[2019] UKFTT 255 (TC)

TC07095

Appeal number: TC/2017/00042

VAT - input tax over-declared and output tax under-declared - records destroyed - assessment - s 73 VATA 1994 - penalties - Schedule 24 FA 2007 - whether assessment to 'best judgement' and penalties correctly determined - yes - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

SIMON MARK PETTIT **Appellant**

- and -

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

TRIBUNAL: JUDGE MICHAEL CONNELL
MEMBER DEREK ROBERTSON

Sitting in public at Tribunal Appeals, Centre City Tower, Hill Street Birmingham on 24 September 2018

The Appellant did not attend

Ms Sabha Konkel, Officer of HMRC, for the Respondents

DECISION

The Appeal

1. This is an appeal by Simon Mark Pettit ('the appellant') against the decision of HMRC ('the respondents') to assess the appellant for VAT under s 73 VATA 1994 ('VATA') in the sum of £89,119, on the basis that he had under-declared output tax and over-declared input tax on his VAT returns for the periods ending 08/12 to 05/16.

2. The assessments were issued predominately for the over claim of input tax. The assessment for 05/16 which was for the under-declaration of output tax amounting to £204 VAT is not referred to in the appellant's notice of appeal and it is therefore assumed is not under appeal.

3. The appellant also appeals a Notice of penalty assessment issued under Schedule 24 to the Finance Act 2007 applied at 35% of the potential lost revenue ('PLR'), in the sum of £31,191.65.

4. The points at issue are:

- Whether or not the value of input tax claimed in the appellant's VAT returns for the periods ending 08/12 to 02/16 are correct.
- Whether or not the amount of VAT assessed for the same periods have been correctly determined to 'best judgement'.
- Whether or not the appellant is liable to penalties under Schedule 24 Finance Act 2007 for all the assessed periods.
- Whether or not the penalties assessed are excessive.

5. The appellant did not attend the hearing. The Tribunal was satisfied that he had been given notice of the time, date and venue of the appeal hearing and that it was in the interests of justice to proceed.

Factual background

6. The appellant traded as Simon Pettit t/a 'Stocktake UK', from 21 Otter Lane, Mountsorrel, Leicestershire, LF12 7GF, supplying stocktaking services to pubs, clubs and hotels.

7. The appellant has been registered for VAT under reference 851 24 22 since 15 November 2004. The registration remains extant.

8. The respondents visited the appellant on 5 May 2016 to verify a VAT repayment claim that had been made by him for period ending 02/16. It was noted in preparation for the visit that the appellant appeared to be trading at a loss, and had made a series of earlier VAT repayment claims for every VAT period ending in the last four years.

9. At the visit, the respondents were told that there were no records available, they had all been destroyed. The discussions at the visit gave an indication that input tax had been over-claimed, and it was noted that the level of expenses claimed was not commensurate with the business activity of stocktaking services. In the absence of any records to substantiate the various repayment claims made by the appellant, it was agreed that once the VAT return for the period ending 05/16 was submitted by the appellant, it would be used as a representative period to verify or amend input tax claimed for earlier periods.

10. At a return visit on 27 July 2016 the records for period ending 05/16 were examined and it was again agreed that the purchase records for this period were to be used as a representative period.

11. On 9 August 2016 the respondents issued a letter to the appellant advising him that the amount that had been calculated as over-claimed was £95,938 for the period 08/12 to 02/16. An allowance was made to the calculations due to there being less work undertaken by the appellant in the representative period due to some health issues. The letter also notified a VAT amount of £204 which was under-declared in tax period 05/16 on sales which were identified at the visit.

12. On 2 September 2016 an assessment was issued for the over-claimed input tax.

13. On 4 September 2016 the appellant wrote to the respondents requesting a review of the decisions made. The appellant said that he believed his calculations for his VAT returns were correct, and that he did not know that he had been trading at a loss.

14. On 3 October 2016 the respondents wrote to the appellant to notify him of their intention to issue a penalty for the periods assessed totalling £33,908. The respondents informed the appellant that they believed the behaviours which led to the assessment were prompted and deliberate, and after mitigation a penalty of 35% was applied for all periods, save for period to 02/16 for which a penalty was applied at 40.25%. The penalties were notified on 1 November 2016.

