



TC08028

INCOME TAX – whether deposits and transfers into Appellant’s bank accounts were income – penalties imposed on basis that behaviour was deliberate – appeal allowed in part – assessments to be reduced – penalties correctly imposed on basis of deliberate behaviour

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/06605

BETWEEN

OLUSOLA OMOLADE

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: JUDGE JEANETTE ZAMAN
MICHAEL BELL**

The hearing took place on 27 November 2020. With the consent of the parties, the form of the hearing was a video hearing on the Tribunal video platform. A face to face hearing was not held because of the ongoing restrictions related to the COVID-19 pandemic. The documents to which we were referred are described in the decision notice.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

The Appellant in person

Rebecca Arnold, litigator of HM Revenue and Customs’ Solicitor’s Office, for the Respondents

DECISION

INTRODUCTION AND SUMMARY

1. This is an appeal by Mr Olusola Omolade against:
 - (1) amendments made to his self-assessment for the tax year 2012-2013 made by a closure notice issued under s28A Taxes Management Act 1970 (“TMA 1970”) totalling £11,978.54, which was subsequently reduced to £10,754.44; and
 - (2) a penalty issued under Schedule 24 Finance Act 2007 (“FA 2007”) of £5,269.76, which was subsequently reduced to £4,516.86, for a deliberate inaccuracy in a return.
2. HMRC had opened an enquiry to Mr Omolade’s return as he had declared a low net profit for the tax year. As further set out below, having received copies of some of Mr Omolade’s bank statements, HMRC identified various deposits and transfers into his accounts which, being unsatisfied by explanations provided by Mr Omolade, they considered represented additional turnover. HMRC considered that the inaccuracy was deliberate, and the disclosure prompted, and issued a penalty under Schedule 24 FA 2007. They allowed a reduction to that penalty for disclosure, and that reduction was increased following a review.
3. Mr Omolade appealed to the Tribunal, denying that any of the amounts were additional income.
4. Having considered all of the evidence, and bearing in mind that the burden of proof is on Mr Omolade to establish that he has been overcharged by the assessment, we concluded that some of the amounts treated by HMRC as being additional turnover were either transfers from another bank account of Mr Omolade which had been round-tripped or were cash deposits on behalf of friends and family which were then paid across to such persons. However, these explanations could not account for all of the transfers and to that extent we considered that Mr Omolade had not established that he had been overcharged. We have therefore allowed his appeal in part. As regards the penalty, we have concluded that Mr Omolade did know that his self-assessment return was inaccurate. A penalty for a deliberate inaccuracy was thus appropriate, although it needs to be re-calculated in the light of our conclusions as to amendments made by the closure notice.

PRELIMINARY ISSUES

5. The papers which had been provided to the Tribunal electronically before the hearing were a hearing bundle (pdf of 275 pages, this being the “pdf hearing bundle”), authorities bundle (pdf of 228 pages), an application by HMRC dated 13 November 2020 to amend their statement of case (the statement of case provided in response to Mr Omolade’s notice of appeal being referred to as the “Original SOC”), an amended statement of case dated 13 November 2020 (the “Amended SOC”) and HMRC’s skeleton argument. There was also an exchange of emails prompted by Mr Omolade’s request on 20 November 2020 that HMRC provide him with a copy of the bank statements they had obtained (the response to which was that they were in the hearing bundle).
6. There were two issues we needed to address at the outset:
 - (1) the form of the hearing bundle; and
 - (2) the application to admit the Amended SOC.
7. In considering these issues we had regard to Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Tribunal Rules”) which reads:

"2. Overriding objective and parties' obligations to co-operate with the Tribunal

- (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes—
 - (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
 - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
 - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (d) using any special expertise of the Tribunal effectively; and
 - (e) avoiding delay, so far as compatible with proper consideration of the issues...

8. All of the persons present had joined the hearing remotely, from different locations. Mr Omolade had before him a hard copy of the hearing bundle (the “paper bundle”). That had been sent to him by HMRC several months previously, during 2019, ahead of an earlier scheduled hearing. He had used that to prepare for the hearing. He stated that the paper bundle had about 220 pages. The pdf hearing bundle had a total of 275 pages, which included a cover page and various dividers and then 266 numbered pages.

9. There was what we considered to be a significant difference in the number of pages, and we thought it unlikely that differences in pagination, the contents page or occasional blank pages in the pdf hearing bundle could account for the 60 pages, although we did note that the Amended SOC is longer than the Original SOC by several pages. Ms Arnold was not able to explain the differences, as she had not been responsible for preparing or sending the paper bundle and only had the pdf hearing bundle.

10. The pdf hearing bundle contained the notice of appeal, the Amended SOC, Officer Freeman’s witness statement, correspondence (mainly between the parties but also between HMRC and Lloyds Bank), Mr Omolade’s self-assessment return, HMRC’s calculations and HMRC’s analysis of the bank statements provided by Lloyds Bank.

11. We discussed the paper bundle with Mr Omolade. There was a difference in the order of documents – eg the witness statement was in different place. However, with the exception of the Amended SOC it did appear that Mr Omolade had the same substantive contents in the paper bundle as was in the pdf hearing bundle.

12. Mr Omolade also confirmed that he had received the emails attaching the documents described at [5] above but said he had had a problem opening the pdf hearing bundle. We paused the hearing to enable Mr Omolade to attempt to download the pdf hearing bundle for the purpose of the hearing. He was able to do so.

13. We considered the need to deal with the matter fairly and justly, and in particular ensuring that parties are able to participate fully in proceedings whilst also avoiding delay. We decided that it was appropriate to proceed with the hearing on the basis that Mr Omolade could use both the paper bundle and the pdf hearing bundle (the latter being helpful to him for when HMRC referred to particular pages) but that he would be able to take us to documents he wanted in the paper bundle (this being the version with which he was familiar) and the panel and HMRC would locate them in the pdf hearing bundle.

14. The hearing proceeded on that basis, and whilst this difference in pagination did slow us down slightly, it proved workable for all parties. However, during the hearing we did

encounter a further issue arising out of this difference in the bundles in relation to the bank statements which were included in the different bundles.

15. As described under Facts below, HMRC had requested and obtained copies of bank statements from Lloyds Bank. The copies included in the pdf hearing bundle were “clean” copies, in the form in which they had been received by HMRC from Lloyds Bank. However, it became apparent during the hearing that the copies included in the paper bundle were annotated copies thereof – they were the version which had been used by Officer Freeman during the course of the enquiry to analyse the statements: they contained highlighting, and marked where HMRC had identified (by cross-checking the statements themselves) that transfers which contained no narrative had actually been made between different accounts belonging to Mr Omolade.

16. The annotated bank statements had not been included in the pdf hearing bundle, nor had Ms Arnold had them available to her (or been aware of their existence). Their existence came to light during the hearing when Mr Omolade showed them to us (by holding up a selection of pages from his paper bundle to the camera on his computer).

17. This did give us a concern about whether we should proceed – this was a document which Mr Omolade had but not the panel or Ms Arnold. Officer Freeman knew of the existence of the annotated statements (as she had prepared them) but had not realised (or at least had not told anyone) that they were not before us. Ms Arnold explained that the paper bundle had been prepared from papers in HMRC’s office, whereas the pdf hearing bundle had been prepared remotely, from papers that were available online. The annotated statements were in one of HMRC’s offices, and had not been scanned onto the system, such that when preparing the pdf hearing bundle it was not known that a version existed other than the clean version. It was not therefore possible for Ms Arnold to provide us with a copy of the annotated statements during the hearing, although she indicated that HMRC would be able to provide us with them afterwards, once someone was able to access the papers in the office. (The annotated statements were then provided to the Tribunal by email on 16 December 2020.)

18. The annotated statements were clearly helpful for Mr Omolade to have before him – the highlighting and the notes helped to identify the payments which HMRC had focused on, and explained why some transfers had been treated as additional income and others had not. To the extent that any party was at a disadvantage during the hearing by not having these annotated statements it was HMRC (and the panel). Nevertheless, the data was the same, and the tables which HMRC had produced, which were in both bundles, clearly identified which payments had been treated by HMRC as additional income.

19. HMRC did not apply for the hearing to be adjourned and postponed to a date on which everyone had the annotated statements. We nevertheless considered ourselves, having regard to the overriding objective in rule 2 of the Tribunal Rules, whether we should adjourn the hearing (notwithstanding our decision at the beginning of the hearing that we could proceed). We were satisfied that there was no prejudice to Mr Omolade in continuing – he had both versions of the bank statements and the annotated statements had clearly been helpful to him in his preparations as it made it more straightforward to focus on the payments which had been identified by HMRC as appropriate to be treated as additional income. Any potential prejudice was to HMRC, and they did not ask for an adjournment and Officer Freeman had prepared the annotated statements. However, we had been proceeding by manually following through and cross-checking between the statements as points were made during the hearing. As the difference in the versions of the bank statements in the bundles was only discovered during the afternoon of a one-day hearing there was an efficiency in being able to continue.

