficult to follow. However, in the absence of any records maintained by Mr Erdogan as to his Turkish income remitted to the UK it is necessary to make some estimate of Mr Erdogan’s cash needs. The resulting figure of £9,186 does not appear unreasonable but it does involve applying a very broad brush. Importantly however, the analysis was not challenged by Dr Mustafa on behalf of Mr Erdogan.

59. The total shortfall identified by Mr Lindley and not challenged by Mr Erdogan is therefore £52,031, being £42,845 plus £9,186. Allocated on a monthly basis to the relevant tax years gives £15,303 in 2004-05 and £36,728 in 2005-06. In addition, in 2005-06 there were bank transfers from Turkey of £12,772 giving total remitted income for 2005-06 of 49,500.

60. The Turkish income for 2006-07, 2007-08 and 2009-10 was estimated on the assumption that income from Turkey brought in by hand would have been deposited at London branches of Mr Erdogan’s banks by Mr Erdogan and those members of his family and friends who brought the funds from Turkey. It has also been assumed that all deposits over £250 other than UK rent from Higham Road would be deposits of income from Turkey.

61. Mr Erdogan has not challenged the detail of these calculations or the assumptions and estimates used in the calculations. He simply says that the overall estimate of income remitted from Turkey is excessive, that any income from Turkey has suffered Turkish tax and in the course of oral evidence that no income was brought into the UK by hand. In his witness statement Mr Erdogan stated that all his

income from Turkey was paid into his UK bank account, but he did not seek to do any analysis of his bank statements to identify what he says is income from Turkey remitted to the UK.

5 62. As at 5 April 2010 there remained a balance of Turkish income unaccounted for of £73,528. In other words there was no evidence of any further bank transfers or cash remitted based on the assumptions described above. However, Mr Lindley has not treated that figure as being remitted to the UK. His calculations could still therefore be a reasonable estimate of the Turkish income remitted even if the annual income arising in Turkey was as low as £9,500 per year as opposed to the incorrect figure of 10 £13,500. That is below the mid-point of the estimates given by Mr Erdogan in interviews, although it is higher than the estimates he gave in his oral evidence.

15 63. Taking into account all the evidence available, we prefer the estimates given by Mr Erdogan in his interviews. At that stage there was no reason for Mr Erdogan to give anything other than an honest estimate. He was not aware at that time that the Turkish income was taxable in the UK, but it is no part of his case that he was seeking to exaggerate his Turkish income in the interviews.

20 64. In any event, even if the Turkish income was overestimated by Mr Lindley, the basis of his assessments was unidentified deposits into Mr Erdogan's bank accounts. If the income remitted from Turkey was less than his estimate, then the undeclared takings from the Food Factory would be greater. Further, there would be no national insurance or VAT liability on foreign income whereas there is a class 4 national insurance liability on undeclared profits and VAT on undeclared income from the Food Factory. Treating the unidentified deposits as Turkish remitted income is therefore beneficial to Mr Erdogan.

25 65. Based on all the available evidence we are satisfied on the balance of probabilities that Mr Erdogan remitted £250,564 of his income from land in Turkey to the UK in the period 2000 to 2010. That included income which had accrued in Turkey between 1989 and 2000.

30 66. Mr Erdogan accepted that he did not tell his accountants about income being remitted from Turkey. He said that he thought all tax had been paid in Turkey and there was no liability to tax in the UK. We are not satisfied on the basis of the evidence and our findings of fact that Mr Erdogan deliberately failed to declare his remitted Turkish income. We consider it more likely that Mr Erdogan was not aware that his remitted income from land in Turkey was taxable in the UK.

35 67. If Mr Erdogan wanted a credit for tax paid in Turkey then the onus would be on him to declare his Turkish income in the UK and make a claim for credit, either for treaty relief or for unilateral relief. It is for the taxpayer to adduce evidence of payment or withholding of foreign tax. He has not done so. The only evidence of tax paid in Turkey is very small sums in 2012 onwards, after the commencement of the 40 enquiry and the periods assessed.

