Neutral Citation: [2025] UKFTT 00052 (TC)

Case Number: TC09406

FIRST-TIER TRIBUNAL
TAX CHAMBER

On the papers

Appeal reference: TC/2021/18569

INCOME TAX – discovery assessments – did HMRC reasonably consider that funds deposited in private bank accounts held in the UK and Isle of Man were undeclared income from trade – yes; has the Appellant failed to declare foreign income – yes; are the assessments made in accordance with the statutory requirements – yes; has the Appellant evidenced that reasonable conclusion to be wrong – no; does behaviour justify longer assessment time limits – yes – assessments upheld.

PENALTIES – behaviour justifying assessments also justifying penalties – penalties upheld

Heard on: 2, 3, 6 – 10 January 2025
Judgment date: 16 January 2025

Before

TRIBUNAL JUDGE AMANDA BROWN KC

Between

HARON MAYET

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

The Tribunal determined the appeal on 2 – 10 January 2025 without a hearing under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (**FTT Rules**) the parties having consented to it being so determined and on the basis that I considered that I was able to decide the matter without a hearing in accordance with the overriding objective. I reached this view because:

(1) The appeal concerns decisions of HM Revenue & