[2019] UKFTT 525 (TC)

VAT – sole proprietor with more than one business - total turnover for all businesses for VAT registration – time limits for claims - Leeds City Council applied - Jurisdiction of Tribunal - appeal dismissed - INCOME TAX - Discovery assessments - timing and competency - HMRC discharged burden of proof - onus of proof for quantum on appellant -HMRC's conduct prior to appeal not within jurisdiction of Tribunal – PENALTIES -deliberate and not careless - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

TC07321

Appeal number: TC/2017/03811

BETWEEN

KENNETH SEATH **Appellants**

-and-

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

TRIBUNAL: JUDGE ANNE SCOTT

Sitting in public at George House, 126 George Street, Edinburgh on Tuesday 6 August 2019

No appearance by or for the Appellant

Mrs E McIntyre and Mr M Mason, Officers of HMRC, for the Respondents

DECISION

INTRODUCTION

1. The appellant has been represented throughout but his current representative ("the agent") indicated at an early stage that neither the agent nor the appellant would be attending the hearing, the Tribunal having refused an application that the appeal be decided on the papers. On 1 August 2019 the agent wrote formally to confirm that there would be no attendance and enclosing a submission.

2. I had due regard to Rules 2 and 33 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") and decided that it was in the interests of justice to proceed with the hearing.

3. Mrs McIntyre and Mr Mason appeared for HMRC with the former advancing the arguments on indirect taxes and the latter on direct taxes. The hearing took place in Edinburgh by arrangement rather than Glasgow as previously listed.

4. I had the benefit of hearing evidence from Mr Hastings, the officer of HMRC, involved in the enquiry into the appellant's tax affairs. He was a wholly credible and straightforward witness.

Matters under appeal

VAT

5. By letter dated 5 January 2017, the agent formally appealed a decision by HMRC dated 23 December 2016 not to allow a claim for repayment of VAT input tax and a decision not to allow a review of an enquiry which had taken place in 2009.

6. The appellant was registered for VAT as a sole proprietor under VAT Registration Number ("VRN") 762 0509 46 and that from 4 December 2000 until deregistration on 5 January 2012. He asked to be deregistered for VAT because his business as a publican running the Struan Bar ceased to trade.

7. However, on 22 February 2012, the appellant signed a VAT Registration application showing that he wished to be registered for VAT with effect from 1 January 2012 as he was making taxable supplies as a sole proprietor diving for shellfish. He gave the fishing business email address as the relevant email address for the new VRN. He also confirmed that the Struan Bar was no longer trading.

8. That VRN is 130 0119 85 and is still live as the appellant has been sequestrated. The Trustee permitted him to pursue this appeal.

9. The appellant and/or the agent seems to have thought that the deregistration for VAT was for the Struan Bar only. It was not and could not have been so.

10. It is trite law that any taxpayer is obliged to register for VAT if the value of all taxable supplies made by him whilst trading as a sole proprietor exceeds the limit. Therefore, although a sole proprietor can have more than one business, it is the turnover of all of the businesses which matters. That information is easily accessible even by means of Google eg search "sole proprietor 2 businesses VAT".

11. In this case the appellant had three businesses whilst he was registered as a sole proprietor prior to 2012.

12. He was professionally advised at all times but, as I indicate above, the information is readily available to anyone who is literate.

13. If he had known that he could reclaim input VAT in relation to his fishing business he could and should have done so. He was not present so I do not know why he did not but the tenor of the correspondence suggests that he was not advised to do so. That does not assist him[1].

14. Notwithstanding the protestations of the agent, the fact that HMRC raised discovery assessments does not "open" earlier years for VAT purposes. The two taxes may apply to the same taxpayer, or not. An example would be that what amounts to a business for income tax purposes may not be a business for VAT purposes and vice *versa*.[2] Each tax stands or falls only by the legislation applicable to that tax.

15. Input tax is proper to the period in which it is claimed. In other words if there were repayment claims to be made for the share fishing income then they should have been made in the relevant periods. The appellant now seeks to claim such input tax for periods prior to the current period of the current registration.

16. The time limit for claiming input tax is four years from the due date of submission of the relevant return.[3]

17. The claim for the VAT input tax (in this case unquantified but a request for new VAT returns to be issued) is out of time and the time limit cannot be extended[4].

18. The Tribunal has no discretion to extend that time limit. Therefore I accede to HMRC's application and dismiss that aspect of the appeal.

