



TC08193

Appeal number: TC/2016/04101

VALUE ADDED TAX – personal liability notice – whether underlying VAT assessment on company can be challenged – Andrews followed – whether Appellant discharged burden of displacing HMRC figures for assessment on company – no – personal liability notice confirmed as issued

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DANIEL O'DOHERTY

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JANE BAILEY

The Tribunal determined the appeal on 14 and 15 June 2021 without a hearing under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 with the consent of the parties and the agreement of Judge Redston, having first read the Notices of Appeal dated 28 July 2016 and 20 October 2016 (with enclosures), HMRC's Amended Consolidated Statement of Case dated May 2018, and the documents in the documents Bundle filed by the Respondents.

DECISION

Introduction

1. This appeal concerns a personal liability notice issued to the Appellant in the sum of £130,257.92 following the failure of a company named GS Trading VI (Chesterfield) Limited (“GS VI”) either to register for VAT or account for VAT in the period 19 December 2013 to 31 January 2015. At all relevant times the Appellant was the sole director of GS VI.

Evidence before the Tribunal

2. The parties have agreed that this appeal should be heard on paper and so no oral evidence has been given. However, three witness statements have been included in the bundle of documents provided. There is one statement from Officer Tiffany Renshaw, an officer of HMRC, and two statements from the Appellant.

3. I find Officer Renshaw to be an honest and credible witness and I accept her evidence in its entirety. While I do not consider the Appellant to have been dishonest in his evidence to the Tribunal and I accept the majority of his evidence, unfortunately that evidence is limited in respect of the issues that are before the Tribunal.

4. The Appellant has produced a large number of invoices and receipts which appear in the bundle. These invoices and receipts are not in chronological order, nor ordered by the person to whom they are addressed. The invoices are addressed to various entities: GS VI and other companies controlled by the Appellant, but also companies not apparently controlled or in any way connected to the Appellant. Some of the invoices are addressed to “cash”, “sundry account” or “trade sale account” without any indication of the person to whom the supply has been made. The receipts are predominantly for small cash purchases from high street stores or for cash purchases at petrol pumps. Some of the invoices do not show that the supplier is VAT registered, and some of the invoices (for example, the supply of water or food) show that no or very little VAT has been charged on the supply. A few invoices show either no supply at all, or a supply of goods without charge, but then show an invoice total in different figures. Many of the invoices and receipts produced are too faint to be made out. Some of the invoices and receipts are duplicates of other documents.

5. The Appellant has provided two schedules in an attempt to make sense of the invoices and receipts he has provided. The first schedule relates to only 60 of the invoices and, in this schedule, the Appellant accepts that the invoices are made out to six different people. The second schedule includes far more invoices and apparently attempts to group the invoices and receipts by category but it also includes invoices and receipts that are addressed to people other than GS VI, and/or are outside the relevant period.

6. The Appellant has also provided bank statements for a company called Accelerator Concepts Limited which has traded as Accelerator (per the bank

statements) and as New Forest Investments (per the invoices). The bank statements are so heavily redacted that on the first page only one figure paid in, and one figure paid out, remain. There are handwritten annotations on this first page suggesting that the identified figure paid out of Accelerator Concepts Limited's bank account went towards the payment of some of the invoices provided as evidence of GS VI's expenditure. The remaining pages of the statements are also heavily redacted and some pages have further annotations. There are no bank statements for GS VI. No accounts for GS VI have been provided.

7. Given this mass of material, findings in respect of the limited number of invoices addressed to GS VI are made, as far as possible, on a month by month basis. Findings in respect of invoices addressed to "Chesterfield Hotel" are made on the same basis. No findings are made in respect of the large number of invoices that predate GS VI's incorporation (and thus the period assessed) or for receipts that are undated; similarly, no findings are made in respect of the invoices that are not addressed to either GS VI or "Chesterfield Hotel" as there is insufficient explanation from the Appellant as to the interconnection of the various entities, and no evidence to show that GS VI ultimately bore the expense of a supply that was apparently invoiced to a separate company (and, in some cases, a company that was controlled by a person or people other than the Appellant).

Facts found

8. On the basis of the documents in the bundle and the three witness statements produced, I find the following facts:

Prior to 19 December 2013

9. The Chesterfield Hotel is a hotel on Malkin Street, Chesterfield. At all relevant times it had three bars, a restaurant, approximately 76 bedrooms (of which approximately 54 were double rooms) and a leisure centre including a swimming pool, gym, sauna and steam room. The hotel restaurant and the main bar were open to the public. The other two bars were mainly used as function rooms.

