



**TC07982**

*INCOME TAX - discovery assessments - valid - reduced - appeal allowed to that extent*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2018/01693**

**BETWEEN**

**MR MARK TURNER**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE NIGEL POPPLEWELL  
MISS SUSAN STOTT**

**Hearing conducted remotely by video on 23 November 2020 with written submissions received in December 2020. Since the hearing was held remotely, it was, by necessity, held in private.**

**The Appellant in person**

**Mrs Helen Davies, Officer of HM Revenue & Customs, for the Respondents**

## DECISION

### INTRODUCTION

1. This is an appeal against three discovery assessments made by the respondents (or “HMRC”) on 21 October 2014 for the tax years 2009-2010, 2010-2011 and 2011-2012. The total amounts of income tax in question is £14,417.76.
2. There are two issues which we have to determine. The first is whether the discovery assessments are valid in time discovery assessments and have been properly served and notified to the appellant. If HMRC can establish this, then the second issue is whether the appellant has displaced the assessments by putting forward a positive case of the more likely amount of taxable profit generated in those tax years.
3. For the reasons given later in this decision, we have come to the conclusion that the discovery assessments are valid, but the assessments do overcharge the appellant. We have therefore reduced the assessments.

### THE LAW

4. There is no dispute about the law.
5. Section 12B of the Taxes Management Act 1970 (“TMA”) provides that a person who may be required to submit a tax return to HMRC must keep and preserve all records as may be required to enable him to make and deliver a complete and accurate return for the tax years in question.
6. Under section 29 TMA, an officer of HMRC may make a discovery assessment if he or she discovers, as regards a taxpayer who has not submitted a tax return for a year of assessment, that income or gains which should have been assessed has not been so assessed or that an assessment to tax is or has become insufficient or that any relief which has been given to a taxpayer is or has become excessive. The usual time limit for making a discovery assessment is not later than 4 years after the end of the year of assessment to which it relates, but that period is extended to 6 years if the loss of tax has been brought about carelessly by the taxpayer.
7. Under section 50(6) TMA an assessment (including a self-assessment and an amended self-assessment) shall "stand good" unless the taxpayer establishes that it is wrong.
8. Case law clearly establishes that the onus is on the taxpayer not only to suggest that the assessment is incorrect but also to provide evidence as to what the correct amount to which he or she should be assessed, is more likely to be.
9. In *Haythornthwaite & Sons Ltd v Kelly* 11 TC 657 the Court of Appeal said:  
  
"Now it is to be remembered that under the law as it stands the duty of the Commissioners who hear the appeal is this: Parties are entitled to produce any lawful evidence, and if on appeal it appears to the majority of the Commissioners by examination of the appellant on oath or affirmation, or by other lawful evidence, that the appellant is over-charged by any assessment, the Commissioners shall abate or reduce the assessment accordingly; but otherwise every such assessment or surcharge shall stand good. Hence it is quite plain that the Commissioners are to hold the

assessment standing good unless the subject - the appellant - establishes before the Commissioners, by evidence satisfactory to them, that the assessment ought to be reduced or set aside".

10. And as Walton J. put it in *Nicholson v Morris* 1977 STC 162, referring to the Revenue figures: "I do not think that anybody pretends that those figures are anything other than estimates or guesses. They are the best that the Revenue can do on the materials in front of them and they may very well, for ought I know, be a very poor approximation to the truth indeed. But the situation here is that once leave has been given to make the additional assessments and the additional assessments have been made, the onus is on the taxpayer to show that they represent over-assessments".

## **EVIDENCE AND FACTS**

11. We were provided with a comprehensive bundle of documents. The appellant gave oral evidence on which he was cross examined by Mrs Davies. Amongst the documents was a witness statement made by HMRC Officer Christopher Coombs ("**Officer Coombs**"). Officer Coombs was not called to give evidence in person because his statement had been tendered to the appellant well before the hearing, and on which the only comment made by the appellant concerned the earnings figures provided by Officer Coombs from the Forest of Dean Council. As things turned out, it was apparent that this was simply a transcriptional error made by Officer Coombs who should have been referring, in that section, to Gloucestershire County Council (although the appellant did suggest that if the officer had made this mistake, he might have made others (which he did not specifically identify however)). From this evidence we find the following:

### **Background**

- (1) The appellant is a self-employed taxi driver and has been within the self-assessment regime since February 2006. He operates in and around the Forest of Dean in Gloucestershire. He was sent notices to file tax returns for the tax years under appeal but failed to submit such returns. Following information received from Gloucester County Council in December 2011 confirming that the appellant had undertaken driving work for them in the relevant tax years, HMRC notified the appellant, in January 2012, of their intention to visit him and discuss his business records.
- (2) A meeting was held on 25 June 2012 between HMRC and the appellant. The notes of that meeting record that the appellant agreed that he delivered parcels for DHL; the Council work was paid into the appellant's private bank account with RBS and the cash work was paid into the appellant's private Santander account which was then transferred into the RBS account. One of his customers, Tim's Transport, made payments by bank transfer. Fuel had been paid for on account but at the date of the meeting the appellant was paying the fuel by cash. The appellant also agreed that he would provide HMRC with his business records for the previous 12 months.
- (3) However, notwithstanding correspondence for the rest of 2012 and in 2013, in which HMRC asked the appellant to produce its business records, the appellant failed to do so. He also failed to do so in response to information notices issued under Schedule 36 Finance Act 2008. In this period there were a number of telephone conversations between the appellant and HMRC which made clear that

the appellant was having difficulty in compiling records but in which he indicated to HMRC that he would do his best to sort them out and send them to HMRC. He failed to do so.

- (4) Following information received from Tim’s Transport in 2014, HMRC’s assessing officer, Officer Peachey, wrote to the appellant on 17 June 2014 telling him that he intended to raise determinations for the tax years in question in which his net profit would be increased for 2009-2010 from £10,026 to £23,696; for 2010-2011 from £5,326.48 to £26,513; and for 2011-2012, from £2,940.24 to £20,721. This letter was followed up by the discovery assessments themselves which were sent to the appellant on 21 October 2014 along with a covering letter from Officer Peachey and late filing penalty assessments and explanation letters for the three tax years.
- (5) HMRC had previously issued revenue determinations for the years 2007-2008 and 2008-2009 in October 2010. Following assistance from HMRC’s “Needs Extra Support” (“NES”) Team in the summer of 2016 the appellant submitted tax returns for the years 2007-2008 to 2015-2016 between July and September 2016. HMRC’s view was that these did not displace the determinations nor the discovery assessments and invited the appellant to make a late appeal, which the appellant did in November 2017. A late appeal hearing took place before Judge Short on 10 January 2020 who allowed the appellant to bring his appeals out of time.
- (6) In her decision, released on 17 February 2020, Judge Short recorded that “Mr Turner suggested at the Tribunal that having discussed matters with Tax Aid he was now in a position to produce evidence to support his appeals against the three discovery assessments for the 2009-10 to 2011-12 tax years.” And: “In our view Mr Turner’s prospect of success in his appeals will be determined by his ability to provide the evidence which he has now told us is available.....”
- (7) Judge Short went on to make directions that the appellant should provide HMRC, no later than 30 June 2020, with a document setting out his business expense claims for the 2009-10 and 2011-12 tax years to which he should attach the evidence which he had to support those claims in the form of bank statements or other documents. Following such directions, the appellant provided additional information which resulted in HMRC withdrawing the late filing penalties which they had previously assessed on the appellant.
- (8) In their statement of case, HMRC provided a table of the numbers which had been used by the appellant in his tax returns for the tax years under appeal, and the figures which HMRC have used as the basis for the discovery assessments. This is set out below:

	<b>Appellant figures 2009-10</b>	<b>Appellant figures 2010-11</b>	<b>Appellant figures 2011-12</b>
Turnover	£36,984.00	£35,442.00	£38,758.00
Car, van, travel	£19,500.00	£23,353.00	£23,381.25

exp			
Wages/staff costs	£3,700.00	£4,160.00	£9,111.68
Rent	£320.00		£960.00
Interest	£257.00	£257.52	£257.00
Accountancy		£100.00	
Phone	£2,369.00	£1,413.00	£1,920.83
Other exp	£812.00	£832.00	£187.00
Total	£26,958.00	£30,115.52	£35,817.76
Taxable profits	£10,026.00	£5,326.48	£2,940.24

	HMRC figures	HMRC figures	HMRC figures
Income	£37,613.00	£42,085.00	£32,891.00
Expenses	£13,917.00	£15,571.00	£12,169.00
Taxable profits	£23,696.00	£26,513.00	£20,721.00
Tax	£4,882.68	£5,671.68	£3,863.84

(9) We find the foregoing background as facts.

### **Officer Coombs' evidence**

12. Officer Coombs was not the assessing officer, that was Officer Peachey, but Officer Peachey had left the department some time ago and Officer Coombs was asked to provide his view of the matter. To do this he reviewed the case papers which included the appellant's tax returns as well as the notes of the meeting which took place on 25 June 2012 and the correspondence between the parties. He said that Mr Turner had been contacted on at least 15 occasions following the meeting in an attempt to obtain records and although Mr Turner had given various undertakings to provide his business records, they were not forthcoming. He had been asked to reconcile the figures used by Officer Peachey. In his letter of 17 June 2014 which predated the discovery assessments, Officer Peachey had increased the net profit figures to the figures set out in the table at [11 (8)] above. He had determined income from Council contracts, parcel deliveries and from the appellant's work with Tim's Transport. He had considered cash based journeys but had not been able to determine a realistic figure from this potential source of income. He had allowed a percentage of turnover as expenses which, determined on national trends, was 37% as being an average rate. Officer Coombs thought that with no records available, his experience was that 37% of turnover is a reasonable figure to use as a deduction to cover motor and other general maintenance expenses. He reviewed

the income figures used by Officer Peachey on the basis of information which he had received from Gloucestershire County Council and Tim's Transport (and as mentioned above it was clear that Officer Coombs' reference to the Forest of Dean Council was mistaken and that he meant Gloucestershire County Council), and in his view the turnover figures provided by Officer Peachey reconciled almost exactly to the figures which he, Officer Coombs, had reviewed. The 37% deduction would not include any deduction for wages. Mr Turner had supplied receipts for only £298.27 for 2009-2010, £71.63 for 2010-2011, and approximately £1,400 for 2011-2012. Although bank statements provided by the appellant for later periods do not cover the periods in question, they do indicate additional income for parcel deliveries which in Officer Coombs' opinion meant that the turnover figures used by Officer Peachey were lower than they should have been, and the turnover for 2009-2010 should have been £48,528, for 2010-2011, it should have been £52,692, and for 2011-2012, it should have been £47,567. Verifiable income for 2011-2012 (contract work and parcel delivery) amounts to £40,932 yet Mr Turner's tax return for that year shows a total of £38,758. This does not include any cash work that the appellant might have undertaken. Officer Coombs also considered figures supplied by the appellant for 2013-2014 (not a year subject to the discovery assessments). He observed that although the appellant claimed expenses of £27,205.94 for that year, he only provided evidence of expenditure of £2,366.07. As a percentage of turnover Mr Turner's claim for expenses for that year is not dissimilar to that allowed by Officer Peachey for the tax years under appeal. He has understated his parcel delivery income by approximately £550. In his view because Mr Turner had not kept robust business records, Mr Turner's figures were unreliable.

### **Mr Turner's evidence**

13. Mr Turner's evidence in chief is derived from a number of sources, namely facts found by Judge Short in her decision of 17 February 2020, written observations made by the appellant on HMRC's skeleton argument, and his oral testimony at the hearing

14. Mr Turner has always had difficulty with paperwork. In his words it makes his head "fuzz up and I cannot understand it". He had separated from his long-term partner in 2008 and it was she who had liaised with his accountant and sorted out the relevant paperwork for his business. That accountant became blind and unable to continue to work for Mr Turner after 2009. He had relied very heavily on his former partner and his accountant to deal with his paperwork and so the paperwork for his business got out of control from 2009 and 2010. His father had become seriously ill in 2012 and died in June 2015 and during the period of his father's illness the appellant was not in a fit enough mental state to deal with his tax affairs and could not afford an accountant to help him out. He had not intentionally avoided paying his tax bills but had fallen behind with all of his paperwork including mortgage payments, Council tax and business rates. He had employed some accountants to do his payroll but that was the only administrative support he had. In the summer of 2016, someone from HMRC put him in touch with HMRC's NES unit. He would go to Ross on Wye library and meet a lady from this unit with his records and she then completed his tax returns for the tax years under appeal. She seemed to have a hotline to HMRC and was able to contact them much more readily than he had been able to do. She accepted some of his figures but rejected others but the figures in his 2016 tax returns were based on his business records and are the correct ones. HMRC's estimate of his outgoings are just that, an estimate, whereas the figures in his 2016 returns were based on real outgoings. The 37% figure used by HMRC might be a reasonable one for taxis which are used in cities such as Bristol or Cheltenham, but it is far too low for rural areas. Furthermore, he uses older vehicles and because of that he has to pay more than the average for repairs and maintenance. He also has to keep replacing vehicles, so