19. I do not accede to HMRC's request that that element of the appeal be struck out since in terms of Rule 8 of the Rules the appellant would be required to be given the opportunity to make representations. I had due regard to Rule 2 of the Rules and that would cause delay and expense and would not be proportionate.

20. The appellant's request that the Tribunal reopen the "Result of the 2009 VAT Investigation" is dismissed. As the review officer pointed out to the agent in his letter of 23 December 2016, the case papers and decision relating to the 2009 assessment were reviewed by HMRC in 2014 and the reasons to open a late review were rejected.

21. The appellant was given the opportunity to submit an appeal to the Tribunal within 30 days of that decision. He did not do so. He cannot do so now. He has advanced no relevant arguments for the failure to apply to the Tribunal in 2014 and the elapse of time both before and after that is both serious and very significant. HMRC are entitled to consider that matter closed.[5]

22. Lastly, in the interests of clarity, in the context of VAT, share fishing is usually what is called a "repayment trader" so when HMRC officers visit for a compliance visit or even an enquiry, unless they are told about the share fishing in the context of VAT it would not even be on their "radar" and would not be expected to be. Accordingly, although the Tribunal certainly does not have any jurisdiction whatsoever to consider the earlier enquiries, certainly as far as VAT is concerned, the share fishing was not a relevant issue since it is obvious that the appellant had not included anything to do with that in his VAT returns.

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[1] Last sentence paragraph 58, HMRC v Katib [2019] UKUT 189 (TC)
[2] Three H Aircraft Hire vHMRC [1982] STC 653
[3] Regulation 29(1A) VAT Regulations 1995
[4] Leeds City Council v HMRC [2015] EWCA Civ 1293
[5] Martland v HMRC [2018] UKUT 178 (TCC) paragraphs 43-47

The direct taxes

23. The matters in dispute are the assessments issued to the appellant in relation to his various activities as a sole proprietor.

24. All of the assessments in this matter are discovery assessments in terms of Section 29 Taxes Management Act 1970 ("TMA").

25. The first point that I would make is that the agent repeatedly indicates that there had been an enquiry into the appellant's 2012 tax return and therefore nothing prior to that should even be considered. HMRC confirmed that that enquiry related to the appellant's activity trading as the Struan Bar and was not then concerned with his share fishing income (see paragraph 32 below).

26. The appellant's share fishing income relates to the fishing of razor clams. An electric charge is inserted in the sea bed and triggering that sends the creatures upward in the sea. The divers collect them. The appellant's income in respect thereof is inter-related (see also paragraph 67).

27. I accept the evidence that as far as the discovery assessments and the penalties are concerned, they are:-

Date	**Year**	**Type**	**Additional Income (£)**	**Additional Tax due (£)**
20/09/2016	2007/8	Assessment	9,882	2,964.60
20/09/2016	2008/9	Assessment	22,485	6,295.80
20/09/2016	2010/11	Assessment	35,519	12,190.50
20/09/2016	2011/12	Assessment	38,190	10,107.25
20/09/2016	2012/13	Assessment	34,818	13,807.27
20/09/2016	2013/14	Assessment	42,447	15,780.22
20/09/2016	2014/15	Assessment	27,001	9,253.64
21/09/2016	2007/08	Penalty Determination		2,223.00
22/09/2016	2008/9 to 2014/15	Penalty Assessment		43,663.51

Background

28. On 17 June 2015, HMRC wrote to the appellant and the agent offering the use of Contractual Disclosure Facility (CDF) under HMRC's Code of Practice 9 (COP 9) on the basis that it was suspected that the appellant had committed tax fraud.

29. On 17 August 2015, HMRC received a letter dated 12 August 2015 from the agent enclosing the appellant's rejection of the offer to deal with matters under CDF/COP 9. That letter drew Officer Hastings' attention to the Note in the White Space in the appellant's 2014/15 tax return. That read:

> "As I am currently under investigation by HMRC's Fraud and Bespoke Avoidance Section and as they refuse to tell me what information they hold to suggest I have committed fraud to protect my interests all figures on this return should therefore be treated as provisional. This is purely to protect my interests in the event that I have inadvertently made some error or omission which I am not at present aware of and which HMRC refuse to advise me of."

30. That statement was made in the context that the agent understood that the fish merchant who purchased from the boat from which the appellant "operates" was being investigated by HMRC and it was believed that HMRC would have compared the entries on the appellant's tax return with the information held by the fish merchant.