10. A Scottish company names GS Estates VI Limited was incorporated on 30 September 2013. The original director was a Mr Steven Green, with whom the Appellant would later be in dispute. The Appellant was appointed a director of GS Estates VI Limited on 18 October 2013, when Mr Green ceased to be a director. The Appellant has controlled GS Estates VI Limited from 18 October 2013 onwards.

11. From an unknown date, the freehold of the Chesterfield Hotel has been owned by GS Estates VI Limited. The freehold of the hotel was bought from an unknown entity, with financing supplied by a company called Graf Mortgage Corporation Limited, then directed by Mr Green.

12. The Appellant has described GS Estates VI Limited as a non-trading company. It is unknown which person or persons traded as the Chesterfield Hotel prior to 19 December 2013. The invoices dated prior to December 2013 that have been produced by the Appellant are addressed to Accelerator Concept Limited, Graf Securities 111

Limited, Graf Securities 111 (30) and Peak Leisure. Although the Appellant has been a director of Accelerator Concepts Limited since 1 October 2013, there is no apparent link between the Appellant and Graf Securities 111 Limited, Graf Securities 111 (30) or Peak Leisure. There is no evidence of who controlled Graf Securities 111 Limited or Graf Securities 111 (30) at any relevant time. Peak Leisure Limited ran the leisure centre at the Chesterfield Hotel and this company was controlled by a Mr Darren Gillan, the hotel manager of the Chesterfield Hotel prior to 19 December 2013. Mr Gillan remained in post for a period of time after December 2013 (see below).

19 December 2013 onwards

13. On 19 December 2013, GS VI was incorporated. The nature of GS VI's business is hotels and accommodation. GS VI was incorporated in order to take over and continue the trade of the Chesterfield Hotel. The Appellant has stated, and I accept, that that GS VI was "a management company for the Chesterfield Hotel" from incorporation until 31 January 2015. The Appellant does not refer to any other company managing the Chesterfield Hotel during this period but the majority of the suppliers to the Chesterfield Hotel appear unaware of GS VI's management role. Only one supplier addressed its invoices to GS VI.

14. The Appellant was appointed as the sole director of GS VI at incorporation and was the sole shareholder. The Appellant has had complete control of GS VI at all relevant times.

15. At no relevant time was GS VI registered for VAT. Although the Appellant exhibited a summary of VAT information to his second witness statement, no VAT returns have ever been submitted by GS VI.

16. Once it took over the trade of the Chesterfield Hotel, GS VI kept on the hotel manager, Mr Gillan, to continue to run the hotel. In addition to Mr Gillan, the Chesterfield Hotel had other employees. However, at no relevant time was GS VI registered for PAYE or NICs.

17. The only December 2013 invoice that is addressed to the Chesterfield Hotel and is within the period assessed is from Saharas International Limited. This invoice is in the total sum of £68.40. No invoices were addressed to GS VI in December 2013.

January 2014

18. In either very late 2013 or in early 2014, the Appellant established that the Chesterfield Hotel needed improvements as it could not meet the requirements of health and safety, or fire, regulations. The Chesterfield Hotel was closed between 8 January 2014 and 23 February 2014 for significant refurbishment.

19. The three hotel bars and the hotel restaurant remained open while the Chesterfield Hotel was not operating as a hotel. The continued trading of the bar and restaurant at the Chesterfield Hotel is confirmed by the continued purchase of supplies at this time, including supplies of alcohol. The Appellant asserts that, from memory, the bar and restaurant traded at a minimal level at this time. When HMRC visited in September

2014, the till reports for the tills in the three bars of the Chesterfield Hotel showed total sales of £364,641.43. While this sales figure is not minimal, it is not known over what period these sales took place. In the absence of accounts for GS VI, or any bank statements showing GS VI's level of income at any time, I am unable to make any findings about whether the bar and restaurant trading was at a reduced or minimal level while the hotel was being refurbished.

20. There are no invoices addressed to GS VI in January 2014. The invoices addressed to the Chesterfield Hotel, and receipts available from suppliers, in this month are from Contract Natural Gas Limited, Hurriprint design studio, Booker, Eyre and Elliston, Dansies, The Cable Co, Last Orders, Amazon.co.uk, and Wickes. The receipts and invoices total £18,893.14.

February 2014

21. The continued opening of the bar and restaurant is confirmed by the February invoice from Last Order that states that "20+ empties" were collected from the Chesterfield Hotel at the same time that further alcohol was being delivered.

22. There are no invoices addressed to GS VI in this month. The invoices addressed to the Chesterfield Hotel, and receipts available from suppliers, in this month are from Dansies, Key Signs UK Limited, Amazon.co.uk, Booker, Last Orders. The receipts and invoices total £442.10.

March 2014

23. The hotel was closed until the end of February 2014. Although Mr Simms (see below) told HMRC that the hotel refurbishment lasted until August 2014, one invoice produced shows the presence of a hotel guest in March 2014 (and further invoices show guests later in the spring). Therefore, I prefer the Appellant's timings and I find that the Chesterfield Hotel was trading as a hotel (with at least some bedrooms suitable for hotel guests) from March 2014. The three bars and the restaurant were also open.

24. There are no invoices addressed to GS VI in this month. The invoices addressed to the Chesterfield Hotel, and receipts available from suppliers, are from Contract Natural Gas Limited, Mr Paper Limited, Ibis Hotels Limited, Amazon.co.uk, Booker, Dansies and Hobbycraft. The receipts and invoices total £17,789.24.

April 2014

25. There are no invoices addressed to GS VI in this month. The invoices addressed to the Chesterfield Hotel, and receipts available from suppliers, are from Co-operative Travel Management, Last Orders, Hutton Wholesale Drinks, AdB Audio Visual Limited, Skyline Supplies Limited and Trim Centre UK Limited. These receipts and invoices total £910.99.

May 2014

26. There are no invoices addressed to GS VI in this month. The invoices addressed to the Chesterfield Hotel, and receipts available from suppliers, are from Crown Gas & Power, Sandpiper Hotel and Restaurant, C.E.F. (Chesterfield), Emcat Limited, Dansies, Booker, The Cable Co and You Can Hire Limited. These receipts and invoices total £5,250.05.

June 2014

27. There are no invoices addressed to GS VI in this month. The invoices addressed to the Chesterfield Hotel, and receipts available from suppliers, are from Booker, Dansies, The Cable Co, Banks Skip Hire Limited, B&Q and Carphone Warehouse. These receipts and invoices total £663.05.

July 2014

28. There are no invoices addressed to GS VI in this month. The invoices addressed to the Chesterfield Hotel, and receipts available from suppliers, are from Hotel Smart.co.uk, Banks Skip Hire Limited, Dansies, Booker, Emcat Limited, Hutton Wholesalers, The Cable Co and Wickes. These receipts and invoices total £2,069.32.

August 2014

29. Mr Gillan had apparently continued to work as manager of the Chesterfield Hotel until about the spring or summer of 2014. On 21 August 2013, Mr Gillan had been interviewed by HMRC Officers Tiffany Renshaw and Nigel Ward about his own tax affairs and a number of companies that he had run from the Chesterfield Hotel, including one that that was apparently involved in the supply of VoIP and about which HMRC had serious concerns. The Appellant was unaware of these issues when GS VI retained Mr Gillan as the hotel manager. On an unknown date, Mr Gillan was dismissed from his role as manager of the Chesterfield Hotel.

30. On an unknown date, a Mr Dean Simms was appointed as manager of the Chesterfield Hotel. Mr Simms appears to have been working at the Chesterfield Hotel since at least December 2013. (Mr Simms' name appears on a December 2013 invoice produced by the Appellant, although the email address Mr Simms used at that time suggests he was working for a company called Red Web online.)

31. As part of HMRC's investigation of Mr Gillan, HMRC checked the position of GS VI and the Appellant. It became clear that GS VI was not registered for VAT or PAYE, and that the Appellant was the director of another company that ran a hotel that HMRC understood to owe a significant amount of VAT.

32. An intelligence report provided to Officer Renshaw in August 2014 suggested that Metro Ops / Metro Inns was trading as the Chesterfield Hotel but not paying over the PAYE or NICs deducted from employees. As a result of this intelligence information, Officer Renshaw arranged for her colleagues to conduct an unannounced visit to the Chesterfield Hotel in September 2014.

33. In August 2014, for the first time, the invoices produced by the Appellant include invoices addressed to GS VI. The six invoices addressed to GS VI are from Michael J Holdsworth Limited, a food supplier, and these invoices total £1,065.02 (of which £35.75 is VAT).

