



**TC03393**

**Appeal number: TC/2012/11007**

*INCOME TAX – Assessment for additional tax after continuation – penalties – whether sufficient records delivered – whether income undeclared in light of family household expenditure - financial information of spouse not disclosed because of secrecy – Appeal allowed. Sections 12, 29, 34 and 36 of the Taxes Management Act 1970 and Part 1 Finance Act 2007*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**GLEN WHITTLE**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE W RUTHVEN GEMMELL, WS  
MR PETER R SHEPPARD, FCIS, FCIB, CTA**

**Sitting in public at George House, 126 George Street, Edinburgh on 11 and  
12 February 2014**

**Mr Desmond Cheyne, Advocate and Mr Jason Main, M J Lynas Ltd,  
Accountants for the Appellant**

**Mrs Chris Cowan, Officer of HMRC, for the Respondents**

## DECISION

- 5 1. This is an appeal against the decision by the Commissioners of H M Revenue and Customs (“HMRC”) in respect of a closure notice issued for the tax year 2006-2007 on the grounds that Glen Whittle (“GW”) kept inadequate business records; submitted incomplete and inadequate records, including an inadequate record of income and a claim that GW had insufficient means to meet private and personal expenditure during the tax year 6 April 2006 to 5 April 2007.
- 10 2. HMRC believed the shortfall was £8,628.
3. Notices of assessment, and penalty determinations, were issued for the tax years 2005/06 to 2009/10 inclusive.
- 15 4. The amounts assessed were £1,722.90 for the tax year ended 5 April 2006, £2588.40 for the tax year ended 5 April 2007, £2,696.70 for the year ended 6 April 2008, £2,487.52 for the tax year ended 6 April 2009 and £2,601.76 for the tax year ended 5 April 2010. .
5. Penalties were determined under Section 95 of the Taxes Management Act of £3,153 for the tax years 2005/06 to 2007/08 and under Schedule 24 of the Finance Act 2007 of £1,183.24 for the tax years 2008/09 to 2009/10.
- 20 6. The grounds of appeal were that in GW’s opinion it was totally incorrect of HMRC to claim that GW had insufficient income, together with his wife, Marie Whittle (“MW”), to substantiate their lifestyle.
- 25 7. This hearing had been postponed from October 2013 as the Tribunal Centre had received on the morning of the hearing a communication from a spa hotel that Mr Jason Main (“Mr Main”), who was to present the case, had food poisoning.
8. The hearing was accordingly adjourned.
9. At the start of the adjourned hearing, Mr Desmond Cheyne, Advocate, stated that he had not received the bundle of documents which had been made available for witnesses and which had been delivered to the Tribunal Centre and which HMRC claimed had been sent to Mr Main’s firm, M J Lynas Ltd (“the agents”).
- 30 10. It was explained that M J Lynas Ltd was a firm of accountants whose sole director was Josephine Main, the spouse of Mr Main.
11. Mrs Main who was in the habit of signing letters in her maiden name, Mary Josephine Lynas, held the qualification of a Member of the Association of Tax Technicians. Mr Main had no professional qualifications.
- 35 12. HMRC stated that they had sent the bundle of documents to M J Lynas Ltd at 192 Duke’s Road, Rutherglen, Glasgow and that they had been signed for on receipt.

13. Mr Main explained that the person who had signed for these documents lived in a tenement flat at the same address of 192 Duke's Road, Rutherglen, Glasgow but that the individual who had signed for the documents had not passed them to M J Lynas Ltd.

5 14. Mr Main was asked why he had not noticed this in October, given that he was to present the case then and his attention was drawn to the direction issued by the Tribunal Judge instructing bundles of documents to be lodged with the Tribunal Service and each party by a specified date. Mr Main stated that "I must have overlooked that".

10 15. Mr Cheyne explained that he had only been instructed on Friday, 7 February 2014 and had not noticed the reference in the directions.

16. The hearing was, accordingly, adjourned for a further period for Mr Cheyne to examine the documents within HMRC's bundle that he might not previously have seen.

15 17. At the hearing, the Tribunal Centre was advised that GW would be called as a witness, together with his wife, MW, and Mr Main.

18. HMRC objected that they had had no notice that Mr Main was to be called as a witness and it appeared that M J Lynas Ltd had either overlooked or ignored a direction by a Tribunal Judge to notify the parties and the Tribunal Centre of all witnesses who would be appearing.  
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19. Time was, accordingly, given to HMRC, after Mr Main was examined by Mr Cheyne, before Mr Main was cross examined by Mrs Cowan.

### **Cases References**

*Johnson v Scott (HMIT); (CA) [1978] STC476.*

25 *Nicholson v Morris (HMIT); (Ch.D) [1977] STC162*

*Jonas v Bamford (HMIT) ChD [1973] STC 519*

*Norman v Golder (HMIT) (C.A.) 171 Lt 369 (1944)*

*Blyth v The Company of Proprietors of the Birmingham Waterworks (1856) 11 Ex Ch 781*

### 30 **Legislation**

Taxes Management Act 1970 Sections 9A,12B, 19A, 28A, 29, 34, 36, 50, 95, 100, 100B, and 102

Finance Act 2007 Schedule 24

Finance Act 2008 Schedule 36 Parts 1, 39, and 40

## **The Evidence and Findings of Fact**

20. GW, who is currently aged 55, is a hackney cab driver at Glasgow Airport.
21. For most of GW's working life, he had been a mechanic. He was made redundant in 2005, at which time he became a driver and shared the driving of a taxi with the owner of the taxi.
22. GW had never been self employed before 2005 and this was his first foray into keeping accounts which he explained was primarily constituted by using a taxi book in to which he entered the fares he had received and the relevant expenditures he had incurred.
23. GW explained that because the taxi was shared, no record could be taken from the taxi meter installed in the taxi as this had to be cleared or reset so that it was available for each driver.
24. Instead, he recorded each journey on slips of paper which he temporarily deposited in the glove compartment of the taxi. These slips were then used to complete the taxi book and then destroyed.
25. The tariffs charged by GW were as regulated by the local authority and he estimated that he received some level of tip on about 50% of his journeys.
26. GW's shifts ranged from 4pm in the afternoon until approximately 11pm in the winter and longer in the summer and he worked only certain days of the week.
27. The taxi was owned by Mr McGuire to whom GW paid £200 per week as a flat fee although GW had bought his own taxi in 2010. In addition, a payment was paid to a company to provide a radio taxi link and other costs included fuel.
28. As GW had had no bookkeeping or accountancy experience, he contacted Mr Main.
29. In July 2006, GW and MW purchased a new house from Stewart Milne Homes and had a number of disputes with them as to the condition of the property which led to publicity in the media. GW was of the view that this had come to the attention of HMRC who, as a consequence, raised an enquiry into his tax affairs.
30. HMRC stated that the enquiry may have been raised as a result of GW coming in to self employment for the first time.
31. On 18 December 2008, HMRC wrote to GW and his agents advising that they intended to enquire into his 2006/2007 tax return and requested, amongst other things, all business records from which the accounts to 5 April were prepared, including records/cash book, vouchers in support for expenditure and all other books, records etc maintained.