68. We are not satisfied that any Turkish tax was paid in relation to the years of assessment. Mr Erdogan would have been entitled to a credit for Turkish tax paid pursuant to the UK-Turkey Double Taxation Agreement, alternatively by way of unilateral relief. However, the onus is on Mr Erdogan to establish what, if any, tax was paid and he has failed to satisfy that burden.

(3) *Food Factory*

69. The Food Factory is a takeaway food outlet serving mainly kebabs, burgers and chips. At all material times Mr Erdogan worked in the business himself and had three employees. He purchased the business in 2006. Mr Erdogan did not accept that any profits from the Food Factory had been undeclared.

70. Zek & Co produced a schedule of all purchases which had been included in Mr Erdogan's accounts from 1 April 2008 to 31 March 2009. Mr Erdogan offered no credible explanation as to why supplier invoices from his main suppliers had been omitted from his records. He speculated that possibly someone had gone to the suppliers and simply purchased in cash using the name Food Factory. In the absence of any reliable evidence to support that theory or as to why in relation to the specific suppliers it might have been the case, we reject it.

71. Mr Erdogan also offered no credible explanation for the unidentified deposits and the cash shortfall calculated by Mr Lindley.

72. If the purchases had been included in the accounts for the Food Factory then it is clear from the table below that the business would have made significant losses in all years:

| <b>Tax Year</b> | <b>Declared Profits/(Losses)<br/>£</b> | <b>Omitted Purchases<br/>£</b> |
|-----------------|--|--------------------------------|
|                 |  |                                |
| <b>2006-07</b>  | (11,244)                               | 8,720                          |
| <b>2007-08</b>  | (2,222)                                | 24,714                         |
| <b>2008-09</b>  | 1,662                                  | 22,835                         |
| <b>2009-10</b>  | 1,627                                  | 5,632                          |
| <b>2010-11</b>  | (1,631)                                | 12,583                         |

25

73. Such losses do not seem credible. Further, Mr Erdogan did not offer any explanation as to why the business should have declared losses or such small profits. Given the level of purchases omitted from the records it is likely and we find that Mr Erdogan deliberately omitted purchases from his records so as to help conceal the fact that he was not declaring all his takings. He did so dishonestly with a view to evading

both VAT and income tax. Mr Lindley's calculations described above estimated a profit of £57,169 over the years 2007-08 to 2010-11. We are satisfied that is the likely level of profit over those years.

5 74. We are also satisfied that Mr Erdogan failed to declare all the Food Factory takings on his VAT returns. There was no specific challenge to Mr Lindley's computation of the VAT assessments, nor was any alternative calculation offered. In the circumstances we confirm the VAT assessments in the sum of £23,599.

#### *Technical Validity of the Tax Assessments*

10 75. The Appellant did not raise any issues about the technical validity of the assessments but at the hearing we were concerned to ensure that the assessments were properly made within the applicable statutory time limits. The basis on which HMRC sought to justify the technical validity of the assessments was set out in their statement of case.

15 76. The closure notice for the enquiry into Mr Erdogan's self assessment for 2008-09 was issued on 28 March 2013 pursuant to section 28A Taxes Management Act 1970 ("TMA 1970"). The income tax charged was £19,845 but HMRC accept that figure is to be reduced in the light of information subsequently provided by Mr Erdogan. We have power to reduce the assessment pursuant to section 50(6) TMA  
20 1970.

77. Income tax assessments for 2000-01 and 2001-02 were made on 28 March 2013 pursuant to section 29 TMA 1970 on the basis of a discovery that the Turkish income which ought to have been assessed to income tax had not been so assessed. We are satisfied on the basis of our findings of fact set out above that Mr Lindley did make  
25 such a discovery. HMRC must also satisfy us that the condition in section 29(4) is satisfied, namely that the loss of tax was brought about carelessly or deliberately by Mr Erdogan. On the basis of our findings of fact we are satisfied that the loss of tax was brought about by Mr Erdogan at least carelessly and HMRC were entitled to make the assessments.