34. The invoices addressed to the Chesterfield Hotel, and receipts available from suppliers, in this month are from Last Orders, Dansies, Booker, The Cable Co, Banks Skip Hire, Chesterfield Cash Registers Limited, Wickes and Argos. The receipts and invoices total £4,297.34.

September 2014

35. On 8 September 2014, four HMRC officers carried out an unannounced visit to the Chesterfield Hotel. Officer Payne made a note of this visit. HMRC uplifted invoices addressed to Graf Securities 111 Limited and to Metro Inns Chesterfield (copies of these invoices have also been provided to the Tribunal by the Appellant to support his claim that GS VI was entitled to claim input tax). Officers Thomas and Wilde interrogated the cash tills in the building and checked the VAT registration numbers used by the tills. The till in the restaurant was using the VRN of Metro Inns Operations Limited; the three tills in the bars were using the VRN of North East Corporation Limited, an apparently unrelated company.

36. The HMRC officers spoke to Mr Simms, who identified himself as the manager of the Chesterfield Hotel, and (very briefly) to a Mr Ian Nicholls, who introduced himself as the security manager for Accelerator Concepts Limited, which was said (by Mr Nicholls) to manage the hotel. The merchant details provided to HMRC by Mr Simms identified an account in the name of Accelerator Concepts Limited trading as New Forest Investments.

37. Mr Simms told HMRC that the hotel had an occupancy rate of about 50% and that the rate for a double room was £50 per room per night, and the rate for a single room was £30 per room per night. Mr Simms confirmed that significant refurbishment had recently taken place. Mr Simms stated that he was the bar licence holder but that the licence was soon to be transferred to GS VI. Mr Simms also stated that about 25 functions had taken place.

38. Mr Simms said that the leisure club was owned by either Graf Securities or GS VI, and that it was planned to re-open in January 2015. Mr Simms identified Metro Inns Limited as the owner of the Chesterfield Hotel until May 2013 when its finance company (also Graf Mortgage Corporation Limited) had called in its loan. GS VI was identified by Mr Simms as the current owner, with Graf Mortgage Corporation Limited as mortgagee.

39. Mr Simms produced two blank printed invoices to Officer Payne, one headed Graf Securities 111, and one from Metro Inns Chesterfield (bearing the VRN of Metro Inns). Mr Simms said that the Metro Inns invoice was the old invoice but that it was currently being used by staff at the hotel as they had run out of newer invoices. A VRN on the till takings sheet was also described as being an old VAT number.

40. Mr Simms said that the hotel's income was approximately 30% cash and about 70% card, and that non-bar supplies to the hotel were mostly paid in cash. Mr Simms also said that bar orders were paid by "head office" and orders were placed on a weekly basis.

41. In his witness statements, the Appellant stated that the Chesterfield Hotel encountered severe difficulties in trading from September 2014 to January 2015 due to the actions of people associated with Graf Mortgage Corporation Limited and that, for about four weeks, GS Estates VI Limited was wrongly in receivership. The Appellant described how people associated with Graf Mortgage Corporation Limited made false representations to the hotel's suppliers in order to damage the business of the Chesterfield Hotel. The Appellant stated "the hotel encountered severe difficulties in trading in September, October, November and December 2014 and January 2015" due to the dispute with Mr Green and people associated with Mr Green.

42. I accept that GS VI and/or the Appellant was in dispute with Mr Green and/or Graf Mortgage Corporation Limited from September 2014 onwards. However, as the Appellant has failed to provide accounts or bank statements for GS VI for any period, it is not possible to see how the trade of the hotel or the trading income of GS VI was affected by the actions or representations of Mr Green or Graf Mortgage Corporation Limited over this period. It is clear from the invoices produced showing supplies to the hotel that the hotel, bars and restaurant continued to trade in this period. The invoices from Michael J Holdsworth Limited (the only supplier to invoice GS VI) show that the value of the food ordered in September 2014 was greater than that ordered in August 2014, suggesting there was an increase in people staying at the hotel and / or eating at the restaurant from September 2014 onwards. The value of the food ordered stayed consistent in October 2014, increased again in November 2014, dropped in December 2014 (to the September and October level) before dropping sharply in January 2015. (The invoices addressed to the Chesterfield Hotel show a similar pattern of a greater value of supplies from September onwards with a peak in November 2014.) This pattern of supplies does not support the Appellant's suggestion of difficulties in trading from September 2014. Therefore, I do not find that the hotel's trade or GS VI's income was affected or reduced from September 2014 onwards.