32. They also requested the name and address of the owner of the taxi and information regarding the financial arrangements and occupancy of GW's private address.

5 33. The letter noted that "modest profit figures have been returned". HMRC requested sight of all private financial statements in GW's name and in which he had an interest covering the 12 month period to 5 April 2006.

34. On 13 February 2009, HMRC issued a Section 19A Notice requiring documents, within 30 days of receipt of the Notice, as they had received no information from GW or his agents.

10 35. On 16 March 2009, GW's agents delivered a letter to Cotton House, Offices of HMRC, which stated "I now enclose all the relevant records for the above named. Hoping the above information is suitable for your requirements and if there is any further information you require please let me know".

15 36. On 30 March 2009, Miss Julie Carmichael ("JC"), Compliance Officer for HMRC, replied thanking the agents for their letter of 16 March, "enclosing records for the above tax payer. Please arrange to send it (sic) the weekly record book which covers the period 24 July 2006 to 2007 to support the figures in the cash book analysis". There was a further request for the make, model and registration details of the taxi and the taxi firm GW drove for. The letter also suggested that a meeting with HMRC and GW, with the agent in attendance, would be helpful and a date of  
20 Wednesday, 27 May 2009 was suggested.

25 37. On 13 May 2009, HMRC wrote again to GW requesting the information (ie the make and model of the registration details of the taxi which had still not been provided) and issued a Paragraph 1, Schedule 36 of the Finance Act 2008 Notice requesting the information by 22 June 2009 and setting out the penalty payable for failure to do so.

30 38. By letter dated 26 May 2009, referring to a telephone conversation between Mr Main and JC, Mr Main confirmed the make and model of the car and the name but not the address of the owner. The letter continued "I would also advise you that I submitted Mr Whittle's cash book to 5 April 2007 together with other records on 16 March 2009."

35 39. On 23 June 2009, JC wrote to the agents acknowledging receipt of the details of the car used by GW but stating that the cash book provided only covered the period 25 July 2005 to 31 July 2006 whereas the period of enquiry was from 6 April 2005 to 5 April 2007 and, accordingly, requesting sight of the cash book which covered the period 24 July 2006 to 5 April 2007.

40. A meeting was set for 8 July 2009 but the actual meeting then took place on 20 August 2009 between JC, GW and Mr Main.

40 41. At this meeting GW advised that he had recorded all income properly and correctly claimed his expenses. He confirmed that he had no other sources of income other than his taxi earnings, no other income to supplement his earnings and did not

receive any money from dividends, savings, insurance maturities or any lottery or gambling wins.

42. GW was to check how many loans he had during the year but he was sure it was at least one from Marks and Spencer.

5 43. GW mentioned that his wife, MW, worked full time with Thomson, the travel company. His daughter was not in employment during the period. GW later confirmed he had two daughters, one who was not in employment because she was at school and the other who was in employment.

10 44. GW explained his shifts were shared with Mr Michael McGuire. GW's shifts were Tuesday, Wednesday, Thursday (pm) and all day Friday and Saturday. They changed their shifts at the airport. The £200 weigh in fee payable to Mr McGuire for the taxi was made in cash on a Saturday. The £10 radio fee was paid to ATS in cash on a Tuesday.

15 45. GW advised that he would get Mr McGuire's address but could not provide the mileage of the car that had been used in 2006/2007 as the car had been scrapped.

46. GW advised that fares were paid in cash and with any credit hires 10% was added and paid to ATS.

20 47. GW advised that his engaged mileage was affected by often having to sit at the airport from 6.30am until 1.30pm before he obtained a fare. He would aim to make six hires on a good day and local hires to the airport hotels, which were a quarter of a mile away, would be charged at £2.40 whereas a city centre trip would be £16 for an eight mile trip. GW advised that in the summer it would start getting busy in the third week of July and advised that August would be quieter as it was the English holidays and there were not as many business trips.

25 48. GW had a licence which meant he could not pick up in Glasgow but he could pick up in Renfrew but did not do so as he did not have safety glass separating him from his passengers.

30 49. GW explained how he kept the slips of paper and how he maintained his records and advised that his only cash expenses were for newspapers and tea or coffee and that diesel fuel was paid out of his takings. The amount of cash he banked depended on the bills he was required to pay and was paid into his own bank account at the Clydesdale bank whilst keeping a float of approximately £8 to £9 in the taxi.

35 50. At this meeting, GW was advised that the reason for his case being chosen for review was because of his means and, accordingly information was required about his expenditure during the year.

51. JC noted that he had moved house during the year and she enquired how this was funded. GW advised that the profits from the sale of a house funded from the fees of the estate agents, lawyers and stamp duty. GW said he was unable to provide expenditure details as these were paid through his wife's account.

52. GW was given a pro forma of expenditures to take away and complete and he was asked that he include all expenditure such as holidays, Christmas (“Xmas”), birthdays and all bank and credit card payments.

5 53. GW confirmed the only assets he had was his house which was mortgaged for £150,000 and his wife’s car.

54. The notes of this meeting were sent on 21 August 2009 with a request to advise HMRC in writing if any of them were incorrect. HMRC noted that, following the meeting, tips were not recorded. GW was asked to explain how he recorded his credit hires as these were not on his meter readings, how the money for these was paid to him and how he arrived at the airport to start a shift.

55. He was requested to return the completed expenditure document and to provide sight of documentation regarding the sale of his old house and purchase of his new house, including how the fees, stamp duty etc had been funded. A further request was made for sight of all private financial statements in GW’s name or in which he had an interest.

56. HMRC wrote on 5 October 2009 making a formal request for the information they say had been previously requested on 21 August 2009 and 26 August 2009 to be produced by 30 November 2009. This was a Notice under Paragraph 1 of Schedule 36 of the Finance Act 2008. The documentation required was the full name and address of the person to whom GW paid weigh in fees, details of the personal expenditure, as discussed at the meeting of 20 August 2009, and sight of documentation regarding the sale of the old house and purchase of the new house.

57. This was followed on 18 November 2009 with a penalty warning stating that the information required by 13 November 2009 had not yet been produced and stating this was a final warning if the documents were not received by 4 December 2009.

58. On 3 December 2009, the agents wrote confirming the loan details in relation to a loan from Marks and Spencer and provided letters regarding the property purchase and sale and a letter from GW regarding Mr McGuire’s accountant and details relative to the credit work. The letter said an income and expenditure spread sheet was also enclosed and stated GW kept the slips in the glove compartment of the taxi and that the taxi book recorded all monies received, including tips.