15. The appellant told the visiting Officer that trading in the 05/16 period had been lower than normal. The visiting Officer confirmed that this was taken into account. She had also adopted a methodology which expressed the trading in the 05/16 return as a percentage of the other periods. The assessment of the under-declared input tax was confirmed as £95,938.

16. On 15 November 2016 the review Officer checked the visiting Officer's workings and using a different methodology of calculating the PLR made an adjustment to the calculations which increased the amount of input tax allowed per period. The result of this adjustment was to reduce the assessment on the input tax claimed from £95,938 to £89,119, a reduction of £6,819.

17. On 1 December 2016 a VAT adjustment assessment was issued to reflect the adjustment notified in the review conclusion letter, and the adjustment assessment for period ending 08/12 was issued on 6 December 2016.

18. The respondents' case is that they have identified that excessive claims of input tax had occurred, and there are no corresponding records to support the claims.

19. The respondents consider that the disclosure was prompted, and behaviour leading to the error in the appellant's returns was deliberate without concealment. A compliant trader engaged in a stock-taking service business would not ordinarily incur excessive expenses which resulted in a permanent loss making situation over a four year period with corresponding VAT repayment claims. The appellant was engaged in profit and loss calculations as part of his daily trade which would mean it should be very easy to spot this trend in his own business. His conduct was therefore deliberate. The penalty range for a deliberate prompted disclosure is between 35% - 70%.

20. The respondents gave the appellant penalty reductions as follows for periods 08/12 to 11/15 as follows:

Telling - 30%
Helping - 40%
Giving - 30%
Total 100%

21. The penalty reduction was therefore 100%. Therefore, a penalty of 70% - 35% = 35%, resulting in a penalty of 35% of the PLR was charged for periods 08/12 to 11/15.

22. The respondents gave the appellant a penalty reduction as follows for period 02/16:

Telling - 30%
Helping - 40%
Giving - 15%
Total 85%

23. The resulting penalty reduction is 29.75%. This is the product of the difference between the maximum (70%) and the minimum penalty percentages (35%) and the total penalty reduction (85%). Therefore, a penalty of 70% - 29.75% = 40.25% of the PLR has been charged was charged for period 02/16.

24. On 5 December 2016 the appellant made an appeal against the input tax assessments, and penalties.

25. On 13 December 2016 the review Officer amended the penalty for period 02/16 by reducing the rate from 40.25% to 35% so as to correspond to the rate applied to all other periods. This reduced the penalties to a final total of £31,191.65.

26. The onus of proof with respect to the VAT assessments lies with the appellant.

27. The onus of proof with respect to the penalty assessments raised under Schedule 24 FA 2007 lies with the respondents.

28. The standard of proof in all cases is the civil standard of proof - the balance of probabilities.

29. The assessment in relation to the undeclared output tax for period ended 05/16 is not in dispute.

Evidence

30. We were provided with two bundles of documents which included the assessment decision, the review decision; copy correspondence between the parties; a summary of HMRC's calculations supporting the assessment and penalties and the witness statement of Ms Carolyn Cosier, the HMRC Officer who reviewed the assessment and penalties. Relevant authorities and legislation were also included.

Relevant legislation

The relevant VAT legislation relating to VAT assessments is contained in VAT Act 1994:

Section 73 Failure to make returns

(1) Where a person has failed to make any returns required under this Act (or under any provision repealed by this Act) or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are incomplete or incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify it to him.

(6) An assessment under subsection (1), (2) or (3) above of an amount of VAT due for any prescribed accounting period must be made within the time limits provided for in section 77 and shall not be made after the later of the following -

(a) 2 years after the end of the prescribed accounting period; or

(b) one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge, but (subject to that section) where further such evidence comes to the Commissioners' knowledge after the making of an assessment under subsection (1), (2) or (3) above, another assessment may be made under that subsection, in addition to any earlier assessment.

Section 77 of the Act states:

(1) Subject to the following provisions of this section, an assessment under section 73 shall not be made –

(a) more than [4 years] after the end of the prescribed accounting period or importation or acquisition concerned.

Section 77(4) of the Act (prior to 1 April 2009 and relevant to VAT periods prior to 04/09) previously read as follows:

(4) Subject to subsection (5) below, if VAT has been lost-

(a) as a result of conduct falling within section 60(1) or for which a person has been convicted of fraud, or

(b) an assessment may be made as if, in subsection (1) above, each reference to [3 years] were a reference to 20 years.