We asked that the annotated statements be provided to everyone after the hearing, but considered that it was fair and in the interests of justice that the hearing continue.

20. As noted above, the annotated statements were then provided by HMRC on 16 December 2020. We have taken them into account.

21. HMRC also applied to admit the Amended SOC (and the Amended SOC was that which they had included in the pdf hearing bundle). The Amended SOC had also been circulated separately by email (alongside with the application for its admission).

22. The application was made on the basis that HMRC had identified that the Original SOC did not contain sufficient details about the penalty, omitted some of the background correspondence and did not address special circumstances.

23. The panel had had the opportunity ahead of the hearing to consider the Amended SOC and noted that the Amended SOC contained a summary of the correspondence between the parties since the enquiry had been opened, including phone calls received from Mr Omolade to HMRC, brief references to the legislation and case law, a summary of Mr Omolade's contentions, a more detailed summary of HMRC's contentions, an explanation of the computation of the penalty (including the basis of the mitigation which had been applied) and that they had considered whether there were special circumstances.

24. Given that the key changes which had been made were to include further information of matters that had already been dealt with in correspondence with Mr Omolade, and that the Amended SOC had been provided to Mr Omolade and the Tribunal on 13 November 2020, we considered that there was no prejudice to Mr Omolade in it being admitted and that it was fair and in the interests of justice to do so.

EVIDENCE

25. In addition to the papers described above, which included a witness statement from Officer Karen Freeman dated 12 July 2019, we heard oral evidence from Mr Omolade and Officer Freeman, who were both cross-examined and answered questions from the Tribunal.

26. Officer Freeman is a compliance officer of HMRC, and had opened the enquiry into Mr Omolade's tax return. She had corresponded with Mr Omolade, received the bank statements from Lloyds Bank, reviewed them and issued the closure notices. She had also issued the penalty, concluding that the behaviour was deliberate and the disclosure prompted, and allowed mitigation. (That mitigation was increased by another officer following the review.)

27. Officer Freeman was a credible witness. She explained the reason for opening the enquiry (her concern as to means given the low net profit declared), the identification of the deposits and transfers that formed the basis of the amendments made and readily acknowledged that the table of Halifax Transfers (as defined in the Discussion) had not taken account of payments from other accounts of Mr Omolade to that account (again, as described further in the Discussion). We considered that to be a flaw in the approach she had adopted. Nevertheless, Officer Freeman was transparent as to the work she had done and conclusions reached.

28. Mr Omolade's evidence was difficult. The written explanation of the payments which HMRC sought to treat as additional income was that set out in his correspondence with HMRC (described in the Facts below) and his grounds of appeal. Those explanations were very vague, although HMRC had accepted a large part of what he had said and concluded that several large sources of funds were not themselves his income but were short-term interest-free loans. Mr Omolade's evidence during the hearing was also vague – he was adamant that the amounts HMRC identified were not income, but were cash he deposited on behalf of others, or transfers between his accounts. Ms Arnold challenged him on his

position. He did not produce any evidence to corroborate these statements as to the loans – either evidence from these other people or any correspondence (however informal) that he might have had with them. We were not able to accept Mr Omolade’s oral evidence alone, as we had doubts as to the lack of documentation, how and why amounts were deposited by him and then accounted for to others, how he was managing to repay the sums which he stated were being lent to him, how he managed his household expenditure and why he had not been able to provide any copies of financial paperwork himself – either for his bank accounts or credit cards, not accepting that closure of an account will necessarily prevent a person from being able to request copies later. Instead, we have looked for evidence which corroborates his explanations, whether that be directly or by drawing inferences. We have analysed the Lloyds Statements very carefully for this purpose. We address this at relevant stages in the Discussion.

FACTS

29. We find the following facts on the basis of the evidence before us. Further findings of fact are made in the Discussion.

30. Mr Omolade submitted his self-assessment return for the tax year 2012-2013 on 2 July 2014. Within that return he declared turnover of £10,234 and expenses of £7,011. He stated that he traded as a courier.

31. On 2 December 2014 HMRC opened an enquiry into that return and requested evidence to substantiate the turnover and expenses claimed. Officer Freeman stated that the net profit declared had raised a question as to financial means.

32. No response was received, and on 14 January 2015 HMRC issued an information notice requesting the information as outlined in the opening letter. The deadline was 13 February 2015 and again there was no response. On 18 February 2015, a £300 penalty was issued for the non-compliance with the information notice.

33. On 30 March 2015 Mr Omolade telephoned HMRC (speaking to Officer Freeman) explaining that he had been ill and would send the information by the middle of April. On 28 April 2015 he called again stating that he had sent his books and records on 24 April and apologising for not sending them sooner.

34. On 10 June 2015 HMRC sent a letter to Mr Omolade requesting further evidence, noting that records had been received but these related to the period from 6 February 2014, not the year under enquiry. That letter asked for the information by 10 July 2015. Nothing was received and on 15 September 2015 HMRC issued a further information notice with a deadline of 15 October 2015.

35. On 11 October 2015, Mr Omolade sent a letter to HMRC outlining that he had asked for copies of his pay invoices from London City Bond, but they might not arrive by the deadline. Some or all of his copies of the documents were lost when his van had been stolen during the tax year. He asked for an extension to the deadline. HMRC agreed to extend the deadline to 22 December 2015, and in their letter agreeing this extension (dated 17 November 2015) asked for further information about his work for London City Bond (exact description of the nature of the business, what it involves, period worked, how did they pay, how often) and for a breakdown of the business expenses claimed as well as details of bank statements and household income.

36. On 9 February 2016 a further information notice was issued by HMRC to Mr Omolade, the deadline for which was 12 March 2016. On 12 April 2016 a further £300 penalty was issued.

37. Mr Omolade responded to that penalty notice in a letter which was received by HMRC on 12 May 2016. (There were two copies of that letter in the pdf hearing bundle, one of which was stated to be dated 13 November 2014, but that was clearly an error as it refers to HMRC's letter of 12 April 2016. The second copy is dated 30 April 2016, and that is more likely to be the date on which it was written.) Mr Omolade explained that he had not received HMRC's letter of February 2016, nor had he received any copies of documents from his bank or London City Bond. That letter explained the attempts he had made to obtain information from London City Bond, provided a crime report reference in relation to the theft of his van, and a copy of a letter he had sent to London City Bond on 11 October 2015 requesting pay invoices.

38. On 13 July 2016 HMRC cancelled the penalty for failure to comply with an information notice. HMRC proposed that they contact London City Bond and his bank directly to obtain the information required. They enclosed blank mandates for him to sign.

39. Mr Omolade returned the signed mandates in August 2016. That which he returned for the bank was signed but the space for the name of the bank was left blank. He included additional information in October 2016, completing the mandate for Lloyds Bank, with account details for Danemm Enterprises (account number ending 1168)

40. On 29 September 2016, HMRC contacted London City Bond asking for pay details, enclosing a copy of the signed mandate. On 10 October 2016 London City Bond replied that Mr Omolade had not worked for them directly or been on their payroll so they did not have records of his earnings. They noted that he may have worked for a contractor or an agency.

41. On 8 December 2016 HMRC asked for information from Lloyds Bank, enclosing the signed authority, asking for bank statements for Mr Omolade/Danemm Enterprises for the period 6 April 2012 to 5 April 2013.

42. On 5 January 2017 Lloyds Bank replied, enclosing copies of statements of three accounts, namely account numbers ending 4460, 4868 and 1168 (these statements being the "Lloyds Statements" and these three bank accounts being the "Lloyds Accounts").

43. On 6 February 2017 HMRC wrote to Mr Omolade stating that they had received the Lloyds Statements and noted that the deposits into these accounts totalled £122,822. They asked for an explanation of these deposits and for details of all other bank accounts and active credit cards.

44. The sources of payments on the Lloyds Statements included Lyon UK, Thames Distribution, HMCTS, Ms Akanbi, Mr Ajao, Mr Badru, Mr Oyewale and Biyep Ltd.

45. On 3 March 2017 Mr Omolade replied to HMRC. His letter set out that:

(1) Lyon UK and Thames Distribution are the same company as London City Bond. This was the only company he had worked for in that tax year.

(2) Account ending 4460 had a £3,000 overdraft.

(3) Account ending 0665 had a £5,000 deposit.

(4) Before he started the courier business he was living on available overdrafts, and most of the balance was used for a van to work with and re-fitting it, leaving him in financial trouble at the time. That van was stolen around September 2012.

(5) Account ending 1168 was his sole trading account with a basic cash card, and without any debit card. He had to use it generally after some unknown fraudsters tried to access his other personal accounts with either a cloned card or by using his card details online without his permission. Transfers to and from this account were as a

result of this, so that he could secure whatever funds were available to him to prevent compounding his financial problems.

(6) He held a Vanquis credit card with a credit limit of £350 and Aqua credit card with a limit of £800 which had both been closed so there was no access to any statements.