59. On 14 December 2009, HMRC stated that the income and expenditure sheet was not enclosed.

60. HMRC requested sight of the slips of paper as the “prime record of his sales” and pointed out serious concerns regarding GW’s means relating to the purchase of his house.

61. HMRC could not understand how “GW was able to obtain a mortgage for £149,970 even taking into account his wife’s income”. The agents responded on 12 January 2010 stating that “at the time of their application both Mr and Mrs Whittle were in full time PAYE employment and made the application as such”.

62. On 17 February 2010, HMRC issued a notice to produce documents under Paragraph 1 of Schedule 36 of the Finance Act 2008 requesting the slips of paper, details of how the mortgage was obtained and more information about private financial statements.
- 5 63. On 30 March 2010, a further penalty notice was sent requesting this information within the next 14 days and, on 24 May 2010, further information was provided by the agents, being primarily GW's copy credit card statements and confirmation that a £3,000 deposit payment for the new house was made by a cheque from MW.
- 10 64. On 18 June 2010, the agents provided further copies of GW's bank statements, and copies of the statement of settlement in relation to the purchase of GW's home in 2006.
- 15 65. On 1 October 2010, HMRC was disappointed to note that no progress had been made with the enquiry and having failed to receive a reply to their letter of 21 June 2010, reviewed the case again and carried out a Business Economic Exercise which produced a total turnover of £42,544 being an additional £16,645 from what had been returned.
- 20 66. The letter continued "as I told you from the outset means was a concern in this case". The letter enclosed a summary of incomings and outgoings for the year ended 5 April 2007, and the Family Expenditure and Spending Statistics for the year ended 5 April 2007.
- 25 67. The agents replied on 25 October 2010 stating that no letter of 21 June had been received and asking for a copy of it and confirming that GW was in total disagreement with the contents of the letter of 1 October 2010. This related to a criticism of the calculation for tips, the amount of engaged miles, and the income/fuel ratio and suggested an alternative basis. On this basis, the agent noted that the income would be £25,994.39 against a declared income of £22,354.
68. In relation to the statement of means the agents stated that HMRC had used an average of half of the household expenses, some of which did not relate to the Whittle household.
- 30 69. HMRC responded on 18 November 2010 accepting some of the points made in relation to engaged time and requesting that GW complete and submit a mandate to obtain information from the radio operator ATS for the period in question.
- 35 70. HMRC stated that as the letter of 1 October 2010 had not provided the requested information they had used the Family Expenditure and Spending Statistics for the year 5 April 2007. From this had been deducted the amounts where it was known that Mr Whittle had incurred the expenditure. The Marks and Spencer loan payments had been included but HMRC pointed out that the loan was taken out on 1 June 2005 which was out with the period.
- 40 71. The letter continued "I did not include Mrs Whittle's income for privacy purposes but the means test clearly demonstrates a potential shortfall in income to cover



expenditure even if Mrs Whittle's income was taken into account". It continued "as I advised at the outset of this enquiry, means was my main concern".

5 72. It transpired in evidence that the letter of 21 June 2010 had been sent to Mrs Josephine Main's father, Michael Lynas, Accountant, at a different address in Glasgow. The letter had apparently not been passed to the agents.

73. By letter of 21 January 2011, HMRC noted they had been disappointed to receive no reply to the letter of 18 November 2010 and required further information, in particular, the record book for the period 24 July 2006 to 5 April 2007. HMRC stated they had doubts as to the accuracy of the records and returned profit.

10 74. HMRC had also carried out a review of the monthly passenger figures for Glasgow Airport and noted that, despite the fact that passenger numbers increased from May through to July, there was very little increase in GW's monthly sales which would be expected.

15 75. By letter received on 28 March 2011, the agents advised that neither they or GW were willing to agree to the proposals set out in the letters of 21 January and 21 February and pointed out that in HMRC's income and expenditure statistics they had not considered Mrs Whittle's income or that the mortgage was granted on MW's income solely.

20 76. HMRC wrote on 12 April 2011 requesting further information. Contact within 30 days was required or they would issue closure notices and amendments for the tax return for the year 2007 and tax assessments for the period 2005/2006 to 2009/2010. Based on errors found, HMRC considered that GW had been negligent and culpable for additional liability due for all years from 2005/2006 to 2009/2010.

25 77. Penalties were assessed and in relation to the 2006–2008 penalties under Section 95 of the Taxes Management Act 1970, the issues of disclosures, cooperation and seriousness, considered resulting in a penalty abatement for 45% and a penalty loading of 55% of the original tax.

30 78. In relation to the period 2009-2010, under Schedule 4 of the Finance Act 2009, the issues of behaviour, disclosure, telling, helping, giving were considered and resulted in "the maximum statutory penalty being stated at 30% of the tax loss i.e. £1,526.76".

79. In accordance with HMRC's procedures, authority was given to make extended time limits for the purposes of making good a loss to tax because of careless or deliberate behaviour (continuation).

35 80. On 13 September, a meeting took place between GW and JC at which GW explained he thought the assumed expenditure figures for recreation and culture were too high as were "restaurants". He made various explanations about "going out" for only limited events.

81. GW explained that his wife secured flights to Florida, their normal holiday destination when they have one, for a nominal amount as she works for Thomson and her brother lives over there and so they stay with him.

5 82. JC said she was willing to make some adjustments to the estimated expenditure if GW could provide evidence but noted that she had never received MW's bank account and had no information from GW regarding personal expenditure in terms of national averages.

10 83. GW stated that he had given everything to his agent to work out the figure and so "it must be correct". The note continued "GW will arrange to submit MW's bank statements". GW asked what he should do regarding payments.

84. On 18 October 2011, GW telephoned JC and confirmed that the practice when sharing the taxi was that it was filled with fuel at the end of a shift so that the taxi had a full tank at the beginning of the next shift.

15 85. On 18 October 2011, HMRC wrote to the agents stating that what they believed was the legal basis for using the UK Family Enterprise Survey (FES) and providing a summary, based on the receipts received and income payments over a period of three months which suggested that no fuel purchases had been made or recorded, contrary to the information advised by GW.

20 86. On 13 December 2011, the agents wrote to HMRC stating that "both weekly record books were personally hand delivered to Cochrane Street. Mr Whittle cannot be held responsible for matters out with his control. I have also supplied my analysis from the 'missing record book'. As regards the analysis of the record book, as stated on 6 and 7 June 2006, Mr Whittle had full use of the taxi with no need to return the vehicle and hence no need to refuel on Tuesday evening. The week commencing 25 10 July 2006 was Mr McGuire's holiday hence no need to refuel at any particular evening, only when necessary".

