



**TC05729**

**Appeal number: TC/2014/01202**

*Corporation tax – closure notice and penalty – understated profits – whether deliberate and concealed – appeal dismissed.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**EASINGHALL LTD**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE SARAH ALLATT  
                  MR NICHOLAS DEE**

**Sitting in public at Royal Courts of Justice on 27 and 28 February 2017**

**Mr Michael Feng for the Appellant**

**Mrs Christine Cowan, HM Revenue and Customs Presenting Officer, for the Respondents**

## DECISION

### **The Appeal**

- 5 1. This is an appeal against a Closure Notice for the accounting period ended 31 March 2011 pursuant to Paragraph 32 of Schedule 18 to the Finance Act 1988 and a Penalty Assessment for the accounting period ended 31 March 2011 pursuant to Schedule 24 of the Finance Act 2007
- 10 2. The Closure Notice increased the Corporation Tax payable by £7,051.17 and charged an associated Penalty Assessment of £6,522.33.

### **Background**

3. The business of Easinghall Ltd is that of a Chinese takeaway, trading under the name Jade Orchid, in Christchurch, Dorset. Ms X Lin is the sole Director of the business.
- 15 4. An enquiry was opened into the Corporation Tax Return of Easinghall Ltd for the period ended 31 March 2011 on 25 June 2012 pursuant to Paragraph 24 of Schedule 18 to the Finance Act 1988.

### **Evidence**

- 20 5. The Tribunal heard from Mr Gavin Laurie, enquiry officer of HMRC, and from Ms Lin, director of Easinghall Ltd. Ms Lin gave evidence through a court appointed interpreter. Over the course of the 2 day hearing we heard twice from Mr Laurie and three times from Ms Lin. We have summarised their evidence in total below.
- 25 6. We found Mr Laurie to be an honest and straightforward witness. His evidence was that he had opened an enquiry into Easinghall Ltd's corporation tax return for the period ended 31 March 2011 on 25 June 2012, and asked Feng & Co, agent for the business, for the business records. Some records were provided on 14 August 2012. Considering these records to be incomplete, after further correspondence had failed to produce sufficient records he wrote on 18 January 2013 asking for a meeting with the director of the company. In a letter dated 30 January 2013, written in Chinese and English, Ms Lin declined a meeting.
- 30 7. Mr Laurie explained that what had given him particular concern about the records of the company was the absence of sufficient quantities of meat, poultry and seafood purchase invoices. After the receipt of the letter declining a meeting, he issued 3<sup>rd</sup> party notices under Schedule 36 Finance Act 2008 to 3 suppliers of the business: Cook's Delights, Yau Brothers and Wah Hing Chinese Supermarket on 6 February 2013. After cross referencing these to the business records provided by Easinghall Ltd, he found that there were a significant number of invoices issued by Cook's Delights that were not in the business records of Easinghall Ltd.

8. Initially he thought that two accounts were maintained by Easinghall Ltd at Cook's Delights, but after further correspondence with Cook's Delights he found that there was in fact only one account, with a reference JAOR11B, however contained within that account were many invoices (corresponding to the ones missing from the books of Easinghall Ltd) with a + sign at the end of the reference. Cook's Delights had informed him that those invoices must be paid for in cash before the delivery driver could leave the stock. Invoices not marked with a plus could be paid under normal terms.

9. Mr Laurie considered that the stock from unrecorded purchases had been used to generate further takings that had also been omitted from the business records.

10. The unrecorded purchases amounted to £14,959. Calculating the declared gross profit rate from the company accounts for the year ended 2011 to be 69.2%, Mr Laurie calculated that the undeclared sales were likely to be £48,536. He calculated additional tax due of £10,192.56.

11. On 14 August 2013 Mr Laurie wrote to explain that a closure notice was to be issued, and that penalties would be charged. He wrote again on 20 September explaining about the penalties to be charged. The closure notice, amendment, assessment and penalty assessments were issued on 21 October 2013.

12. Penalties were charged at the rate of 92.5%, reflecting a penalty for deliberate and concealed behaviour, with no reduction for 'telling', no reduction for 'helping' and an overall 7.5% reduction for 'giving access'.