43. The nine invoices addressed to GS VI in this month are from Michael J Holdsworth Limited, and these invoices total £1,684.31 (of which £59.09 is VAT).

44. The invoices addressed to the Chesterfield Hotel, and receipts available from suppliers, in this month are from Murder International, City Electrical Factors, Last Orders, Dataserve UK, Co-operative Travel Management, Banks Skip Hire Limited, Dansies, The Cable Co, Booker and Wickes. These receipts and invoices total £8,574.19

October 2014

45. The nine invoices addressed to GS VI are from Michael J Holdsworth Limited, and these invoices total £1,599.02 (of which £53.41 is VAT).

46. The invoices addressed to the Chesterfield Hotel, and receipts available from suppliers, in this month are from Last Orders, Banks Skip Hire Limited, Dansies, The Cable Co, Mellcrest Limited, Booker, Safety Buyer, Hutton Wholesalers, Trim Centre, Acorn Environmental Care, C.E.F. (Chesterfield), The Cable Co, Jewson and Chesterfield Cash Registers. These receipts and invoices total £8,800.84

November 2014

47. The ten invoices addressed to GS VI are from Michael J Holdsworth Limited, and these invoices total £2,209.77 (of which £76.65 is VAT).

48. The invoices addressed to the Chesterfield Hotel, and receipts available from suppliers, in this month are from Last Orders, City Linen Services, Co-operative Travel Management, Mellcrest Limited, Banks Skips Hire Limited, the Interactive Health & Safety Company, Skyline Supplies Limited, Emcat Limited, The Cable Co, Booker and Dansies. These receipts and invoices total £13,965.82.

December 2014

49. The eleven invoices addressed to GS VI are from Michael J Holdsworth Limited, and these invoices total £1,698.28 (of which £71.80 is VAT).

50. The invoices addressed to the Chesterfield Hotel, and receipts available from suppliers, in this month are from Last Orders, Dansies, Emcat Limited, The Cable Co, Banks Skip Hire Limited, The Emergency Bolt Company Limited, Booker and Hurriprint design studio. These receipts and invoices total £3,941.83.

January 2015

51. On 27 January 2015, Officers Bullender and Bullen made an unannounced HMRC visit to the Chesterfield Hotel, and spoke to Mr Simms. During this visit, Mr Simms told HMRC that the hotel would be closing on 31 January 2015, and that the previous year's average turnover for the hotel was "£20 / 22k per week".

52. On 31 January 2015, GS VI ceased to trade.

53. The one invoice addressed to GS VI is from Michael J Holdsworth Limited, and is in the sum of £147.06 (of which £1.79 is VAT).

54. The invoices addressed to the Chesterfield Hotel are from Last Orders and Peak FM. These invoices total £3,047.46

The February 2015 VAT application

55. The Appellant has stated that Mr Gillan was instructed to apply for VAT registration at a time when he was still hotel manager but that he did not do so because of his own tax issues. The Appellant states that this only came to light in September 2014, and that thereafter he applied for VAT registration. However, the Appellant does not suggest that he ever chased Mr Gillan for confirmation that the hotel had been

registered for VAT, or that he ever asked Mr Gillan for the VAT number so that VAT returns could be filed by GS VI. I find that the Appellant made no attempt to check that Mr Gillan had registered GS VI for VAT and I find that the Appellant made no attempt, at any date, to file VAT returns for GS VI.

56. On 20 February 2015, HMRC received a completed VAT application form said to be for the Chesterfield Hotel. In this form the sole proprietor, and applicant, is stated to be “Malcolm Aw”, a natural person living at an address in Tenerife. The date of incorporation for GS VI is given but GS VI is not named. There is no evidence to show who Mr Aw is, or how he is connected to the hotel. There is no explanation of why the Appellant did not complete a VAT application form in September 2014 when he said he first became aware that GS VI was not registered for VAT.

57. The Appellant’s case is that the Chesterfield Hotel was owned by GS Estates VI Limited (of which he was a director). However, the person completing the form has ticked the box to state that no director of the proprietor had been involved in any other business in the UK in the preceding two years. I am satisfied from Officer Renshaw’s statement and exhibits that the Appellant had been a director of a different company that ran another hotel in the preceding two years. Therefore, this part of the form is inaccurate.