30 87. In relation to the use of the FES and HMRC's presentation of personal expenditure, it continued "he (GW) has evidenced individual purchases and bills which show his day to day expenditure. All that is missing is the extra expenditure which you require for uplift in profits. You have mentioned that you have taken his personal expenditure from his bank statements but in reality you have also used his credit card statements, also provided at considerable cost. You have also omitted to include in your calculations the extra credit which has been extended to Mr and Mrs Whittle during the year. I have also, as previously mentioned, had sight of 35 Mrs Whittle's bank statements which show payments of all other relevant costs associated with the day to day life of the household. I would still assert that Mr Whittle's records are accurate and complete".

40 88. HMRC summarised their view on the matter in their letter of 24 January 2012 which largely repeated comments made previously and included an amended shortfall (whilst ignoring MW's income in the tax years in question).

89. On 20 February 2012, the agents wrote saying that MW was now willing to assist in the completion of an income/expenditure statement. The statement was sent on 23 February 2012 and was the same style of assessment given to GW in August 2009.

5 90. On 6 June 2012, HMRC set out their comments on the statement and, in particular, highlighted their concern that the annual amounts for a four bedroomed detached house of £200 for electricity and £400 for gas were unlikely and, based on their analysis, the more correct figures should result in a further total bill of £812.

10 91. Similarly, HMRC did not find the amounts advised for the monthly household phone/telephone of £12 credible and noted that there was no money for the cost of holidays, spending money and clothing which HMRC estimated at £1,000 per year, spending for Christmas, birthdays etc at a further £1,000 a year and concluded that £200 per month for shopping and toiletries and annual clothing etc. In total this produced, HMRC suggested, a revised shortfall of £7,452.

15 92. The agents wrote on 9 June 2012 stating that MW received during the year a further loan advance of £3,613.21.

93. HMRC replied they had received no documentation in relation to this but this was subsequently disclosed by a letter from the agents of 18 June 2012 which advised that MW received £8,000 as a lump sum on 14 August 2006 for which a bank statement was also subsequently exhibited.

20 94. In their letter of 16 August 2012, HMRC reiterated that the information supplied did not show conclusively Mr and Mrs Whittle had sufficient means because although money may have been received, such as the pension payment, it did not prove that the money was utilised for means.

25 95. The letter stated “it is just as likely these monies were utilised for extraordinary purchases in your new home also financed during that year. I would expect as evidence to see Mrs Whittle’s private bank account showing the money coming in and that it was used for private and personal expenditure”.

30 96. The agents replied on 13 August 2012 disappointed by HMRC’s comments and stating that MW was not the taxpayer under investigation and that she had supplied relevant and sufficient information.

97. A statutory review on 22 October 2012 took place and concluded that incorrect returns had been made for the year 2005/2006 to 2009/2010 inclusive and upheld HMRC’s decision and a total liability for tax and penalties of £16,433.52.

### **Mr Main**

35 98. Mr Main gave evidence, was examined and cross examined.

99. He had been an accountant with the agents for 20 years and prepared accounts and gave tax advice.

100. In 2006, he had prepared the accounts, books and tax returns for GW and stated that he had had sufficient records to make GW's 2006/07 return, including the taxi book, being in standard form produced by the Radio Association, which was similar to other taxi drivers that Mr Main advised.

5 101. On receipt of HMRC's request for information and documents on 18 December, Mr Main believed he had replied timeously and supplied sufficient receipts and information, the principal ones being the cash book and his analysis of the cash book.

10 102. In summary Mr Main's view was that he had passed on information to HMRC as and when he received it and, in particular, on 16 March 2009, hand delivered "all the relevant records" for GW to HMRC's office at Cotton House, 7 Cochrane Street Glasgow. Mr Main was in the habit of delivering items to this office and was acquainted with the receptionist. Mr Main was convinced that he had handed in the cash book or weekly record book which covered the whole period and, in particular, a second record book covering the period 24 July 2006 to 5 April 2007.

15 103. Mr Main took the view throughout that he had always provided this information to HMRC but, other than referring to the act of delivery in the letter of 16 March 2009, gave no further information to HMRC. Mr Main did not receive a receipt when he handed in the documents to Cochrane Street.

20 104. Mr Main was given MW's bank account by GW but, other than producing part of a redacted statement which showed a payment from a pension policy, either decided or advised GW not to give this information to HMRC.

105. Mr Main repeatedly stated that much of the family expenditure was paid for by MW and this was reiterated at the meeting with HMRC on 20 August 2009.

25 106. Mr Main thought HMRC's estimated figures were "ridiculous". An example of this was the relationship of the use of fuel to income based on the business Economic Exercise. Mr Main also thought that JC of HMRC believed GW was "fiddling the figures" to meet her perception of GW's income.

30 107. Mr Main advised that his calculations are usually accepted by HMRC but there was no agreement on the figures and no compromise was reached with HMRC in this case.

108. In relation to the mandate for ATS, Mr Main advised this was not completed because the ATS company had "shut down".

35 109. Much evidence was given in relation to the expenditure of the family and HMRC's table which omitted to show MW's income, although this was known to HMRC, because of privacy.

110. Their initial calculation of this produced a deficit of £33,669 which included estimated expenses which Mr Main thought were irrelevant even although they might be statistically correct.

111. Mr Main noted that the statistical basis included two children whereas there was only one child within the Whittle household as the other child was an adult and earning (and contributing to the household budget).

5 112. An analysis of cash banked and expenditure produced by HMRC was agreed as being correctly attributable to GW.

113. In relation to HMRC's analysis to an increase in passengers during certain months of the year, Mr Main accepted that there may have been an increase in passengers but did not accept that this related to an increase in taxi journeys. This was primarily based on the fact that the increased traffic was mostly during holiday periods which also meant there was less business trips.

114. When finally MW's analysis of income and expenditure was completed voluntarily, Mr Main felt that HMRC had enough information and it was unreasonable to ask for more by 23 March 2012.

15 115. Mr Main felt that, on the information he had from MW's bank statement and his knowledge of GW's affairs, there was no deficit and that there was no evidence to show that GW had been taking sums for which he had not accounted for or had been paying to his wife or to anyone else.

116. Under cross examination, Mr Main accepted that information had repeatedly had to be requested by Section 19A or Schedule 36 Notices as most requests for information were not completed within reasonable timescales, in particular, the make and model of the taxi and the name and address of the owner but Mr Main repeatedly stated that most information had already been given, it was just not acceptable in the form it was given to HMRC.

25 117. Mr Main reiterated that he had encouraged GW to give information about his expenditure to HMRC and to say that the remainder was met by MW. Mr Main again stated that MW, on the grounds of privacy, and as she was not under investigation, was not required to provide any of the information relating to her expenditure.

## **GW**

30 118. GW gave evidence and was a credible witness. He was examined and cross examined.

