



TC05559

Appeal number: TC/2013/05072

*VAT-penalty- deliberate and concealed – personal liability notice on
director -hijacking of company by third party –whether attributable to
director -yes-appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Mr Shafiq Rehman

Appellant

- and -

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

**TRIBUNAL: JUDGE Rachel Short
Mrs Norah Clarke (Member)**

**Sitting in public at Eastgate House, Newport Road, Cardiff on 29 March 2016
and 1 December 2016**

**Mr Martyn Arthur of Martyn Arthur Forensic Accountants Limited for the
Appellant**

**Mr James Puzey of St Philips Chambers Birmingham, instructed by the General
Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

DECISION

1. This is an appeal made by Mr Shafiq Rehman against a penalty of £36,271.50 imposed on him in his personal capacity as a director of a company called Talent Acquisition Limited (“TAL”).
2. TAL was served with a Notice of Penalty Assessment on 18 July 2013 in respect of inaccuracies in its VAT returns for the 10/11 and 11/11 periods.
3. The inaccuracies related to the failure by TAL to account for output tax on the sale of goods subject to VAT in the UK, with a total potential lost revenue of £3,740 in the period 10/11 and £68,803 in the period 11/11.
4. The penalty was calculated under paragraph 3 of Schedule 24 Finance Act 2007 (“FA 2007”) as 100% of the VAT owing on the basis that the inaccuracies in TAL’s returns were “deliberate and concealed”.
5. The penalty was reduced under paragraph 9 of Schedule 24 FA 2007 to 50% of the tax owing taking account of TAL’s co-operation during HMRC’s investigations but on the basis that TAL’s disclosure of the inaccuracies was “prompted” for the purposes of paragraph 9(2).
6. A penalty was imposed on Mr Rehman by a Penalty Liability Notice dated 18 July 2013.
7. The penalty was imposed on Mr Rehman as a director of TAL under paragraph 19 of Schedule 24 FA 2007, and was 100% of the penalty imposed on TAL.
8. Mr Rehman was the sole director of TAL for the relevant periods.
9. Mr Rehman appealed against the Penalty Liability Notice on 31 July 2013.

Preliminary issues

10. This appeal was heard on two separate dates, 29 March 2016 and 1 December 2016. The Respondents put their case and produced their witness evidence on 29 March 2016. The Appellant put its case and its witness evidence on 1 December 2016 and the Respondents made their reply on that date.

Background facts

11. TAL was registered for VAT in the UK with effect from 12 July 2011. Its main business activity was stated on its VAT 1 as “recruitment” with subsidiary activities of “wholesale” and “telecoms”.

12. Mr Rehman was the sole director of TAL, appointed on 12 July 2011.
13. HMRC (Officers Goulding and McMaster) visited TAL on 10 November 2011 having identified TAL as trading in electronic goods. No representative of TAL was present on that occasion.
- 5 14. HMRC undertook a second visit on 28 November 2011 at which Mr Rehman was present.
15. TAL submitted VAT returns for periods 10/11 and 11/11 on 9 January 2012.
16. HMRC undertook a third visit on 3 February 2012 at which Mr Rehman was present when TAL was asked to provide all its business records.
- 10 17. HMRC visited TAL again on 29 March 2012.
18. On 21 June 2012 TAL was notified that assessments would be raised for periods 9/11, 10/11 and 11/11. Total VAT of £73,003 was assessed on 27 June 2012.
- 15 19. On 18 July 2013 a notice of penalty assessment under Schedule 24 FA 2007 was issued to TAL and a Penalty Liability Notice issued to Mr Rehman, each in the sum of £36,271.50.
20. The Penalty Liability Notice issued to Mr Rehman explained that TAL's VAT returns for 10/11 and 11/11 had under-declared sales. Documents relating to the under-declared sales had only been produced when HMRC had notified TAL that it knew about them. The transactions had been deliberately concealed. Mr Rehman was therefore personally liable for the penalties as a director of TAL.
- 20 21. The VAT assessments on TAL for the 10/11 and 11/11 periods have not been appealed. It is not disputed that the VAT assessed on TAL for those periods is due and payable.
22. No appeal has been made by TAL against the penalty assessment.
- 25 23. TAL was wound up on 20 August 2013.

