Neutral Citation: [2022] UKFTT 00315 (TC)

Case Number: TC08584

FIRST-TIER TRIBUNAL
TAX CHAMBER

At Bristol Magistrate's Court

Appeal reference: TC/2019/01250

VAT – HMRC assessments on basis that the Appellant had suppressed takings – leading questions and adverse inference – whether assessments made within time limits – whether assessments to HMRC's best judgement – whether behaviour deliberate – appeal dismissed, assessments and penalty confirmed

Heard on: 8 and 9 August 2022
Judgment date: 01 September 2022

Before

TRIBUNAL JUDGE ANNE REDSTON

Between

THE GREAT BRITISH TAKEAWAY LIMITED

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Arnold J Homer, Chartered Accountant and Chartered Tax Adviser, instructed by Marneros Marcus & Co, Chartered Certified Accountants

For the Respondents: Mr Max Simpson and Mr Charles Asuelimen, Litigators of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. The Great British Takeaway Ltd ("GBT") runs a fish and chip shop in Bristol. On 1 October 2018, HM Revenue and Customs ("HMRC") issued GBT with VAT assessments for periods 11/14 to 05/18 ("the relevant period") on the basis that it had suppressed its takings and under-declaring its VAT. The assessments were subsequently amended to £109,450, and before the hearing HMRC asked the Tribunal further to reduce them to a total of £109,157.

2. On 8 February 2021, HMRC issued GBT with a penalty on the basis that disclosure had been prompted and the behaviour deliberate. The penalty was subsequently amended to £51,607.82 in line with the reduced assessments and then amended again to £49,665.94.

3. GBT appealed against the assessments and the penalty. The issues in the case were:

   (1) whether the assessments for periods 11/14 to 8/16 had been made within "one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge", as required by Value Added Taxes Act 1994 ("VATA"), s 73(6);

   (2) whether the assessments had been made to the HMRC's "best judgement" as required by VATA s 73(1);

   (3) if the answer to the above question was "yes", what was the "correct amount of tax" payable by GBT;

   (4) if the assessments were upheld in whole or in part, whether the behaviour was "deliberate" within the meaning of Finance Act 2007, Sch 24 ("Sch 24"); and if not, whether it was careless; and

   (5) whether any resulting penalty should be further reduced under Sch 24, para 9 as the result of the "quality of the disclosure".

4. I decided as follows:

   (1) the assessments for periods 11/14 to 8/16 were made within the statutory time limit;

   (2) all the assessments were made to HMRC's best judgement;

   (3) having considered all relevant facts, there was no basis for reducing the assessments;

   (4) the behaviour had been deliberate; and

   (5) there was no basis further to reduce the penalty.

5. I therefore confirmed the assessments in the total amount of £109,157 and I upheld the penalty of £49,665.94.

THE LATE APPEAL

6. HMRC issued their review decision on 7 December 2018. GBT appealed the Tribunal on 21 February 2019, so the appeal was around 6 weeks late. HMRC did not object to the late appeal. GBT's reasons for appealing late were that:

   (1) On 21 December 2018, Mr Marneros, GBT's accountant, wrote to HMRC saying that GBT wanted to appeal the assessments, asking whether "at this stage, a more formal manner of appealing is appropriate" and making a formal complaint about the review process.

(2) On 2 January 2019, Mr Justin Richards, the HMRC officer who had issued the assessments, emailed GBT saying that "the next step would normally be to follow the Alternative Dispute Resolution ("ADR") procedure as discussed in the review decision letter".

(3) HMRC responded to GBT's complaint on 8 January 2019.

(4) On behalf of GBT, Mr Marneros asked for ADR on 31 January 2019, and at the same time asked HMRC to regard the letter as "a formal appeal against the VAT assessments" and enquired whether "intimation of [GBT's] formal appeal to the VAT Tribunal is necessary at this stage".

(5) HMRC responded by saying that ADR could not be considered, as GBT had not appealed to the Tribunal.

7. I considered the relevant case law, in particular *Martland v HMRC* [2018] UKUT 0178 (TCC). The delay was serious and significant, being over twice the statutory time limit. However, it is clear from the correspondence that HMRC were aware that GBT intended to appeal, and it is also clear that GBT did not understand the interactions between appeals, complaints and ADR; and that Mr Richard's email of 2 January 2019 had been unhelpful in that respect..

8. Having considered and weighed all relevant factors, including giving particular weight to the need for statutory time limits to be respected, I gave permission for GBT to make the appeal late.

THE EVIDENCE

9. The evidence before the Tribunal consisted of both documents and witness evidence.

The documents

10. The hearing of this appeal was originally listed for February 2022 but was postponed. A main bundle of documents and one supplementary bundle was prepared for that hearing. I gave permission for GBT to file and serve a second supplementary bundle before the relisted hearing. In this decision, unless otherwise specified, reference to "the Bundle" is to all three bundles.

11. The Bundle included the following:

(1) correspondence between GBT (and its advisers) and HMRC, and between the parties and the Tribunal;

(2) notes made by HMRC officers following "test purchase" visits to GBT's premises on 4 August 2018 ("the Test Purchase"), and notes made following a subsequent "unannounced visit" to the premises on 22 September 2017 ("the Visit");

(3) a copy of a document headed "E-PoS Cashing Up Record" ("the cashing-up record"), which was the subject of extensive submissions, see further §59;

(4) schedules of sales prepared by HMRC setting out the itemised sales as recorded by the till ("the analysis schedules");

(5) GBT's statutory accounts for the four years from April 2014 to April 2018;

(6) two pictures of the premises and a description of its dimensions; and

(7) documents produced by Mr Marneros, referred to at §17.

Ms Rushworth's evidence

12. Ms Rushworth attended the Visit and took over responsibility for the case from Mr Richards after he had issued the assessments. She provided a witness statement, gave oral evidence led by Mr Simpson, was cross-examined by Mr Homer and answered questions from the Tribunal. I found her to be an entirely credible and honest witness.

Mr Kyriacou

13. Mr Christakis Kyriacou ("Mr Kyriacou") is a director of GBT. He provided a document dated 13 March 2020 which did not comply with the requirements for a witness statement, as it did not include a statement of truth. It also related only to the reasons why adjustments were made to the Z readings. For the reasons explained later in this decision, I reject most of the statements made in this document as not credible.

14. Mr Kyriacou also gave extensive oral evidence-in-chief. Most of this was obtained following leading questions put to him by Mr Homer. Despite reminders from the Tribunal, including warnings as to the effect leading questions have on the credibility of evidence, Mr Homer did not desist; he also took the same approach during re-examination. Mr Simpson submitted that Mr Kyriacou's evidence given in-chief and on re-examination was therefore "fundamentally tainted" and should be given little or no weight. I agree.

15. Mr Kyriacou also made a number of inconsistent statements from the witness box which lacked credibility, in particular in relation to the cashing-up exercise and telephone orders, see §59ff and §69ff.

16. In short, I found Mr Kyriacou to be an unreliable witness. Where there was a conflict between his evidence and that given by Ms Rushforth, I had no hesitation in preferring that of Ms Rushforth.

Mr Marneros

17. Mr Marneros is the owner and director of Marneros Marcus & Co, a firm of Chartered Certified Accountants, previously known as Savvides & Co. That firm has been GBT's accountant throughout the relevant period. For ease of reference, where correspondence has been sent to GBT and/or HMRC from Marneros Marcus & Co, I have referred to it as being from Mr Marneros.

18. The Bundle included the following documents:

(1) a handwritten schedule prepared by Mr Marneros dated 23 March 2020 setting out gross profit percentages for some of his clients, together with a covering letter setting out his "opinion" on GBT's gross profit percentage ("the GPP Documents");

(2) numerical analyses of the till data for the date of the Test Purchase and the date of the Visit ("Mr Marneros's analysis schedules"); and

(3) a handwritten schedule headed "schedule of samples of duplicated telephone orders, errors, staff training etc" ("the handwritten list"), together with copies of particular orders.

19. Mr Marneros attended both days of the hearing. On the second day, I asked Mr Homer about the status of the documents set out in the preceding paragraph, and whether he was making an application for Mr Marneros to give witness evidence. Mr Homer initially said he had not called Mr Marneros as a witness, because he had understood HMRC to have accepted the evidence in the GPP Documents and in Mr Marneros's analysis schedules. However, Mr Homer accepted he had had no confirmation from HMRC that this was the case, and added that if his assumption was wrong, he was applying for Mr Marneros to be allowed to give oral evidence, on the basis that the material he had provided was an "important part" of GBT's case.

20. Mr Simpson confirmed that HMRC had never accepted the evidence in the GPP Documents, Mr Marneros's analysis schedules or the handwritten list. He objected to Mr Marneros giving witness evidence because:

(1) GBT had originally suggested to HMRC that Mr Marneros give evidence as an expert, but had withdrawn that suggestion when HMRC had pointed out that he lacked the requisite independence;

(2) on 21 July 2022, Mr Marneros had confirmed to the Tribunal and HMRC that the only witness attending the proceedings was Mr Kyriacou, with Mr Marneros was attending as an "adviser" to GBT;

(3) Mr Marneros had never provided a witness statement: his letter of 23 March 2020 did not say it was a witness statement, and did not include a statement of truth; instead it explicitly said it was setting out Mr Marneros's "opinion";

(4) HMRC had had no warning that Mr Marneros would be giving evidence, and Mr Simpson had therefore not prepared any cross-examination; and

(5) if the Tribunal now allowed Mr Homer's application on this second day of a two day hearing, it would unfairly prejudice HMRC.