Section 77(4) of the Act provides (w.e.f 1 April 2009):

(4) In any case falling within subsection (4A), an assessment of a person ('P'), or of an amount payable by P, may be made at any time not more than 20 years after the end of the prescribed accounting period or the importation, acquisition or event giving rise to the penalty, as appropriate (subject to subsection (5).
(4A) Those cases are-
(a) a case involving a loss of VAT brought about deliberately by P (or by another person acting on P's behalf).

Legislation relating to the imposition of penalties is set out below:

Schedule 24 Finance Act 2007 – Penalties for errors (effective from 1 April 2009).
Paragraph 1 Schedule 24 Finance Act 2007 provides:

Error in taxpayer's document

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 I and 2 are satisfied.

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

(a) an understatement of a liability to tax,
(b) a false or inflated statement of a loss, 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.

(4) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

The Table includes VAT returns.

Paragraphs 3 to 5 Schedule 24 provide (so far as relevant):

3. Degrees of culpability

(1) For the purposes of a penalty under paragraph 1, inaccuracy in a document given by P to HMRC is-

(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
(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).

(2) An inaccuracy in a document given by P to HMRC, which was neither careless nor deliberate on P's part when the document was given, is to be treated as careless if P-

(a) discovered the inaccuracy at some later time, and
(b) did not take reasonable steps to inform HMRC.

4. Standard amount

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

(2) ... the penalty is-

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

5. Potential lost revenue: normal rule

(1) "The potential lost revenue" in respect of an inaccuracy in a document (including an inaccuracy attributable to a supply of false information or withholding of information) or a failure to notify an under-assessment is the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment.

(2) The reference in sub-paragraph (1) to the additional amount due or payable includes a reference to-

(a) an amount payable to HMRC having been erroneously paid by way of repayment of tax, and
(b) an amount which would have been repayable by HMRC had the inaccuracy or assessment not been corrected.

Paragraphs 9 and 10 Schedule 24 provide (so far as relevant):

9. Reductions for disclosure

(Al) 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.

(1) A person discloses an inaccuracy, a supply of false information or withholding of information, 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 or withholding of information, or the under-assessment, and
(c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment is fully corrected.

(2) Disclosure-

(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, and
(b) otherwise, is "prompted".

(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.
Standard % Minimum % for prompted disclosure Minimum % for an unprompted disclosure

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%

Paragraph 13

13(1) Where P becomes liable for a penalty under paragraph 1 or 2 HMRC shall-

(a) assess the penalty,
(b) notify P, and
(c) state in the notice a tax period in respect of which the penalty is assessed.

(2) An assessment-

(a) shall be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Act),
(b) may be enforced as if it were an assessment to tax, and
(c) may be combined with an assessment to tax.

(3) An assessment of a penalty under paragraph 1 must be made within the period of 12 months beginning with-

(a) the end of the appeal period for the decision correcting the inaccuracy, or
(b) if there is no assessment within paragraph (a), the date on which the inaccuracy is corrected.

(4) An assessment of a penalty under paragraph 2 must be made within the period of 12 months beginning with the end of the appeal period for the assessment of tax which corrected the understatement.

(5) For the purpose of sub-paragraphs (3) and (4) a reference to an appeal period is a reference to the period during which-

(a) an appeal could be brought, or
(b) an appeal that has been brought has not been determined or withdrawn.

(6) Subject to sub-paragraphs (3) and (4), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.

Paragraphs 15 to 17 Schedule 24 provide (so far as relevant):

15. Appeal

(1) A person may appeal against a decision of HMRC that a penalty is payable by the person.

(2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by the person.

16 (1) An appeal under this Part of this Schedule shall be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).

(2) Sub-paragraph (1) does not apply-

(a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or
(b) in respect of any other matter expressly provided for by this Act.

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-

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

(3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 11-

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 11 was flawed.

(5A) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 16(1).

(6) In sub-paragraphs (3)(b), (4)(a) and (5)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

Appellant's case

31. The appellant's grounds of appeal as summarised from his correspondence are:

1. I was not aware my business was trading at a loss. All purchase records have been accidentally destroyed at the beginning of the year.

2. My sales and purchases were a lot higher than the best judgement figure applied by (the visiting Officer) using the 05/16 period. I was off sick for most of the 05/16 period. I would have been a lot busier in the periods after 08/12. My output tax was probably 50% higher than it is now.