13. This also contained similar assessments and penalties in respect of the year ended 31 March 2012.

14. On 20 November an appeal was made together with a request for an independent HMRC review. The HMRC review concluded that there was insufficient evidence to raise an assessment for the year ended 31 March 2012, and also recalculated the tax due for 31 March 2011, allowing a deduction for the undeclared purchases. Calculating the declared gross profit rate from the company accounts for the year ended 2011 to be 69.2%, and therefore that the undeclared sales were likely to be £48,536, and the undeclared profit to be £33,577, the additional corporation tax due was reduced to £7,051.17.

15. The Tribunal heard evidence from Ms Lin through an interpreter. We found Ms Lin to be an unreliable witness. Her evidence contained many contradictions, which we outline below. Ms Lin gave evidence three times throughout the hearing, but her evidence in total is summarised below, not necessarily in the order it was given.

16. Ms Lin is the director of Easinghall Ltd. Easinghall Ltd took over the business of Jade Orchid which was formerly run by Ms Lin's husband as a sole trader. Ms Lin and her husband both work in the business.

17. The Tribunal was provided with a written witness statement from Ms Lin, totalling some 58 pages. The first 8 points, contained on the first page were factual

statements about her, the business, and the appeal. The remaining points 9 – 394 on the remaining 57 pages were a day by day summary of the days takings and purchases. An example is ‘On 25 May 2010 Cooks Delights delivered me beef of £45.99. I paid £45.99 in cash to one of the drivers and they left. On 25 May 2010 my  
5 business takings were £103.50. That was made up of £38.40 in cash and £65.10 in credit cards. That can be checked against the business statements, credit card statements and the daily computerised record.’

18. The witness statement contained no details of purchases from any other supplier apart from Cook’s Delights. Ms Lin confirmed that the statement had been compiled  
10 from the business records, and so was neither more nor less than a summary of items provided elsewhere in the bundle.

19. Ms Lin said that her native language was a dialect of Mandarin. Her level of education was low, up to the equivalent of Yr 3 in an English primary school. She does not read English well at all and, for example, recognises British Gas bills by  
15 their logo rather than the words. She is not confident with business letters even when written in her native language.

20. Ms Lin was taken through the schedules of invoices provided by Cook’s Delights corresponding to the purchases that were in the business records, where she confirmed the purchases had been made by the business, and those that were not in  
20 the business records, where she denied that the purchases had been made by the business.

21. She gave as the reason for her denial that one set of invoices were clearly addressed to Jade Orchid at her address, while the second set just had ‘cash sales only’ in the business address section.

25 22. Ms Lin also explained that the business was small, and did not require all the purchases that HMRC was attributing to it.

23. When asked more general questions about the business, Ms Lin explained that she works in the business both in the kitchen and taking orders in the front of the shop. She also orders the food and receives deliveries. She cashes up the days takings  
30 and every 3 months she will send the records (till receipts, invoices, etc) to her accountant.

24. She and her husband work in the business. At busy times (Fridays and Saturdays) they employ students or part time workers to help. These individuals may work for around 2-3 months. Ms Lin said that these workers were paid in cash and no  
35 payroll was run for them. The accountant was not told about these part time workers.

25. The business also employed delivery drivers. The drivers were also paid in cash, and again no entry was made in the books for these payments.

26. Ms Lin was asked several times about where the cash came from to pay these workers. She said she took cash from the till. She was unable to give a coherent  
40 answer about whether therefore her cash takings would show the actual cash takings,

or the cash takings reduced by payments to casual workers. She said her cash takings would be the cash takings derived from the total sales, but as the books balanced, she was unable to state where the additional costs had been recorded.

27. When asked in general terms about orders and deliveries from Cook's Delights, Ms Lin said that she usually phoned them up on a Monday, and they would deliver on a Tuesday. Several times she confirmed that, on average, she would take one delivery a week from Cook's Delights. When asked why her books contained only 21 deliveries and invoices from Cook's Delights, she maintained that no invoices were missing but that on average she had one delivery a week. When it was pointed out that 52 invoices would be expected for one delivery a week, she again confirmed that on average there was one delivery a week but that the invoice record was complete.