31. The letter went on to state that "… although the boat is not owned by Mr Seath the business is effectively his …". Reference was also made to previous HMRC enquires and, in particular, the enquiry into the appellant's 2011/12 tax return involving both direct and indirect compliance checks which in the main related to income from the Struan Bar.

32. Officer Hastings contacted the enquiry officer and it was confirmed that the income from fishing was not considered during the 2012 enquiry and that although records were inspected "on site" at the agent's address, only spreadsheets were ever submitted to HMRC.

33. On 15 September 2015, HMRC acknowledged the appellant's decision not to utilise CDF/COP 9 and advised the appellant of the potential consequences including criminal prosecution.

34. On 2 October 2015, HMRC issued a request for information to the appellant under Schedule 36 of the Finance Act 2008 ("Sch 36 Notice") in relation to bank accounts which were operated or to which the appellant was a signatory, copies of lease, purchase or sale agreements for all businesses operated by the appellant, record of income and expenditure including payments to other individuals, crew, share fisherman or staff for the period 6 April 2009 to 5 April 2014.

35. On 2 October 2015, the agent wrote to HMRC appealing against the issue of the Sch 36 Notice on the basis that the information requested was excessive and unreasonable.

36. On 21 October 2015, HMRC wrote to the agent to advise that the information requested was for records that the appellant was required to maintain by law and therefore the appeal against the Sch 36 Notice was rejected.

37. On 21 October 2015 the agent wrote to HMRC objecting to the request for personal bank statements and credit card statements and advising that a formal subject access request may be made.

38. On 26 October 2015, HMRC wrote to the agent advising that the request for records to be produced had been amended to remove personal bank and credit card statements and requesting details of a suitable location where the records could be made available for uplift or inspection by HMRC.

39. On 6 November 2015, the agents provided some records in electronic format but some of the records relating to the Struan Bar appeared to have been lost although HMRC would have seen them in the enquiry. HMRC were advised that there were no written agreements in relation to the fishing boat.

40. On 3 February 2016, HMRC wrote to the agent requesting sight of the primary records and suggesting that a meeting be held in order to progress matters and requesting bank statements for fishing activities prior to February 2012 as none had been provided.

41. On 4 February 2016, the agent wrote to HMRC advising that he was not recommending that his client attend a meeting with HMRC and questioning the need for records to be produced to HMRC when there had been a previous enquiry into certain periods of trading by the appellant. He stated that there were no bank records available prior to February 2012.

42. On 10 February 2016, HMRC wrote to the agent noting the rejection of a meeting request. The letter requested copies of any contemporaneous records of sales and asked for an indication

of what records had been prepared. Details of previous bank accounts were also requested and the agent was advised that HMRC had concerns over the level of income declared by the appellant for a number of years.

43. In particular, Officer Hastings stated that his review of records had identified that details of landings from the Semper Victoria since 2009 existed, yet there were no bank records.

44. On 12 February 2016, the agent wrote to HMRC advising that a request had been made for old bank statements for a closed bank account. A request was made for details of the bank reconciliation carried out by HMRC and advised that if any errors had been found in the records they were unintentional. The only sales receipts that were held were in the form of bank transfers.

45. On 23 February 2016, HMRC acknowledged being advised that the appellant had requested duplicate bank statements. A request was made for information in relation to the treatment of cash sales and HMRC made a further request to have a meeting with the appellant.

46. On 18 April 2016, the agent wrote to HMRC advising that the appellant had received £1,500 per month in cash in relation to the sale of the Struan Bar and a portion of this money had been treated as untaxed interest.

47. On 25 April 2016, the agent wrote to HMRC providing copy bank statements from December 2009 to May 2012. The letter reiterated that the appellant "was in reality little more than a share fisherman…and that he does not own the boat he worked from…" and that he had been landed with the administrative tasks that were usually carried out by the boat owner because he was the most capable of so doing. He was now purely a share fisherman on any boat on which he could find work.

48. On 26 May 2016, HMRC wrote to the agent pointing out that the statements for the period 29 December 2011 to 2 April 2012 were missing and that a review of the bank statements that had been provided showed that a number of sales relating to the Semper Victoria and Bute Diving accounts had been omitted. A meeting was again requested.

49. On 15 June 2016, the agent wrote to HMRC stating that the appellant maintained the business records to the best of his ability. The letter went on to state that the appellant was a share fisherman and was not the skipper and therefore was only responsible for his share of the catch.