the figure does not take into account the lower qualities of cars which he used in his business. His fuel costs are also much higher than the average since the Forest of Dean is very spread out. He has never hidden anything and given information freely. He takes very little or no cash as there is no general taxi work. Most people in the Forest of Dean have a car and there is little tourism. There is little need for people in the Forest of Dean to use taxis so most of his income comes from contract work. His credit record is very bad, and he does not own a debit card. So in order to acquire new vehicles he would ask a friend of his, Ms Greenwood, to buy the cars for him and he would then pay her back. This repayment can be seen from his RBS statements. When Halifax closed their branch in his local town, Cinderford, he opened an account with the branch of Santander which opened in its place. He would transfer money from his Halifax and RBS accounts into his Santander account which he would draw out as cash in order to pay for fuel.

15. He did not realise that he needed to supply all his Santander bank accounts for this hearing. He had intended to respond to HMRCs requests for the provision of his business records, by getting them into decent shape before sending them on but accepted that he had not done this.

16. In cross examination Mr Turner provided further evidence and explanations. He accepted that by the time he had to submit his 2009-2010 tax return he had had over 12 months to find an accountant following the illness to his previous accountant, but he is not a wealthy man and could not afford one; although he had always intended to supply his records to HMRC, he accepted that he had failed to do so, the reason for which was that they were in a poor state, he couldn't cope with it, and although he intended to put the paperwork into a better state, he didn't get round to doing that; he did not dispute that he had been careless in dealing with his business administration; he also accepted that he had told the Tribunal recently that he would provide his business records but had not provided a comprehensive set; the Halifax statements that he had provided started in January 2011 and did not cover the full period; even though he had told Officer Peachey that he had a Santander bank account in 2012, he has not provided any Santander bank statements; nor has he provided any RBS bank statements for the relevant periods; the wages that he paid his employees were done via his accountants and although he has not supplied records, those records will be available from his accountants; his bank accounts may not show regular payments to one of his employees, Mr Gardner, but that's because he would sometimes miss payments and then make them up with more payments later; whilst he had told Officer Peachey that his parcel income was about £60 a fortnight, this was seasonal, and he would split this money with someone else; if Officer Coombs analysis of his parcel income for 2011-2012 was correct as £9,601.59, and that was greater than £60 a fortnight then that was because he was under pressure at the meeting; but he did not try to hide the correct number; he had provided the records that enabled him to verify the actual amount received from his parcel work to the NES unit; even if his income figures are not absolutely correct, he did not intentionally deceive HMRC; and his expenditure figures are more accurate since these are based on the records he gave to the NES unit; the fuel statement which he provided shows that in the three month period in 2011 he was spending about £1,800 per month on fuel; it was this sort of amount that he was transferring to his Santander bank account and then withdrawing in cash to pay for fuel once he had closed his fuel account; his cars in the Forest of Dean incurred more mileage than cars in the city because of the rural environment; one of the reasons he did not take someone on to help him with the paperwork was because that person would not generate income; he could not explain the increase in wages between 2009-10 of £3,700 to the figure in 2011-2012 of £9,111.68, nor could he explain the difference between the analysis conducted by Officer Coombs who only identified approximately £2,400 of wages for that later tax year, but he had