28. The Tribunal was provided with 470 pages of evidence from Easinghall Ltd, containing the entire records of the company, but without any references or summaries, or an index. The Tribunal, on looking at the invoices for the first 2 months of the year, found one purchase of pork, and no purchases of beef, chicken, duck, prawns or eggs. In contrast, there were large quantities of bean sprouts, chips, spring onions and mushrooms.

29. Ms Lin confirmed that her meat purchases were mainly from Cook's Delights, with perhaps the odd purchase from a mainstream supermarket. She explained that meat would be purchased, divided up into small portions, and frozen.

30. When asked in general terms, she said that beef would be purchased maybe weekly or every two weeks, fresh. Chicken would be bought frozen. When asked why, over the entire year, the books showed only two purchases of chicken, four days apart, she said that chicken would be bought frozen, defrosted, divided into smaller portions, and re-frozen. She maintained this answer despite being asked several times. When asked why no beef was apparently purchased for the first two months of the year, she repeated that it would be cut up when bought and used as needed.

31. The Tribunal noted that the 'missing' invoices, provided by Cook's Delights, almost exactly match the purchasing pattern that Ms Lin outlined when asked in general terms about the business. There is an invoice for beef generally weekly. There are regular invoices for pork, duck, chicken and shellfish. This contrasts with the noticeable absence of invoices for such products in the records of the company. When this was pointed out to Ms Lin she did not have a satisfactory answer.

32. Ms Lin was asked to comment on the fact that Cook's Delights had confirmed to HMRC that delivery of goods had been made, and payment received, and invoices issued, for the schedule of invoices referenced JAOR11B+. Ms Lin said she had spoken over the phone to Cook's Delights after hearing from HMRC about the missing invoices, and Cook's Delights had said 'we just made this up' 'we just want to kill your business'. She explained she was angry when she made the phone call and she no longer does business with Cook's Delights.

33. Ms Lin was asked about her role as director of the company, and the manner in which she dealt with letters from HMRC. Ms Lin explained that until this hearing, she had not known that the letters were from HMRC. She did not know what the HMRC logo stood for and she was unable to read letters in English. She explained that sometimes she asked for help with letters [from HMRC or anyone else] from friends or sometimes her accountant, other times she simply put the letters aside and eventually threw them away. Although she accepted she was a director of the company, she did not know what this meant and did not feel that she was 'in charge', she simply worked in the business.

## 10 **Grounds of Appeal**

34. Mr Feng raises four grounds of appeal

35. Firstly he contends that the Closure notice is not valid as the conclusion is not stated correctly.

36. Secondly he contends there is not sufficient evidence that purchases have been understated and therefore no further corporation tax is due.

37. Thirdly he contends that in the event the additional liability is concerned, there is no evidence of behaviour to support the level of penalty charged.

38. Fourthly he contends that Ms Lin's Human Rights have been breached as correspondence was not issued to the Appellant in a language that she understood.

## 20 **The Law**

39. The law on closure notices is contained in Schedule 18 Finance Act 1998:

Amendment of return after enquiry

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[(1) This paragraph applies where a closure notice is given to a company by an officer.

(2) The closure notice must—

(a) state that, in the officer's opinion, no amendment is required of the return that was the subject of the enquiry, or

(b) make the amendments of that return that are required—

(i) to give effect to the conclusions stated in the notice, and

(ii) in the case of a return for the wrong period, to make it a return appropriate to the designated period.

(2A) The officer may by further notice to the company make any amendments of other company tax returns delivered by the company that are required to give effect to the conclusions stated in the closure notice.]

(3) An appeal may be brought against [an amendment of a company's return under sub-paragraph (2) or (2A)]<sup>1</sup>.

(4) Notice of appeal must be given—

(a) in writing,

5 (b) within 30 days after the amendment was notified to the company,

(c) to the officer of the Board by whom the [closure notice]<sup>1</sup> was given.

(5) In this paragraph “the designated period” means the period designated in the closure notice.