50. On 26 June 2016, the agent submitted the missing bank statements and wrote to HMRC stating that his client was:

> "…little more than a share fisherman… … and is only responsible for his share of any catch.. when he is actually on a trip... …he is unable to supply dates for any trips he missed … …he also had his public house business and on occasions worked away from home shop fitting…. he has perhaps got in over his head when he accepted the bookkeeping and administrative roll (sic) for this business particularly when he was not in charge of the business or vessel…".

51. On 11 August 2016, the agent wrote to HMRC asking for the enquiry to be closed.

52. On 24 August 2016, HMRC wrote to the agent asking for a meeting and stated that if that was declined then he required answers to some 42 questions including questions about when the appellant first commenced fishing activities, which vessels he had worked on since April 2009, the operation of the bank accounts for Semper Victoria and Bute Diving, the notifications made to Marine Scotland in relation to landings, who dealt with crew members for share portion, payment for crew and information about for whom the shop fitting was carried out.

53. On 24 August 2016, the agent responded expressing concern at the length of time taken over the enquiry and the amount of information requested by HMRC.

54. On an unspecified date, which on the balance of probabilities I find to be after the issue of that letter, Officer Hastings made enquiry to HMRC's Share-fisherman Unit ("the Unit") and although the primary records had been destroyed the information captured in electronic ledger (as is usual practice) disclosed that gross payments had been made to the appellant in 2007/08 and 2008/09 totalling £9,822 and £22,485 respectively from the vessels Semper Victoria and Gwalch-Y-Mor. On checking the tax returns for those years, which had been submitted to HMRC by a previous agent on 27 January 2010 and 31 January 2012, there was no return made in respect thereof.

55. On 19 September 2016, Officer Hastings received copies of declarations to the Unit by Alexander Burke & Co confirming that in 2010/11 to 2015/16 there were no gross payments to share fishermen relating to the Semper Victoria.

56. On 20 September 2016, HMRC wrote to the appellant advising that HMRC considered that his income had been under-declared for a number of years in relation to fishing, including details submitted to HMRC in respect of share fishing and declarations of sales from the fishing vessel operated by the appellant.

57. The letter also provided details of the additional income HMRC considered was due to the fishing activities carried out by the appellant and a penalty issued under Section 95(1) TMA for the financial year ending 5 April 2008. The letter advised that the penalty was normally based on 100% of the additional tax chargeable. HMRC considered an abatement of 25% was appropriate and as such a 75% penalty charge would apply for the 2007/08 year. The letter went on to advise that penalties for the years ending 5 April 2009 to 2015 would be issued under Schedule 24 of the Finance Act 2007 ("Sch 24 FA 07").

58. The agent appealed and correspondence ensued. Ultimately a review was requested and on 7 April 2017 Officer Vallance wrote a ten page letter to the agent upholding the original decision.

The Tax Returns

59. HMRC produced copy tax returns for the years 2007/08 to 2014/15, copies of which had been sent to the agent on 18 October 2018.

60. The first return submitted by the agent was that for 2012/13. The first mention of share fishing is in the White Space for 2013/14 where it reads: "I receive a share of the catch from the boat I work on and in previous years my returns showed only my share of the income and expenses….". In that year and in the previous year his sources of income were described as "Bute Diving" and "Shop Fitting". In the years where the previous agent submitted the returns the sources of income were identified as the "Struan Bar" and "Diver" or "Diving Activities".

The Law

61. Section 29 TMA, so far as material reads as follows:-

> **"29 Assessment where loss of tax discovered**
>
> (1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a year of assessment—
>
> > (a) that any income which ought to have been assessed to income tax, or chargeable gains which ought to have been assessed to capital gains tax, have not been assessed, or
> >
> > (b) that an assessment to tax is or has become insufficient, or
> >
> > (c) ….

The officer or, as the case may be, the Board may, subject to subsections (2) and (3) below, make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax.

…

(3) Where the taxpayer has made and delivered a return under section 8 or 8A of this Act in respect of the relevant year of assessment, he shall not be assessed under subsection (1) above—

(a) in respect of the year of assessment mentioned in that subsection; and

(b) in the same capacity as that in which he made and delivered the return,

unless one of the two conditions mentioned below is fulfilled.

(4) The first condition is that the situation mentioned in subsection (1) above was brought about carelessly or deliberately by the taxpayer or a person acting on his behalf.

(5) The second condition is that at the time when an officer of the Board—

(a) Ceased to be entitled to give notice of his intention to enquire into the taxpayer's return under section 8 or 8A of this Act in respect of the relevant year of assessment; or

(b) Informed the taxpayer that he had completed his enquiries into that return,

the officer could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the situation mentioned in subsection (1) above.