not made the payments up and the reason he cannot explain the increases and differences is because he doesn't have the paperwork; he had paid for advertisements in local media which advertised not his taxi business but other small traders and charities, but the amounts were negligible; although he had told Officer Peachey that his telephone costs had been about £15-£30 a month, it was in fact more than that and the difference between that number and the amount claimed in his return of £1,920.83 was simply because his statement to Officer Peachey had been incorrect and was a result of being put under pressure at the meeting; for the year 2013-2014, he cannot explain the differences between the figures in his tax return (which show, for example, that expenses he has claimed for car van and travel as being £23,708.75, and for phone fax stationary and other office costs of £1,808.12) and the figures provided by HMRC's analysis of the documents provided by the appellant in June 2020 for the purposes of this hearing; but he explained that he had provided the documents to the lady at the NES unit and his tax returns therefore reflected what was in those documents and was the correct amount; he accepted that he had been careless in keeping records which would have enabled him (or someone helping him) to have submitted accurate information on his returns but he was not intentionally careless; HMRC were not right when they said that he had underdeclared his income because he had not included in it any cash from, for example, delivering parcels; he had no cash income and in fact HMRC's figures were way too high.

## **DISCUSSION**

### **The assessments - validity**

17. Whilst the appellant has made no serious challenge to the validity of the discovery assessments, it is still incumbent on us to make a finding as to whether they are valid in time assessments which have been properly served on the appellant. If HMRC cannot establish this, then the appeal must be allowed.

18. On the basis of the evidence which we have seen and which we have described above, we have concluded that Officer Peachey made a discovery that the appellant should have been assessed to income tax for each of the tax years in question when, following his meeting with the appellant on 25 June 2012,( and thereafter, having sought to obtain business records on numerous occasions from the appellant) he obtained information from Tim's Transport of the payments made to the appellant. That was in the spring of 2014. On 17 June 2014 Officer Peachey wrote to the appellant explaining that he had decided to increase the appellant's profits to the amounts set out at [11(4)] above and followed up that letter by issuing the discovery assessments on 21 October 2014. There is no question that those assessments had become stale, and, as far as the tax years 2010-2011 and 2011-2012 are concerned, we find that those were valid in time assessments since they were made within the ordinary time limit of 4 years from the end of the year of assessment to which they relate.

19. The discovery assessment for the tax year 2009-2010 does not fall within the ordinary 4 year time limit and so HMRC must show that the loss of income tax has arisen because the appellant behaved carelessly. They submit that the appellant had known for some time before he needed to submit his 2009-2010 tax return that he needed help since some 12 months prior to that he knew that his old accountant could not help him nor could his previous partner. In the circumstances he should have appointed an agent to assist. The reasonable taxpayer in the appellant's circumstances, would have done so. At the meeting with HMRC in June 2012 the appellant had confirmed that he was aware that he had not filed his relevant tax returns, that he needed help in his affairs, that his previous agents was not able to assist him, and that the agent previously dealing with his payroll was also assisting him to get his affairs in order; but that agent dealt only with payroll and not with his tax returns; and he should have appointed



that agent to deal with the returns and not just with his payroll; the appellant has accepted that he was careless in keeping records which would have enabled someone on his behalf to have submitted accurate and timely returns.

20. We accept these submissions. We ask ourselves whether the objectively reasonable taxpayer in the appellant's position exercising reasonable diligence towards the tax system and the completion of his tax returns would have behaved as the appellant has behaved. And the answer is no. In our view the reasonable taxpayer in the appellant's position would have sought help, from someone competent, to assist him to complete his returns on the basis of the records in his possession. That person might also have been able to assist in organising those records. The appellant has a statutory duty to keep and preserve records to enable him to submit an accurate return. And it seems to us that he has failed in his duty. But given his almost pathological aversion to paperwork, it was incumbent on him to seek assistance to enable him to submit timely and accurate returns. And he failed to do this. In our view this is careless and allows HMRC to extend the time period for assessing the appellant to tax for the tax year 2009-2010 to October 2014.

21. And so, it is our conclusion that the discovery assessments are valid in time assessments for each of the three tax years under appeal.

### **The assessments – quantum**

22. We remind ourselves that at this stage of the enquiry, the burden is on the appellant to satisfy us that, on the balance of probabilities, his figures are more likely than not to be correct. To discharge that burden it is incumbent on an appellant to bring forward positive evidence. Unfortunately for this appellant, he has failed to provide much positive evidence for the hearing notwithstanding what was said to him by Judge Short at the hearing on 10 January 2020.

23. Although the appellant has provided further documents to HMRC following that hearing, many of them do not cover the periods under appeal.