119. GW explained the prime source of recording the income of the taxi was the meter which was cleared before the change of a shift because the taxi was shared by more than one driver.

35 120. GW confirmed that he paid for and kept petrol receipts and that he kept a record of income and business outgoings. A flat fee for the lease of the taxi was £200 per week and, at that time, was paid in cash and the car wash was paid to Polish or Romanians who also demanded cash in hand. Similarly, £10 for the radio was paid in cash.

121. GW confirmed that it was up to him the amount of hours he worked within his shifts, that he had employed the agents as he had never filled in a tax return before and that he had had meetings with JC in relation to the investigation.

5 122. GW confirmed that the house was owned jointly with MW; that they had both, he recalled, applied for a mortgage but for whatever reasons, possibly because he had just started self-employment, the mortgage was based on MW's earnings who was in salaried employment and had been so for a number of years. GW thought he may also have been a counter signatory to a Standard Security supporting the loan.

10 123. GW confirmed that Mr Main had said he had handed in his weekly record books to HMRC and that he knew that HMRC had said they had not received them.

124. Notwithstanding this, GW confirmed that he did not have any difficulties with making disclosure to HMRC but felt he had given enough information to his agents that was passed on. GW explained that a great deal of household expenditure was paid for by his wife.

15 125. GW claimed that the costs and upkeep of his car were limited because he was a mechanic, that gas and electricity for their four bedroomed Stewart Milne executive villa was correct because it was fuel efficient and "eco-friendly". GW, although giving cash to his wife to help with the household budget, relied on her to buy all the food; stated that the furniture in the new house came from the previous house; that his  
20 wife paid for common charges; his wife paid for most of the alcohol but he did not drink much because of his job and, in any event, his wife was able to obtain duty free alcohol as part of her job with Thomson. Similarly, the costs of holidays for GW and MW were heavily discounted and the amount spent could be relatively low depending on whether the holiday was confirmed (when accommodation was paid for) or  
25 unconfirmed, particularly when they went to Florida where MW's brother lived and where they could stay. GW explained that they did not eat out very much and although he paid for his own clothes, his wife paid for her and their daughters' clothes. GW confirmed that he paid for his golf club, SKY and mobile telephone subscriptions.

30 126. GW confirmed that he had only one bank account and had a Clydesdale Bank Mastercard and a Halifax Visa card and that, overall, he had provided information to HMRC, albeit sometimes late, as some of the information he had been required to get was difficult to obtain or, in his words, "a nightmare".

127. GW stated that he did not ever run this taxi with the meter off.

35 128. When GW was cross examined the issue of the slips of paper was raised which HMRC considered as the prime record. GW stated that he could see no difference between the slips of paper and the collective record of these in the taxi book being anything other than two forms of prime record as the actual source information that backed them up was the taxi meter. GW confirmed that "on the rank, no one hands  
40 out receipts" and that much of the receipts made are in cash.

129. GW reiterated that he had provided what he had been asked for when HMRC required information but could not give her anything for the house because his wife paid for all that and came to the conclusion when giving information to JC “it was twisted or misinterpreted”.

- 5 130. GW was asked why, when he had told HMRC he would obtain MW’s bank statement, he had changed his mind. GW responded that this was because the agents had said his wife was not under review or “on trial”. GW denied that he had kept inadequate records.

## MW

- 10 131. MW confirmed that she was an air crew cabin manager with Thomson, the holiday and airline company, and had worked with them for 33 years.

132. She had been married for 32 years and had two children, who in the tax year 2006/07 were 15/16 and the eldest 17 but in full time employment.

- 15 133. MW recounted the issues relating to the purchase of the house and how the mortgage was obtained and that, ultimately, the mortgage was accepted based on her income. The mortgage was, nevertheless, a joint one and the Standard Security in favour of the lender and, indeed, the title to the property were in joint names.

- 20 134. In relation to the Schedule of Income and Expenditure incurred by MW, MW advised that when she actually received this in 2012 she completed it reluctantly as she felt it was an invasion of her privacy.

135. MW confirmed much of what GW had stated in relation to the payment of holidays, the cost of food, alcohol, meals out, gas and electricity.

136. In addition, MW stated that she had cashed in a pension or part of it and this had resulted in a payment of £8,000 during the year under investigation.

- 25 137. In addition, MW advised that her husband contributed approximately £200 to £300 per month in cash to the family budget. MW had only limited knowledge of GW’s business affairs but was aware that although the numbers at Glasgow airport had been increasing, the airport bus between Glasgow airport and the city centre was the most popular form of transport to and from the airport and the cheapest.

- 30 138. MW advised that she did not have a normal 9am to 5pm, five day a week job. She was often on extended trips which resulted in her absence from home. In the year under investigation, her children went to stay with her mother on these occasions. Absences because of her employment could be from seven to 14 days at a time during which time the airline would pay for meals and accommodation. Hours worked could  
35 sometimes be 7am to 10pm although the necessary breaks or time off was given, these could sometimes be “down route” which meant in the middle of a trip usually abroad.

139. MW had not been given the income and expenditure sheet to complete in relation to her expenditure until 2012.

140. MW stated that she had obtained her bank statements as well as completing the income and expenditure statement and given them all to GW who had given them to Mr Main. MW did not know whether they were given to HMRC or not.

5 141. MW confirmed that there were loans coming into the household which also assisted with meeting expenditure and confirmed that she had never received a letter directly from HMRC in relation to any matter relating to GW's investigation or tax affairs.

## JC

10 142. JC is an Inspector of Taxes who conducted the initial enquiry into GW's tax affairs.

15 143. JC outlined her requests, mostly by letter but, occasionally, by telephone or at a meeting, for further and more information in relation to GW's tax affairs in order to satisfy herself that he had returned the correct income. She stated that the information was asked for initially informally but when that failed, which was most of the time, formal notices had to be served.

20 144. In relation to the meeting on 20 August, JC explained why HMRC had opened the enquiry; stated her concern over income and expenditure and gave an opportunity to GW to advise if anything was incorrect or omitted. Following the meeting, this raised further questions, in particular, the accounting or tips and led on to further enquires about private and personal expenditure and, in particular, the ability to afford the new house.

25 145. By 18 November, a final warning penalty letter was sent and the terms of this confirmed on 30 March 2010. JC outlined the problems she had with the information she had received and, consequently, her decision to carry a Business Economic Exercise. Based on JC's assumptions, she used the fourth quartile grouping for a household comprising two adults and two children which provided a weekly expenditure cost of £624 per week.

30 146. By 21 January 2011, JC had still not seen the weekly record book for the period 24 July 2006 to 5 April 2007 and although she had seen an income and expenditure analysis, the lack of prime record raised doubts as to their reasonableness.