The law

24. Schedule 24 FA 2007 sets out the circumstances in which a penalty can be imposed for an inaccurate VAT return. It is not disputed that there were inaccuracies in TAL's VAT returns for periods 10/11 and 11/11.
- 30 25. Paragraphs 3 and 4 of Schedule 24 set out the degrees of culpability and the level of penalty payable. TAL's penalty was treated as "deliberate and concealed" under paragraph 3(1)(c) defined as:

“deliberate and concealed” if the inaccuracy is deliberate [on P’s part] and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure)”.

5 26. Paragraph 9 of Schedule 24 explains the potential reductions to the penalties charged by reference to the quality of the disclosure made by the taxpayer. HMRC reduced the 100% penalty chargeable on TAL to a 50% penalty on the basis that TAL gave HMRC reasonable help in quantifying the inaccuracy (paragraph 9(1)(c)) but that the disclosure was “prompted” (paragraph 9(2)).

10 27. The penalty chargeable on TAL was also charged on Mr Rehman as a director of TAL under paragraph 19 of Schedule 24;

“Where a penalty under paragraph 1 is payable by a company for a deliberate inaccuracy which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as HMRC may specify by written notice to the officer”.

15 28. An officer is defined for these purposes in respect of a company at paragraph 19(3) as:

“(a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006 (c46))

(aa) a manager, and

20 *(b) a secretary”*

29. The question for us is whether HMRC were correct to attribute 100% of this penalty to Mr Rehman.

30. Mr Rehman’s rights of appeal against the attribution of this penalty to him arise under paragraph 19(5):

25 *“Where HMRC have specified a portion of a penalty in a notice given to an officer under sub-paragraph (1).....*

(e) paragraphs 15(1) and (2), 16 and 17(1) to (3) and (6) apply as if HMRC had decided that a penalty of the amount of the specified portion is payable by the officer”.

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Evidence

31. We saw

(1) HMRC’s Notice of Intended Notice of Personal Liability served on Mr Rehman on 18 July 2013 setting out HMRC’s reasons for attributing the penalty

to Mr Rehman, rehearsing the details of HMRC's correspondence and meetings with TAL, HMRC's information requests and concluding that:

5 “HMRC consider that the company's behaviour which led to the return irregularities was deliberate and concealed. With the transactions only being produced to HMRC after enquiries began their disclosure was prompted. HMRC have however given the company the full benefit for the disclosure made and imposed the minimum penalty percentage payable of 50% for this category of irregularity.

10 HMRC consider that the insolvency of the company and your knowledge of the company's trading activity together with your management and accounting responsibilities as a sole director contribute to your personal liability”

(2) The Penalty Liability Notice served on TAL dated 18 July 2013.

(3) Written notes of each of HMRC's visits to TAL on 10 November 2011, 28 November 2011, 3 February 2012 and 29 March 2012.

15 (4) Various correspondence between HMRC, TAL and Mr Rehman.

Oral evidence

Mr Baines

20 32. We heard oral evidence from Mr Joseph Baines, a VAT officer of HMRC who provided a witness statement dated 7 October 2015 and was cross-examined by Mr Arthur. Mr Baines explained the background to HMRC's investigations of TAL; HMRC first raised a query in respect of TAL's 09/11 VAT return having concerns that one of TAL's suppliers was a “missing trader” and asked to see copies of invoices for the supplies TAL made to its customer Cheap Clean for the 09/11 period.
25 HMRC had also identified TAL as an acquirer of electronic goods from the EU through their investigations of a freight forwarder, Solo Logistics Limited.

30 33. TAL was informed of issues with one of its suppliers (Holmes Direct Limited) being de-registered for VAT as a missing trader by a letter dated 28 October 2011. TAL was informed of similar issues with its customer Cheap Clean by letter of 21 November 2011.

34. Mr Baines explained that he became involved in the investigation of TAL in January 2012 when HMRC's central MTIC team referred TAL to the fraud team in Birmingham because of TAL's wholesale trading with Northwell (UK) Limited (“Northwell”).

35 *Meeting of 3 February 2012*

35. Mr Baines attended meetings at TAL's premises on 2 and 3 February 2012. No one from TAL was available on 2 February. Mr Rehman was present at the second of these meetings on 3 February. Prior to the meeting Mr Rehman had been asked to

provide all purchase and sales records since TAL had started trading, orders and related correspondence.