(7) In any month he had a debt of £9,150 to pay interest on, and had to source any available funds to reduce this interest.

(8) Payments from HMCTS of £612.71 were the stipends paid for jury service at Southwark Crown court.

(9) Ms Akanbi was his partner, now wife. All payments from her were short-term (days) interest-free loans, aimed at reducing charges from his overdraft.

(10) Mr Ajao is a relative who supported him during this period with any available funds to bring down his overdraft. All payments from him were short-term interest-free loans.

(11) Mr Oyewale was a friend, he had tried to buy two cars from Auto Lots Ltd, a company which was then owned by Mr Ajao. One of those was returned for a full refund. Mr Oyewale was at that time a carer and worked during the day, which meant Mr Omolade helped him to pay and collect the car. He was not paid for this.

(12) Mr Badru is a relative who supported him with interest-free loans to use for days.

(13) Payments of £200 from ADS Media was for the sale of his SatNav after he stopped his courier business due to the van being stolen.

(14) The payments from Biyep were for the sale of his car, comprising a deposit and two instalments.

(15) Payments from PayPal were from the sale of household items when he moved in with his wife. He was advised to declare this as part of his income by the person who helped him with his tax return as he had lost all invoices in the stolen van.

46. On 13 April 2017 HMRC wrote to Mr Omolade and explained he had not provided explanations for deposits totalling £24,176.78, £10,450 and £11,753. Additional information was requested in regard to the deposits from Ms Akanbi, Mr Ajao and Mr Badru.

47. Nothing further was received, and on 29 August 2017 HMRC wrote to Mr Omolade outlining proposals to settle the enquiry. As the reasons for the three categories of deposits had not been substantiated, HMRC would treat them as income. Turnover would be increased to £55,203.63 (this amount being £7,860.85 from Thames Distribution, £1,242 from Lyon UK, £3,644.25 from PayPal, deposits of £24,176.78, transfers of £10,450 and other transfers of £11,573), and expenses would be allowed at a rate of 20% of the turnover as a "reasonable estimate for any business expenses that may have been incurred", noting that no evidence had been supplied to support the expenses claimed of £7,011. That letter also stated that the behaviour was considered to be deliberate and a penalty would be chargeable. The potential lost revenue ("PLR") was at that stage calculated as £11,978.74. HMRC allowed a reduction of 60% in mitigation (0% out of 30% for telling, 40% out of 40% for helping and 20% out of 30% for giving).

48. On 30 August 2017 HMRC issued a penalty explanation schedule which detailed how the penalty that would be charged.

49. On 20 October 2017 HMRC issued a closure notice under s28A TMA 1970. That notice amended his return in line with the amendments set out in the letter of 29 August 2017.

50. On 13 November 2017 Mr Omolade called HMRC explaining that he had just received the letter dated 28 October 2017 which referred to a letter sent in August 2017. He had never received that letter at all. The following day HMRC sent him a copy of the letter dated 29 August 2017.
51. On 19 December 2017 HMRC received a letter dated 4 December 2017 from Mr Omolade appealing against the closure notice. That letter reiterated that his only income was that from Thames Distribution and Lyon UK and that the bank accounts were already closed and so bank statements could not be provided.
52. On 6 February 2018 HMRC issued their view of the matter letter. That letter revised the turnover to £55,302.63, being the payments from Thames Distribution and Lyon UK and the “unidentified deposits” (being the deposits, transfers and other transfers). The amounts from PayPal were removed from the turnover figures. As previously, HMRC allowed 20% of the revised turnover as a deduction to cover the cost of business expenditure. This reduced the additional tax due to £10,754.44.
53. On 1 May 2018 HMRC issued a further penalty explanation letter and then sent a letter detailing the penalty behaviour and disclosure. The PLR was stated to be the reduced additional tax due of £10,754.44.
54. On 5 June 2018 HMRC issued a penalty of £5,269.67. The behaviour was considered to be deliberate, and the penalty was reduced by 0% for telling, 40% for helping and 20% for giving. The penalty was therefore 49% of the £10,754.44 PLR.
55. Mr Omolade appealed against the penalty on 14 June 2018. HMRC agreed to accept that as a late appeal against the revised amendments made by the closure notice as well as against the penalty.
56. On 14 August 2018 HMRC issued a view of the matter letter in response to Mr Omolade’s appeal, in which Officer Freeman confirmed that she considered the penalty assessment notice was issued correctly.
57. On 27 September 2018 HMRC issued its review conclusion upholding the amendments made by HMRC’s revised closure notice but varying the penalty assessment to allow a 20% reduction for telling (rather than 0%) as Mr Omolade did provide explanations of the incorrect figure. The reductions applied were thus 20% (out of a maximum 30%) for telling, the maximum 40% for helping and 20% (out of a maximum of 30%) for giving. This meant the penalty was reduced to £4,516.86, 42% of the PLR. That review considered whether there were special circumstances and concluded that there were none.
58. On 23 October 2018, Mr Omolade appealed to the Tribunal. His grounds of appeal are:
- (1) Monies collected from families in cash or bank deposits from Mr Badru and Mr Ajao were paid back to them and were not income.
 - (2) He had collected cash for Mr Badru through sales to his client that he had introduced and usually have that money paid to him through bank transfers. This may also show as payments to Biyep Ltd
 - (3) Same applies to Mr Ajao who is also a close family friend and was into car sales and other businesses that had at some point paid to him some available cash for a short time to help lower his overdraft interest payment. This may have shown as payments to Femtim Ventures or Auto Lots Ltd.
 - (4) There are bank transfers from one of his accounts to another – these are not income.

(5) All funds classified as income should have been seen going back to the rightful owners in his bank statements.

(6) His van had been stolen in September 2012 and he lost his copy of bank statements in that van.

59. HMRC issued an amended notice of penalty assessment on 15 November 2018.

RELEVANT LEGISLATION

60. The obligation to file a return is contained in s8 TMA 1970. Section 9A TMA 1970 permits HMRC to enquire into that return if they give notice of their intention to do so within the specified time limit.

61. Section 12B TMA 1970 deals with record-keeping:

“12B Records to be kept for purposes of returns

(1) Any person who may be required by a notice under section 8, 8A ... or 12AA of this Act ... to make and deliver a return for a year of assessment or other period shall -

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

(b) preserve those records until the end of the relevant day, that is to say, the day mentioned in subsection (2) below or, where a return is required by a notice given on or before that day, whichever of that day and the following is the latest, namely

(i) where enquiries into the return are made by an officer of the Board, the day on which, by virtue of section 28A(1B) or 28B(1B) of this Act, those enquiries are completed; and

(ii) where no enquiries into the return are so made, the day on which such an officer no longer has power to make such enquiries.

(2) The day referred to in subsection (1) above is -

(a) in the case of a person carrying on a trade, profession or business alone or in partnership or a company, the fifth anniversary of the 31st January next following the year of assessment or (as the case may be) the sixth anniversary of the end of the period;

(b) otherwise, the first anniversary of the 31st January next following the year of assessment ...

or (in either case) such earlier day as may be specified in writing by the Commissioners for Her Majesty's Revenue and Customs (and different days may be specified for different cases).”

62. Section 28A TMA 1970 deals with completion of the enquiry:

“28A Completion of enquiry into personal or trustee return ...

(1) This section applies in relation to an enquiry under section 9A(1) ... of this Act.

(1A) Any matter to which the enquiry relates is completed when an officer of Revenue and Customs informs the taxpayer by notice (a “partial closure notice”) that the officer has completed his enquiries into that matter.

(1B) The enquiry is completed when an officer of Revenue and Customs informs the taxpayer by notice (a “final closure notice”) -

(a) in a case where no partial closure notice has been given, that the officer has completed his enquiries, or

(b) in a case where one or more partial closure notices have been given, that the officer has completed his remaining enquiries.

In this section “the taxpayer” means the person to whom notice of enquiry was given.”

63. Section 50(6) TMA 1970 deals with the jurisdiction of this Tribunal:

"(6) If, on an appeal notified to the tribunal, the tribunal decides

(a) that, the appellant is overcharged by a self-assessment;

(b) ...; or

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

the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good.

(7) If, on an appeal notified to the tribunal, the tribunal decides

(a) that the appellant is undercharged to tax by a self-assessment

(b) ...; or

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

the assessment or amounts shall be increased accordingly.

(8) Where, on an appeal notified to the tribunal against an assessment (other than a self-assessment) which

(a) assesses an amount which is chargeable to tax, and

(b) charges tax on the amount assessed,

the tribunal decides as mentioned in subsection (6) or (7) above, the tribunal may, unless the circumstances of the case otherwise require, reduce or, as the case may be, increase only the amount assessed; and where any appeal notified to the tribunal is so determined the tax charged by the assessment shall be taken to have been reduced or increased accordingly."

64. The penalties legislation in relation to inaccuracies which are deliberate or careless is set out in Schedule 24 FA 2007, the relevant paragraphs of which are:

“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.