58. The person completing the form has also ticked the boxes to indicate that the proprietor was not taking over a going concern, was not registering either voluntarily or compulsorily, and that the proprietor was not exempt from registration. The previous owner is said to be GS Securities III. No figures for anticipated turnover were provided.

Subsequent events

59. On 7 May 2015, Ms Renshaw of HMRC wrote to the Appellant as director of GS VI. Officer Renshaw stated her belief that the turnover for the business breached the VAT registration threshold and that she had calculated output tax at £274,685 for the period 19 December 2013 to 31 January 2015. Officer Renshaw warned that a failure to notify penalty could also be payable and asked for further information to be provided.

60. On 26 May 2015, HMRC notified GS VI that it was required to be registered for VAT from 19 December 2013 to 31 January 2015, and issued an assessment in the sum of £274,685. Although it was open to GS VI to file a VAT return for the period 19 December 2013 to 31 January 2015, and so appeal the assessment to VAT, no VAT return was ever filed by GS VI, and GS VI made no attempt to challenge the VAT assessment raised.

61. On 10 March 2016, and in the absence of any information from the Appellant or GS VI about the circumstances that led to the VAT assessment, HMRC wrote to GS VI stating that they intended to charge a penalty of £168,244.56. This penalty was calculated at 61.25% of potential lost revenue of £274,685 over the period 19 December 2013 to 31 January 2015. This penalty was notified to GS VI on 11 April 2016.

62. On 13 April 2016, HMRC issued a personal liability notice to the Appellant in respect of the penalty issued to GS VI, on the basis that HMRC considered the

Appellant to have acted deliberately. As sole director, the Appellant was made personally liable, under the notice, for 100% of the penalty imposed on GS VI.

63. On 9 May 2016, the Appellant sought a review of the personal liability notice that had been issued to him. On review, HMRC Officer Di Champion upheld the Appellant's liability to the penalty but recalculated the VAT due from GS VI as £212,666 (on the basis that the estimated turnover of £22k each week should have been treated as the VAT inclusive figure, rather than exclusive of VAT). As a result of this reduction of the VAT due from GS VI, the penalty was also reduced. The reduced figure for the penalty was £130,257.92.

64. A revised personal liability notice, in the sum of £130,257, was issued to the Appellant on 20 September 2016. The Appellant appealed against that personal liability notice to the Tribunal.

Tribunal jurisdiction

65. A person who is assessed to a penalty imposed under Schedule 41 to the Finance Act 2008, including any officer who is made personally liable for a portion of the penalty, may appeal to the Tribunal against the decision that a penalty is payable, and may appeal against the amount of the penalty.

66. In such an appeal, the Tribunal has the power to confirm or cancel HMRC's decision or to substitute any other decision that HMRC had the power to make.

Onus in an appeal against a penalty

67. In an appeal against a penalty, the onus is on HMRC to demonstrate all aspects that the legislation requires must be established for a penalty to be imposed.

68. In this case, it is not disputed and I am satisfied that GS VI was required to be registered for VAT throughout the period from 19 December 2013 to 31 January 2015 as its annual turnover exceeded £79,000. I am satisfied that GS VI was not registered for VAT at any time between 19 December 2013 and 31 January 2015, and so the obligation to register was breached.

69. Paragraph 1 of Schedule 41 provides that a person who fails to comply with the obligation to register for VAT is liable to a penalty. I am satisfied that GS VI was liable to a penalty.

70. Paragraph 22 of Schedule 41 provides that an officer of a company may be liable for a portion of a penalty payable by a company for a deliberate act or failure attributable to them. I am satisfied that the Appellant, as the sole director of GS VI, was responsible for ensuring that GS VI was registered for VAT.

71. I have considered whether GS VI's failure to register for VAT was attributable to the Appellant and deliberate, bearing in mind the guidance in set out in paragraphs 81-86 of *Clynes v HMRC* [2016] UKFTT 369.

72. The Appellant's case is that he told Mr Gillan to register GS VI for VAT. Therefore, the Appellant must have been aware that GS VI was required to be registered for VAT. The Appellant's case is that he was unaware that GS VI was not registered until September 2014, ten months after GS VI began trading. I am satisfied that the Appellant did not check whether Mr Gillan had registered GS VI – if the Appellant had checked then he would have discovered that GS VI was not registered, that the VRNs of other companies were printed on invoices issued by the Chesterfield Hotel and that the VRNs of yet other companies were registered on the cash tills used by the hotel. Also, I have found that the Appellant did not ask Mr Gillan for the VRN in order to file VAT returns for GS VI. Although the Appellant's case is that he was aware of the lack of VAT registration in September 2014, no application for VAT registration was made until February 2015, five months later and after GS VI had ceased to trade. In the circumstances, I am satisfied that GS VI's failure to be registered for VAT was deliberate and was attributable to the Appellant.