10 The law on appeals and burden of proof is contained in Taxes Management Act 1970:

50 Procedure

(1)–(5) ...<sup>2</sup>

[(6) If, on an appeal notified to the tribunal, the tribunal decides—]<sup>7</sup>

15 (a) that, ...<sup>6</sup> the appellant is overcharged by a self-assessment;

(b) that, ...<sup>6</sup> any amounts contained in a partnership statement are excessive; or

(c) that the appellant is overcharged by an assessment other than a self-assessment,

20 the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good.]<sup>3</sup>

40. The law on Penalties is contained in Schedule 24 Finance Act 2007

41. Part 1 Liability for Penalty

Error in taxpayer's document

25 1—

(1) A penalty is payable by a person (P) where—

(a) P gives HMRC a document of a kind listed in the Table below, and

(b) Conditions 1 and 2 are satisfied.

30 (2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to—

(a) an understatement of [a]<sup>1</sup> liability to tax,

(b) a false or inflated statement of a loss ...<sup>1</sup>, or

(c) a false or inflated claim to repayment of tax.

(3) Condition 2 is that the inaccuracy was [careless (within the meaning of paragraph 3) or deliberate on P's part]<sup>1</sup>.

.....

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#### Degrees of culpability

3—

(1) [For the purposes of a penalty under paragraph 1, inaccuracy in]<sup>1</sup> a document given by P to HMRC is—

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(a) “careless” if the inaccuracy is due to failure by P to take reasonable care,

(b) “deliberate but not concealed” if the inaccuracy is deliberate [on P's part] but P does not make arrangements to conceal it, and

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(c) “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).

#### Amount of Penalty

##### Standard amount

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(1) This paragraph sets out the penalty payable under paragraph 1.

(2) If the inaccuracy is in category 1, the penalty is—

(a) for careless action, 30% of the potential lost revenue,

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(b) for deliberate but not concealed action, 70% of the potential lost revenue, and

(c) for deliberate and concealed action, 100% of the potential lost revenue.

.....

#### Reductions for disclosure

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[(A1) Paragraph 10 provides for reductions in penalties under paragraphs 1, 1A and 2 where a person discloses an inaccuracy, a supply of false information or withholding of information, or a failure to disclose an under-assessment.]<sup>1</sup>

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(1) A person discloses an inaccuracy[, a supply of false information or withholding of information,]<sup>1</sup> or a failure to disclose an under-assessment by—



- (a) telling HMRC about it,
- (b) giving HMRC reasonable help in quantifying the inaccuracy[, the inaccuracy attributable to the [supply of false information]<sup>2</sup> or withholding of information, or the]<sup>1</sup> under-assessment, and

5 (c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy[, the inaccuracy attributable to the [supply of false information]<sup>2</sup> or withholding of information, or the]<sup>1</sup> under-assessment is fully corrected.

(2) Disclosure—

10 (a) is “unprompted” if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the inaccuracy[, the supply of false information or withholding of information, or the under-assessment]<sup>1</sup>, and

(b) otherwise, is “prompted”.

15 (3) In relation to disclosure “quality” includes timing, nature and extent.

10—

(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a “standard percentage”) has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

(2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it—

(a) in the case of a prompted disclosure, in column 2 of the Table, and

(b) in the case of an unprompted disclosure, in column 3 of the Table.

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	15%	0%
45%	22.5%	0%
60%	30%	0%
70%	35%	20%
105%	52.5%	30%
140%	70%	40%
100%	50%	30%
150%	75%	45%
200%	100%	60%.] <sup>1</sup>

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.....

17 (1) On an appeal under paragraph 15(1) the ... tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 15(2) the ... tribunal may—

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(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

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The Law on the right to a fair trial is contained in Article 6 of the Human Rights Act 1998

*ARTICLE 6*

Right to a fair trial

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1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

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2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

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3 Everyone charged with a criminal offence has the following minimum rights:

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(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e)to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

### **First Ground of Appeal**

5 42. In respect of the first ground of appeal, Mr Feng objects to the fact that the closure notice says ‘I have concluded that the takings are understated’. He states that the closure notice should say ‘I have concluded that the purchases are understated’ or alternatively ‘I have concluded that the profits are understated’.