21. I agreed with Mr Simpson for the reasons he gave, and refused the application. As a result, the GPP Documents were not included as evidence in these proceedings. Mr Homer said he was able to explain Mr Marneros's analysis schedules and the handwritten list to the Tribunal and to HMRC. Mr Simpson did not object to that approach to those documents, see further §103 and §81.

The three employees

22. The Tribunal issued standard directions for the hearing on 6 January 2021. Under the heading "witness attendance at hearing", they read as follows:

> "At the hearing any party seeking to rely on a witness statement may call that witness to answer supplemental questions (but the statement shall be taken as read) and must call that witness to be available for cross-examination by the other party (unless notified in advance by the other party that the evidence of the witness is not in dispute)."

23. The Bundle included documents put forward by GBT as witness statements from three employees, Mr Tyler Griffiths, Mr Ashley Hawtin and Mr Simeon Miney. They were all signed, but only the first was dated. All had been included in the Bundle for the first hearing. Their content related to the process used for taking orders from customers and dealing with the till, one of the key factual issues in dispute between the parties.

24. On 3 March 2022, after the first hearing had been postponed, Mr Marneros wrote to the Tribunal saying that GBT "may wish" Mr Griffiths "to give his evidence in person should he be available". On 21 March 2022, the Tribunal wrote to Mr Marneros at my direction, warning that if Mr Griffiths did not attend the hearing "little if any weight is likely to be given to his evidence".

25. None of the three employees attended the hearing. Mr Simpson asked that no weight be given to the related documents for the following reasons:

(1) they did not included a statement of truth;

(2) two were undated;

(3) the Tribunal directed that witnesses must attend the hearing, and the consequences of not doing so had been spelled out by the Tribunal's letter of 21 March 2022; and

(4) none of the employees had attended, and Mr Simpson had therefore been unable to cross-examine them.

26. I again agreed with Mr Simpson. The matters covered in these three documents were highly contentious, and it was plainly not in the interests of justice to ascribe any weight to them, given that the individuals had not attended the hearing to be cross-examined. I set aside those documents and have not considered them in coming to this decision.

Mr Sotiris Kyriacou and Mrs Kyriacou

27. Mr Sotiris Kyriacou and Mrs Pantelitsa Kyriacou are Mr Kyriacou's parents. In this decision, Mr Kyriacou's father is referred to as Mr Sotiris Kyriacou and his mother as Mrs Kyriacou.

28. During the relevant period, Mr Sotiris Kyriacou and Mrs Kyriacou were the only directors of GBT, see §36. Both were directly concerned with the issues in this appeal and were thus in a position to give relevant evidence. In particular:

(1) Mr Sotiris Kyriacou regularly worked at GBT's premises, and was present on the night of the Visit, see §41ff; and

(2) it was Mr Kyriacou's evidence that his mother adjusted the Z readings and then completed the daily takings sheets on which the VAT returns were based. This was the key factual issue in dispute between the parties, see §79 and §89.

29. No witness evidence was filed by either Mr Sotiris Kyriacou or Mrs Kyriacou. At the beginning of the hearing, I pointed out that they were both in a position to give relevant evidence. Mr Homer said that only Mr Kyriacou was to give evidence and his parents would not be present. No explanation was given as to why it had been decided not to call them as witnesses.

30. I considered whether to draw an adverse inference from GBT's failure to call Mr Sotiris Kyriacou and Mrs Kyriacou. In *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324 at 339, Brooke LJ adopted the following summary from the judgment of Gillard J in *O'Donnell v Reichard* [1975] VR 916, a decision of the Supreme Court of Victoria:

> "…the effect of a party failing to call a witness who would be expected to be available to such party to give evidence for such party and who in the circumstances would have a close knowledge of the facts on a particular issue, would be to increase the weight of the proofs given on such issue by the other party and to reduce the value of the proofs on such issue given by the party failing to call the witness."

31. In *British Airways PLC v Airways Pension Scheme Trustee Ltd* [2017] EWHC 1191 (Ch) ("*British Airways*") at [141-143], Morgan J summarised the relevant case law and then said that a court or tribunal should ask itself the following questions:

> "1. Is there some evidence, however weak, to support the suggested inference or finding on the matter in issue?
>
> 2. Has the Defendant given a reason for the witness's absence from the hearing?
>
> 3. If a reason for the absence is given but it is not wholly satisfactory, is that reason 'some credible explanation' so that the potentially detrimental effect of the absence of the witness is reduced or nullified?
>
> 4. Am I willing to draw an adverse inference in relation to the absent witness?"

32. He added at [146]:

> "even if I eventually conclude that I have not been given a good reason or a credible explanation for the [party] not calling these three witnesses, it does not follow that I will automatically draw [an adverse] inference...In deciding what inferences to draw, I need to take into account not only the fact that [the individuals] were not called, when they could have been, but also other matters such as what I consider to be the most probable finding to make on the basis of all the evidence which I have received."

33. Although the overall conclusions reached by Morgan J in *British Airways* were subsequently overturned by the Court of Appeal (see [2018] EWCA Civ 1533), that Court made no criticism of his approach to dealing with adverse inferences.

34. I considered the list in *British Airways* in the context of this case. In relation to points 2 and 3 of that list, no reason was given for GBT's decision that Mr Sotiris Kyriacou and Mrs Kyriacou would not attend the hearing. In relation to points 1 and 4:

(1) the effect of not calling Mr Sotiris Kyriacou was that the Tribunal was unable to hear from him as to the operating procedures in the premises, or his account of the Visit. As result, only Mr Kyriacou gave evidence on those matters on behalf of GBT. Given his lack of credibility, the effect of his father's absence was further to weaken GBT's position in relation to those disputed factual matters (on which it had the burden of proof). I decided that there was no need for me to make a specific adverse inference.

(2) The position was different in relation to Mrs Kyriacou. It was GBT's case that Mrs Kyriacou adjusted the Z readings at the end of each day, and the reasons for those adjustments lay at the heart of this appeal. There was plainly evidence to support an adverse inference in relation to Mrs Kyriacou and I decided it was appropriate to draw that inference because GBT had failed to call as a witness the one person who could give first-hand evidence about this key issue.

FINDINGS OF FACT

35. I make the findings of fact in this part of the judgment on the basis of the evidence summarised above, taking into account my findings on credibility and the adverse inference drawn from the lack of any witness evidence from Mrs Kyriacou. I first set out the findings which were not in dispute, followed by the factual issues in dispute and my findings thereon.

Facts not in dispute

36. GBT began trading on 8 April 2014, and from that date until at least July 2018, only Mr Sotiris and Mrs Kyriacou were appointed as directors. At some subsequent date, Mr Kyriacou was appointed a director.

37. At all relevant times, GBT operated a fish and chip shop in Bradley Stoke, Bristol; it was open six days a week. The shop was staffed by family members and also by students. At the end of each day, Mrs Kyriacou was provided with the Z readings. She adjusted those readings and completed the daily takings sheets using those adjusted figures. The nature and extent of the adjustments was in dispute and I return to that issue later in this decision.

38. Mrs Kyriacou sent the daily takings sheets to Mr Marneros, who used those figures to complete GBT's VAT returns, and he relied on the same figures when completing the statutory accounts.

39. On 4 August 2017, Mr Richards and another HMRC officer, Mr Andrew Churchill, carried out the Test Purchase. They entered the premises separately and paid for their purchases. They were given change from the till, which generated two receipts. Each officer was given one of the receipts; the other was given to the kitchen staff so they knew what to cook. The receipt provided to the officers showed what had been ordered, the amount tendered,

the change given and an order number, and it was not in dispute that the kitchen copy was identical. Both officers observed the same process being repeated for other customers. I make further findings about the Test Purchase at §111.

40. Customers also placed orders by telephone and subsequently visited the premises to pay for and collect the food which had been ordered. The evidence as to the process for telephone orders was in dispute and I consider it at §69ff.

41. On 22 September 2017, three HMRC officers, Mr Richards, Ms Rushforth and Ms Bennett, made an unannounced visit to the premises. Ms Bennett is a till specialist from HMRC's Systems Evasion and Analysis Team ("SEAT"). The officers waited outside until the premises was empty of customers, and entered shortly before closing time, which was at 10pm. They asked to speak to the person in charge, and Mr Kyriacou identified himself. Mr Sotiris Kyriacou had left the premises at around 9pm and taken cash home with him for safekeeping. Mr Kyriacou called his father (who lived close by) and he came to the premises.

42. The officers interviewed Mr Kyriacou and Mr Sotiris Kyriacou; Ms Bennett interrogated the till and extracted data, in particular the Z readings since 4 November 2014 (no earlier records had been retained by the till). Ms Rushforth checked that there was no further money in the safe at the back of the premises. Her evidence is that the officers then observed the evening's cash-up exercise, but this is disputed and I return to it at §59ff.

43. On 25 November 2017, Ms Bennett produced a report which outlined the work she had carried out when comparing the till data and the Appellant's VAT returns. As a result of that comparison, she concluded that that GBT's total sales as evidenced by the Z readings from the till exceeded the amounts declared on its VAT returns.