73. The penalty imposed upon GS VI was calculated on the basis that the behaviour of GS VI was deliberate but not concealed. I am satisfied that this is correct. HMRC concluded that the penalty should be fixed at 61.25% of the potential lost revenue to reflect the very limited assistance provided by GS VI. It is not argued that I should disturb that percentage, and I see no reason to reduce it.

74. It follows that I am satisfied that HMRC have demonstrated all the legislative aspects required for a penalty to be imposed.

The basis on which the Appellant appealed to the Tribunal

75. The Appellant's appeal to the Tribunal is on a limited basis.

76. The Appellant has not argued that he should not be liable for any failures on the part of GS VI or that GS VI should not have been registered for VAT. The Appellant has not argued that the penalty percentage of 61.25% should be reduced.

77. The Appellant argues only that the assessment raised upon the GS VI is too large and that, once input tax is taken into account, GS VI's liability for the relevant period would be "£30,000 at most" (although the final figure produced by the Appellant is £68,920). Consequently, the Appellant argues, his personal liability would also be greatly reduced.

The assessment raised upon GS VI

78. The assessment raised upon GS VI is in the sum of £212,666 for the period 19 December 2013 to 31 January 2015. As explained in paragraph 23 of Officer Renshaw's statement, the assessment upon GS VI is based in part upon the assertion by Mr Simms, the hotel manager, that the turnover of the hotel had averaged £20k-22k each week over the previous year, and in part upon HMRC calculations taking into account the size of the hotel, its location, the cost of the rooms and the hire charge for the function rooms.

79. Although a summary of a VAT return was exhibited to the Appellant's second statement, filed in May 2019, at no stage has GS VI filed VAT returns with HMRC. Therefore, GS VI does not have the right to appeal against the assessment raised by HMRC because Section 83(1)(p) Value Added Tax Act 1994 prevents an appeal being made against an assessment where there has been no VAT return filed for the VAT periods for which the assessment has been raised. At no stage has GS VI attempted to challenge the VAT assessment raised.

80. At one stage during these proceedings, HMRC argued that a sole director who is appealing against a PLN imposed upon him cannot, on appeal, question the size of the assessment when he is responsible for the decision of the relevant company not to file VAT returns. However, in their Skeleton Argument, HMRC have indicated that they will not pursue this argument in this appeal (though it may be raised in other appeals in future). Therefore, I deal with the point only briefly.

81. In *Andrew v HMRC* [2016] UKFTT 0295 (TCC), the relevant company had filed returns but had not challenged either the VAT assessments or penalty raised upon it. The company had been dissolved soon afterwards so had limited prospect of appealing either charge. The sole director had been issued with a personal liability notice making him personally responsible for a proportion of the company's penalty. The Tribunal agreed with the VAT Tribunal in *Nazif and anor v CCE* (1995) (LON/92/70P), considering predecessor legislation, that the right of appeal of a person to whom a company penalty liability had been transferred should include a right to challenge the amount of the company penalty, and that this included the underlying liability that gave rise to the penalty.

82. Like *Andrew*, this case is relatively simple, involving a sole director who had complete control of the relevant company at all times. In this case GS VI could have appealed but, as in *Andrew*, it had limited interest in doing so given the transfer of a large part of its liability to the Appellant. I agree with the Tribunal's conclusions in *Andrew*, that it could be contrary to justice in some cases if an appellant to a personal liability notice could not challenge the size of the penalty raised upon the relevant company. In the absence of full argument from the parties, I consider that the Appellant here should be permitted to challenge the quantum of VAT assessed upon GS VI.

The quantum of the VAT assessment upon GS VI

83. In an appeal against the quantum of an assessment to VAT, the onus is on an appellant to show that the amount of the assessment is unduly onerous or excessive, and that there is another figure that is more likely to be accurate. An appellant can do this by demonstrating that alternative figures are right or are, at least, more right.