30 78. We must also consider whether those assessments were made in time. Mr Erdogan was not notified of any requirement to make self assessment returns for 2000-01 and 2001-02. We are satisfied however that he was required to notify his chargeability to income tax in relation to his remitted Turkish income in those years by virtue of section 7 TMA 1970. The time limit for making an assessment in those  
35 circumstances is governed by section 36(1A)(b). It is 20 years after the end of the year of assessment. The assessments for these years were therefore in time.

79. Income tax assessments for 2002-03, 2003-04 and 2004-05 were made on 28 March 2013 in relation to Mr Erdogan's remitted income from Turkey. We are satisfied that HMRC made a discovery and that Mr Erdogan's failure to include this  
40 income on his return was careless for the purposes of section 29(4) TMA 1970. The time limit for making assessments is governed by section 36 TMA 1970. In the case



of a careless omission, the time limit is 6 years after the end of the year of assessment to which it relates pursuant to section 36(1). On that basis the assessments for these years would be out of time. However there is an extended time limit of 20 years where the loss of tax is brought about deliberately.

5 80. As we have previously stated, we are not satisfied that Mr Erdogan deliberately failed to declare his remitted income from Turkey. In those circumstances the assessments for 2002-03, 2003-04 and 2004-05 were out of time and must be set aside.

10 81. The income tax assessment for 2005-06 was made on 15 March 2012. However we note that when it was made it was expressed to be an assessment for UK rental income rather than remitted Turkish income. It is not clear why that should have been the case and Mr Lindley's evidence did not include any explanation. Subsequently it appears that Mr Lindley appreciated that the UK rental income first arose in 2006-07 and he assessed the UK rental income for that year on 28 March 2013. It does not  
15 appear that any amendment was ever made to the assessment for 2005-06, although in a letter dated 11 December 2012 Mr Lindley proposed an assessment in relation to 2005-06 of Turkish rents amounting to £56,380. No amendment was ever made, but in the review letter dated 18 March 2014 the assessment for 2005-06 was varied to reflect Turkish rents of £49,500.

20 82. We have previously found that Mr Erdogan did not deliberately omit his Turkish income from his self-assessment returns and that conclusion also applies to 2005-06. That income was not the subject of any assessment within 6 years of the end of the year of assessment, that is by 5 April 2012. In our view HMRC are not entitled to treat an assessment of UK rental income made on 15 March 2012 as if it were an  
25 assessment to remitted Turkish income. The assessment for 2005-06 must therefore be set aside.

83. The income tax assessment for 2006-07 was made on 28 March 2013. We are satisfied that HMRC made a discovery that the Turkish income and UK rental income had been omitted from Mr Erdogan's self assessment and that the omission was  
30 caused by Mr Erdogan's carelessness in relation to the Turkish income and deliberately in relation to the UK rental income. The conditions for a discovery assessment under section 29(4) were therefore satisfied. Further the assessment was made within 6 years of the end of the year of assessment and was therefore in time.

84. The income tax assessment for 2007-08 was made on 15 March 2012. It  
35 covered remitted Turkish income and UK rental income but not the undeclared profits from the Food Factory. We are satisfied that HMRC made a discovery that the Turkish income and UK rental income had been omitted from Mr Erdogan's self assessment and that the omission was caused in part by Mr Erdogan's carelessness and in part deliberately. The conditions for a discovery assessment under section 29  
40 were therefore satisfied. Further the assessment was made within 6 years of the end of the year of assessment and was therefore in time. As far as the Food Factory undeclared sales are concerned, on the basis of our findings of fact those profits were deliberately suppressed and we are satisfied that HMRC are in time to assess those

profits. The assessment for 2007-08 should therefore be increased to reflect those profits.

5 85. The income tax assessment for 2009-10 was made on 28 March 2013 and covered all three sources of income. We are satisfied that HMRC made a discovery that the income had been omitted from Mr Erdogan's self assessment and that the omission was caused in part by Mr Erdogan's carelessness and in part deliberately. The conditions for a discovery assessment under section 29 were therefore satisfied. Further the assessment was made within 6 years of the end of the year of assessment and was therefore in time.