(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.

...

3

(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...

4

(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,
- (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

(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...

9

(A1) Paragraph 10 provides for reductions in penalties -

(a) under paragraph 1 where a person discloses an inaccuracy that involves a domestic matter, ...

(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 unprompted disclosure
30%	15%	0%
70%	35%	20%
100%	50%	30%

11

(1) If they think it right because of special circumstances, HMRC may reduce a penalty under paragraph 1, 1A or 2.

(2) In sub-paragraph (1) "special circumstances" does not include -

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to -

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

...

13

...

(3) An assessment of a penalty under paragraph 1 or 1A must be made before the end of 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 to the tax concerned within paragraph (a), the date on which the inaccuracy is corrected.

(4) An assessment of a penalty under paragraph 2 must be made before the end of the period of 12 months beginning with -

(a) the end of the appeal period for the assessment of tax which corrected the understatement, or

(b) if there is no assessment within paragraph (a), the date on which the understatement is corrected.

(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.

14

(1) HMRC may suspend all or part of a penalty for a careless inaccuracy under paragraph 1 by notice in writing to P.

(2) A notice must specify -

- (a) what part of the penalty is to be suspended,
- (b) a period of suspension not exceeding two years, and
- (c) conditions of suspension to be complied with by P.

(3) HMRC may suspend all or part of a penalty only if compliance with a condition of suspension would help P to avoid becoming liable to further penalties under paragraph 1 for careless inaccuracy.

15

(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.

(3) A person may appeal against a decision of HMRC not to suspend a penalty payable by the person.

...

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.

(4) On an appeal under paragraph 15(3) -

(a) The tribunal may order HMRC to suspend the penalty only if it thinks that HMRC's decision not to suspend was flawed...

(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.

(7) Paragraph 14 (see in particular paragraph 14(3)) is subject to the possibility of an order under this paragraph.

18

(1) P is liable under paragraph 1(1)(a) where a document which contains a careless inaccuracy (within the meaning of paragraph 3) is given to HMRC on P's behalf...

(3) Despite sub-paragraphs (1) and (2), P is not liable to a penalty under paragraph 1 or 2 in respect of anything done or omitted by P's agent where P satisfies HMRC that P took reasonable care to avoid inaccuracy (in relation to paragraph 1) ...”

DISCUSSION

65. Mr Omolade has appealed against both the amendments made to his self-assessment by the closure notice and the penalty which has been imposed.

Closure notice

66. The burden of proof is on Mr Omolade to establish, on the balance of probabilities, that he has been overcharged by the amended assessment issued by HMRC in accordance with s50(6) TMA 1970.

67. HMRC make the following submissions:

(1) Mr Omolade is required by s12B TMA 1970 to keep all records in order to deliver a complete and correct return for a period of six years after the relevant tax year. The purpose of this requirement is to enable the self-assessment return to be validated, and Mr Omolade has not complied with this requirement; and

(2) They rely on case law including, eg, the interpretation of Buckley LJ in *Johnson v Scott* [1978] 52 TC 383 where it was stated at [403]:

“It seems to me that there the learned Judge puts the Inspector's figures in precisely the right way; they are a suggested reconstruction. Later the learned Judge said

“Indeed, it is quite impossible to see how the Crown, in cases of this kind, could do anything else but attempt to draw inferences. The true facts are known, presumably, if known at all, to one person only - the Appellant himself. If once it is clear that he has not put before the tax authorities the full account of his income, as on the quite clear inferences of fact to be made in the present case he has not, what can then be done?” and the learned Judge goes on to say that he thinks that the Commissioners have rightly reached their conclusion in the present case.”

For the reasons which I have endeavoured to express, which I think are substantially the same as the reasons which influenced the learned Judge, I agree with his conclusion. I think he reached the correct result on the material facts of this case and I would dismiss this appeal.”

(3) Here, the correct position, if it is known at all, would be known by Mr Omolade. HMRC have analysed the Lloyds Statements and must work off inferences, including that the means position of Mr Omolade is very low, with an original net profit of £3,223.00 - it is unlikely that he could live off such low means. The reasonable conclusion to be reached is that the deposits and transfers relate to Mr Omolade's business and should be classified as taxable business income - he has provided no satisfactory explanations of the deposits and transfers.

(4) Mr Omolade has not provided any evidence of the expenditure incurred during the tax year. However, HMRC have recognised that if he has additional turnover it

would be reasonable to presume that he incurred additional expenditure. Therefore, expenses have been allowed at a rate of 20% of the gross turnover.

68. Officer Freeman analysed the Lloyds Statements as follows:

- (1) There were total deposits and transfers into the Lloyds Accounts of £122,822.
- (2) There were various payments received from Ms Akanbi, Mr Oyewale, Biyep Ltd, Mr Badru, PayPal, ThamesDist, Mr Ajao, ADS Media, HMCTS, Lyon UK, and Auto Lots Ltd. She produced breakdowns of these payments and the totals of which were:

	Payments received
Akanbi	£19,662
Oyewale	£7,340
Biyep Ltd	£1,310
Badru	£13,630
PayPal	£3,644.25
Thames Distribution	£7,860.85
Ajao	£17,268.60
ADS Media	£200
HMCTS	£612.71
Lyon UK	£1,242
Auto Lots	£4,152

(3) There were various other transfers and payments into the Lloyds Accounts, being deposits of £24,176.78 (which we refer to as the “Deposits”), transfers of £10,450 (which we refer to as the “Halifax Transfers”) and other transfers of £11,573 (which we refer to as the “Other Transfers”).

(4) The total cash withdrawn from the three Lloyds Accounts was £12,167.

69. Mr Omolade sought to explain these payments in his letter of 3 March 2017. Notwithstanding the lack of detail, or what HMRC term “credible evidence” supporting his explanation, HMRC have decided to accept his explanations in respect of payments identified in the Lloyds Statements as having been received from Ms Akanbi, Mr Oyewale, Biyep Ltd, Mr Badru, Mr Ajao, ADS Media, HMCTS and Auto Lots. The explanation he provided is set out in the Facts, and we revert to this below as it is also relevant to the amounts in dispute.

70. The closure notice issued on 20 October 2017 amended his return to increase his turnover to £55,203.63 (this amount being £7,860.85 from Thames Distribution, £1,242 from Lyon UK, £3,644.25 from PayPal, deposits of £24,176.78, transfers of £10,450 and other transfers of £11,573). However, in their view of the matter letter of 6 February 2018 HMRC stated that they would be adjusting this amount to remove the credits from PayPal (which had initially been included in his turnover in Mr Omolade’s self-assessment return). HMRC had thus amended his self-assessment to include a turnover of £55,302. The position remained the same in the view of the matter letter issued on 14 August 2018.

71. Mr Omolade agreed that the amounts received from Thames Distribution and Lyon UK are his business income, these being amounts he received from London City Bond.

72. The dispute between the parties concerns the inclusion of the Halifax Transfers, Deposits and Other Transfers in the turnover. The breakdown of these amounts is set out in tables under the relevant sub-headings below. These sub-totals are those which Officer Freeman drew to Mr Omolade's attention in HMRC's letter of 13 April 2017 and asked him to explain. The accuracy of these tables (which were produced by Officer Freeman and included in the hearing bundle) was not challenged by Mr Omolade and we accept their accuracy.

73. We address each of these three tables below, including not only what HMRC submit they demonstrate, but also the evidence of Mr Omolade and our conclusions on each of them.

74. Mr Omolade's grounds of appeal are set out under Facts above. Those specific arguments particularly relevant to the Halifax Transfers, the Deposits and the Other Transfers are:

(1) Monies collected from families in cash or bank deposits from Mr Badru and Mr Ajao were paid back to them and were not income.

(2) He had collected cash for Mr Badru through sales to his client that he had introduced and usually had that money paid to him through bank transfers. This may also show as payments to Biyep Ltd.

(3) Same applies to Mr Ajao who is also a close family friend and was into car sales and other businesses that had at some point paid to him some available cash for a short time to help lower his overdraft interest payment. This may have shown as payments to Femtim Ventures or Auto Lots Ltd.

75. Mr Omolade's evidence at the hearing was that:

(1) His only income was that from London City Bond (being the amounts shown from Thames Distribution and Lyon UK).

(2) The account number ending 0665 was a current account of his at Halifax Bank.

(3) The Halifax Transfers, the Deposits and the Other Transfers are not his income, and were either transfers between his accounts, short-term loans which had been provided in cash, amounts which he had deposited for others and transferred to them.

(4) It had been a very bad financial year for him - he was relying on overdrafts and friends and family had helped him to avoid or reduce overdraft charges.

(5) He had received loans from Ms Akanbi (his wife), Mr Ajao (a friend) and Mr Badru (who was a father-figure to him). Biyep Ltd was owned by Mr Badru.