The July Meeting

44. On 26 July 2018, a meeting ("the July Meeting ") took place between Mr Richards, Mrs Kyriacou, Mr Kyriacou, Mr Marneros and Mr Foster, an HMRC officer who took notes of the meeting. Mr Kyriacou and Mrs Kyriacou said that their VAT returns were "true and accurate as far as they were aware" and that all transactions were rung through the till. They also stated that:

(1) expenses paid from the till were properly recorded;

(2) wages were paid from the till and recorded;

(3) cash removed from the till during the day was checked and recorded;

(4) any shortfalls were questioned;

(5) all sales were then entered into a takings book; and

(6) sometimes cash was removed during the course of an evening to reduce the amount in the till, in case of theft.

45. Mr Richards told Mr Kyriacou and Mrs Kyriacou that HMRC's experts had analysed GBT's till data, and this had indicated that the turnover had been understated on GBT's VAT returns. Mrs Kyriacou said that this could be explained by two factors:

(1) New staff are trained using a role play, so they practice on a real till. This means transactions are rung through the till for practice, but they are not necessarily voided off.

(2) Telephone orders are recorded on the till when the customer calls so that it can produce a copy for the kitchen to cook the order. When the customer comes to collect, the order may be rung through again to total up the amount to pay, and the original order may not be voided off.

46. HMRC's note of the July Meeting stated that both Mr Kyriacou and Mrs Kyriacou had said that the failure to void off these transactions "was not a frequent occurrence". Mr Kyriacou denied that this statement was made, and I consider this conflicting evidence at §69ff and §89ff.

47. Mr Richards then provided Mr Kyriacou and Mrs Kyriacou with a schedule setting out HMRC's view of the position. He said that the potential under-declarations were significant and "more than might be explained from staff training etc"; he added that the till reports showed that "training and double recording had been factored in". He had come to this conclusion because the analysis of the till data showed that the numbers of void/error corrections varied from a low of 972 in quarter 5/17 to 1,475 in the quarter ended 11/16. Those figures were not challenged and I find them to be correct. Since the premises was open six days a week, I further find that a transaction was voided/corrected between 13 and 19 times each day.

48. At the end of the July Meeting, Mr Kyriacou and Mrs Kyriacou agreed to allow HMRC officers to conduct an invigilation exercise, during which they would monitor transactions and determine the controls in place and the level of sales; Mr Kyriacou and Ms Kyriacou also said that "if HMRC took that route they would abide by the findings". Mr Richards ended the meeting by saying he would consider the options, but that further records would be requested and would need to be reviewed.

After the meeting

49. After the meeting, but on the same day, Mr Richards emailed Mr Sotiris Kyriacou, asking him to provide weekly takings sheets for periods 5/17, 2/18 and 5/18; and log books/journals, purchase invoices & bank statements for period 5/17. On 28 August 2018, Mr Richards thanked Mr Sotiris Kyriacou for the records, and said he now required the weekly takings sheets for periods 8/17 and 11/17; these were provided.

50. HMRC compared those takings sheets with the till data and the VAT returns, and found as follows:

(1) the figures on the takings sheets were the same as those on the VAT returns;

(2) in the four days before the Visit, and on the day of the Visit, the daily sales recorded on the weekly takings sheets exactly matched the Z readings; but

(3) in all other periods, the Z readings were significantly more than those on the takings sheets.

51. The parties put forward various reasons as to why the position was different for the week of the Visit, and I consider these reasons at §98ff.

The VAT assessments

52. On 1 October 2018, Mr Richards issued GBT with assessments for periods 8/14 to 05/18 totalling £141,202. On 3 October 2018, he vacated the assessment for period 8/14, as GBT had begun trading during that quarter. The assessments as reduced totalled £131,340.

53. Almost all the assessments were arrived at by comparing the sales figures given by the Z readings with the turnover on the VAT returns. However, the till data for period 11/14, was largely absent, see §42; there was incomplete till data for period 11/17, and none for periods 2/18 and 5/18, because these three periods ended after the Visit when the Z readings had been collected. The assessments for those four periods were calculated based on an average of the difference between the figures in the Z readings and the VAT returns for the periods for which till data had been collected.

54. On 10 October 2018, HMRC issued GBT with an inaccuracy penalty of £61,865.77 charged under Sch 24.

55. On 19 October 2018, Mr Marneros wrote to HMRC on behalf of GBT seeking to appeal the assessments. Mr Richards responded the same day, saying that VAT assessments could not be appealed in this way and explaining the procedure for statutory review.

56. On 24 October 2018, Mr Marneros asked for a statutory review of the assessments and the penalty. The Review Officer, Mr Dave Rickaby, noted that Mr Richards had calculated the VAT as 20% of the figure identified as a shortfall; Mr Rickaby recalculated the assessments on the basis that the VAT was instead 1/6 of the shortfall; as a result the total assessed was reduced to £109,456. He issued his review decision on 7 December 2018, together with amended assessment of £109.450[1] and an amended penalty of £51,607.82.

57. Ms Rushforth subsequently identified that an incorrect number of days had been used, and on 27 January 2021 notified GBT that the total should be 109,157; HMRC asked that the Tribunal confirm the assessments after incorporating these further reductions.

58. On 8 February 2021, an amended penalty of £49,665.94 was issued based on the lower figure for the assessments. I make further findings about the penalty at §152ff.

The cashing-up exercise

59. The first of the factual matters where the evidence was disputed was the cashing-up exercise. However, the content of the cashing-up record itself was not in dispute, and I set that out first, followed by the conflicting evidence about the process and my findings of fact.

The cashing-up exercise

60. The cashing-up record consisted of a single sheet of paper which contained boxes for completion. The first boxes were for the VRN (Vat Registration Number), the VAT registered name, the date and the trader's address; these boxes had been filled in by hand.

61. Underneath was a table with three columns headed Note/coin, quantity and value. Along the vertical axis was a list of all possible notes/coins. Each of those boxes had also been completed by hand, stating that there were no £50 notes; £100 each of £20 and £10 notes; 34 x £5 notes, no £2 coins, 24 x £1 coins; 3 x 50p, 17 x 20p, 15 x 10p, and 1 x 5p, making a total of £400.25[2]. From that sum an opening float of £35 had been deducted and the following then added: cheques of £7.30; credit/debit card amounts of £1,319 and cash expenses of £196.69 making a gross takings total of £1,888.24.

62. The next box was the "X read total" of £2,752.90; beside this was written "difference £864.96 taken away at 21.00". The "X reading time shown" was 21.14, the "actual time" was given as 22.14. I find as a fact that the time recorded on GBT's till on the day of the Visit was an hour behind the actual time; this was accepted by Mr Kyriacou in cross-examination. He also accepted that on other occasions, the time shown on the till was different to that recorded by the till, commonly by an hour.

63. On the left hand side of the form, in a blank space, was written "£383" followed by some crossed out text which included the words "removed at lunch" and then (not crossed out) the words "takings from lunch. From X-read".

64. The end of the form has Ms Rushforth's name, signature and the date, followed by that of Mr Richards and finally that of Mr Kyriacou.

[1] The difference between the figure in the review decision of £109,456 and that in the amended assessment of £109,450 appears to be a typographical error.

[2] There was a slight error in the addition, as the total of the above notes/coins listed in fact comes to £405.20, but neither party referred to this in the hearing and it does not affect my conclusions.

Ms Rushforth's evidence

65. Ms Rushforth gave the following evidence about the cashing-up exercise:

(1) The exercise was carried out after Ms Bennett had interrogated the till.

(2) HMRC have a standard procedure in relation to cashing-up exercises. In particular the HMRC officers never handle the money; this is counted by the trader and observed by the HMRC officers.

(3) On this occasion it was Mr Kyriacou who counted the money, observed by Ms Rushforth and Mr Richards.

(4) Ms Rushforth obtained the figure of £1,319 for card purchases from the card machine.

(5) The till contained the cheque for £7.30 shown on the cashing-up record. Mr Homer took her to the itemised schedule setting out all the transactions for that day, which included at 18.45 a cheque of £7.30; the reversal of that entry, and a new entry of £7.30 as a credit card transaction. Ms Rushforth confirmed that there was nevertheless a cheque for £7.30 in the takings for the day.

(6) She had completed all parts of the cashing-up record apart from the final boxes with the names, signatures and dates of Mr Richards and Mr Kyriacou. In cross-examination, Mr Homer suggested to her that the handwriting showed that it had been completed by more than one person, saying that not all of the "7s" had a bar through them. Ms Rushforth considered the cashing-up record and said she was unable to see any example of a 7 without a bar, other than the date inserted by Mr Kyriacou.

(7) After the record had been completed, it was signed and dated. Ms Rushforth signed it first, followed by Mr Richards and finally by Mr Kyriacou. Nothing was added to, or removed from, the record after it had been signed.

(8) Ms Rushforth had asked Mr Kyriacou and Mr Sotiris Kyriacou about the difference of £864 between the gross takings total shown in the first part of the form, and the total shown on the X read taken from the till, and they had both said that this money had been taken home by Mr Sotiris Kyriacou at 9pm so as to reduce the amount of money on the premises.