10 43. We will deal with this matter very briefly. It is clear from the law set out above that there is no requirement that HMRC need set out reasons in the closure notice. That view has been endorsed by the Supreme Court in *HMRC v Tower MCashback LLP1* [2011] UKSC19. In any case, HMRC are indeed concluding that the takings are understated, having reached that conclusion by analysing the purchases. We see no merit in this ground of appeal and it is accordingly dismissed.

### **Second Ground of Appeal**

15 44. In regard to the second ground of appeal (lack of evidence) Mr Feng relied heavily on the fact that HMRC had not called any witnesses from Cook’s Delights. He therefore submitted that the evidence from Cook’s Delights was possibly not reliable, and certainly not sufficient.

20 45. Mr Feng reminded the Tribunal many times of our duty to examine the evidence and to make sure it was sufficient to establish any findings of fact we may make.

46. His submissions can be summarised by a quote from the Court of Appeal in *Georgiou and Another trading as Marios Chippery vs Customs and Excise Commissioners* [1996] STC 463, from Lord Justice Evans who said

25 ‘There is a well-recognised need for caution in permitting challenges to findings of fact on the ground that they raise this kind of question of law. That is well seen in arbitration cases and in many others. It is all too easy for a so-called question of law to become no more than a disguised attack on findings of fact which must be accepted by the courts. As this case demonstrates, it is all too  
30 easy for the appeals procedure to the High Court to be misused in this way. Secondly, the nature of the factual inquiry which an appellate court can and does undertake in a proper case is essentially different from the decision-making process which is undertaken by the tribunal of fact. The question is not, has the party upon whom rests the burden of proof established on the balance of  
35 probabilities the facts upon which he relies, but, was there evidence before the tribunal which was sufficient to support the finding which it made? In other words, was the finding one which the tribunal was entitled to make? Clearly, if there was no evidence, or the evidence was to the contrary effect, the tribunal was not so entitled.’

47. Mr Feng also commented that HMRC were making observations on the internal accounting mechanisms of Cook's Delights (the differing JAOR11B and JAOR11B+ references on the invoices) which in the absence of a witness from Cook's Delights they were not entitled to rely on.
- 5 48. However Mr Feng made no attempt to address the initial thrust of the argument from HMRC, which was that the enquiry had begun when scrutiny of the invoices had shown a lack of purchases of chicken, beef, pork, duck and seafood. He rested his case on lack of evidence solely on there being insufficient proof that the 'missing invoices' were in fact for goods supplied by Cook's Delights to Easinghall Ltd.
- 10 49. The burden of proof in this part of the appeal is on Easinghall Ltd to show that HMRC has overcharged tax by the assessment.
50. We do not consider that the appellant has discharged this burden of proof.
51. We find as a fact that the purchases shown on the schedule of invoices supplied by Cook's Delights under the reference JAOR11B+ as being invoices for purchases made, delivered to and paid for by Easinghall Ltd, were purchases made by Easinghall Ltd.
- 15 52. When making this finding we have come to our decision in the following manner.
53. Firstly, we consider that an analysis of the pattern of invoices in the records of Easinghall Ltd shows that the purchase invoices are incomplete, due to the lack of invoices for beef, chicken, pork, seafood and duck outlined above.
- 20 54. Secondly, we note that the 'missing' invoices supplied by Cook's Delights matches the lack identified.
55. Thirdly, we note that the evidence from Cook's Delights was lawfully obtained by HMRC, who know of no reason that Cook's Delights should lie in this matter.
- 25 56. Fourthly, we note that the pattern of purchases from Cook's Delights shown by the 'missing' invoices and the recorded invoices, taken together, matches the evidence given by Ms Lin when asked in general terms about purchasing patterns of the business.
- 30 57. We have not relied in any way on the explanation given by Cook's Delights for the differing invoice references (that one was for cash on delivery and the other may be left without receiving payment).
58. We have taken into account that Ms Lin, when asked in general terms about the purchases made by the business, answered in general terms and not always entirely specifically about purchases made in the period 1 April 2010 to 31 March 2011.
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59. We consider that the method used by HMRC to calculate additional corporation tax due (as revised by the review letter) is reasonable and has not been shown to over assess the tax due.