(6) He took us to the Lloyds Statements, showing the payments he had made to these individuals and explaining that these were repayments of the amounts they had lent to him. These were not business transactions:

(a) The Lloyds Statements recorded payments out to Mr Badru and Biyep Ltd in total of £17,699.05.

(b) The Lloyds Statements recorded payments out to Mr Ajao totalling £30,275.20.

(7) Mr Ajao was a car dealer. He made some cash sales from his business. Mr Omolade would help him out by collecting that cash from him, paying it into the bank and then transferring the money across to him.

(8) He was also moving money between his own accounts – this accounted for the Halifax Transfers and the Other Transfers.

(9) He had assistance when preparing his self-assessment return. He had some paperless statements available after his van was stolen, and showed the person assisting him statements for about three to four months of the tax year.

(10) Any oversight is a mistake (although he did not accept that any of the amounts should have been included as his turnover or income). This was not deliberate behaviour.

76. Before assessing the evidence in relation to the Halifax Transfers, the Other Transfers and the Deposits, we make the following findings of fact on the basis of the evidence before us:

(1) Mr Omolade moved in with Ms Akanbi (who is now his wife) during September 2012, and his van was stolen during that month whilst he was in the process of moving. He had had some financial records in his van at the time.

(2) The income declared by Mr Omolade had been received between 6 April and 10 September 2012 – there was one receipt from Lyon UK on 11 June 2012 and monthly receipts from Thames Distribution from 10 April to 10 September 2012 (apart from June), consistent with these receipts being for work the previous month, and ceasing at the time Mr Omolade’s van was stolen.

(3) We had no information in relation to the income or other means of his wife, other than knowing that she had transferred some amounts to him (£19,662), and he had transferred some amounts to her (£9,237.33).

(4) We have no information as to how they dealt with household expenditure. Two of the Lloyds Accounts (account numbers ending 4460 and 1168) had considerable activity during the year. One was in Mr Omolade’s name (4460) whereas the other was in the name of Danemm Enterprises (1168). The former account included some expenses that might be personal or business related (eg petrol, insurance) and some that were clearly personal (McDonald’s). There were some bill payments (eg Npower, TalkTalk) but we did not see what the panel regarded as routine household expenditure (council tax, gas and electricity for the home – the Npower was not routine, grocery shopping).

(5) Mr Omolade also had a bank account at the Halifax Bank, account number ending 0665 (the “Halifax Account”). We had no bank statements in relation to this account.

(6) It is entirely possible that household expenditure was met from the Halifax Account, or that Mr Omolade’s wife paid these bills. We had no evidence either way.

(7) Mr Omolade had been lent money by Ms Akanbi (or shared household money with her), Mr Ajao and Mr Badru. We accept this to the extent that the Lloyds Statements identify that payments made into the Lloyds Accounts were from these individuals, or from Biyep Ltd, and note that this is common ground between the parties in any event. HMRC have not sought to include these payments in Mr Omolade’s turnover for the tax year.

(8) He had received payments from HMCTS for jury service and from PayPal for the sale of personal items on Ebay. Again, we note that this is common ground between the parties.

(9) There was little activity in the Lloyds Account ending 4868 (one of the two in the name of Mr Omolade). There were two transfers into that account, of £959 and £1,087, both of which were from Wonga. There were transfers out of almost corresponding amounts at the same time, namely of £960 and £1,080. The destination account of each is not shown on the Lloyds Statements. However, the Lloyds Statements in respect of the Lloyds Account ending 4460 show (unidentified) receipts of those amounts on the same dates. We conclude that the amounts were transferred from 4868 to 4460. These amounts are not included in HMRC's tables (ie HMRC are correctly not seeking to identify these amounts as income).

(10) The Lloyds Account ending 4460 was usually overdrawn (and often very close to the apparent overdraft limit of £3,000).

(11) The Lloyds Account ending 1168 (in the name of Danemm Enterprises) was actively used. In addition to the transfers identified by HMRC, there was income from Thames Distribution, Lyon UK, payments were received from Akanbi and Ajao and there were lots of debits referenced 5217 and cash withdrawals. The debits referenced 5217 would appear to be expenses paid with a debit card ending with that number. We note that Mr Omolade had stated that he did not have a debit card for this account, only a cash card, and this was not challenged by HMRC. We make no finding on this point.

(12) Cash was withdrawn from the Lloyds Accounts amounting to £12,227 during the tax year. We note that HMRC identified cash withdrawals of £12,167; we do not regard the difference as significant.

Halifax Transfers

77. This table records all transfers into any of the Lloyds Accounts which are described in the narrative description for those Lloyds Accounts on the Lloyds Statements as having been paid from an account number ending 0665. This table was prepared by Officer Freeman and we accept its accuracy. These receipts are all described with banking code "TFR".

Date	Amount	
30/11/2012	£900.00	Into account 4460
14/12/2012	£120.00	Into account 1168
24/12/2012	£100.00	Into account 1168
03/01/2013	£250.00	Into account 4460
22/01/2013	£1,850.00	Into account 4460
02/02/2013	£400.00	Into account 4460
04/02/2013	£2,600.00	Into account 1168
07/02/2013	£100.00	Into account 1168
26/02/2013	£200.00	Into account 4460
04/03/2013	£500.00	Into account 4460
	£1,120.00	Into account 1168
12/03/2013	£100.00	Into account 4460
28/03/2013	£2,210.00	Into account 1168
	£10,450	

78. HMRC had asked Mr Omolade to provide bank statements for this account (on 6 February 2017 and on 13 April 2017) but he had not done so. In his letter of 19 December 2017 Mr Omolade had stated that the bank account had been closed and he could not provide bank statements. He did not state (in this letter or at any other time in correspondence with HMRC) that this account was with Halifax Bank.

79. At the hearing the Tribunal asked Mr Omolade what money was paid into this Halifax Account, and he said that he mostly received money from Mr Ajao and Mr Badru, with amounts being transferred from his other accounts (ie the Lloyds Accounts).

80. Officer Freeman stated that this table records all transfers from the Halifax Account to the Lloyds Accounts which are recorded in the Lloyds Statements as having been paid from this Halifax Account. We accept that evidence (which in any event was not challenged). However, she also confirmed in response to questions from the Tribunal that she had not analysed whether there were transfers from any of the Lloyds Accounts to that Halifax Account.

81. We consider this to be a significant flaw in the approach, particularly given Mr Omolade's position that all of the payments in issue (ie the Halifax Transfers, the Deposits and the Other Transfers) were either loans or transfers between his own accounts. HMRC's submission was that they had no evidence as to where the funds in the Halifax Account which were transferred to the Lloyds Accounts came from. Yet there was some evidence, in addition to the oral evidence of Mr Omolade, which is that some funds were transferred in the other direction. During the hearing, Officer Freeman was able to identify £10,100 as having been transferred from the Lloyds Accounts to the Halifax Account, and the Tribunal identified £11,341 of transfers from the Lloyds Accounts that are described in the narrative as being made to the Halifax Account, ie an amount in excess of that which was transferred from the Halifax Account to the Lloyds Accounts.

82. Whilst we consider the significance of this further below in Consideration and Conclusions, at this stage it is sufficient for us to state that we are satisfied that the Halifax Transfers comprise the payment of amounts from the Halifax Account which had been funded by payments going the other way from the Lloyds Accounts. We note that this does not answer the question as to how such funds were generated by Mr Omolade in the first place.

Other Transfers

83. These are transfers into the Lloyds Accounts, where the banking code for the type of transaction is TFR and where there is no narrative description of the payor. The table compiled by Officer Freeman is as follows:

Date	Amount	
27/04/2012	£696.10	Into account 4460
04/05/2012	£332.13	Into account 4460
01/06/2012	£145.13	Into account 4460
20/09/2012	£1,050.00	Into account 1168
12/10/2012	£2,100.00	Into account 1168
22/10/2012	£300.00	Into account 4460
03/11/2012	£1,300.00	Into account 1168
11/11/2012	£2,000.00	Into account 4460

17/11/2012	£450.00	Into account 4460
23/11/2012	£2,270.00	Into account 1168
26/11/2012	£650.00	Into account 1168
27/11/2012	£280.00	Into account 4460
	£11,573.36	

84. The Lloyds Statements show more transfers with no narrative than are set out in this table (together, the “Unidentified Transfers”). Officer Freeman confirmed that she had checked whether any of the Unidentified Transfers could be matched against a transfer out from one of the other Lloyds Accounts. Several could be so matched, and such Unidentified Transfers have not been included in this table above. The Other Transfers are thus a sub-set of the Unidentified Transfers which are recorded in the Lloyds Statements.

85. On the basis of our own analysis of the Lloyds Statements we are satisfied that this analysis was performed and that the table is accurate.

86. Mr Omolade did not challenge the accuracy of the compilation of the table, only whether it could be shown that the accounts from which these payments had been transferred belonged to someone else. (His challenge was the same in relation to the Deposits.)