(9) Ms Rushforth explained the crossing out on the cashing-up record by saying she had initially assumed that lunchtime takings had been removed, but Mr Kyriacou told her that this was not the case, so she had deleted that note.

(10) Mr Sotiris Kyriacou had invited the officers to come to his home to see the money, but they declined. This was because:

(a) Mr Sotiris Kyriacou and Mr Kyriacou had agreed that the identified difference of £864 consisted of money already removed from the premises, so the cashing-up exercise did not disclose any unexplained figures.

(b) HMRC officers require permission to make an unannounced visit such as had happened in this case, and the permission was specific to the particular premises. It did not extend to the trader's home.

(c) HMRC officers were prevented by health and safety requirements from visiting traders' homes late at night.

Mr Kyriacou's evidence

66. Mr Kyriacou's evidence was as follows:

(1) He understood the purpose of the cashing-up exercise was to record the takings for the day.

(2) When asked about the difference of £864 between the total cash from the till reading and the figure on the Z readings, his father had told HMRC that he had taken cash home at 9pm and had offered to take the officers to his house to check the cash, but they had declined.

(3) He had filled in the "coins" sections of the cashing-up exercise and had then signed the form; the form was thus only partially completed at the point when he signed it.

(4) The figure for cash expenses of £196.69 shown on the form was too high; £25 was a more realistic daily figure.

(5) The form contained a figure of £7.30 for cheques, and the business does not accept cheques.

Mr Homer's assertion

67. In his Reply, Mr Homer asserted that HMRC could not have known about the £383 figure for lunchtime takings until after the Visit, and he submitted that this showed the cashing-up record had been incomplete when signed by Mr Kyriacou. However, Mr Homer accepted that he had not put this point to Ms Rushforth and there is no evidence in the Bundle to support his assertion. It thus has no evidential basis and I reject it.

Findings of fact

68. Having considered the evidence set out above, I make the findings of fact underlined below, together with my reasons.

(1) The cashing-up record was completed in its entirety before it was signed by Mr Kyriacou. I come to this finding because:

(a) Mr Kyriacou is a businessman who understood the purpose of the cashing-up exercise. It is not credible that he would have signed an incomplete cashing-up record, let alone one which contained only the coins figures.

(b) Mr Kyriacou agreed that there had been a discussion about the difference between the figure shown by the till, and the cash/notes etc. That discussion could only have been held after the other parts of the form had been completed, disclosing a shortfall.

(2) Ms Rushforth's evidence was that HMRC officers are not allowed to handle the notes and coins. I make the reasonable inference that this is to prevent accusations that money has been removed by the officers in the course of the cashing-up exercise. I accept her evidence and find that Mr Kyriacou counted all the notes and coins (and not only the coins).

(3) The cashing-up record was completed in its entirety by Ms Rushforth (other than the signature boxes). I reject Mr Homer's suggestions that the handwriting is different: there are, as Ms Rushforth said, no differences in the number 7 and no other alleged differences were put to her, otherwise raised by Mr Homer, or visible on the face of the record.

(4) There was a cheque for £7.30 in the till. I come to this finding because:

(a) I have already found that the form was complete in all respects when signed by Mr Kyriacou; he therefore saw the cheque had been included on the form when he signed it and so confirmed its presence.

(b) I found Ms Rushforth to be an honest and credible witness.

(c) In reliance on the detailed schedule of sales for the day of the Test Purchase I find that GBT made 14 other sales which totalled exactly £7.30, and that on the day of the Visit it made 8 such sales. Thus, it is reasonable to assume that it regularly sold goods for £7.30, and that it did so on the day of the Visit in exchange for this cheque.

(5) It follows from the above that by signing the cashing-up record Mr Kyriacou confirmed that the total on the Z reading was the same as the total takings for the day, after taking into account the money removed by his father, the float and the cash expenses.

(6) I accept Ms Rushforth's evidence as to the reasons why the officers did not visit Mr Sotiris Kyriacou's home.

Telephone orders: evidence

69. At the heart of this case was the dispute about what happened when a customer ordered food by telephone and subsequently came into the premises to collect the food. Mr Kyriacou gave evidence about this procedure, but HMRC did not accept most of his evidence. I summarise it below, followed by the parties' submissions and my findings.

Evidence about the order

70. Mr Kyriacou said that when a customer ordered food over the phone, this was always keyed in as "cash", most commonly (but not invariably) as "coins"; the till then issued two receipts (as it would have done had the customer been present in person, as observed by the officers during the Test Purchase, see §39). The receipts showed what had been ordered, an amount of "cash" equal to the order value, and an order number. One receipt was given to the kitchen staff so they knew what to cook, and the other was put to one side.

71. Mr Kyriacou's written explanation of this procedure in his "to whom it may concern" letter of 13 May 2020 was that it had been adopted so that:

> "when the customer arrives their order will be prepared first, with the avoidance of other customer complaints. For example if I placed the order through the till when the customer arrives, then their unique number will come after those who have already ordered, thus if we were to prepare the phone order and call that unique customer number customers would sometimes get irritated and stating 'why was theirs done before mine, I came first'."

72. However, in his oral evidence, Mr Kyriacou stated that the customer was not told the order number over the telephone, and he also said that the second copy of the document was never given to the customer, but retained on the counter. If both those statements were correct, the customer would not know the order number, and so GBT could not have called it out to alert the customer that the food was ready. There were thus inconsistencies between the evidence in the letter of 13 May 2020 and that given at the hearing.

Evidence about what happens when a telephone customer pays in cash

73. Mr Kyriacou's letter went on to say that "if the customers [sic] is paying by cash then the order was already placed through the till so we would collect the money and calculate the change without the use of the till". In his oral evidence, Mr Kyriacou said that if the customer had ordered food costing £14.50 and gave a £20 note to pay for the food, the staff would use a calculator kept next to the till to work out the change, open the till as a "no sale" and give the customer the change from the till.

74. This was inconsistent with Mr Kyriacou's letter, which said that the staff "were instructed that under no circumstances are they authorised to open the till". In his oral evidence, Mr Kyriacou said staff were so authorised when dealing with genuine transactions such as telephone sales settled in cash.

75. Mr Kyriacou accepted that the procedure he described had the following inevitable consequences:

(1) the till would never correctly record the type of consideration received, because most telephone transactions were recorded as "coins", but the majority would in fact be paid at least in part using notes, the "coins" recorded would be overstated and the notes would be understated; and

(2) if the telephone customer *was* given a receipt (see the conflicting evidence on this at §72), that receipt could not show the amounts tendered or the change given, because it was issued before payment was made. Instead, it would show the net amount only, equal to the cost of the goods.

Evidence about what happened when a telephone customer paid by card

76. Mr Kyriacou's letter said this (wording as in original):

> "if a customer prefers to pay by card there was no other option but to place the same order through the till a second time so that we can press the credit card button on the till, we would then again with the amount of the order on the piece of paper so that it can be deducted from the cash total on the Z reading as no cash money was taken."

77. In his oral evidence, Mr Kyriacou said that the method described above was GBT's invariable practice, with the result that all credit card sales were entered twice: once as cash and once as a purchase by credit card. He said it was "too time consuming" to use the void/error correction button on the till and it was simpler to write the duplicate amount on a piece of paper.

78. The Z reading totals extracted by HMRC from the till showed that credit card sales varied from £36,606 or 27% of the total in period 2/15, to £51,657 or over 38% of the total in period 8/17. There was no challenge by GBT to these figures or percentages and I find as a fact that they were correct.

Evidence about the pieces of paper

79. Mr Kyriacou's evidence was that at the end of each day, Mrs Kyriacou was given the pieces of paper ("Notes") on which the credit card duplication adjustments were written; she deducted these adjustments from the Z reading total and entered that lower total on GBT's takings sheets, and then threw the Notes away.

80. HMRC accepted that Mrs Kyriacou had reduced the figures on the Z readings before completing the VAT returns, but did not accept that she had done so in order to reflect the correct sales, but that her purpose had instead been to suppress genuine sales and reduce the VAT payable.

Evidence of duplicate entries

81. If Mr Kyriacou's evidence were to be correct, it must follow that the analysis schedules taken from the information stored in the till, which set out all the transactions for each day would include a high number of duplicate entries.

82. As already noted at §18(3), Mr Marneros had drawn up a handwritten list which included "samples of duplicate orders". Mr Kyriacou said that he had identified these duplicate orders

after having gone through the analysis schedules provided by HMRC. The "samples of duplicate orders" included the following:

(1) Order 74 on 1 May 2017 was for sausage and chips; this is recorded as a cash sale. Order 82 on the same day was for sausage, chips and a fish cake and it is recorded as a credit card sale. It was GBT's case that the second order was a duplicate of the first, and the customer decided to add a fishcake after he arrived in the shop. However, Mr Kyriacou agreed under cross-examination that these could instead be two different customers.

(2) On 5 May order 76 (cash) was matched with order 80 (card). Although the items were the same, the first receipt included change, and it was Mr Kyriacou's evidence that telephone orders were always entered as the exact amount of cash. It follows that these two cannot be duplicates.

(3) On the same date, order 109 (cash) has been matched with order 214 (card). These two orders are both for cod bites and chips, but the first was timed at 17.18 and the second almost two hours later, at 19.02. Although not impossible, it is unlikely that a person would delay for almost two hours before collecting an order.