24. The appellant's case is, basically, that he provided all his records to the lady from the NES unit who faithfully transcribed those into his tax returns and the figures in those tax returns are therefore correct. If the wages figures in his returns are overstated, then the real figures can be obtained by HMRC from their PAYE records. He might have understated his parcel income during the meeting on 25 June 2012 but that was because he was under pressure at the time. In any case he split that parcel income 50-50 with another person. He made further detailed submissions and explanations during his evidence in chief and cross examination, and those are set out above.

25. HMRC's position is that the figures provided by Officer Coombes in his statement following the analysis of the information provided by the appellant provides a more accurate reflection of the appellant's tax position than that set out in his returns. The appellant has agreed that the income which the Council says it has paid him, is correct, and the same is true of Tim's Transport. The additional parcel income identified in the bank accounts supplied by the appellant has been correctly analysed by Officer Coombes and shows that the appellant's income for the three years has been understated. Although not the period under appeal, the information provided by the appellant for the tax year 2013-2014, which the appellant says is accurate, cannot be reconciled with the information included in his returns. For example, for that year the only receipts provided by the appellant for expenditure amounted to £2,366.07 when the claim on his return was for £27,205.94. If this was true for the tax year 2013-2014,

it was also likely to be true for the three periods under appeal. The appellant's expenditure on his telephone is far less than the amount claimed in his tax return for that and other office costs. Admissions made in cross examination by the appellant illustrate that the amount of income and expenditure submitted by the appellant does not stand up to scrutiny. It is likely that additional cash income from general taxi work was received by the appellant and used to pay cash expenditure. The appellant has not displaced HMRCs assessments which HMRC ask us to uphold.

26. We are grateful for the parties clear and helpful submissions both written and oral which we have carefully considered in reaching our conclusion, and in so reaching that conclusion, we have not found it necessary to refer to each and every argument advanced by the appellant and by HMRC.

27. It is our conclusion, for the reasons which we set out below, that the more likely amounts of the appellant's income and expenditure are those set out in the table below:

	<b>Tribunal figures 2009-10</b>	<b>Tribunal figures 2010-11</b>	<b>Tribunal figures 2011-12</b>
Contract work	£36,028.00	£40,668.00	£31,331.00
Parcels	£4,400.00	£4,400.00	£4,800.00
Cash	£520.00	£520.00	£520.00
Turnover	£40,948.00	£45,588.00	£36,651.00
<b>Less costs:</b>			
Car, van, travel exp	£19,500.00	£23,353.00	£23,381.00
Wages/staff costs	£2,744.00	£3,054.00	£2,477.00
Rent	£320.00		£960.00
Interest	£257.00	£257.00	£257.00
Accountancy		£100.00	
Phone and other office costs	£2,369.00	£1,413.00	£1,921.00
Other exp	£812.00	£832.00	£187.00
Total costs	£26,002.00	£29,009.00	£29,193.00
Taxable profits	£14,946.00	£16,579.00	£7,458.00

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28. When considering the appellant's position, we have taken the view that, notwithstanding the appellant's failure to supply evidence to us as part of this hearing, it is likely that he provided more comprehensive evidence to the lady at the NES in 2016, and that lady would have tested the information with which she was provided rather than accepting it at face value, in order to enable her to complete the appellant's returns on accurate basis. We are conscious that we do not know precisely what information was given by the appellant to that lady, and of course that is crucial to the veracity of the figures returned for the three years under appeal. But we are of the view that a certain amount of testing of the appellant's position would have been undertaken, in particular concerning the appellant's expenditure, and the figures in the returns would have reflected information contained in paperwork provided by the appellant at that time. The figures were not simply plucked out of the air by the appellant. They were subject to external verification. And so whilst we appreciate HMRC's position that the appellant has not been particularly convincing in certain elements of the evidence which he has given at the hearing, either oral, or by reference to the limited paperwork which he has provided, we think it likely that the returns for the three periods under appeal were made on the basis of relevant documentation provided to the lady at the NES in 2016. So broadly speaking we have accepted the appellant's figures save where subsequent analysis has rendered them untenable.

#### *Contract work*

29. We have accepted the figures set out in Officer Coombs' statement based on his analysis of the paperwork received from the Gloucestershire County Council and Tim's transport.