10 86. The income tax assessment for 2010-11 was made on 4 February 2014 and covered only undeclared business profits. We are satisfied that HMRC made a discovery that the income had been omitted from Mr Erdogan's self assessment and that the omission was caused deliberately by Mr Erdogan. The conditions for a discovery assessment under section 29 were therefore satisfied. Further the  
15 assessment was made within 20 years of the end of the year of assessment and was therefore in time.

87. The VAT assessments based on undeclared sales were notified to Mr Erdogan on 28 March 2012 in the sum of £25,642. An increase in those assessments was notified to Mr Erdogan on 29 January 2016 in the sum of £1,168. In fact, however  
20 HMRC accept that these figures fall to be reduced to a total figure of £23,599 due to various mathematical corrections.

88. The assessments were made pursuant to section 73(1) VATA 1994. The time limit for making the assessments pursuant to section 73(6) VATA 1994 was one year after evidence of facts sufficient to justify the making of the assessments came to the  
25 knowledge of HMRC. We are satisfied that the VAT assessments were made in time.

#### *The Penalties*

89. We turn now to the penalties. The income tax penalty assessments and determinations were all made on 28 March 2013, save that in relation to 2010-11 which was made on 4 February 2014.

30 90. The penalties for 2000-01 and 2001-02 were issued pursuant to section 7(8) TMA 1970 for failure to notify chargeability to tax. Section 7(8) made provision for a penalty not exceeding the amount of the tax assessed. Penalties for 2002-03 to 2007-08 were issued on 28 March 2013 pursuant to section 95 TMA 1970 for "fraudulently or negligently" delivering incorrect returns.

35 91. Section 102 TMA 1970 makes provision for HMRC in their discretion to mitigate those penalties. Section 100B TMA 1970 gives the Tribunal power to reduce a penalty to such amount including nil as it considers appropriate. The time limit for notification of those penalties is 3 years after the final determination of the tax due pursuant to section 103 TMA 1970.

92. The penalties for 2008-09 and 2009-10 were issued on 28 March 2013 and those for 2010-11 were issued on 4 February 2014, in each case pursuant to Schedule 24 Finance Act 2007. The time limit for assessment of penalties is 12 months following the determination of the present appeal.

- 5 93. The income tax penalties were calculated by Mr Lindley by reference to the following proportions of the undeclared tax or potential lost revenue as follows:

| <b>Tax Year</b> | <b>Penalty</b>  |
|-----------------|---|
|                 |   |
| 2000-01         | 25%   |
| 2001-02         | 25%   |
| 2002-03         | 50%   |
| 2003-04         | 50%   |
| 2004-05         | 50%   |
| 2005-06         | 50%   |
| 2006-07         | 50%   |
| 2007-08         | 50%   |
| 2008-09         | UK rental income – 35%<br>Turkish income – 43.75%<br>Food Factory – 77.5% |
| 2009-10         | UK rental income – 35%<br>Turkish income – 43.75%<br>Food Factory – 77.5% |
| 2010-11         | Food Factory Income – 77.5%   |

- 10 94. We have already found that Mr Erdogan’s omission to disclose his Turkish income was not deliberate, but was careless. In fact Mr Lindley calculated the penalty for 2000-01 and 2001-02 on the basis that the non-disclosure was “serious negligence at best”. We would not characterise it as such. Taking a broad brush approach and taking into account all our findings of fact we reduce the penalties for those years to 15% of the tax payable.

- 15 95. We have set aside the assessments for 2002-03 to 2005-06 and say nothing about the level of penalties in those years.

- 20 96. For 2006-07 the penalty imposed was 50% of the tax due following non-disclosure of the Turkish income and the UK rental income. Mr Lindley considered that both were deliberate non-disclosures. We have found that is the case in relation to the UK rental income and the penalty of 50% is appropriate. In relation to the Turkish income it should be reduced to 15%.

97. For 2007-08 the penalty should be reduced to 15% of the tax due on the Turkish income. It should remain at 50% of the tax due on undeclared UK rental income and on the Food Factory profits where we are satisfied that the inaccuracies were deliberate.