(4) On both 1 May and 5 May, the schedule identifies one example of a cash order followed soon afterwards by a card payment for identical items.

83. Mr Simpson cross-examined Mr Kyriacou on the alleged duplications. Mr Kyriacou accepted that it was "hard to go back after so long"; that he didn't remember "these specific orders or customers" and finally conceded that "it is impossible to remember".

Telephone orders: submissions and findings of fact

84. Mr Homer submitted that the main reason why there were differences between the figures on the VAT returns, and those in the Z readings, was because Mrs Kyriacou had removed duplicate orders from each of the day's totals, in reliance on the Notes provided to her. Mr Homer said in his skeleton that it was "unfortunate" she had then thrown those Notes away, adding in oral submissions that this was nevertheless reasonable as she had done so after she had established the correct figure to enter on the VAT returns.

85. Mr Simpson submitted that Mr Kyriacou's evidence about the credit card sales was not credible. GBT had been unable to show that credit card sales were duplicated on a regular basis, as would be the case if Mr Kyriacou's evidence was correct. Mr Simpson also submitted that GBT made frequent use of the void/error buttons on the till (see §47) and in the event of an occasional duplicate, had used one of those buttons.

Findings of fact

86. I reject Mr Kyriacou's evidence that all credit card sales made by telephone were duplicated. I instead find that as a fact that this was not the case, for the following reasons:

(1) Had it been the position, it would have been a relatively simple matter to identify a regular pattern of duplications in the Z readings, and these would have been significant in number.

(2) Instead, GBT has identified a very small number of possible duplications, and the great majority of these are unlikely to be duplicates.

(3) Mr Kyriacou accepted that he could not show that any of the listed examples were duplicates.

(4) The credit card sales were £36,606 in period 2/15, rising to £51,657 in period 8/17. It is not credible that a busy fish and chip shop would enter all these sales twice in the till

and make a manual record of the duplication; it is also not credible that writing duplicates on a piece of paper is less "time-consuming" than using the till to make corrections.

(5) Had the process described by Mr Kyriacou been GBT's normal and regular practice, he and Mr Sotiris Kyriacou would have explained to HMRC at the time of the Visit that the Z reading needed to be adjusted because of their method for dealing with phone/credit card sales. However, no such statement was made. In contrast, as I have already found, Mr Kyriacou agreed that the total on the Z reading for the day of the Visit was correct, see §68(5).

(6) Similarly, had this been GBT's invariable practice, Mr Kyriacou and Mrs Kyriacou would have said so at the July Meeting. Instead, they told HMRC that with telephone orders "when the customer comes to collect, the order may be rung through again to total up the amount to pay, and the original order may not be voided off". They therefore did not say they invariably duplicated credit card sales; they instead referred generally to all telephone sales, including those settled in cash.

(7) Mrs Kyriacou was responsible for completing the daily takings sheets and so could have given evidence as to why the figures from the Z readings had been reduced. However, GBT failed to tender her as a witness, and I have made an adverse inference in consequence, see as §34(2).

87. Consistently with my finding that GBT did not enter credit card sales into the till twice and subsequently adjust the Z readings to remove those duplicates, I further find that:

(1) Mr Kyriacou and Mrs Kyriacou *did* say at the July Meeting, that failing to void off duplicate transactions "was not a frequent occurrence", see §46, and I reject Mr Kyriacou's evidence to the contrary; and

(2) duplications/errors were routinely dealt with using the relevant buttons on the till.

88. As noted at §72 above, Mr Kyriacou's more general evidence about telephone orders was internally inconsistent. In addition, it is not credible that customers ordering by phone and paying by cash were never provided with receipts which showed the money they had paid and the change they received, as Mr Kyriacou said was the case, see §75(2). These are further reasons why I have rejected Mr Kyriacou's evidence about GBT's approach to telephone orders.

Training

89. It was common ground that new employees were trained on the till by an experienced staff member pretending to be a customer and placing orders. Mr Kyriacou's evidence was that:

(1) these "dummy" orders were commonly not voided off using the till;

(2) instead they were included in the Notes which were handed to Mrs Kyriacou at the end of each day; and

(3) Mrs Kyriacou adjusted the Z readings to remove the training, using the information provided to her on those Notes, and she then threw the Notes away.

90. GBT provided four related documents. The first was headed "James Training 5-8.30pm", followed by six amounts of £18, £9.85, £15.30, £7.60, £20.90 and £11.35. The second was headed "Training James" followed by six amounts; there were two similar documents both headed "Toby Training". These documents were signed, although the surnames could not be deciphered, and none was not dated.

91. I agreed with Mr Simpson that these documents had no evidential value, because:

(1) Mr Kyriacou accepted under cross-examination that they had been created after the end of the relevant period;

(2) they were undated;

(3) they were not exhibited to witness statements; and

(4) neither "James" nor "Toby" attended the hearing to give evidence.

92. Mr Marneros's handwritten list (see §81) also included a number of orders where the time given on the order was during the hour before GBT's opening time. It was GBT's case that these were examples of dummy orders used in training. Mr Simpson said that all the orders included in the analysis schedules were "real genuine orders", because:

(1) on the date of the Visit, in September 2017, the time recorded on GBT's till was an hour behind the actual time, and Mr Kyriacou had accepted that the time on the till was not reliable, see §62. As a result, there was no evidence that the transactions had taken place outside normal opening hours;

(2) under cross-examination Mr Kyriacou had said that it was "impossible" to know whether these identified orders in fact related to training;

(3) GBT had made extensive use of the void/error buttons, and it was reasonable to infer that these had been used when training; and

(4) Mr Kyriacou and Mrs Kyriacou had said in the July Meeting that adjustments to the Z reading as the result of dummy orders for training were infrequent.

93. I agree with Mr Simpson. I find that GBT normally used the till to void dummy orders for training. There was no reliable evidence as how much training had not been voided other than that this was "not a frequent occurrence" and there was thus no basis on which to make a quantitative finding of fact.

Other evidential points

94. There were also disputes about the following evidential points, which I consider below.

Errors

95. It was GBT's case that staff made errors which were not voided using the buttons on the till, but were instead recorded on the Notes handed to Mrs Kyriacou at the end of the day.

96. Mr Marneros's handwritten list included orders which GBT said were errors. Mr Homer focused in particular on an entry made by "Natasha" for "misc food" of £1.19 on 18 September 2017, which had been reversed out and replaced by an entry for £119. That figure was then included in the analysis schedule and the Z reading for that day, but not under the heading "Sales" but under a separate heading being "Mains". There was no evidence to explain this separate heading. Mr Homer described the inclusion of the £119 in the Z reading as a "glaring error" made by a student employee, and submitted that it proved the Z readings were incorrectly inflated.

97. Mr Simpson responded by saying that there was insufficient evidence about this transaction to prove that it was an error. I agree. If it was an error, it would be surprising if it had been overlooked, given that it was separated out from the "sales" for the day and placed in a separate category of its own. There is thus no evidential basis on which to make a finding that the Z readings contained errors which were not adjusted using the till buttons.

The week ending in the Visit

98. In the week leading up to the Visit, the daily takings sheet exactly matched the Z readings, see §50(1), and this was self-evidently inconsistent with GBT's case that the Z readings were

invariably adjusted at the end of every day so as to reverse genuine errors, training and duplications.

99. In the response to HMRC's Statement of Case, GBT initially sought to explain this by saying that in the week of the Visit, there were no students, and thus only family members were working in the shop, so they made no errors and required no training.

100. In his oral evidence Mr Kyriacou gave a different explanation, saying that after the Visit he had told Mrs Kyriacou that the VAT return had to be completed using the figures from the Z readings without any adjustments; she had prepared that week on that basis, and that as a result the declared turnover was significantly too high for that week, and too much VAT had therefore been paid.

101. I agree with Mr Simpson that:

(1) it was not credible that Mrs Kyriacou would incorrectly complete the daily takings sheet using the Z reading despite having evidence that the Z readings were too high in the form of the daily Notes of duplications and errors. Instead, a business in that position would retain the Notes and explain the position to HMRC; and

(2) the identity between the daily takings sheets and the Z readings for this week was further evidence that GBT did not have a practice of duplicating telephone/card orders, as Mr Kyriacou had said was the case. Credit card sales made up around one-third of all sales at the relevant time and if GBT was right, the alleged duplication would invariably have been present every day;

102. I add that GBT's original explanation that there were no family members in the shop during the week of the Visit was itself disproved by the evidence (provided after the first hearing) relating to the alleged £119 error; this transaction took place in the week of the Visit and was carried out by a student called Natasha.

The analysis schedules

103. Mr Homer sought to rely on annotations to the analysis schedules made by Mr Marneros. As I understand Mr Homer's submission, it was to the effect that some of the figures entered as "coins" on the analysis were in reality "notes".

104. As Mr Simpson pointed out, there was no consistency in Mr Marneros's approach, as there was no obvious reason why he had selected and reclassified particular "coins" entries. I place no weight on Mr Marneros's annotations to the analysis schedules.

The family income and assets

105. The Bundle included a "position statement" from GBT which stated that HMRC's decision "flies in the face of the family financial circumstances" and setting out a statement of "the movement of their wealth over the period of the assessments" together with a statement about drawings from GBT and rental income.