(6) For the purposes of subsection (5) above, information is made available to an officer of the Board if—

(a) It is contained in the taxpayer's return under section 8 or 8A of this Act in respect of the relevant year of assessment (the return), or in any accounts, statements or documents accompanying the return;…"

Reasons for Decision

62. HMRC acknowledge that, in the first instance, in regard to the discovery assessments, the burden of proof lies with them. In terms of Section 29(1) TMA the issue is whether or not there was income which ought to have been assessed to income tax but which had not been declared by the appellant and that therefore there was a loss of tax. Thereafter the burden of proof shifts to the appellant.

2007/2008 and 2008/09

63. During the enquiry, the agent had laboured under the misapprehension that it was for HMRC to tell him what information they held and then he could rebut it. This is a self-assessment system. It is for the taxpayer to establish that tax returns are complete and correct.

64. As is evident from the issue of the Sch 36 Notice in October 2015, HMRC embarked on a fact finding exercise. It is clear from that that at that stage, Officer Hastings only suspected a loss of tax from 2009/10. He was clearly still of that view in February 2016 when reiterating his request for details of landings from 2009. Even as late as 24 August 2016 (see paragraph 52 above) he was still working on the premise that the defaults started in April 2009 but by that point he did ask when the appellant first started fishing, to which question, of course given the history, he received no reply.

65. I simply do not accept the argument that HMRC knew about the appellant's share fishing income prior to the 2009 VAT investigation and the investigation of the 2011/12 tax return and they overlooked it so therefore cannot raise discovery assessments. I have made the position

clear in respect of those issues at paragraphs 22 and 60 above. Furthermore I have made it explicit at paragraph 60 above that the appellant himself only disclosed share fishing income in his 2013/14 tax return. That return was lodged on 10 December 2014. The CDF was offered in good time on 17 June 2015. HMRC would have had no reason to check with the Unit until the investigation leading to these assessments was launched.

66. I am satisfied that as far as 2007/08 and 2008/09 are concerned it was only once Officer Hastings received the information from the Unit, in or about early September, that he could see that there were omissions in those returns. The assessments were issued on 20 September 2016. Section 29(1) TMA is satisfied in that there was a loss of tax. Subsection (4) is satisfied because the appellant had deliberately omitted the income from his tax returns. The Officer acted timeously and the assessments are competent[6].

The other assessments

67. Whilst I acknowledge that there had been an enquiry into the appellant's 2012 tax return, I am satisfied that that was largely restricted to his activities with the Struan Bar. As I have made clear, it was only after December 2014 that HMRC became aware of the issues surrounding the share fishing for razor clams which had previously been described as diving.

68. As can be seen above, the full information in regard to the fishing income in the form of the bank statements was only furnished in June 2016. The discovery assessments were issued in September 2016. In my view it was only when the first set of bank statements for the earlier years were provided in April 2016 that Officer Hastings could begin to quantify what might be the level of tax loss. Even those statements show that there was a tax loss.

69. I am satisfied that HMRC have established that the provisions of Section 29 TMA have been satisfied.

70. The position is further complicated by the fact that the agent has repeatedly told HMRC that the appellant was not an owner of the vessel. It is clear from the printout from Marine Scotland that Mr Seath was an owner of the vessel from 29 August 2011 to 18 August 2015. Officer Hastings was clear that that redacted printout was shown to the agent.

71. Officer Hastings was also very clear that he did not know whether the appellant had been the sole owner or whether a member or members of the Burke family had been a co-owner(s). The fact that Alexander Burke & Co made declarations to the Unit covering the period whilst the appellant was an owner means that that is quite likely. The appellant has repeatedly been asked for information as to his status on the vessel and has declined to furnish anything.

72. This is a specialist Tribunal and not only have I heard many cases involving discovery assessments but in professional practice I have acted for taxpayers in numerous enquiries. The first point I would make is that it is certainly not the case that all taxpayers who are investigated are found to have omissions from their returns or accounts. I also make it quite clear that I reject the agent's repeated assertion that the fish buyers who have been investigated have been accused of fraud. In my experience that is a very rare occurrence indeed.

73. Furthermore it is my experience, and I therefore agree with the oral evidence of Officer Hastings, that errors or omissions in "deductibles" in accounts are almost never deliberate since it is in the taxpayer's interests to maximise those. Therefore the agent's repeated assertion that the fact that one or more of the fish buyers who provided information to Marine Scotland may be under investigation by HMRC means that that information is unreliable does not carry much weight.