36. Mr Baines referred to a transcript of the notes of the meeting of 3 February 2012 and said that they had not been signed by Mr Rehman; it was not normal practice to have notes of meetings signed by the taxpayer concerned.

37. According to Mr Baines on 3 February Mr Rehman produced two invoices for recruitment services (issued to Cheap Clean) and documents relating to four sales to Dada Trading Limited (“Dada”). He said that he had a colleague named Kayn Hussain who was the company’s sole employee, paid on a commission basis, by cheque from his own bank account and that all online payments were dealt with by Mr Hussain.

38. Mr Baines told us that he asked whether Mr Rehman had heard of Northwell. Mr Rehman said that it had been mentioned to him by Mr Hussain as a good buyer. Mr Rehman did not volunteer any information about Northwell until asked. Mr Baines said that while some sales of electronic goods were included on TAL’s VAT returns for the 10/11 and 11/11 periods (the sales to Dada) supplies to Northwell were not included.

39. Mr Baines said that HMRC had not checked the signature on invoices said to be signed by TAL.

40. At the end of this meeting Mr Rehman was given HMRC’s Notices 161 (Missing Traders), 726 (Joint and several liability) and factsheets FS1 and FS12 (Compliance Checks).

41. On 22 February 2012 Mr Baines received copies of Northwell documents from another HMRC office, including details of purchases from TAL of TVs, games consoles and copper cathodes for the periods 2 November 2011 to 22 December 2011.

25 *Meeting of 29 March 2012*

42. Mr Baines attended a further meeting at TAL’s offices at which Mr Rehman was present on 29 March 2012. Mr Baines told us that Mr Rehman had provided some documents concerning the Northwell transactions at that meeting which Mr Rehman said he had found in his office (eight purchase orders, six sales invoices and a copy of a Northwell supplier declaration form) and said that he had met Mr Dowood of Northwell at TAL’s premises.

43. At this meeting Mr Rehman could not provide any information about Mr Hussain, but said that he had not yet paid any money to Mr Hussain.

44. Mr Rehman explained to Mr Baines that he had asked Mr Hussain for information about other deals and missing documents but nothing had been received. Mr Hussain was the main contact for the Northwell transactions. Mr Rehman told Mr Baines that he could not access emails which he had sent to Mr Hussain. He told Mr Baines that he had given copies of his driving licence to Mr Hussain and TAL’s details so that an offshore bank account could be opened for TAL.

45. Mr Rehman provided further documents to HMRC by email on 27 April 2012; five AHS sales invoices and five Northwell purchase orders.

Other issues

5 46. Mr Baines confirmed that all of TAL's suppliers and customers were missing traders.

47. TAL's VAT returns were submitted electronically through TAL's HMRC account.

Mr McMaster

10 48. We heard oral evidence from Mr David McMaster who provided a witness statement dated 9 October 2015 and was cross-examined by Mr Arthur. Mr McMaster is the VAT assurance officer who visited TAL's offices on 10 and 28 November 2011. Mr Rehman was present at the 28 November meeting.

15 49. Mr McMaster produced the transcript of contemporaneous notes of these meetings and confirmed that these had not be signed or confirmed by Mr Rehman as an accurate note of the two meetings.

Meeting of 10 November 2011

20 50. Mr McMaster explained that this meeting was arranged because business records of another trader (Solo Logistics Limited) had identified TAL as the acquirer of games and TV consoles. No representative from TAL was available on this date. Mr McMaster said that although mention had been made by the office receptionist of two individuals called "Shaf and Jay" who ran the business, HMRC had not taken steps to trace the identity of "Jay".

25 51. HMRC notified TAL on 10 November 2011 that they had visited the company's premises and that TAL would be de-registered for VAT unless it contacted HMRC. Mr Rehman contacted HMRC in response and confirmed that TAL had done deals through Solo Logistics Limited with Cheap Clean.

Meeting of 28 November 2011

30 52. Mr McMaster explained that he was mainly concerned with obtaining information about the deals concluded between TAL and Cheap Clean at this stage. He said that at this meeting he explained MTIC fraud to Mr Rehman and that HMRC had lost the VAT on all four of the wholesale deals undertaken by TAL.

53. Mr Rehman told Mr McMaster that he made payments to Cheap Clean through an offshore bank account which was TAL's account.