106. That position statement was neither dated nor signed, and did not constitute witness evidence. It was not accompanied by bank accounts for any family member, by credit card statements, or by any other independent evidence. HMRC treated the statement as a mere assertion made by Mr Marneros and/or Mr Homer. I agree. I place no weight on this document and make no finding about the wealth of any family member.

The till

107. The Bundle included a letter from a company called Linden Business Systems ("LBS") dated 26 September 2017. It stated that there had been "an unfortunate accident regarding the cash register" as "it would seem that coke…entered the side vents" and this "contaminated the

main board and caused a total loss of the unit". In his skeleton argument, Mr Homer said that this was "the culmination of technical trouble with the till".

108. I find as follows:

(1) the letter from LBS post-dates the Visit;

(2) it refers to a one-off event, the spilling of drink which damaged the till;

(3) that accident cannot therefore be relevant to the Z readings collected at the time of the Visit;

(4) there is no evidence in support of Mr Homer's submission that there had been other "technical trouble with the till"; and thus

(5) the difference between the Z readings and the daily takings used for the VAT returns cannot be explained by technical problems with the till.

The purchases

109. The Bundle included a listing of purchases of fish and potatoes for the relevant period. Mr Simpson submitted that there was nothing which proved that all purchases made by the business were included in that list. I agree. I make only the limited finding that GBT purchased the fish and potatoes set out in the list, and I make no finding that the list comprised all of the purchases. I return to this point at §141(3).

The size of the premises

110. It was part of GBT's case that the premises was too small for the business to have had the turnover shown by the Z readings, and Mr Homer asked the Tribunal to make this finding on the basis of two pictures of the premises, and a document which said that:

(1) the takeaway area was 18.4m^2, the counter servery was 22m^2, and the preparation area was 64.1m; and

(2) the servery was fitted with a Dutch computerised frying range with five deep fat fryers and two holding baskets.

111. This document appeared to have been written by a professional firm such as an estate agent or surveyor, but neither the name of that firm nor the address of the premises being described was identified on the face of the document. However, HMRC did not challenge its authenticity and I have therefore accepted that it accurately describes GBT's premises.

112. Other relevant evidence is provided by the notes made by the officers who took part in the Test Purchase on 6 August 2017; I take judicial notice of the fact that this was a Tuesday.. The officers recorded that there were seven staff present, four of whom were working in the kitchen and three of whom were serving. Mr Richards entered the premises at 6pm and left at 6.18pm. There were three customers queuing for food when he arrived, and a further eight waiting to collect orders which had already been processed. Mr Churchill entered the premises at 6.12 and left at 6.18; in that six minute period, four other customers paid for food. None of that evidence was in dispute.

113. Taking into account the evidence as to the size of the premises, the equipment, the staff and the customers, I reject the inference which Mr Homer asked me to make, and find GBT falls far short of proving that the premises was incapable of generating the turnover shown by the Z readings.

The Notes allegedly used by Mrs Kyriacou

114. As is clear from the above, GBT's case rested on Mrs Kyriacou having reduced the Z readings by reference to handwritten Notes provided to her at the end of each day by Mr Kyriacou or by Sotiris Kyriacou. However:

(1) Mrs Kyriacou did not give evidence, and I have made an adverse inference, see §34(2).

(2) No copies of the Notes allegedly used to reduce the takings during the relevant period were provided.

(3) The only evidence about these Notes was that of Mr Kyriacou, who was not a reliable witness.

(4) The Notes were not mentioned during the Visit. On the contrary, Mr Sotiris Kyriacou and Mr Kyriacou agreed with HMRC that the Z reading total was correct.

(5) The Notes were not referred to in the July Meeting , attended by Mr Kyriacou and Mrs Kyriacou.

(6) It was not in dispute that GBT was operating a "point of sale retail scheme" to record its sales, and so was required to comply with VAT Notice 727/3. Para 5.3 of that Notice relates to Daily Gross Takings ("DGT") and has the force of law. It reads "You must retain evidence to support any adjustments to your DGT figure". GBT did not explain why it had failed to comply with that legal requirement to retain the Notes.

115. In short, there is no reliable evidence to support the existence of the Notes, and I find as a fact that there were no Notes.

Overall finding

116. No credible reason has been put forward by GBT for the differences between the Z readings and the figures used in the VAT returns. The only credible reason is instead that put forward by HMRC, namely that GBT was suppressing its takings and reducing the VAT shown on its returns, and I so find.

WHETHER ASSESSMENTS IN TIME

117. The assessments were made on 1 October 2018 for periods 11/14 to 05/18. VATA, s 73(1) requires that these assessments "shall not be made later than" the time limits set out in VATA s 73(6), namely

> "(a) 2 years after the end of the prescribed accounting period; or
>
> (b) one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge."

118. Both parties accepted that the assessments for VAT periods 11/16 to 5/18 were within the time limit in (a) above. The issue was with the assessments for periods 11/14 to 8/16.

The parties' submissions

119. It was common ground that the assessments made on 1 October 2018 had been based on the Z readings obtained at the Visit; this had taken place on 22 September 2017. Mr Homer submitted that HMRC therefore had the required "evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment" over a year before the assessments were made, and these earlier assessments were therefore out of time.

120. Mr Simpson submitted that it was clear from the notes of the July Meeting and the subsequent correspondence between the parties that "in the opinion of the Commissioners" HMRC did not have "sufficient" information to make the assessments until they had received:

(1) Ms Bennett's analysis of the Z readings, which was not completed until 25 November 2017;

(2) the documents provided to HMRC after the July Meeting, including those requested on 28 August 2018, just over a month before the assessments were made; and

(3) the information provided orally to HMRC at the July Meeting, which took place on 26 July 2018, just over two months before the assessments were made. At that meeting, Mr Kyriacou and Mrs Kyriacou were informed about the discrepancies identified by HMRC and asked whether there was an explanation. In Mr Simpson's submission, their failure at that meeting to provide a credible explanation for the differences between the Z readings and the figures on the VAT returns was itself evidence of a fact which Mr Richards took into account in making his assessments.

The Tribunal's view

121. In *Pegasus Birds v HMRC* [1999] STC 95 ("*Pegasus Birds*"), Dyson J set out six principles to be used in deciding whether "evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment" has come to their knowledge of HMRC. These are:

> "1. The commissioners' opinion referred to in s 73(6)(b) is an opinion as to whether they have evidence of facts sufficient to justify making the assessment. Evidence is the means by which the facts are proved.
>
> 2. The evidence in question must be sufficient to justify the making of the assessment in question (see *Customs and Excise Comrs v Post Office* [1995] STC 749 at 754 per Potts J).
>
> 3. The knowledge referred to in s 73(6)(b) is actual, and not constructive knowledge (see *Customs and Excise Comrs v Post Office* [1995] STC 749 at 755). In this context, I understand constructive knowledge to mean knowledge of evidence which the commissioners do not in fact have, but which they could and would have if they had taken the necessary steps to acquire it.
>
> 4. The correct approach for a tribunal to adopt is (i) to decide what were the facts which, in the opinion of the officer making the assessment on behalf of the commissioners, justified the making of the assessment, and (ii) to determine when the last piece of evidence of these facts of sufficient weight to justify making the assessment was communicated to the commissioners. The period of one year runs from the date in (ii) (see *Heyfordian Travel Ltd v Customs and Excise Comrs* [1979] VATTR 139 at 151, and *Classicmoor Ltd v Customs and Excise Comrs* [1995] V&DR 1 at 10).
>
> 5. An officer's decision that the evidence of which he has knowledge is insufficient to justify making an assessment, and accordingly, his failure to make an earlier assessment, can only be challenged on Wednesbury principles, or principles analogous to *Wednesbury (see Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1947] 2 All ER 680, [1948] 1 KB 223) [2012] STC 1738 at 1748 (see *Classicmoor Ltd v Customs and Excise Comrs* [1995] V&DR 1 at 10-11, and more generally *John Dee Ltd v Customs and Excise Comrs* [1995] STC 941 at 952 per Neill LJ).
>
> 6. The burden is on the taxpayer to show that the assessment was made outside the time limit specified in s 73(6)(b) of the 1994 Act."

122. When *Pegasus Birds* went to the Court of Appeal under reference [2000] STC 91, Dyson J's decision was upheld, albeit without expressly referring to the above principles.

123. I first considered whether Ms Bennett's analysis of the Z readings was "the last piece of evidence of these facts of sufficient weight to justify making the assessment was communicated to the commissioners". However, I agree with the conclusions of the VAT Tribunal (Mr Paul Heim), in *Lazard Brothers & Co Ltd v HMRC* (1995) VAT Decision 13476. After a careful review of the authorities, he concluded as follows:

> "The Tribunal does not consider that the making of calculations upon facts in the possession of the Commissioners comes within the terms of evidence of facts sufficient to justify the making of the assessment. The making of the assessment is the exercise of the Commissioners' judgment upon the facts.."

124. I next considered the documents provided to HMRC after the July Meeting. These plainly provided evidence of facts, but those facts related to periods 5/17, 8/17, 11/7, 2/18 and 5/18, see §49. They thus did not provide evidence of facts about the earlier periods with which we are concerned, namely 11/14 to 8/16.