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[6] Burgess and another v HMRC [2015] UKUT 578 (TC)

74. Where the appellant's accounts disclose a sale to a fish buyer that was not reported by that buyer to Marine Scotland, on the balance of probability that is a simple error or oversight. That is a rare occurrence. However, on the balance of probability, where the fish buyers did report purchases then those reports are likely to be accurate.

75. The appellant or the agent does not seem to have understood that the burden of proof in regard to a large number of matters lies with them. The appellant has chosen not to lodge a witness statement. The appellant has chosen not to identify the owner(s) or skipper(s) of the vessels at any point in time. That does not assist him. It does not assist him that he did not volunteer the information that he had been a share fisherman either in his tax returns until 2013/14 or before 2009 as Officer Hastings first believed.

76. It does not assist him that initially it was denied that there were any bank statements predating February 2012 (see paragraph 41 above).

77. The agent is still averring (point g of the submission) that HMRC were not concerned about the bank accounts. They were and Officer Hastings wrote to the agent on 26 May 2016 stating explicitly: "A review of the bank statements available reveals that a number of sales have been omitted from Semper/Bute Diving accounts." That was sent before the missing statements were provided and more omissions discovered.

78. An example of a payment which was traced in the bank account and which matches the value of sales declared to Marine Scotland but which was omitted from the business account is a deposit on 23 April 2013 of £2,327.40.

79. Further examples of discrepancies arise where the payments traced in the bank account matched the value of sales declared to Marine Scotland but yet the amount declared in the business accounts is less can be found at (a) in relation to a fishing trip for 9-10 January 2013 the landings were £5,155.80 but the accounts disclose £4,792.10, (b) in relation to a fishing trip for 10-12 January 2013 the landings were £4,030.80 but the accounts disclose £3,736.80.

80. Lastly in regard to omissions, again there are many examples but on a number of occasions a large sale to Trawlpac was declared in the accounts but a sale from the same landing to Tom Stevenson was not. Examples include landings in Crinan being (a) one worth £2407.30 to Trawlpac which was declared and one of £121.32 to Tom Stevenson which was not, and (b) one worth £3,077.80 to Trawlpac which was declared and one of £937 to Tom Stevenson which was not.

81. Officer Hastings' evidence was that the most frequent omissions related to sales to Tom Stevenson and Atlantic Seafoods. I accept that there is evidence of a consistent and persistent suppression of takings in the accounts.

82. The declarations to Marine Scotland by buyers relating to the purchases of razor fish or clams from the Semper Victoria for the years ended 5 April 2008 to 2013 was £1,085,402.

83. The total turnover declared in the appellant's tax returns in the same period was £145,948.

84. Information provided to the Unit did not reflect the profits that the appellant personally received or claimed to have made to crew members.

85. There is an almost complete absence of relevant records. HMRC have provided very detailed spreadsheets setting out the basis on which they have calculated the assessments. They have furnished those spreadsheets to the agent.

86. I observe that the agent has repeatedly complained about HMRC's conduct of the enquiry. The Tribunal has no jurisdiction in regard thereto. However, I observe that HMRC

have repeatedly offered to meet the appellant and have repeatedly asked for information. There is a serious lack of primary records and only the appellant can furnish some of the information. He has not done so. The 42 questions (see paragraph 52) asked by HMRC are exactly the type of question I would have expected to have been asked in such an enquiry had I been acting.

87. The appellant has not discharged the burden of proof which lies with him.

88. In all these circumstances I find that the assessments have been made to best judgement. They are therefore upheld. The appeal in that regard is therefore dismissed.

Penalties

89. In regard to penalties the burden of proof lies with HMRC. As I have indicated above, I find that the appellant's conduct in relation to the omissions has been deliberate at every stage.

90. In regard to the Penalty Determination under Section 95 TMA I find that the return was delivered fraudulently as the appellant deliberately omitted his fishing income in that and indeed the following year.

91. The Schedule 24 penalties are correctly imposed since there are deliberate inaccuracies in the returns.

92. The agent has not addressed the question of penalties but in my view the reductions offered by HMRC, in the circumstances of this case, are, if anything, generous. HMRC have therefore discharged their burden of proof.

93. The penalties are therefore upheld and the appeal dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

94. 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.

ANNE SCOTT
TRIBUNAL JUDGE

Release date: 09 August 2019