35 54. Mr Rehman told HMRC that TAL's last deal was on 2 November 2011 and that there were no pending deals. He said that his sole customer was Dada.

Mr Rehman

55. We heard oral evidence from Mr Rehman who provided a witness statement dated 20 November 2015 and was cross-examined by Mr Puzey.

56. Mr Rehman disputed some of the detailed comments made in Mr Baines' and Mr McMaster's notes of their meetings with him on 28 November 2011, 3 February 2012 and 29 March 2012.

57. Mr Rehman confirmed that he had also been involved with a company called Workstreet, of which his sister had been a director and investor, which was also an office recruitment company.

58. Mr Rehman explained that although he could only produce two invoices for the recruitment activities of TAL, that did not reflect all of the work being done by TAL, much of which did not result in successful placements.

Mr Hussain's role

59. Mr Rehman told us that he had started TAL as a recruitment firm but had taken the opportunity to diversify TAL's business into other profitable areas including dealing in commodities at the suggestion of Mr Hussain. Mr Rehman met Mr Hussain before he set up TAL. Mr Hussain had described the commodity business opportunity as buying stock on credit as a broker for a small margin and had said this was a good opportunity for Mr Rehman to use TAL to venture into this sector.

60. Mr Hussain dealt with all the client relationships for this part of the business. Mr Rehman dealt with the administration, book keeping invoices and doing administration on an ad hoc basis, including tax and compliance for TAL, with some help from an external accountant. Mr Rehman processed TAL's online VAT returns.

61. Mr Rehman said that he operated his business relationships on trust, that he had a gentleman's agreement with Mr Hussain who had offered him an exciting business opportunity, including introducing him to Cheap Clean. He had gone into business with Mr Hussain in good faith and had been upfront and honest at all times.

62. Mr Rehman described Mr Hussain as his business partner but said that no written partnership agreement existed. He had met Mr Hussain more than ten times in person and had numerous telephone conversations with him. He had seen Mr Hussain's CV, had visited his home but not his business address in south Birmingham and had not obtained any references for Mr Hussain.

63. Mr Rehman explained that his administrative role included checking the invoices entered into by TAL. However, he had not seen many of the invoices which were produced by HMRC for commodity transactions, which had been provided by Mr Hussain. He had liaised with Northwell, including carrying out due diligence on them. He had drafted but not signed the introductory letter to Northwell. He was not familiar with any of the other trading partners used by Mr Hussain.

5 64. Mr Rehman told us that he had given Mr Hussain copies of his driving licence so that Mr Hussain could open an offshore bank account for TAL, which Mr Hussain explained would be more efficient for TAL. When Mr Rehman tried to access this account, which was TAL's account, he found that he could not because he did not have the required password.

65. Mr Rehman had agreed that he would pay Mr Hussain only when certain profits had been made. In fact no payment had been made to Mr Hussain.

10 66. Mr Rehman was adamant that he was not aware of any illegitimate trading being carried on through TAL. He had been conned by Mr Hussain, who was more experienced in these matters and had hijacked his company. As soon as HMRC started to ask questions Mr Hussain disappeared and Mr Rehman had not been able to get in touch with him since 28 November 2011.

Co-operation with HMRC

15 67. Mr Rehman said that he had co-operated fully with HMRC on both of the occasions when he had met with them and provided all the information which he had. He was not aware of the Northwell deals and it was on that basis that he had told HMRC on 28 November 2011 that there were no pending deals and that his only customer was Dada.

20 68. Mr Rehman had not provided the Northwell invoices at his meeting with HMRC on 3 February because these were only available in soft copy and Mr Hussain had control of these. He had provided all of his hard copy invoices at that meeting. He had later obtained hard copy Northwell invoices and had passed these over to HMRC.

25 69. Mr Rehman said that he had mentioned Mr Hussain's role in the business in his meeting with Mr McMaster on 28 November 2011, although there was no reference to this in Mr McMaster's notes of that meeting. Mr McMaster was more interested in obtaining documents than in information about Mr Hussain at this stage.

30 70. Mr Rehman had been confused when he had his first meeting with Mr McMaster in November 2011 and did not really understand what was going on or what HMRC required. If it had been explained to him at the time that there was a problem with VAT avoidance he would have stopped trading. He had not received that letter referred to by Mr McMaster about MTIC fraud.