87. We remain mindful that the burden is on Mr Omolade to establish that he has been overcharged by the assessments.

88. Mr Omolade did not provide any evidence to corroborate his explanation that all of the Other Transfers comprised transfers from his other bank accounts or were short-term loans from friends and family. The only potentially corroborating evidence we had before us were the Lloyds Statements themselves.

89. The Other Transfers were not payments from other Lloyds Accounts.

90. It was common ground that Mr Omolade had another bank account, namely the Halifax Account. It is possible that the Other Transfers were payments from the Halifax Account but were not identified as such on the Lloyds Statements, which we infer is entirely possible given that some payments from the Lloyds Accounts were identified as such whereas others are within what we labelled the Unidentified Transfers. Mr Omolade has not provided us with a copy of any of the bank statements from the Halifax Account which could have supported this argument. He states that he does not have a copy of any of the bank statements for the Halifax Account – some were in his van, he later moved to paperless statements and has since closed the account and does not have access to the paperless statements. Nor did Mr Omolade provide a signed mandate for HMRC to obtain this information in 2017. We do not suggest that Mr Omolade sought to hide this account back in 2017, but he did have the opportunity, when completing the bank mandates, to provide a signed mandate for each bank at which he held a bank account during the tax year. In consequence of failing at that time to tell HMRC that there was an account at the Halifax Bank, the statements for the Halifax Account are not before us. He only mentioned that this account was at the Halifax Bank during the hearing – in such circumstances he cannot reasonably have thought it possible that HMRC would have been able to obtain a copy of these statements themselves.

91. Nevertheless, notwithstanding the absence of statements from the Halifax Account, there is a noticeable pattern in the Halifax Transfers and the Other Transfers, which is that chronologically they do not overlap. The only Other Transfers that have been identified are

from 27 April 2012 to 27 November 2012, whereas the Halifax Transfers were made from 30 November 2012 to 5 April 2013. Having looked at all of the Lloyds Statements, we infer that one explanation for this is that Lloyds Bank changed the presentation of the narrative of their statements from end November 2012 such that after that time payments which were made between accounts that were maintained at banks within the Lloyds banking group (such as Halifax Bank) were identified in the narrative with the sending/receiving account number. This would mean that, in line with Mr Omolade's explanation thereof, the Other Transfers could also be transfers from the Halifax Account to the Lloyds Accounts.

92. We note that just as there were Unidentified Transfers into the Lloyds Accounts, there were also payments out from the Lloyds Accounts where the narrative was blank and where it was not possible to track the receipt into another Lloyds Account. These totalled £3,915 during the tax year.

93. Mr Omolade has not given any evidence that he held any other bank accounts during the tax year and accordingly we find that there were no other such accounts which he held which could have been the source of the funds.

94. The remaining argument put forward by Mr Omolade was that the Other Transfers are payments to him by way of short-term loans from friends and family (this being the general argument he made in respect of all of the additional amounts assessed by HMRC). HMRC have accepted that the payments into the Lloyds Accounts which are identified in the narrative as having been paid to him by Ms Akanbi, Mr Ajao, Mr Oyewale and Mr Badru are such loans. Mr Omolade's submission is essentially that these Other Transfers are more of the same, albeit that they have not been identified as such by Lloyds Bank in the Lloyds Statements.

95. We accept that it is plausible that payments from the same source can be recorded differently in the Lloyds Statements. This is evident from the Lloyds Statements in respect of payments from the Lloyds Accounts where we were able to match payments by payor and payee. The difficulty is that Mr Omolade has not adduced any evidence from any of the individuals in question as to how much money they lent him at this time (with a view to establishing that the amounts are greater than those which HMRC has identified against their names above), or produced his own contemporaneous notes or records of the amounts he was borrowing from them (which notes we would have expected to exist, however informal, in order to keep track of the myriad of payments going between the parties).

96. We consider that Mr Omolade has not established that the Other Transfers were further loans. We do, however, consider that it is more likely that they were transfers from the Halifax Account – we assess the significance of this in Consideration and Conclusions below.

Deposits

97. These are amounts recorded in the Lloyds Statements with the banking code DEP, where the narrative is comprised of (differing sets of) six numbers. The list of Deposits identified by Officer Freeman is as follows:

Date	Amount	
10/04/2012	£1,600.00	Into account 1168
09/05/2012	£170.00	Into account 4460
15/05/2012	£830.00	Into account 4460
06/06/2012	£2,010.00	Into account 1168
31/07/2012	£3,940.00	Into account 4460

06/08/2012	£17.50	Into account 4460
13/09/2012	£689.28	Into account 1168
28/08/2012	£2,100.00	Into account 4460
05/10/2012	£700.00	Into account 4460
02/11/2012	£4,420.00	Into account 4460
26/11/2012	£1,100.00	Into account 4460
14/12/2012	£1,050.00	Into account 4460
04/01/2013	£2,500.00	Into account 4460
04/02/2013	£2,050.00	Into account 4460
04/03/2013	£1,000.00	Into account 4460
	£24,176.78	

98. We accept that this list is accurate.

99. Neither party adduced banking evidence to explain the types of payments which might be recorded in this way, and accordingly the Tribunal relies on its own expertise and experience and considers that these payments may comprise either cash or cheque deposits. Transfers from other bank accounts (whether or not belonging to Mr Omolade) would not be recorded as DEP.

100. Mr Omolade's explanation for these Deposits is that these are cash deposits. He was not able to provide a specific explanation for any identified deposit. Instead, his evidence was that he sometimes received cash from Mr Badru and Mr Ajao. He stated that this was not income but was paid back to them. He varied between describing this receipt of cash as short-term loans and in some instances where he collected the cash from them at their business and would pay it into the bank and then transfer the money to them. Mr Badru's business is Biyep, whereas Mr Ajao's businesses were Auto Lots and Femtim Ventures.

101. The absence of any evidence from either Mr Ajao or Mr Badru is unhelpful.

102. We have looked at the general picture of movements of money as well as the individual deposits recorded in the Lloyds Statements to see if we can discern any corroboration of this explanation.

103. Considering first the general explanation that these Deposits of cash comprised the lending of money from Mr Ajao and/or Mr Badru, we note the following:

(1) The Lloyds Statements recorded payments out to Mr Badru and Biyep in total of £17,699.05. They also show payments in from Mr Badru of £13,630 and from Biyep of £1,310 – which amounts HMRC have accepted as short-term loans. Mr Omolade therefore returned to Mr Badru (and/or Biyep) £2,759.05 more than was identified as having been paid in to him. This leaves open the possibility that he had been lent some further money in cash, which was repaid from the Lloyds Accounts, but we do not know the opening or closing balance of the loan he had with Mr Badru to help test this hypothesis.

(2) The Lloyds Statements recorded payments out to Mr Ajao of £31,005.20. HMRC identified payments in from Mr Ajao of £17,268.60. There are also payments in from Auto Lots of £4,152, payments to Auto Lots of £7,436 and payments out to Femtim Ventures of £7,321.45. There are no receipts from Femtim Ventures that are labelled as

such. There is an excess of payments out to Mr Ajao (and/or Auto Lots and Femtim Ventures) of £24,342.05. This is a more significant difference, although not knowing the starting balance of the loans is unhelpful

104. There remains a question, if the Deposits are loans, as to how Mr Omolade was meeting his own basic expenses and being able to repay the loans. Mr Omolade's response to this was that he was living on his overdrafts and being lent money to try to reduce overdraft charges; but the Lloyds Statements do not give a picture of a gradually (or rapidly) increasing overdraft (although the Lloyds Accounts were frequently overdrawn and there were several bank charges incurred throughout the tax year).

105. It is possible that either Mr Omolade was earning income in cash which he was then using either for expenses or to repay amounts lent from Mr Ajao and Mr Badru (having started the tax year owing them money, this explaining why the payments out to them were greater than payments in), or that he was somehow helping them and paying cash into his account and transferring the money across to them by bank transfer, or that the cash was lent from them and in due course he repaid them by bank transfer.

106. The general picture is unclear, so we have tried to analyse what happened to the Deposits after they were paid into the Lloyds Accounts. We are very aware that the Lloyds Statements do not necessarily record payments and receipts in chronological order for any day.

(1) £1,600 received in account ending 1168 on 10 April 2012 - There was a payment out of £1,790 that same day (the destination of which is unspecified in 1168), but the same amount was received in 4460 (an Unidentified Transfer) which was then followed by payments from 4460 to Mr Ajao of £480 and smaller debits.

(2) £170 received in account ending 4460 on 9 May 2012 – This was received at the same time as a transfer of £850 (an Unidentified Transfer), but can be seen that this had been paid from account ending 1168. This was followed by payments out to Ms Akanbi of £490, a credit card and Wonga.

(3) £830 received in account ending 4460 on 15 May 2012 – This was followed by a transfer out on that same day of £850, the description for which is blank, but where there is also an Unspecified Transfer received in accounting ending 1168 of that amount on that date. There is then a transfer out from account ending 1168 on 15 May of £900 and one of £1,100 on 18 May. The payee is blank in both instances. We do not have any evidence as to where the £900 was transferred to. However, the £1,100 was received in account ending 4460 on 18 May.