125. Finally, I considered the July Meeting. Until that point, HMRC had the VAT returns, the Z readings and Ms Bennett's analysis of those readings, but they did not know GBT's explanation for the differences between the figures on the VAT returns and those on the Z readings. It was only at the meeting that Mr Kyriacou and Mrs Kyriacou said that these discrepancies had been caused by failures to void off some of the training and credit card sales, adding that such oversights were "not a frequent occurrence".

126. I find that Mr Kyriacou and Mrs Kyriacou's failure at the July Meeting to provide a credible explanation for the discrepancies was "the last piece of evidence" sufficient to justify the making of the assessments for periods 11/14 to 8/16, and those assessments are therefore in time.

WHETHER ASSESSMENTS WERE MADE TO BEST JUDGEMENT

127. Mr Homer submitted that none of the assessments were made to HMRC's best judgement and so should be set aside, and that this applied in particular to the assessments for periods 11/14, 2/18 and 5/18, for which no Z readings were held. Mr Simpson submitted that Mr Richards had plainly met the statutory test, given the principles set out in the case law.

128. I first set out the legislation and summarise the case law, followed by the parties' submissions and my view on the assessments in general, followed by consideration of the position for periods 11/14, 11/17, 2/18 and 5/18.

The legislation

129. The assessments were made under VATA s 73, which is headed "Failure to make returns etc". Subsection (1) provides as follows (emphasis added):

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

The case law

130. The correct approach to a "best judgement" assessment was set out in *Fio's Cash and Carry Ltd v HMRC* [2017] UKFTT 346 (TC) ("*Fio*") (Judge Scott and Ms Gable), in a

passage approved by the Upper Tribunal in *Kyriakos Karoulla t/a Brockley's Rock v HMRC* [2018] UKUT 0255 (TCC) (Judges Herrington and Scott):

> "14. In considering an appeal against an assessment under section 73(1), the approach to be adopted was set out in two Court of Appeal decisions, *Rahman (t/a Khayam Restaurant) v Customs and Excise Commissioners* [2002] EWCA Civ 181, and *Pegasus Birds Ltd v Customs and Excise Commissioners* [2004] EWCA Civ 1015. The law was more recently summarised by the Upper Tribunal in *Mithras (Wine Bars) Limited v HMRC* [2010] UKUT 115(TCC) (Judge Sir Steven Oliver QC).
>
> 15. The first stage is for the tribunal to consider whether, at the time such an assessment was made, it was made to the best judgment of the Commissioners. At this stage, the tribunal's jurisdiction is akin to a supervisory judicial review jurisdiction. As stated by Chadwick LJ (as he then was) in *Rahman* (at [32]):
>
> > 'In such cases…the relevant question is whether the mistake is consistent with an honest and genuine attempt to make a reasoned assessment of the VAT payable, or is of such a nature that it compels the conclusion that no officer seeking to exercise best judgment could have made it. Or there may be no explanation; in which case, the proper inference may be that the assessment was indeed arbitrary.'
>
> 16. Chadwick LJ observed (at [43]) that instances of a failure to exercise best judgment would be rare. As he stated at [36]:
>
> > '…But the fact that a different methodology would, or might, have led to a different—even to a more accurate—result does not compel the conclusion that the methodology that was adopted was so obviously flawed that it could and should have had no place in an exercise in best judgment.'
>
> 17. Where the tribunal is satisfied that the Commissioners have used their best judgment in making the assessment, the second stage for the tribunal is to consider whether the amount assessed is correct. As *Mithras* makes clear, in relation to this second stage the tribunal has a full appellate jurisdiction. It can therefore consider all available evidence, including material not available to HMRC at the time when the assessment was made, in substituting its own judgment as to the correct amount of the assessment.
>
> 18. The courts have emphasised that in most appeals against a best judgment assessment the tribunal's focus should be on determining the correct amount of VAT. As Carnwath LJ stated in *Pegasus Birds* (at [38]):
>
> > 'The tribunal should remember that its primary task is to find the correct amount of tax, so far as possible on the material properly available to it, the burden resting on the taxpayer. In all but very exceptional cases, that should be the focus of the hearing, and the tribunal should not allow it to be diverted into an attack on the Commissioners' exercise of judgment at the time of the assessment.'"

131. The case of *Van Boeckel v HMRC* [1981] STC 390 also provides guidance on the approach to best judgement assessments. Woolf J (as he then was), said:

> "What the words 'best of their judgment' envisage, in my view, is that the commissioners will fairly consider all material placed before them and, on that material, come to a decision which is one which is reasonable and not arbitrary as to the amount of tax which is due. As long as there is some material on which the commissioners can reasonably act then they are not required to carry

> out investigations which may or may not result in further material being placed before them."

132. In *Rahman*, Chadwick LJ considered the judgment in *Van Boeckel*, and said:

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

The parties' overall submissions on best judgement and the Tribunal's view

Mr Homer's submissions

133. Mr Homer said HMRC had failed to exercise best judgement because the assessments were based only on the Z readings, and they had not "fairly considered all material placed before them", as required by *Van Boeckel*. He said that this material included:

(1) the evidence as to the reduction of the Z readings by duplications caused by credit card orders and training and by staff errors;

(2) the turnover and assets of GBT as disclosed by the company accounts;

(3) lists of purchases provided to HMRC;

(4) the assets of the family members as disclosed to HMRC;

(5) the gross profit percentage: in this context Mr Homer noted that HMRC had relied on such percentages in *Bustard v HMRC* [2015] UK FTT 546 (TC); and

(6) the size of the shop's serving area.

134. Mr Homer also submitted that HMRC had taken into account a matter that should not have been taken into account, namely the cashing-up exercise. He said that the officers:

(1) had not observed the cashing-up exercise, because the exercise was not completed at the time of the Visit;

(2) did not undertake a cashing-up exercise, because the amounts in the till did not equal the Z reading for the day; there was instead a shortfall of £864.

135. In addition, in Mr Homer's submission, HMRC had failed to consider matters they should have considered, because they had failed:

(1) to accept Mr Sotiris Kyriacou's invitation to visit his home;

(2) covertly to observe the level of trade, for instance by parking in the supermarket carpark opposite the premises; and/or

(3) to carry out an "invigilation" of the premises; this had been agreed to by Mr Kyriacou and Mrs Kyriacou, but HMRC had instead "spurned" this opportunity, which "which would have caused them to question the assessment[s]."

Mr Simpson's submissions on behalf of HMRC

136. Mr Simpson referred to the two-stage test for best judgement, and submitted that in issuing the assessments, Mr Richards had plainly not acted dishonestly or vindictively, and had not made a "spurious estimate or guess which is wholly unreasonable".

137. He made the following submissions in response to those of Mr Homer set out at §133:

(1) There was no reliable evidence that the Z readings had been duplications caused by credit card orders and training and by staff errors; instead, the Z readings had been reduced to suppress the turnover and this reduced the VAT payable.

(2) It was consistent with that suppression for the figures in the accounts also to be reduced.

(3) For the same reason, the list of purchases was likely to be incomplete.

(4) There was no independent evidence of the assets of all family members, but simply a schedule included within GBT's submissions.

(5) The Tribunal had refused to admit the evidence about gross profit percentages for the reasons given earlier in this judgment. The HMRC guidance referred to in *Bustard* had been withdrawn even before the hearing of that case in 2015, and the FTT had criticised HMRC for relying on that guidance, see [146] of that decision.

(6) There was no independent evidence, sufficient to displace the figures given by the Z readings, that the size of the premises meant that it was not possible to generate the turnover shown by those readings.

138. Mr Simpson responded to Mr Homer's other submissions (see §134) by saying that those relating to the cashing-up exercise were factually incorrect; that there were cogent reasons why the officers did not visit Mr Sotiris Kyriacou's home, and HMRC were not required to carry out the further steps suggested by Mr Homer.

The Tribunal's view

139. The case law makes it clear that the Tribunal must consider a "best judgement" assessment in two stages. Mr Homer did not distinguish between the two stages of the test, and his list of factors combines points made on behalf of GBT before the assessments were issued, and further points made in subsequent correspondence.

140. The first stage is whether HMRC had fairly considered all material placed before them and, on that material, had come to a decision which was reasonable and not arbitrary as to the amount of tax which is due. Basing the assessments on GBT's own Z readings was plainly "consistent with an honest and genuine attempt to make a reasoned assessment of the VAT payable" as Chadwick LJ put it in *Rahman*.

141. The second stage is to consider all available evidence and to find the correct amount of tax. Under this heading I considered all of Mr Homer's points at §133. However, I agree with each of Mr Simpson's submissions in response, and I add only the following:

(1) The submission on duplication falls away given the findings of fact earlier in this judgment. In relation to training, there may have been infrequent occasions in which these were not voided (see §93) but there was no reliable basis on which to quantify any adjustment.

(2) It was not in dispute (see §37) that Mr Marneros had completed the statutory accounts from the figures provided by GBT, and he was thus relying on the same information as used for the VAT returns. I have found as a fact (see §116) that those figures had been reduced by GBT in order to suppress their takings, and it is thus plain that the accounts are also unreliable.

(3) I made the limited finding of fact at §109 that GBT purchased the fish and potatoes included on the list provided by GBT, but there is no independent evidence the list is complete. As Mr Simpson says, it would be consistent with the suppression of sales for there to be additional purchases.