#### *Parcels*

30. The appellant accepts that the information given to HMRC about the amount parcel income at the meeting on 25 June 2012 was incorrect and understated that income. Officer Coombe has analysed the information received concerning parcel income and has identified that as being about £9,600 for 2011-2012, and £2,204 for three months in 2010-2011. Scaled up that amounts to approximately £8,800 per year. We have halved those figures since we accept the appellant's evidence that he has shared that parcel income on a 50-50 basis. It is not clear to us what the basis of that sharing is (whether the appellant is entitled to 100% of the income but to a tax-deductible cost of 50%, or whether he held the income when he received it, on a 50-50 basis). We do not believe that it really matters too much, and we have adopted the latter approach. We have therefore added an additional amount of parcel income to his income.

#### *Cash*

31. HMRC's view is that additional cash must have been generated by the business in order to account for the wages claimed by the appellant. Their difficulty with substantiating this is that cash is notoriously difficult to trace. Our view however is that the appellant's wages have been unjustifiably overstated in that he cannot justify the amounts claimed on the basis of the documentary evidence which he has provided to us nor to Officer Coombs. We have therefore, as will be seen below, reduced the amount of wages, and so there is no need to add back corresponding amounts of cash, which is what HMRC have done in order to allow them to accept the wages originally claimed by the appellant. The appellant's evidence, which we accept, is that there is little cash trade for taxis in the Forest of Dean, and although he did

receive some cash it was modest. We have therefore added £10 per week to his income as additional cash takings.

#### *Car, van expenses, travel*

32. This was a reasonably contentious issue, but there is some firm evidence of the amount which the appellant spent on fuel for a three month period between 14 January 2011 and 30 April 2011 by dint of a document which comprises a fuel account from which it can be seen that during that period the appellant paid three invoices for fuel amounting to £5,560. HMRC's view that this is approximately £1,800 per month which annualised is £21,600. This seems to be more than the amount claimed by the appellant in 2009-2010 and in keeping with the amounts claimed for the other two years. Clearly there would have been additional costs over and above fuel for those years, and so we accept the figures provided by the appellant in his tax returns for those three years under this head of claim.

#### *Wages*

33. Unfortunately for the appellant however we cannot do the same for the amounts that he has claimed for wages and staff costs. He has told us that his records show that the amounts claimed were actually paid, but that is not borne out by the paperwork which he has provided. He has also told us that it is open for HMRC to obtain accurate records of the wages which he has paid out, from their PAYE records. But that is not for HMRC to do. It is for the appellant to provide evidence of the amounts that he has paid to justify the figure that he has claimed. And he has been unable to do this. The only concrete evidence we have of the wages paid by the appellant are those set out in the Halifax statements for the 2011-2012 tax year which amounted £2,477. The evidence for this is in the analysis in Officer Coombs' statement and the accompanying documents. We must base our decision on evidence, and so we have taken this figure as the wages paid by the appellant for the year 2011-2012 which is approximately 6.7% of turnover for that year. We have then applied that percentage to the turnover for the years 2009-2010 and 2010-2011, to arrive at the wages/staff costs figures set out in the table above. By approaching the analysis this way, there is no need for us to speculate about significant amounts of additional cash which the appellant might or might not have obtained from his operations.

#### *Other costs*

34. We have allowed the appellant's other costs as claimed in his tax returns. We think it is likely that his phone costs were somewhat less than those originally claimed but it is impossible for us to decide how that affects the overall figure since we do not have sufficient details.

35. However, as mentioned above, we think it is likely that the lady at the NES would have questioned this element of the appellant's claim and would have sought justification for it at that time. The same is true of the other items of expenditure set out in the table. And so we have accepted the amounts claimed by the appellant.

36. We also recognize that although the appellant may have claimed a deduction for the costs of advertising which were not strictly deductible, those amounts are immaterial.

## **DECISION**

37. For the foregoing reasons we have decided that the appellant's taxable profits for the year 2009-2010 amount to £14,946; for 2010-2011, to £16,579; and for 2011-2012, they amount of £7,458. We therefore allow the appellant's appeal to this extent and substitute the foregoing profit figures for those used by HMRC in arriving at their assessments for those three years. We direct HMRC to adjust the assessments to reflect these revised profit figures.

#### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

38. 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.

**NIGEL POPPLEWELL**

**TRIBUNAL JUDGE**

**RELEASE DATE: 30 DECEMBER 2020**