(4) £2,010 received in account ending 1168 on 6 June 2012 – This was followed by some smaller debits (albeit that the largest of which was not insignificant at £481.54), and then, after receiving £1,242 from Lyon UK on 11 June and £300 from Ms Akanbi on 11 June, was followed by payments to Mr Ajao of £1,365 on 11 June and Mr Oyewale of £1,000 on 12 June.

(5) £3,940 received in account ending 4460 on 31 July 2012 - On 1 August 2012 there was a transfer out of £4,070 (unspecified), which was received in account ending 1168. There were then payments out from that account to Mr Ajao of £3,040 and Ms Akanbi of £655.31.

(6) £17.50 received in account ending 4460 on 6 August 2012. We have not looked further at this.

(7) £689.28 received in account ending 1168 on 13 August 2012. There were some debits, then another receipt of £420 (unspecified) but which had come from account ending 4460 and a payment to Mr Ajao of £630 on 14 August.

(8) £2,100 received in account ending 4460 on 28 August 2012. This was three cash deposits made of £980, £1,000 and £100 at LTSB in Barking. There was a payment to Mr Ajao of £1,800 on 30 August.

(9) £700 received in account ending 4460 on 5 October 2012. There was a payment out to Mr Ajao of £943.60 that same day.

(10) £4,420 received in account ending 4460 on 2 November 2012. There was a transfer out of £3,000 (unspecified) the following day, another transfer out of £400 on 6 November (unspecified) and a payment to Mr Ajao of £1,007 on 7 November. That £400 was received in account ending 1168 and a payment of £1,000 was then made to Biyep.

(11) £1,100 received in account ending 4460 on 26 November 2012. There was another receipt of £280 (an Unidentified Transfer) the following day, and on 26 November a payment out (unspecified) was made of £1,389. Both this receipt and the payment were from account ending 1168.

(12) £1,050 received in account ending 4460 on 14 December 2012. There was a receipt from Mr Badru of £1,650 that same day, and a transfer to account ending 1168 of £2,600. There was another transfer of £120 from the Halifax Account to 1168, and on 14 December a payment was made of £2,716 to Auto Lots.

(13) £2,500 into account ending 4460 on 4 January 2013. There was a transfer of £2,040 to account ending 1168 that same day, from which account a payment of £2,050 was made to Femtim Ventures.

(14) £2,050 into account ending 4460 on 4 February 2013. There was a transfer of £2,100 to account ending 1168 that same day. There was also a transfer of £2,600 from the Halifax Account to 1168, and a payment out of £4,649.01 to Biyep.

(15) £1,000 into account ending 4460 on 4 March 2013. There was a transfer of £1,310 to account ending 1168 on that same day. £1,120 was transferred from the Halifax Account to 1168 and a payment of £3,003.04 was made to Biyep.

107. We consider it is difficult if not impossible to draw definitive conclusions from the preceding paragraph. There were many transfers between Mr Omolade's own accounts (including for this purpose the business account). Receipts in are sometimes followed by him making payments out to those from whom HMRC have accepted that he borrowed money (eg Mr Ajao). There is a lack of any obvious matching of amounts (eg a cash deposit of £800 then being followed by a transfer to Mr Ajao of that same amount, even with the possibility of the £800 being first transferred between accounts).

108. We are however struck by the significance of the amounts paid out from the Lloyds Accounts. Whilst we have not found the exercise of trying to follow or trace particular deposits to be helpful, the overall picture is that Mr Omolade paid amounts to Mr Ajao and Mr Badru (including for this purpose the businesses which they operated) in excess of the amounts which they transferred to him, against the background that his explanation is that they had been lending him money (an explanation which has been accepted by HMRC). We do not know how much money they lent him (or what the opening balance was at the beginning of the tax year), but the pattern is very much of regular amounts going in both directions, and the "surplus" of around £27,000 which was paid from Mr Omolade to them

does lend significant support to his explanation that he would deposit cash for them and then transfer the money across.

Consideration and conclusions on the Amendments

109. In considering the Halifax Transfers, the Other Transfers and the Deposits in the discussion above we have sought to draw attention to areas where we consider that the evidence potentially supports the explanations provided by Mr Omolade.

110. We do still have some difficulties with Mr Omolade's position:

(1) HMRC have already accepted that significant transfers into his account were short-term interest-free loans made by friends and family. We do not focus on the payments from Ms Akanbi in this regard (as her relationship with Mr Omolade means that these amounts could well be sharing of income), but this does apply to the payments from Mr Ajao, Mr Badru and Mr Oyewale. These amounts have been accepted as loans notwithstanding as HMRC puts it, there is "no credible evidence" which has been provided in support of these loans. One issue before us is whether we accept that there were additional amounts advanced.

(2) From the outset HMRC asked Mr Omolade to provide details of household income. This can be seen in their letter of 10 June 2015 requesting information from Mr Omolade - HMRC asked for details of "all of your household income and outgoings", including details of anyone else within the household that is working or receiving any types of income. Mr Omolade has stated that he is married (and explained that some of the transfers were from his now wife); however, no information has ever been provided as to the income of his wife or as to household expenses.

(3) We are concerned by the explanation as to the reason for the absence of bank statements from Mr Omolade. He has stated that his van was stolen in September 2012 and that he had bank statements in that van at the time. That evidence is not challenged by HMRC. However, his evidence was also that he then moved to paperless statements via online banking. The panel takes judicial notice of the fact that once a person is using online banking they have access at that time to their transaction history – this may not necessarily include the ability to access statements from several years' previously, but would, in, say, December 2012, afford visibility of transactions conducted since April 2012, and therefore we consider that Mr Omolade would have had access to a record of all transactions conducted in the tax year 2012-2013 when preparing his self-assessment return for that year.

(4) There is a question of the means of Mr Omolade – how were household expenses met, how was he funding repayments of loans from his friends and family. The indicators of lack of means include borrowing from Wonga (both into the 4868 account and at least one other loan directly into 4460), almost constant overdrafts, incurring various bank charges and paying for credit reports. Similarly, there is no evidence of what might be regarded as extravagant expenditure, save potentially for the lack of information as to the amounts which form the basis of this appeal.

(5) The income declared by Mr Omolade for the tax year is that from Thames Distribution and Lyon UK. However, the last payment was received from them on 10 September 2012 (which, as we have already noted, is consistent with his van having been stolen in September 2012). He has not declared any income in respect of the second half of the tax year, yet we note that various of the items of expenditure in the Lloyds Statements which might relate to a courier business, or to involvement in the

sale of used cars (eg petrol costs, multiple insurances, payments to Autotrader and the DVLA) are made throughout the tax year.

111. We are mindful that the burden of proof is not on HMRC to establish that the amendments made are correct but on Mr Omolade to show that he has been overcharged by the amendments.

112. Taking all of the evidence together, including the frequency of payments between the various bank accounts during the tax year, we are satisfied that, on the balance of probabilities, the Other Transfers are payments from the Halifax Account to the Lloyds Accounts. As a matter of fact, this therefore means that the transfers from the Halifax Account to the Lloyds Accounts were £22,023 (ie £10,450 + £11,573) during the tax year. This was thus a movement of money between Mr Omolade's own accounts.

113. This is not the end of the matter, as there is then a question as to where this money came from, ie was it another (undeclared) source of income which had been paid into the Halifax Account. However, the Lloyds Statements also show payments from the Lloyds Accounts to the Halifax Account (identified as such) of £11,341 and payments from the Lloyds Account which are identified as transfers for which there is no narrative (consistent with the format used for the Other Transfers) of £3,915. From this, we infer that £15,256 of the Halifax Transfers and the Other Transfers were funded from the Lloyds Accounts. In this situation, and in the light of all of the evidence, we are satisfied that this £15,256 should not be assessed as additional income.

114. This leaves the balance of £6,767 of the Halifax Transfers and the Other Transfers which was not funded from the Lloyds Accounts. We had no evidence of any other bank accounts of Mr Omolade from which these amounts could have been funded, and there was no evidence to corroborate Mr Omolade's explanation that any otherwise unaccounted for amounts comprised further loans from friends and family. In all of the circumstances, Mr Omolade has not established that this amount should not have been included as additional income.

115. When we look at the status of the Deposits, the starting-point was Mr Omolade's explanation that he would sometimes collect cash from Mr Badru and Mr Ajao and pay it into his account and then transfer the money to them. This explanation is, viewed in isolation, very weak – we were not convinced that there is any good reason for this to happen, no evidence was adduced from Mr Ajao or Mr Badru to support this explanation, and even though we looked very closely at the Lloyds Statements we could not see any clear pattern showing that a cash deposit was followed by a transfer of the same or even a similar amount to these individuals or their businesses.