147. By letter dated 21 February 2011, HMRC were still unsatisfied with the information they received and, consequently, as they were entitled to do with other tax years, they also assumed a shortfall and the additional assessments were raised.

35 148. The letter also enclosed a means test which set out HMRC's then assessment of the deficit of income, as against estimated family expenditure. The income column ignored any income from MW and, on this basis, the deficit amounted to £30,881.

149. By 12 April 2011, HMRC and JC decided to draw a line under the matter and issued a closure notice and tax assessments as they felt they had given GW more than enough time. HMRC felt "there was no other avenue".



150. Penalties were assessed, together with the reasons why discounts were given or not given and authority to extend the time limits obtained.
151. By 18 August 2011, a letter was sent setting out the procedure for suspension of the penalties which was HMRC felt “a final chance to send the information requested”.
152. No such information was received and, on 23 August 2011, a further letter setting out the liabilities was sent.
153. GW then met with JC on 30 September 2011 and GW said he would arrange to submit MW’s bank account and made the point that he thought the figures were too high. He confirmed that he had arranged a loan of £9,000 from Marks and Spencer.
154. JC outlined her analysis of the fuel payments or lack of fuel payments when she felt these would be expected because the taxi had been earning income. On receipt of the income and expenditure pro forma document completed by MW, JC did not accept all the entries as stated.
155. JC felt there was no allowance for maintenance or repairs of the property and that the telephone costs and holiday costs were unrealistic. Some figures were, however, accepted and revised.
156. Accordingly by 8 June 2012, HMRC had concluded that there was a revised shortfall of income against expenditure for the Whittle household of £7,452, after taking into account what they knew to be MW’s income. On 18 June 2012, HMRC considered the information provided by the agents in relation to the credit card debt and also the £8,000 from the pension. HMRC were unpersuaded that this amount was expended on household expenditure in the absence of any bank statements and felt this sum of money could have been spent on “anything”.
157. JC’s view was that she had asked for all information and records that were meant to be kept to prove income and expenditure and considerable doubts remained as only four months of the weekly record book for the tax year had been seen by JC. Although JC had seen an analysis of income and expenditure and accepted the weight in payments at face value, JC had tried to work informally and, when that had failed, formally to obtain sufficient information in order to assess what she believed to be the correct amount of tax.
158. JC stated that the responsibility was on GW and that using an agent who was incompetent was not an excuse. JC felt the agents’ cooperation was poor although JC accepted the issue of privacy relating to MW’s bank statements.
159. JC believed that in relation to the income and expenditure analysis, JC had accepted some of the matters put forward by GW and the agents but not all of them and, in doing so, was fair to GW.

160. In cross examination, JC stated that she had no specialist expertise with Glasgow airport taxi drivers but was non committal on whether the slips of paper could be considered a secondary rather than a primary record.

5 161. JC thought that GW may be under declaring his income because he did not submit his records; She did not accept GW's contention that his wife was responsible for such a large proportion of household expenditure.

10 162. In relation to the meeting with GW, JC stated that GW had been cooperative and had answered all the questions that he had been asked. It was only, with hindsight, that further issues arose, such as tips, and responses such as they were, raised further suspicions.

15 163. In relation to the cash book which Mr Main said was missing, JC stated that she had not carried out an investigation as she did not read the agent's letter of 26 May 2009 (submitting the records) as saying that it submitted two cash books and, in particular, the cash book for the latter part of the year to 5 April 2007. JC was adamant that she and HMRC had only received one of the weekly record books. The 26 May letter referred to a note of a telephone conversation which the Judge requested should be exhibited to the Tribunal Centre but has not been so.

20 164. JC stated that she still remained unsatisfied about the level of GW's income on the grounds of poor record keeping and failure to provide records and that the household expenditure was high for the income returned.

165. In relation to the pro forma completed by MW, JC advised that at no time did HMRC write to MW as she was not under investigation.

166. GW's Counsel referred to HMRC's guidelines and HMRC practice which it is recommended is followed.

25 167. JC stated that MW, through GW, had offered to provide the information but, as GW had never been asked whether he banked income to MW's bank account, there was no ability to demand the bank statement.

30 168. JC stated that she believed the expenditure for the Whittle family was low for a family of four in a four bedroomed house and stated that the Family Expenditure Survey was produced by the Government as an objective measure and confirmed that HMRC put greater weight on the statistical analysis than the information provided by MW where JC disbelieved the latter. JC confirmed that she had not gone back to MW with her concerns of claims of inaccuracy in relation to the completed table and that, having established what HMRC believed to be a reasonable level of expenditure, assumed that the deficit of income must come from GW because MW was in PAYE.

35 40 169. JC stated that the matter could easily have been resolved if MW's bank account had been provided in full to HMRC and, in its absence, had received what HMRC considered to be unreasonable figures so they substituted their own. JC confirmed that she did not know the exact details of the household and, in particular, the number of dependant children and that they were often not on the premises when MW was away

on a trip and that they lived in an eco-friendly house. In relation to the absence of fuel purchases, JC confirmed that she had accepted that some of the failures to purchase fuel which seemed incorrect could be explained by Mr McGuire's absence or holidays.

5 170. JC confirmed that although not experienced in the affairs of Glasgow airport taxi drivers, she had experience of all trades and approached all enquiries in the same way.

171. JC did not accept the agent's analysis and did not accept the lack of additional sales at a time when airport passenger traffic had increased at face value and had  
10 looked at all the information received and did not pre judge any issue.

172. In the final analysis, JC did not think MW was paying all the household expenditure, as suggested by GW.

173. JC was asked by the Tribunal why, given the uncertainties surrounding the Whittle household expenditure, leading ultimately, by implication, to conclusion  
15 about MW's income and expenditure, why an enquiry had not been carried out on her tax affairs in the tax year 2006/07. JC advised that with hindsight that is what should have happened.

#### **HMRC'S Submissions**

174. HMRC say that GW's record keeping was unacceptable and could not be  
20 accepted as a complete and correct return of income and expenditure.

175. Reference was made to Section 12 B of the Taxes Management Act which states "a person .....shall –

(a) Keep all such records as may be requisite for the purpose of enabling  
25 him to make and deliver a correct and complete return for the year or period".

176. HMRC say that GW did not meet this standard; that he was negligent; that he destroyed the taxi slips; that full records were not made available and that there were a number of unreceipted items such as the weigh in fees/payment for the lease of the taxi and car washes.

30 177. Any information provided was done so in a piece meal fashion, usually in relation to HMRC's final demands.

178. HMRC say that, taking account of GW's income and his known lifestyle, HMRC increased the income to a more realistic figure, having identified a deficit based, in the absence of any other receipts, or information, provided by GW.