3. The figure applied by the visiting Officer is not a fair judgement in terms of the levels of business done in period 02/16 compared to 05/16.

4. I had agreed that HMRC should use best judgement for the 05/16 period and did not realise that the visiting Officer was also going to apply this to other periods. The original VAT Officer (Mrs Judge) has just applied one figure to every claim for the period when clearly this would have varied from period to period.

5. I have found administration (of my business) difficult at times, and have not always kept on top of it. The inflated amounts of input tax claimed were not done intentionally. I believed that my calculations were correct. Input tax was calculated at 20% of the total purchase expenses claimed.

6. I am now using a VAT sales daybook and recording all invoices.

7. I understand that I do owe HMRC money as some of the returns (as discussed with the original officer) have been incorrect. I am horrified by the amount demanded.

HMRC's Case

32. Section 73(1) VATA 1994 provides that the Commissioners have the right to issue a 'best judgement' assessment where they consider that the returns are inaccurate or incomplete.

33. Any assessment must comply with the one, two and four year time limits prescribed in s 73(6) and s 77(1).

34. There is no legal definition of 'best judgement', but the meaning has been considered in various case law. The test to apply here is whether the assessment is reasonable given the material available and made by the Commissioners "to the best of their judgement". The principles to apply are documented in *Van Boeckel v C & E QB Dece* 1980 (1981) STC 290 and *Mohammed Hafizar Rahman (t/a Khayam Restaurant) (no 2)* (2003) STC 150.

35. Six principles emerge, three from each case, in order as follows:

- There must be some material before the Commissioners on which they can base their judgement.

- The Commissioners are not required to do the work of the taxpayer in order to form a conclusion as to the amount of tax due.

- The Commissioners are required to exercise their powers in such a way that they make a value judgement on the material before them.

- The Tribunal should not treat an assessment as invalid merely because it may disagree as to how the judgement should have been exercised. A much stronger finding is required, for example, that the assessment has been reached "dishonestly, vindictively or capriciously", or is a "spurious estimate or guess in which all elements of judgement are missing" or is "wholly unreasonable"'.

- If the assessment is shown to have been wholly unreasonable or not bona fide there would be sufficient grounds for setting it aside, but that kind of case is likely to be extremely rare.

- In the normal case it should be assumed that HMRC have made an honest and genuine attempt to reach a fair assessment. The Tribunal should concentrate on seeing whether the amount of the assessment should be sustained in the light of the material available.

36. The basic principles have been refined in a number of other cases. In the following extract from *C A McCourtie* [VTD 12239] the Tribunal considered the principles set out in *Van Boeckel* and stated:

> "In addition to the conclusions drawn by Woolf J in Van Boeckel, earlier tribunal decisions identified three further propositions of relevance in determining whether an assessment is reasonable. These are, first that the facts should be objectively gathered and intelligently interpreted; secondly, that the calculations should be arithmetically sound; and finally, that any sampling technique should be representative and free from bias."

37. The respondents established from an examination of the appellant's VAT returns that he had been in a permanent VAT repayment situation for the previous four years, and that the business on paper was making a loss throughout. The nature of the appellant's business is a stock-taking service to the drinks trade, which is not normally a type of business which would have to purchase large items of stock or goods. The normal expenses that would be expected in this type of business would be related to travel and subsistence whilst visiting clients, possibly an upgraded software package etc.

38. The appellant informed the respondents at the visit in May 2016 that the business records had been destroyed. Therefore, the respondents were not able to verify the large input claims being made. The nature of the appellant's business is that he is advising clients on stock-taking procedures involving paperwork, reports etc., together with profit and loss, and mark-up calculations. The respondents find it inconceivable that a person who advises others on such matters would not know they were permanently trading at a loss and would not keep their own records for inspection.

39. The appellant has not been able to provide any explanation for the consecutive repayment claims, and has not provided any evidence to verify the claims.

40. With regard to time limits for the VAT assessments, the final visit took place in July 2016. The VAT assessments were notified to the appellant by letter in August 2016 and therefore meet the one year time limit set out in s 76(6) of VATA.

41. The respondents consider that the appellant's failure to provide the relevant purchase evidence in his business records to be a deliberate act in order to conceal the true value of purchases in its VAT Returns.

42. This behaviour led to an understatement of VAT due and the respondents were correct to raise assessments in order to recover the undeclared liabilities in all affected periods, not just the one representative period as the appellant appears to suggest in his appeal correspondence.