116. However, we have focused on the payments out from the Lloyds Accounts as well as the payments in and we found it somewhat striking that, as noted at [108] above, Mr Omolade paid out to Mr Ajao and Mr Badru (including, for this purpose, their businesses) £27,101.10 more than they transferred to him. The Deposits total £24,176.78 and we have reached the conclusion that the evidence of the Lloyds Statements supports the explanation that was provided by Mr Omolade and that these cash deposits were not his income. He was thus overcharged by the assessment.

117. HMRC have assessed Mr Omolade as turnover of £55,302.63, being the payments from Thames Distribution and Lyon UK, the Halifax Transfers, the Other Transfers and the Deposits. We have concluded that his turnover was £15,869.85 (£7,860.85 from Thames Distribution, £1,242 from Lyon UK and £6,767 of the Halifax Transfers and Other Transfers).

118. There is then a question of the allowable expenditure. Mr Omolade had claimed a deduction for expenditure of £7,011 in his self-assessment return. He has not provided any explanation as to the calculation of this amount (either in correspondence with HMRC or giving evidence at the hearing) – not even explaining what it represents. In issuing the assessment, HMRC have allowed expenditure of 20% of his total turnover/income. Officer Freeman has provided minimal justification for this allowance, referring only to what might be expected for similar businesses (with no explanation of what might be similar for this purpose). Mr Omolade has not challenged this. Whilst we do have the Lloyds Statements, showing regular (sometimes daily) purchases of petrol, expenditure at Autotrader, on insurance and payments to the DVLA, ie types of payments that might constitute business expenditure, we can see that there was also personal expenditure from the Lloyds Accounts and we have no way of knowing which of the payments that we can see on the Lloyds Statements might have been incurred for business purposes.

119. In this situation, we do not consider that Mr Omolade has established that his allowable expenditure was any greater than 20% of his amended total turnover.

Penalties

120. In respect of the penalty which has been issued, the burden is on HMRC to establish, on the balance of probabilities, that the penalty is due – this includes both its calculation and imposition. We treat Mr Omolade as having appealed against both HMRC's decision to issue a penalty (as he argues that his behaviour was not deliberate and any inaccuracy was a mistake) and against the amount of the penalty (arguing that he has cooperated fully, which we take to mean that he considers he should be allowed the maximum reduction for disclosure and cooperation).

121. Schedule 24 FA 2007 allows a penalty to be charged where it is found that the inaccuracies have occurred due to careless or deliberate behaviour. HMRC have issued a penalty of £4,516.86. This amount has been charged on the basis that Mr Omolade's behaviour was deliberate and that the disclosure was prompted. They have allowed an 80% reduction by way of mitigation, but concluded that there were no special circumstances to justify a further reduction.

122. HMRC refer to the following by way of support for their conclusion that the behaviour was deliberate:

- (1) The amounts of money that were not declared are large (over £46,000), in comparison to business income declared of £10,234).
- (2) The amounts were received regularly throughout the tax year.
- (3) He cannot have been unaware of the existence or significance of these amounts.
- (4) Failure to declare these amounts cannot be explained by reference to his van having been stolen – that was in September 2012, part way through the tax year, and further records would have been available to Mr Omolade by the end of the year. The records that were in the van and thus stolen would not have assisted Mr Omolade in preparing his return. He should have some documents for the period from October 2012 to April 2013. He referred to using paperless documents for the purpose of preparing his return – no copies of these had been downloaded and sent to HMRC.

123. Ms Arnold submitted that Mr Omolade knowingly submitted an inaccurate document which he hoped HMRC would rely upon. HMRC's position was that if we did not agree that the behaviour was deliberate, it was at the very least careless, referring to:

(1) Mr Omolade’s self-assessment had included amounts that “someone had told him to include”, thus indicating that the turnover declared had not been based on robust record keeping.

(2) The amount which Mr Omolade now acknowledges as his income does not match that which was declared on his return. The amounts received from Thames Distribution and Lyon UK are £9,102.85, whereas his return declared income of £10,234.

124. Mr Omolade denied that any inaccuracies were deliberate; they were mistakes. Furthermore, he resisted any suggestion that he had not cooperated fully with HMRC, stating that post could go astray and not arrive. He emphasised his willingness to sign the bank mandates (noting that he had signed these twice), and that he had nothing to hide.

125. We adopt the explanation of a deliberate inaccuracy set out by Judge Greenbank in *Auxilium Project Management v HMRC* [2016] UKFTT 0249 (TC) at [63]:

“...a deliberate inaccuracy occurs when a taxpayer knowingly provides HMRC with a document that contains an error with the intention that HMRC should rely upon it as an accurate document. This is a subjective test. The question is not whether a reasonable taxpayer might have made the same error or even whether this taxpayer failed to take all reasonable steps to ensure that the return was accurate. It is a question of the knowledge and intention of the particular taxpayer at the time.”

126. Whilst we have found that Mr Omolade was overcharged by the assessment issued by HMRC, and that it should be reduced significantly, we have found that the assessment for additional undeclared income of £6,767 stands.

127. There is minimal information included on Mr Omolade’s self-assessment. The business is described as “TRADING”, with turnover stated as £10,234 and total allowable expenses in Box 19 of £7,011. This box should have been the aggregate of expenses set out in categories elsewhere, but there is no other information.

128. We agree with Ms Arnold that Mr Omolade’s own evidence supports a conclusion that he was careless in preparing his return. However, we have concluded that the behaviour goes beyond that and was deliberate. A friend of Mr Omolade’s had helped him prepare his return, and he explained that they had struggled with the fact that his bank statements had been taken with the van in September 2012. However, Mr Omolade was in a position to know about his activities during the tax year, and about the money that was being transferred into his bank accounts on multiple occasions throughout the tax year. His evidence several years after the event was vague but we consider it inconceivable that when submitting his return Mr Omolade did not know that he had received income other than that from Thames Distribution and Lyon UK (plus the amount declared from PayPal). This is particularly the case in a situation where he had not declared any income (leaving aside the PayPal amount) for the second half of the tax year. We find that he did know that the return had not declared all of his income.

129. We agree that the behaviour was deliberate. We also agree that the disclosure was prompted, as Mr Omolade did not make HMRC aware of the errors before they were found.

130. Paragraph 4(2)(b) of Schedule 24 FA 2007 sets the penalty percentage as no more than 70% of the PLR for a deliberate but not concealed penalty. Paragraph 10 sets the minimum percentage that a penalty can be reduced to - for deliberate and prompted behaviour the minimum is 35% of the PLR, therefore the overall range of the penalty is 35-70% of the PLR. Paragraph 9(1) allows a reduction from the statutory maximum penalty for telling, helping and giving.

131. HMRC have applied a reduction of 80% to the overall penalty percentage, broken down as follows: 20% for telling, (the maximum) 40% for helping and 20% for giving.

132. Whilst we accept that Mr Omolade has generally sought to cooperate, and there is evidence from the enquiry process that he had not received all post (eg he received a letter from HMRC in November 2017 which had been sent in October, which referred to a letter sent in August which he said he had not received). Nevertheless, he failed to produce any papers to HMRC when initially requested and only produced some papers after they issued an information notice (having first received a £300 penalty for non-compliance), he completed the bank mandates as requested by HMRC but only for Lloyds Bank and did not explain that the account ending 0665 was with Halifax Bank and did not provide any copies of bank statements or transaction reports from online banking, and he did not respond to provide any additional information when HMRC asked (in their letter of 13 April 2017) for further information or explanations in relation to the three categories of payments which are in issue. HMRC have allowed 80% of the maximum reduction available and we do not consider that there is any basis to allow a greater reduction.

133. HMRC have considered whether there are special circumstances and concluded that there are none. We do not consider that this decision is flawed, and accordingly we cannot disturb it.

134. As a result of our decision in relation to the closure notice, the amount of the PLR is reduced. Mr Omolade shall be liable for a reduced penalty which shall be calculated by HMRC on the basis of the reduced PLR, that his behaviour was deliberate, the disclosure prompted, allowing a reduction of 80% and no further reduction for special circumstances.

CONCLUSION

135. For the reasons set out above, we have decided that Mr Omolade has been overcharged by the assessment issued for the tax year 2012-2013 and his appeal is accordingly allowed in part. The amount of the assessment shall be reduced:

- (1) taxable income shall be £15,869.85 (£7,860.85 from Thames Distribution, £1,242 from Lyon UK and £6,767 of the Halifax Transfers and Other Transfers); and
- (2) allowable expenditure shall be £3,173.97, being 20% of the amended taxable income.

136. HMRC are directed to re-calculate Mr Omolade's tax liability for the tax year accordingly.

137. The penalty shall also be reduced. The PLR shall be the (reduced) tax liability which is calculated in accordance with the above direction, and the penalty shall be amended on the basis that the behaviour was deliberate, disclosure was prompted and mitigation of 80% is allowed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

138. 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.

**JEANETTE ZAMAN
TRIBUNAL JUDGE**

Release date: 10 FEBRUARY 2021