35 179. HMRC say that estimating expenditure is not an exact science but, in the absence of records, the exercise carried out showed, on the balance of probabilities, that there was undeclared income. They used tried and tested methods to achieve a

more realistic estimate. As information was not provided or was not credible, they used statistical data and when challenged used a best estimate.

180. Reference was made to *Johnston v Scott* where Mr Justice Walton stated that the Crown has to, on the facts known, make reasonable inferences. HMRC say that this is what JC did; she had no sufficient tangible documentary evidence to support the household expenditure or GW's contribution to it.

181. Notwithstanding, it was within GW's capability to provide this information. He, however, was either unable or unwilling to do so.

182. In relation to the evidence put forward of loans taken out and pensions cashed in, HMRC say, on the balance of probabilities, that no one would cash in pensions or loans for day to day expenditure although they acknowledge that payment was received within the tax year under enquiry and they do not know how the funds were expended.

183. HMRC also say that as with any loan there are also repayments and interest charges which have to be made.

184. HMRC say that GW was given the pro forma income and expenditure sheet in August 2009; that they had to make repeated requests for information and when the pro forma was completed, the deficit that was calculated then "matched" available family income which, in HMRC's mind, created more cause for concern.

185. HMRC accept that MW was not under enquiry but that the whole issue could have been "put to bed" if they had been given the bank statements. They accept that MW gave the information to GW who gave it to the advisor but that this was not given to HMRC and they remained suspicious of the failure to receive this information, particularly when GW had said that he would obtain it.

186. HMRC say that JC used her best judgement and information and had been generous, fair and pragmatic, as well as carrying out a significant amount of research in order to test the correct level of income relative to expenditure.

187. HMRC say that they were entitled to extend their assessments because of continuity and because the nature of the business had not materially changed.

188. HMRC refer to *Jonas v Bamford* as authority for the legality of presumption of continuity.... "until there is some change in the situation, the onus of proof of which is clearly on the tax payer". HMRC say that the records were incorrect and incomplete and there was no change in record keeping or a significant change in turnover. HMRC say that the penalties were also applied within the relevant Taxes Management Act and the Finance Act 2009 and that the reasons for discounting, or not discounting, the penalties was just, reasonable and fair.

189. HMRC say the burden of proof is on GW to put forward evidence and facts to support his appeal and that under Section 50 of the Taxes Management Act 1970 the assessment should stand good unless otherwise reduced and refer to the case of

*Nicholson v Morris* as authority that the onus is on the taxpayer to provide evidence to refute the assessment standing good.

190. HMRC say the returns cannot be relied upon; that JC is an experienced inspector; that there was no tangible evidence that GW has been overcharged; that  
5 HMRC, in the absence of receiving the information they required, can fully justify the figures and estimates used and derived from an experienced and considered source which looks at all the evidence.

191. HMRC say that GW has been unable to displace HMRC's assessments which are not unreasonable and the appeal should be dismissed.

#### 10 **Submissions for GW**

192. GW accepts that the burden of proof rests with him; that he has no issue with the principle of continuity but states that the appeal should be allowed as the footing of the enquiry is based on a wrong proposition.

193. GW says that the evidence from HMRC about inadequacy of record keeping, as  
15 in the lack of primary records, which, in the particular circumstances, rest entirely with the weekly record book, is an issue of fact.

194. GW refers to the legislation's intention which requires records as may be requisite for the purpose.

195. GW says that the best vouching or best record is contemporaneous evidence  
20 and, in this case, it would be the taxi fare which is a cash transaction where there is habitually no receipt and, in this particular case, no electronic evidence available because of the circumstances of the shared taxi hire. GW says that the slip is a record of a record and that the electronic (meter) record is the principal record or primary source.

196. GW says that there is no prescribed form of information required for taxi drivers  
25 by HMRC, which they are entitled to request under Section 12B, sub section (3A) and, in any event, say there has been no defect in the record keeping. A full set of cash books was given to Mr Main and he hand delivered them to HMRC, along with a spread sheet. HMRC say there was no search or enquiry as to the missing record and,  
30 on that basis, feel entitled to say the records were inadequate which then informed an attitude to the assessment and to the penalties.

197. GW say that when an HMRC officer takes an administrative decision, they need to, at least, investigate the absence of documents which they have been told have been sent. GW says that there was a bland acceptance that the records were not sent.

198. In relation to GW's records that were put forward, GW says that JC was  
35 satisfied and that the record they ultimately only wanted to see, which they did not see, was MW's bank statement.

199. GW says that HMRC cannot have it both ways, to the extent of saying, on the one hand, that the information is inadequate and, on the other, that they are satisfied with all they have got. GW says that HMRC took the view that they have convinced themselves that the records were inadequate and that there must be an under  
5 declaration of tax because GW's expenditure, as they see it, is greater than his income and because he works in the cash business he is more susceptible to evasion and so his income must be unreasonably low and his spouse's expenditure unreasonably high.

200. GW says that if resolution of the case depended on information from the spouse why did HMRC not enquire into MW's position. HMRC say MW, being a PAYE  
10 taxpayer, was less at risk but, in these circumstances, and their queries over her expenditure, one would have thought that this rebuttable presumption could be overcome.

201. GW says that HMRC deduced that because MW was not able to pay her share of expenditure, her husband must be under declaring his income.

15 202. GW did not put the point that HMRC may have not followed their own guidance but questioned why HMRC did not demand the bank statement from MW. GW says he was asked to do something beyond his legal capability which is to produce his wife's bank statement and, if it was so important, why was it left to this relaxed way of trying to obtain it.

20 203. GW says that, even if HMRC substituted estimates put forward by MW, these have to be informed by fact and what the officer, JC, has done has taken her own experience and substituted estimates without considering how apposite they are.

204. GW says that HMRC did not take account that MW's job was unusual and family circumstances were not the same as an average family and, surprisingly, there  
25 was no direct correspondence with MW.

205. GW says that, on the basis of the information put forward to the Tribunal, MW's income is not known nor, in particular, whether she has another salary or other income. Pension income or loan payments can be used for household living expenses and that is what the whole process of pension income drawdown is all about. GW  
30 says there was no enquiry as to what MW was doing, only a demand for bank statements. GW gave all the information he was required to give, often where the evidence was difficult to obtain but that in itself does not lead to a lack of cooperation. He provided the information to back up what he had said although not always quickly.

35 206. GW says that he is honest, gave his evidence credibly, conducts his affairs in a straightforward way and was unused to self employment but did take advice and says that MW was candid, open, honest, reliable and credible in giving evidence.

207. GW says that HMRC were unsatisfied with the responses by someone not under enquiry whilst putting the onus on another taxpayer. JC disbelieved MW.

208. There was no deficit when loans and pensions were taken into account. There was no ambiguity about the contribution to the household budget by MW and there was no under declaration of tax.

5 209. On the evidence, GW kept records and declared the appropriate amount of tax. GW says that penalties were levied on the wrong basis, that of improper records, a lack of cooperation and a failure in record keeping.