84. Unfortunately, the witness statements produced by the Appellant do not sufficiently address the amount of the VAT due from GS VI. While the Appellant disputes both that GS VI is liable for VAT, and the amount of any VAT liability of GS VI, the Appellant has not put forward his positive case clearly setting out the income of GS VI when trading as the Chesterfield Hotel so as to demonstrate that a much lower amount of VAT (or no VAT at all) would be due.

85. As set out above, the Appellant has produced a large number of invoices issued to a large number of entities (some of which have no connection with GS VI). The Appellant asserts that these invoices demonstrate that GS VI would be entitled to claim input tax in the period over which it has been assessed, and that this input tax has not been taken into account by HMRC in their estimated figures.

86. I agree that running a hotel involves expenses, and that GS VI would have incurred costs in its trade as the Chesterfield Hotel. I consider it likely that a hotel refurbishment would involve significant costs. However, there is very limited evidence of the costs of this refurbishment. I have made findings about the very few invoices addressed to GS VI, and also about the larger number of invoices addressed to the trading name of the Chesterfield Hotel. However, I do not accept that all the invoices produced by the Appellant are relevant: as I have noted above, some of the invoices bear dates that are outside the relevant period, some of the invoices are addressed to companies that do not appear to have any connection with GS VI or the Appellant, and some of the invoices/receipts are simply too faint to be read.

87. I am conscious that there is no evidence that GS VI paid the invoices that are relevant. Mr Simms described the alcohol orders are being paid by “head office” but there is no indication of which entity played that role because the Appellant has not explained how the various companies he controlled were connected or operated.

88. More critically, without adequate information about the trading income of GS VI, the invoices that the Appellant has produced do not, and cannot, show that HMRC’s assessment is unduly onerous or excessive. The Appellant has not provided any accounts for GS VI. The Appellant has asserted that HMRC’s estimate of GS VI’s income is excessive, and that the true figure is lower. The Appellant suggests that the total value of GS VI’s sales in the period 19 December 2013 to 31 January 2015 is £573,647. That is a figure that is less than half of the turnover estimated by HMRC. However, the Appellant’s figures are based upon heavily redacted bank statements for Accelerator Concepts Limited. Even if they had not been heavily redacted, the bank statements of Accelerator Concepts Limited do not show the income of GS VI. No bank statements have been produced for GS VI.

89. HMRC’s figures are based in part upon the estimate of the turnover of the Chesterfield Hotel that was provided to HMRC by Mr Simms. Mr Simms had been working at the Chesterfield Hotel since (at least) December 2013, and he had been manager since (at least) September 2014. He was aware of the significant refurbishment of the hotel, and of the issues with the fire regulations that caused the hotel to be closed for some periods. With this awareness, and his knowledge of occupancy, Mr Simms estimated the average turnover of the Chesterfield Hotel to be £20-22k a week.

90. The Appellant has chosen not to file accounts or VAT returns for GS VI, and not to produce the bank statements of GS VI to the Tribunal. The Appellant has produced redacted bank statements for Accelerator Concepts Limited but he has not explained why GS VI’s statements cannot be produced (or why only redacted bank statements have been provided). It might be that all of GS VI’s income came through the bank

account of Accelerator Concepts Limited but at no stage does the Appellant say that this is the case, or explain how different income streams were differentiated in the account. It also might be that Accelerator Concepts Limited played a much greater role in the management of the Chesterfield Hotel than did GS VI but, again, at no stage does the Appellant make this argument. The Appellant's case is that GS VI traded as the Chesterfield Hotel between 13 December 2013 and 31 January 2015. Given that is the Appellant's case, it is regrettable that he has produced such extremely limited evidence of the income and outgoings of GS VI.

91. In the absence of better figures for the income and outgoings of GS VI, I am not satisfied that the figures in HMRC's assessment are excessive or unduly onerous. I am not satisfied that the figures put forward by the Appellant, based upon entries in Accelerator Concept Limited's redacted bank account statements and a hotch potch of invoices, are more likely to be right.

92. I conclude that the Appellant has failed to discharge the burden of disproving HMRC's figures for the VAT assessment upon GS VI.

93. Given that the Appellant's appeal rested solely on disproving the figures for HMRC's assessment on GS VI, it follows that the Appellant's appeal against the personal liability notice imposed upon him personally also fails.

Conclusion

94. For the reasons set out above, this appeal is dismissed. The personal liability notice imposed upon the Appellant is confirmed in the figure of £130,257.92.

95. 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.

**JANE BAILEY
TRIBUNAL JUDGE**

RELEASE DATE: 2 July 2021