### **Third Ground of Appeal**

5 60. The third ground of appeal relates to the penalty charged. Here the onus of proof is on HMRC to show the conditions to charge a penalty have been met. The penalty charged is for one of deliberate and concealed inaccuracy in the corporation tax return, with a reduction for providing access to business records (although not the fullest reduction possible), and with no reduction for telling HMRC about the  
10 inaccuracy or helping to quantify it.

61. HMRC contend that the inaccuracy in the return was deliberate. They contend that the omission of the invoices is too significant to be careless. We note that the schedule of invoices from Cook's Delights recorded in the books of Easinghall Ltd is less than a page, and the missing invoices schedule runs to 9 pages. The total of  
15 recorded purchases from Cook's Delights is just over £1,200 whereas the missing invoices total just under £15,000. They contend that the inaccuracy was concealed as the missing invoices were not provided to Easinghall Ltd's accountant and have never been provided to HMRC.

20 62. Mr Feng's submission is that there is no evidence of any inaccuracy. His submissions rely on the quality of the evidence produced by HMRC, rather than on any further submissions on the behaviour of Ms Lin or Easinghall Ltd.

63. As the burden of proof has shifted, and despite our finding of fact above, we consider further the submission by Mr Feng and some of the cases he relied upon.

25 64. Mr Feng drew our attention to the case of Deeds Ltd v CCE 1983 (1500). The part of the case drawn to our attention was that which said that if any party was alleged to be party to a fraud, an allegation to that effect should be made and evidence adduced in support.

65. We cannot see that this helps Easinghall Ltd's case. The deliberate and concealed behaviour has been clearly alleged and evidence produced.

30 66. Mr Feng also drew our attention to Gardiner v HMRC [2014] UKFTT 421 (TC) which made comments surrounding evidence where documents are produced with no witness to support them. In the case in question, HMRC had produced a bundle of documents including letters from HMRC but no witness to support the documents and in particular the allegation of negligence.

35 67. We do not think this helps Mr Feng's case either. With regard to the evidence from Cook's Delights, Mr Laurie has given evidence as to what the documents are and how they were obtained, and the correspondence surrounding those.

68. Furthermore, we have Ms Lin's own admission that the return contained inaccuracies that were deliberate and concealed, as she has admitted that part time

workers and drivers were paid in cash, from the till of the business and records of this were not given to Mr Feng when he drew up the accounts of the company.

69. We consider that HMRC has discharged the burden of proof to show that the penalty was properly charged for deliberate and concealed inaccuracy.

5 70. We consider that HMRC are justified in allowing no reduction in penalty for ‘telling’ or ‘helping’. We consider a reduction should be given, as it has been given, for giving access to the business records. We agree that the reduction should not be at its fullest level (which would give an overall 15% reduction) as full access was not given to the business records as the missing invoices have never been produced.

10 71. For completeness, although Mr Feng did not argue that there were special circumstances that should lead to a reduction in penalty, we have considered whether there were such special circumstances and have concluded that there were not. Mrs Cowan confirmed that HMRC had consider a special reduction but found no grounds for applying this.

#### 15 **Fourth Ground of Appeal**

72. The fourth ground of appeal is that Ms Lin’s Human Rights were breached as she was not provided with information ‘in a language that she understood’.

20 73. We pause here to make some comments about the language. We are informed that Ms Lin’s native language is Mandarin, and the court appointed interpreter in this hearing is a Mandarin interpreter. When referring to the language issue, however, both HMRC and Mr Feng have used the word ‘Chinese’. No specification has been made as to whether Mandarin or Cantonese. After questioning this, we understand that a written form of language known as ‘simplified Chinese’ has been used by HMRC in written communication with Ms Lin and Easinghall Ltd since a request for  
25 communication in Chinese on 27 February 2014.

74. HMRC accept that as they are alleging deliberate inaccuracies in a tax return, they must provide the appellant with information about Human Rights, and act in accordance with Article 6 of the Human Rights Act 1998 set out above.

30 75. Mr Feng alleges that after the letter written by Ms Lin to HMRC on 30 January 2013, which was written in Chinese and English, HMRC should have realised that Ms Lin did not speak or write or read English and therefore should write to her in Chinese.