35 71. It was only when Mr Baines presented him with HMRC's notes setting out the VAT implications of what they thought was occurring on 3 February 2012 that he realised what was happening. By that stage he could not get in touch with Mr Hussain.

Appellant arguments

72. Mr Rehman's appeal notice of 31 July 2013 set out three heads of appeal: (i) The Appellant was not afforded his rights under Article 6 of the European Convention on Human Rights when the matter was investigated and the penalty imposed; (ii) HMRC did not take account of Mr Rehman's means when setting the level of the fine; and (iii) under EU law the penalty imposed on Mr Rehman was not proportionate.

73. At the Tribunal hearing on 1 December Mr Martyn made clear that none of these heads of appeal were now being pursued.

74. The Appellant's grounds of appeal were (i) he had not acted to deliberately conceal the VAT liabilities of TAL and (ii) the inaccuracies in TAL's VAT returns should not be attributed to him under paragraph 19, Schedule 24 FA 2007.

75. Mr Rehman had been duped by Mr Hussain, who had conned him into giving him control of TAL and its bank accounts. TAL had been hijacked by Mr Hussain who had used it to carry out transactions of which Mr Rehman was not aware until his meetings with HMRC in November 2011.

76. Mr Rehman was aware of transactions with Dada and knew of Northwell. As soon as he was aware of the activities which TAL was being used for by Mr Hussain, he tried to contact Mr Hussain, but was unable to and co-operated fully with HMRC in all their enquiries.

77. He was confused in his meetings with HMRC, where he was interrogated without fully understanding what was going on. Some of the statements made in HMRC's records of those meetings were incorrect. He had not been given the opportunity to comment on or sign those meeting notes at the time.

78. HMRC's statements that he did not co-operate and failed to provide information which he had are incorrect. He had told HMRC everything to the best of his knowledge and given them access to his UK business accounts and any relevant information.

79. Mr Arthur described Mr Rehman as an honest man who had been fooled by a professional con man who had made Mr Rehman a scapegoat to ensure that blame did not fall on him. Mr Rehman had not deliberately concealed anything.

30 *HMRC arguments*

80. On behalf of HMRC Mr Puzey said that the penalty was rightly charged on Mr Rehman under paragraph 19 Schedule 24 FA 2007 because TAL's inaccurate VAT returns were attributable to him.

81. Mr Puzey suggested that Mr Rehman's account of events concerning TAL's activities for the relevant periods and his co-operation with HMRC was not accurate. Mr Rehman knew what TAL's activities were and Mr Hussain was being used by Mr Rehman as a scapegoat. It was significant that Mr Rehman had made no mention of Mr Hussain at his first meeting with HMRC on 28 November 2011. There was no evidence other than Mr Rehman's statements to prove that Mr Hussain even existed.

82. Mr Rehman's suggestion that notes of three different meetings with HMRC made by two different people all contained material inaccuracies was not credible.

83. Other than the activities which gave rise to the under-declared VAT, TAL had done very little business. Only two invoices had been produced for recruitment services and those had been produced only to enable TAL to be registered for VAT.

84. Even if Mr Hussain did exist, Mr Rehman had failed in his duties as a director of TAL by closing his eyes to the actions of Mr Hussain. At best Mr Rehman had neglected his duties as a director and the penalty imposed under paragraph 19 reflected that. Mr Rehman was an experienced business person who had failed to provide any oversight of Mr Hussain's activities as a business partner, including his control of a foreign bank account.

85. Mr Rehman had failed to provide relevant information which was in his possession; at the meeting with HMRC on 3 February 2012, he had not provided any documents or information about Northwell, despite later informing HMRC that he had found hard copy documents in his office.

86. Mr Puzey pointed out that all of the customers with whom TAL dealt were "missing traders" having failed to pay VAT owing to HMRC in the UK, including the entity which TAL had invoiced for recruitment services, Cheap Clean.

87. In response to questions from the Tribunal, HMRC said that there was no bar to the same penalty being imposed simultaneously on both Mr Rehman and TAL. The relevant wording in paragraph 19 was that the penalty was "payable" by TAL. HMRC had assessed Mr Rehman because they were aware that TAL was about to become insolvent in July 2013. If payment was made in part or full by TAL, the penalty on Mr Rehman would be reduced accordingly.