5 98. For the purposes of Schedule 24 we are satisfied that inaccurate returns were attributable to Mr Erdogan deliberately withholding information concerning his UK rental income from his accountants. He intended that the returns should be inaccurate. Disclosure on his part was prompted following the enquiry. As a result the penalty range is 35-70% of the potential lost revenue. We agree with Mr Lindley's assessment that a full reduction should be given for disclosure and the minimum penalty of 35% is appropriate for 2008-09 and 2009-10.

10 99. The same penalty range applies to the Turkish income in those tax years. However, unlike the UK rental income Mr Erdogan should not have full credit for helping HMRC to quantify the inaccuracy. Overall we consider that the penalty of 43.75% of the potential lost revenue is reasonable.

15 100. The position in relation to the undisclosed profits of the Food Factory is that the inaccuracy was deliberate and concealed. Mr Erdogan's failure to disclose all the purchases was part of the concealment. As a result the penalty range is 50-100% of the potential lost revenue. Taking into account the quality of Mr Erdogan's disclosure in relation to the inaccuracy we agree with Mr Lindley's assessment that an appropriate penalty is 77.5% of the potential lost revenue.

20 101. The VAT penalties for periods up to period 01/09 were assessed pursuant to section 60(1) VATA 1994 which provides for a penalty up to the amount of VAT sought to be evaded where a person does any act for the purpose of evading VAT and his conduct involves dishonesty. Section 60(7) provides that the burden of proof as to those matters is on HMRC. Mr Lindley assessed a penalty based on 80% of the VAT sought to be evaded.

25 102. For periods between 04/09 and 04/11 the VAT penalties were assessed pursuant to Schedule 24 Finance Act 2007 on the basis that Mr Erdogan's VAT returns contained inaccuracies which were deliberate and concealed on his part. The penalties were calculated at the rate of 77.5% of the potential lost revenue.

30 103. Based on our findings of fact we are satisfied that Mr Erdogan's conduct in failing to declare all supplies by the Food Factory was dishonest for the purpose of evading tax and that the inaccuracies in his tax returns were deliberate on his part. We consider that the rate of penalty in relation to all periods ought to be 77.5%.

### *Conclusion*

35 104. For the reasons given above we allow the appeal in part, to the extent indicated. By way of summary the following sums are chargeable to tax and incur penalties at the following rates:

| <b>Tax Year</b> | <b>Turkish Income (£)</b> | <b>Penalty %</b> | <b>UK Rental Income (£)</b> | <b>Penalty %</b> | <b>Business Profits (£)</b> | <b>Penalty %</b> |
|-----------------|---------------------------|------------------|-----------------------------|------------------|-----------------------------|------------------|
| 2000-01         | 2,000                     | 15               |                             |                  |                             |                  |
| 2001-02         | 45,000                    | 15               |                             |                  |                             |                  |
| 2002-03         |                           |                  |                             |                  |                             |                  |
| 2003-04         |                           |                  |                             |                  |                             |                  |
| 2004-05         |                           |                  |                             |                  |                             |                  |
| 2005-06         |                           |                  |                             |                  |                             |                  |
| 2006-07         | 5,935                     | 15               | 9,138                       | 50               |                             |                  |
| 2007-08         | 31,830                    | 15               | 1,992                       | 50               | 17,007                      | 50               |
| 2008-09         | 27,794                    | 43.75            | 5,256                       | 35               | 23,427                      | 77.5             |
| 2009-10         | 33,202                    | 43.75            | 11,760                      | 35               | 7,283                       | 77.5             |
| 2010-11         |                           |                  |                             |                  | 9,442                       |                  |
|                 |                           |                  |                             |                  |                             |                  |
| <b>Total</b>    | <b>145,761</b>            |                  | <b>28,146</b>               |                  | <b>57,159</b>               |                  |

105. It will be a matter for the parties to calculate and agree the amount of tax liabilities arising from these assessments. The penalties will then follow according to the percentages identified.

5 106. We confirm the VAT assessments in the total sum of £23,599 but reduce the penalty to £18,289.

107. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**JONATHAN CANNAN**  
**TRIBUNAL JUDGE**

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**RELEASE DATE: 30 OCTOBER 2017**