(4) I considered the "family income" point at §105 and §106, and was unable to make any finding of fact about the wealth of any family member.

(5) For the reasons explained at §17ff, Mr Marneros's GPP Documents were not included as evidence in these proceedings. Mr Homer's reliance on *Bustard* is unfounded for the reasons given by Mr Simpson.

(6) I made findings of fact about the size of the premises at §110ff, and rejected the inference that it was incapable of generating the turnover shown by the Z readings.

142. In relation to Mr Homer's further four points, the facts about the cashing-up exercise are at §59ff, and as Mr Simpson said, there were cogent reasons why the officers did not visit Mr Sotiris Kyriacou's home. HMRC did not carry out further exercises, such as observing the premises or invigilation, but that does not invalidate the assessments. As Woolf J said "as long as there is some material on which the commissioners can reasonably act then they are not required to carry out investigations which may or may not result in further material being placed before them".

143. In short, GBT has failed to provide any reliable or sufficient evidence to meet its burden of displacing the assessments. That is sufficient to confirm the position for all periods other than for 11/17, 11/14, 2/18 and 5/18, to which I now turn.

Periods 11/14, 11/17, 2/18 and 5/18

144. The assessment for period 11/17 was based on:

(1) Z readings for the period up to 21 September 2017, the day before the Visit;

(2) the turnover for the remaining days calculated based on the average daily sales of £1,398 derived from the Z readings for all other periods; and

(3) the sum of the two was then compared to the turnover reported on the VAT return for the period, and the difference assessed.

145. HMRC did not explain why the Z reading for the day of the Visit was not used, but no objection was raised by GBT, presumably on the basis that the reading for that day was higher than the average figure calculated by HMRC.

146. In relation to period 11/14, there were no Z readings (see §42). Periods 2/18 and 5/18 were both after the Visit, so HMRC also did not have Z readings for those periods. Instead, the assessments were based on comparing the average daily sales of £1,398 derived from the Z readings for all other periods with the figures reported on GBT's VAT returns for these three periods.

The parties' submissions

147. Mr Homer submitted that HMRC were not exercising best judgement because they had simply extrapolated from other periods. Mr Simpson responded by saying that HMRC had relied on the evidence they had obtained, and it was for GBT to show that the figures were incorrect for these four periods.

The Tribunal's view

148. In making the assessments for these four periods, HMRC applied what is known as the "presumption of continuity"; in other words, they have presumed that the position was the same in these four periods as it was in the periods for which they had obtained the Z readings.

149. It is again clear that the first stage of the "best judgement" requirement is satisfied: deciding to use the average of the other periods was reasonable and not arbitrary and

"consistent with an honest and genuine attempt to make a reasoned assessment of the VAT payable".

150. In relation to the second stage, it is, as Mr Simpson said, for GBT to provide evidence to rebut HMRC's assessments for these particular VAT periods: for example, GBT could have provided the actual Z readings for periods 2/18 and 5/18 and for the remainder of period 11/17, but it has not done so. I find that there is no evidential basis on which to set aside or reduce these assessments, and I confirm them.

OVERALL CONCLUSION ON THE ASSESSMENTS

151. The assessments are upheld, subject to the minor amendments as notified by HMRC, see §57. The total of the assessments is thus £109,450.

THE PENALTY

152. The penalty was charged under FA 2007, Sch 24 on the basis that the behaviour had been deliberate and the disclosure prompted. HMRC submitted that, if the Tribunal did not agree the behaviour was deliberate, GBT should be penalised on the basis that it had acted carelessly.

The legislation

153. FA 2007, s 97 is headed "penalties for errors", and begins:

> "(1) Schedule 24 contains provisions imposing penalties on taxpayers who
>
> (a) make errors in certain documents sent to HMRC…"

154. Sch 24, para 1 reads:

> "(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…
>
> (3) Condition 2 is that the inaccuracy was careless (within the meaning of paragraph 3) or deliberate on P's part."

155. A VAT return is one of the documents listed in the Table below that paragraph. Para 3 is headed "degrees of culpability" and provides:

> "(1) For the purposes of a penalty under paragraph 1, an inaccuracy in a document given by P to HMRC is
>
> (a) 'careless' if the inaccuracy is due to failure by P to take reasonable care,
>
> (b) 'deliberate but not concealed' if the inaccuracy is deliberate on P's part but P does not make arrangements to conceal it, and
>
> (c) 'deliberate and concealed' if the inaccuracy is deliberate on P's part and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure)."

156. Para 4 provides that where there is no offshore element, the penalties are 30% of the "potential lost revenue" or "PLR" for careless action; 70% of the PLR for deliberate action, and 100% of the PLR where the action is both deliberate and concealed.

157. Para 5 defines the PLR as "the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment".

158. Para 9(1) provides that a person discloses an inaccuracy by:

> "(a) telling HMRC about it,
>
> (b) giving HMRC reasonable help in quantifying the inaccuracy…and
>
> (c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy…is fully corrected."

159. Para 9(2) provides that a penalty 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", and otherwise it is "prompted".

160. Para 10(2) provides that where the behaviour is deliberate, the "standard" penalty for a prompted disclosure is 70% and the minimum penalty 35%; where the behaviour is careless, the standard penalty is 30% and the minimum penalty is 15%. The quantum of the penalty within those bands is decided by "the quality of disclosure" see para 10(1). Para 9(3) provides that "In relation to disclosure 'quality' includes timing, nature and extent".

Deliberate?

161. The burden is on HMRC to prove that GBT acted deliberately. In *Tooth v HMRC* [2021] UKSC 17 at [43], in the context of the Taxes Management Act 1970 ("TMA") the Supreme Court said:

> "Deliberate is an adjective which attaches a requirement of intentionality to the whole of that which it describes, namely 'inaccuracy'."

162. The Court added at [47], with reference to the relevant section of the TMA:

> "for there to be a deliberate inaccuracy in a document within the meaning of section 118(7) there will have to be demonstrated an intention to mislead the Revenue on the part of the taxpayer as to the truth of the relevant statement."

163. In *Auxilium Project Management v HMRC* [2016] UKFTT 249 (TC) at [63] the Tribunal (Judge Greenbank and Mr Bell) similarly held that "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".

164. Mr Simpson submitted that the consistent and repeated adjustments of the Z readings so as to reduce the turnover figures for VAT could only have been deliberate. Mr Homer did not submit that the difference between the Z readings and the VAT returns could be explained by careless actions.

165. I have already upheld the assessments based on the Z readings and I agree with Mr Simpson that those consistent adjustments can only have been carried out deliberately with the purpose of suppressing GBT's turnover, and I so find.

Reduction for disclosure

166. There was no dispute that the disclosure was prompted. As noted above, the maximum penalty for a deliberate disclosure without concealment is 70% and the minimum 35%. HMRC awarded reductions as follows:

(1) For "telling", 10% out of a possible 30%, on the basis that Mr Kyriacou and Mrs Kyriacou supplied some information at the July Meeting, but did not provide any information as to the true basis or methodology of the suppression.

(2) For "helping", 30% out of a possible 40%, on the basis that GBT had provided records and attended meetings, but had not "actively engaged in quantifying the inaccuracies or volunteered any information relevant to the disclosure".

(3) For "giving", 30% out of a possible 30%, because GBT had promptly responded to requests for information and documents.

167. Mr Homer submitted that insufficient weight had been given to GBT's willingness to co-operate, noting in particular that Mr Kyriacou and Mrs Kyriacou had agreed to an invigilation (see §48). He also submitted that it was unfair that GBT's refusal to admit that takings were suppressed caused HMRC to give a low discount for "telling". Looking at the case overall, he said that the maximum discount should be applied. Mr Simpson asked the Tribunal to confirm HMRC's reductions, saying that they were fair and reflected all the facts of the case, including the willingness to submit to invigilation.

168. I agree with Mr Simpson that the reductions already given fairly reflect the quality of the disclosure, and that the agreement to an invigilation was already encompassed within the reductions for "giving" and "helping".

169. I reject Mr Homer's submission about the "telling" category. Its purpose is that a penalty should be reduced where a person accepts that the document (here the VAT returns) was inaccurate. The Notes on Clauses, published when Sch 24 was introduced, describe "telling" as an "admission", in other words "telling HMRC that there is or may be an inaccuracy". HMRC's guidance at CH82442 similarly explains, entirely correctly, that "telling" includes:

(1) admitting that the document was inaccurate;

(2) disclosing the inaccuracy in full; and

(3) explaining how and why the inaccuracy arose.

170. HMRC allowed 10% out of a possible 30% for "telling" on the basis that Mrs Kyriacou and Mr Kyriacou said at the July Meeting that the differences between the Z readings and the VAT returns could be explained by training and telephone orders. I have found as a fact that this was not the case. HMRC were generous in awarding 10% and there is no basis further to increase it.

OVERALL CONCLUSION AND APPEAL RIGHTS

171. For the reasons set out above, the assessments are upheld subject to the minor amendments already agreed by HMRC, see §57. The total of the assessments is thus £109,450. The penalty of £49,665.94 is also upheld.

172. 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.

ANNE REDSTON
TRIBUNAL JUDGE

Release date: 01 SEPTEMEBR 2022