25 *Decision*

Findings of fact

88. On the basis of the evidence produced by both parties we make the following findings of fact:

- (1) The penalty charged on TAL has not been appealed.
- 30 (2) The penalty charged on TAL has not been paid by TAL.
- (3) TAL was put into insolvency on 20 August 2013.
- (4) As sole director of TAL, the actions of TAL can be attributed to Mr Rehman.
- (5) Mr Rehman was responsible for TAL's tax returns.
- 35 (6) Mr Hussain was not an officer of TAL.
- (7) Mr Rehman gave Mr Hussain control of TAL's offshore bank account.

(8) Mr Rehman was aware that Mr Hussain was dealing with Northwell on behalf of TAL.

5 *Attribution to Mr Rehman*

89. We had some reservations about how the attribution rules in paragraph 19 of Schedule 24 FA 2007 operated in circumstances such as these where HMRC have simultaneously charged both TAL and Mr Rehman for the same penalty and what would happen if HMRC recovered the penalty from TAL having already recovered it from Mr Rehman.
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90. HMRC pointed out paragraph 19(2) of Schedule 24 which precludes HMRC recovering the penalty more than once and that the only condition for attributing a charge under paragraph 19(1) is that the penalty be “payable” by TAL and can also be attributed to Mr Rehman. HMRC also referred to their guidance (factsheet FS12) which states that they will only attribute a charge to an officer if they are unlikely to recover it from the company (for example if it is or is about to become insolvent) and will only recover such amount as has not been recovered from the company.
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91. On that basis we have proceeded on the basis that there is no impediment to HMRC having issued a penalty notice simultaneously on both TAL and Mr Rehman.

20 *Can Mr Rehman appeal against the penalty?*

92. It is TAL, not Mr Rehman which is primarily liable for this penalty. We were told that TAL had appealed neither against the VAT assessments nor against the notice of penalty assessment issued to it on 18 July 2013.

93. HMRC explained the basis on which the penalty had been assessed on TAL and the manner in which it had been mitigated, taking account of TAL’s co-operation with their enquiries. HMRC stated that Mr Rehman could not now appeal against the penalty imposed on TAL.
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94. Although the focus of the parties was whether this penalty could be attributed to Mr Rehman, it appeared to the Tribunal that the elements of Mr Rehman’s appeal concerning whether there had been deliberate concealment from HMRC and the level of co-operation given to HMRC went not only to the question of attribution but also to whether the penalty itself was properly assessed on TAL.
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95. It is difficult in circumstances where the Appellant is the sole director of a company to differentiate between Mr Rehman’s appeal in respect of the actions of TAL acting through him and his appeal in his capacity as an officer to whom a penalty has been attributed.
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96. We have considered whether Mr Rehman, in his capacity as the officer of TAL to whom this penalty has been attributed, can make an appeal against that penalty as such, rather than just its attribution to him.

5 97. Paragraph 19(5) states that the penalty attributed to Mr Rehman is to be treated as if it is a penalty payable by him. Our view is that it follows that Mr Rehman should be able to appeal against this penalty. We note that this approach is supported by other cases recently heard by the First-tier tribunal in particular *Jason Andrew v HMRC* [2016] UKFTT 0295 (TC), which considered facts broadly similar to those before us.

Deliberate and concealed

10 98. Mr Rehman's appeal against the penalty charged on TAL goes to the extent to which TAL's concealment of VAT which was not declared on its tax returns for the 10/11 and 11/11 periods was not deliberate, but arose as a result of Mr Hussain's concealing information from TAL.

15 99. While we found Mr Rehman to be a convincing witness in most respects, there were some inconsistencies between his evidence and HMRC's concerning what information was provided to HMRC and at what stage: HMRC's evidence, in the form of their notes, suggests that it was only after HMRC mentioned Northwell at their meeting on 3 February 2012 that Mr Rehman provided any information about these transactions. Mr Rehman told us that he was aware of Northwell, but that Mr
20 Hussain dealt with these transactions and that it was him, not Mr Baines who first raised Northwell.