43. With regard to the quantum of the assessment, the respondents have based their calculations on the limited information gleaned in the representative period. It is not the responsibility of the respondents to undertake the full accounting function for the appellant. The respondents would expect a compliant business in the stock-taking trade to be in a permanent payment situation and not the reverse as in this case. The appellant has not

provided any evidence whatsoever to show that the assessments by HMRC are excessive and not to 'best judgment'.

44. Under paragraph 1 of Schedule 24 to the Finance Act 2007 a penalty is due when a person gives HMRC an inaccurate return or other document and two conditions are satisfied. These are:

- The document contains an inaccuracy which amounts to or leads to an understatement of a liability to tax, a false or inflated statement of a loss or a false or inflated claim to a repayment of tax.

- That the inaccuracy was deliberate.

45. The respondents consider that the penalty assessed is proportionate. The respondents view is that purchases have been deliberately inflated to create successive repayment claims, and that when reasonably asked for evidence to verify the claims none has been produced. The returns based on these incomplete records were inaccurate and as a result tax was lost. The appropriate mitigation has been given in this case.

46. A penalty has therefore been correctly notified in accordance with Schedule 24 to the Finance Act 2007.

47. HMRC also considered "special reduction" in accordance with paragraph 11 of Schedule 24 to the Finance Act 2007, but maintain that there are no special circumstances on which they can make such a reduction.

Conclusion

48. In respect of the assessments, the onus of proof rests, at law, with the appellant to demonstrate that the assessments raised are incorrect.

49. In respect of the penalty assessments issued under para 1 Schedule 24 FA 2007, the onus of proof rests with HMRC to establish that their decision to issue the penalties, as determined, is not flawed.

50. The standard of proof is the ordinary Civil Standard of the balance of probabilities.

51. The appellant is required under VATA, Schedule 11, s 6(1), and the VAT Regulations 1995, regulation 31, to retain his business and accounting records. He has not done so.

52. As HMRC say, the overstated input tax (and understated output tax) led to incorrect VAT returns. Section 73 VATA is relevant to determine the appeal in that, where it appears that VAT returns are incorrect, HMRC may assess and notify the amount of VAT due to the best of their judgment.

53. In order to reclaim VAT as input tax the taxpayer must hold suitable evidence. This is usually in the form of valid VAT invoices. Without this documentation the taxpayer would need to provide alternative evidence that a taxable supply had taken place. Clearly HMRC should not be required to do the work of the taxpayer in order to form a conclusion as to the correct amount of input tax.

54. We do not accept that the appellant believed he was not trading at a loss between August 2012 and May 2016, or that by the use of bank statements and other records he would not be able to reconstitute at least some of his records for that period to justify his assertion that his input tax claims were not exaggerated.

55. Acceptance of alternative evidence is at the discretion of HMRC who have to reach a 'best judgement' assessment. In the total absence of copy VAT invoices, business records and accounts, or third party evidence, HMRC had to make an honest and genuine attempt to arrive at a reasoned assessment, taking into account all relevant and available information and material. We are satisfied that they did this and that they did not take into account anything that was irrelevant.

56. The appellant had the records for the 05/16 return which the visiting Officer therefore used as a basis to check the validity of past claims. Use of the representative period 05/16 was agreed with the appellant.

57. On the information provided and in the absence of any detailed submission by the appellant that the figures provided by HMRC are flawed, we have to conclude that the assessments are correct.

58. Under paragraph 1 of Schedule 24 to the Finance Act 2007 a penalty is due when a person gives HMRC an inaccurate return or other document and two conditions are satisfied. These are:

- The document contains an inaccuracy which amounts to or leads to an understatement of a liability to tax, a false or inflated statement of a loss or a false or inflated claim to a repayment of tax.

- That the inaccuracy was deliberate.

59. The appellant does not dispute that his returns for the relevant periods were inaccurate. He claims that his behaviour in relation to the inaccuracies was not deliberate. On the facts we have to conclude that the appellant's behaviour was deliberate and that HMRC have correctly assessed the penalties.

60. The appeal is therefore dismissed. The assessment in the sum of £89,119 is confirmed and the penalty of £31,191.65 is also confirmed.

61. 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.

MICHAEL CONNELL
TRIBUNAL JUDGE

RELEASE DATE: 13 APRIL 2019