10 210. GW kept the same records as every other taxi driver, he cooperated with HMRC, and he attended visits voluntarily and telephoned HMRC. What he could not provide was evidence in relation to his wife's actual expenditure. GW says that, in the absence of evidence and records, HMRC can demonstrate spending better than the taxpayer. This is solipsism in reverse.

### **Decision**

15 211. The Tribunal considered the issue of whether the investigation into GW's tax affairs had been prompted by media exposure over the purchase of his and MW's new house or whether it had been instigated as he was new to self employment or self assessment or some other reason but considered these to be irrelevant. HMRC are entitled to carry out any enquiry into a taxpayer's affairs in terms of the legislation and, in doing so, they met the terms of the relevant legislation.

20 212. At the conclusion of the hearing, the Member of the Tribunal requested HMRC to provide any detailed requirements, should there be any, under Section 12B of the Taxes Management Act which expanded on the requirement for records to be "requisite for the purpose of enabling him to make and deliver a correct and completed return". No such information was received from HMRC.

25 213. The Tribunal, therefore, considered whether the records provided to HMRC were "requisite".

214. It was noted in evidence that there had been meetings or telephone discussions between GW and JC and there was numerous correspondence between HMRC and JC and GW and Mr Main.

30 215. HMRC noted that they thought that the agents' and Mr Main's behaviour in this matter was uncooperative and the Tribunal agreed. Information was given in a piece meal fashion and often late and was usually provided only after a formal notice had been served and informal attempts had failed.

35 216. The Tribunal were impressed with GW's evidence at the hearing and believed he had done what every other taxi driver was doing in relation to keeping records and he had taken advice from Mr Main and the agents, although it was questionable as to whether this was always beneficial. HMRC specifically asked for the name and address of the taxi owner but this seemed to take an extraordinary long time to be obtained when the information should have been available from Renfrewshire Council who had granted him the taxi licence. The Tribunal thought that Mr Main could have  
40 discovered this information or directed GW to discover it. Similarly, the actual

information about the motor vehicle used may have been available from the same source; if not from Mr McGuire himself.

217. The Tribunal were persuaded that the slips of paper that GW kept were not the primary source of record in relation to the taxi fares. This was clearly the meter or, possibly, in other records where there was a credit card hire and agreed that the slips of paper individually may be of no more evidential value than a weekly summary of the same.

218. Clearly, if HMRC are concerned about the requirements and status of records for taxi drivers, who are predominantly, engaged in a cash only business, it is within their powers to specify exactly what records they are required to keep. In this particular case, there was a catalogue of evidential failures including the weekly record books which Mr Main is adamant he delivered to HMRC but for which he received no receipt. He did provide an analysis of income and expenditure and the record book covering the four months of the tax year under investigation. The meter was not a reliable source of evidence as this was reset to zero whenever a change of shift between Mr McGuire and GW took place; the mileage on the car could not be vouched for as by the time it was required the car had been scrapped and the radio operator had gone out of business, although HMRC say that the administrator, or the equivalent, should have retained records for seven years.

219. In relation to the allegedly missing weekly record book, the agents and HMRC appear to have taken their own divergent views on this. The agents say their letter enclosed "all the records" whilst HMRC interpreted this as enclosing the records they saw rather than the ones the agents say they delivered.

220. Initially the agents did not make it specifically clear they had enclosed the two taxi books which might have helped the issue and, on the other hand, when HMRC became aware of it, they did not investigate it. On the balance of all the evidence, the Tribunal considered the effect if GW had not submitted the second weekly record book, the inference being that it might have delivered an entirely different picture to the first four months. The Tribunal were unpersuaded by this and accepted that the taxi book, either had been delivered or that the analysis of it was correct and no evidence was led by HMRC that the last eight months of the year were markedly different from the first four months. Furthermore, on GW's evidence, the Tribunal were not convinced that he had under declared his income.

221. The Tribunal were satisfied with the explanation as to how the new house was paid for, together with all the relevant costs and taxes, and were also satisfied on the evidence of GW's contribution to the household budget and the expenses that he paid personally.

222. The whole issue, therefore, came down to the question of whether the collective Whittle income, being GW and MW's combined income, was commensurate or more than commensurate with what either GW and MW said was their expenditure or what HMRC believed should be their expenditure.



223. Whereas the reasons for HMRC's criticism or disbelief may be understandable in relation to an average family of two adults and two children living in a four bedroomed house, this was not the circumstances prevailing in the Whittle household. In the year in question, one daughter was in employment and contributing to the household budget and one was at school. More importantly, MW had an employment with terms and conditions which were certainly not average. She was required by her job to be absent from her home for sometimes lengthy periods of time and received various allowances in respect of this. In relation to specific purchases, for example, alcohol, she would be entitled to take advantage of duty free allowances and flights were discounted. Whereas it would have been beneficial for both GW, and HMRC, to have seen actual bills or receipts, the explanation as to the electricity and gas consumption and its cost, in the year under investigation, were plausible if the new house was eco-friendly and less occupied than might be the norm, as a result of MW's employment.

224. The Tribunal also took into account the cash payment from MW's pension which was vouched for by means of a bank statement which, in the year under investigation at least, was in excess of the deficit which HMRC claimed was factual and which was disputed by GW.

225. The issue of privacy in relation to MW's expenditure and, more particularly, her bank statements, appears to have been a decision not made by MW. She gave the information to her husband, GW, who gave it to Mr Main who decided not to release this, other than the redacted bank statement showing the pension payment of £8,000 to HMRC.

226. MW is entitled to privacy and HMRC repeatedly in tribunal cases refuse to give information about other taxpayers when requested to do so by appellant tax payers on the same grounds. The issue of whether it would have brought the investigation to an end, if MW had decided to waive her privacy, is not one for the Tribunal.

227. The Tribunal considered, however, that HMRC were suspicious at worst or uncertain at best over the incomes and expenditures of the Whittle household and whether or not this had resulted in an under declaration of income. HMRC took the view that, as MW was under the PAYE system, any under declaration had to be made by GW but, as GW put forward in his submissions, this was largely predicated in the belief that MW's account of her expenditure was incorrect.

228. The Tribunal considered that HMRC, using their powers of enquiry, should have opened up an enquiry in to MW's tax affairs in 2006/07 in order to settle the matter and it was surprising, given their suspicions, that they did not do so.

229. The Tribunal held that the declaration of income and the account of personal expenditure by GW was correct. Consequently, the continuation was not applicable and, as the Tribunal believe that the requisite information was provided, the penalties are not applicable.

230. The appeal is allowed.

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

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**W RUTHVEN GEMMELL  
TRIBUNAL JUDGE**

**RELEASE DATE: 4 March 2014**

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