100. It is agreed that Mr Rehman did not provide any of the invoices relating to the Northwell transactions at his meeting with Mr Baines on 3 February 2012 despite having been asked to provide all TAL's invoices and other trading documents. Mr
25 Rehman said that he did not provide the invoices because he only had these in soft copy. HMRC's note records that at the meeting on 29 March 2012 that he had "*produced a bundle of documents which he said he had found in his office since our last meeting*" but before us Mr Rehman said that this was not an accurate description and that he had only later been able to access soft copies and print them off.

30 101. Even if we accept Mr Rehman's explanation for his failure to provide information about the Northwell transactions to HMRC and his version of who first raised Northwell at the meeting with HMRC in November 2011, in our view TAL (acting through Mr Rehman) was acting in a manner that was both deliberate and concealed by not including the Northwell transactions in its VAT returns when they
35 were made in January 2012 for the 10/11 and 11/11 periods.

102. TAL's VAT returns were processed by Mr Rehman who, at the time when they were submitted in January 2012 was aware that HMRC already had concerns about TAL's activities, from Mr McMaster's visit on 28 November 2011 and from HMRC correspondence about Cheap Clean and Homes Direct Limited. At that time Mr
40 Rehman also knew that Mr Hussain was working with Northwell. Even if Mr Rehman was not apprised of the specific details of the Northwell deals, he told us that he had

done the due diligence on Northwell and drafted part of the introductory letter to them.

103. If Mr Rehman was ignorant of the details of the transactions which were actually being done with Northwell in October and November 2011, that was because
5 he had allowed Mr Hussain to access to TAL's offshore account with no supervision or oversight.

104. Mr Rehman's lack of information about the Northwell deals arose as a result of a decision on his part not to ask questions about what Mr Hussain was doing. In our view an intentional failure to do something, including the intentional failure by a
10 director to exercise oversight of a business partner, can amount to a deliberate act of concealment.

105. For these reasons we accept that HMRC were correct to levy a penalty on TAL for deliberate and concealed actions at 100% of the unpaid VAT.

Mitigation of penalty

15 106. Mr Rehman also appeals against the penalty charged on TAL and attributed to him because it fails to take account the fact that he provided all of the information of which he was aware to HMRC and that he fully co-operated with HMRC's enquiries.

107. The penalty charged on TAL has already taken account of TAL's co-operation; HMRC have mitigated the level of the penalty to the maximum possible extent (50%)
20 for TAL's co-operation. Even if further mitigation were possible, we cannot see how it could be mitigated again to take account of Mr Rehman's co-operation when there is an exact coincidence between the behaviour of TAL and Mr Rehman as the sole director of TAL. For these purposes Mr Rehman's actions are the actions of TAL.

Attribution of penalty

25 108. The remaining question is whether, under paragraph 19 100% of that penalty charged to TAL should be attributed to and charged on Mr Rehman.

109. As sole director of TAL, it is hard to see how it is possible for Mr Rehman to avoid having the penalty attributed to him. Mr Rehman's arguments attempted to convince us that the penalty should not be attributed to him because his actions were
30 driven by the actions of Mr Hussain.

110. The logical conclusion of Mr Rehman's arguments is that the penalty should be attributed, in whole or in part to Mr Hussain, who he described as his business partner. Mr Rehman did not attempt to argue that Mr Hussain should be treated as one of the class of "officers" to whom the penalty could be attributed under paragraph
35 19 of Schedule 24 FA 2007, either as a shadow director or as a manager. We cannot see any other basis on which the penalty can be attributed to Mr Hussain.

111. In our view, Mr Rehman's attempts to break the link between TAL and himself by inserting Mr Hussain as the culpable third party cannot change the attribution of

the penalty to Mr Rehman. It is Mr Rehman who is the officer of the company and it is as a result of his failure to carry out his duties properly, including by exercising oversight of Mr Hussain, that these penalties have arisen.

5 112. This might seem a harsh conclusion in respect of a well meaning company officer who has been duped by a convincing conman, but we do not see any basis in the legislation or by reference to wider principles of directors' responsibilities which can exonerate someone in Mr Rehman's position who has failed to act to prevent a company of which he is a director from making inaccurate returns.

Conclusion

10 113. For these reasons, we uphold the penalty assessment on Mr Rehman and dismiss this appeal.

15 114. 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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**RACHEL SHORT
TRIBUNAL JUDGE**

RELEASE DATE: 19 DECEMBER 2016

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