35 76. HMRC contend that at no point before a letter in February 2014 was a request made for correspondence in Chinese. After that date, translated documents were provided as requested.

77. HMRC does not routinely issue correspondence in alternative languages. HMRC does however provide translation and interpretation services in limited circumstances at the request of the customer. These services include a free

interpretation service on customer help lines and providing help sheets and leaflets in a variety of languages if requested.

5 78. HMRC does not consider that Article 6(3) a of the Human Rights Act requires it to provide translated documents at the stage of the enquiry at which Appellant alleges that the breach took place.

79. HMRC considers that Article 6(3) a of the Human Rights Act is only engaged once proceedings have commenced. HMRC considers that even when Article 6(3) a is engaged, it is only required to translate those documents essential for the taxpayer to exercise their right of defence.

10 80. Notwithstanding that HMRC does not consider that it was required to provide translated documents, HMRC submits that it has followed its published procedures and provided the relevant leaflets and letters of explanation to the Appellant at the correct time.

15 81. Neither the Appellant nor her Tax Adviser gave any indication at the time the relevant leaflets and letters of explanation were issued that they had not been understood by Ms Lin or had not been adequately explained to Ms Lin by HMRC or by her Tax Adviser.

20 82. Easinghall Ltd is a UK registered company, trading in the UK in the service sector and is represented by a Tax Advisor who communicates with HMRC in English. A copy of all of HMRC's correspondence to Easinghall Ltd was also sent to the Appellants Tax Adviser.

83. The company accounts and tax returns are all presented to HMRC in English.

25 84. The Appellant states that the fact that Ms Lin wrote to HMRC in Chinese on 30 January 2013, before the first penalty warning letter was issued means that HMRC must have known that Ms Lin could not understand English. HMRC contends that this is not evidence that Ms Lin could not speak, read or otherwise understand English and all it shows is that she chose to write a letter to HMRC in Chinese.

30 85. HMRC submits that even if Ms Lin did not understand the correspondence issued to her by HMRC, her Tax Adviser would have clearly understood the correspondence and would have explained its implications to her.

35 86. HMRC has never been given the opportunity to meet with Ms Lin as a request for a meeting was declined. The Appellants Tax Adviser has responded to all correspondence sent by HMRC. HMRC therefore say it is reasonable to assume that all responses made by or on behalf of Ms Lin were in the full knowledge that she understood the correspondence and were made on the basis that through her Tax Adviser she had full knowledge of the potential penalty position.

87. At no point prior to the issue of the Penalty Assessment was there a specific request made for any particular items of correspondence to be supplied in a translated form.

88. The grounds of appeal shown on the notice of appeal to HMRC on 28 November 2013 and the Tax Advisers covering letter made no reference to any breach of the Appellants Human Rights under the Human Rights Act.

89. HMRC contends that it has not breached the Appellants Human Rights right by issuing the relevant penalty correspondence and leaflets in a standard form. HMRC contends that the Appellant has provided no evidence to show that Ms Lin did not understand the correspondence or the potential penalty position and no specific request was made at the time for translated correspondence or documents to be supplied.

90. The Tribunal considers that Ms Lin's Human Rights have not been breached. HMRC is under no obligation to issue correspondence in a language other than English until it has reason to believe that English is not understood, and an allegation of a criminal charge (in this case, deliberate inaccuracy) has been made. As soon as it was made aware that Ms Lin did not understand English, Chinese translation was made available. The letter of 30 January 2013 written in Chinese and English contains no request for a Chinese translation. In addition, throughout 2012, and continuing into 2013, letters written to Easinghall Ltd and Mr Feng in English had been replied to in English, giving no indication that English was not understood by the Appellant.

**The Decision**

91. Accordingly, for the reasons given above, we consider there has been no breach of the Human Rights Act.

92. We confirm the corporation tax in the amount of £7,051.17, the penalty in the amount of £6,522.33 and we dismiss the appeal.

93. 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.

**SARAH ALLATT  
TRIBUNAL JUDGE**

**RELEASE DATE: 1 APRIL 2017**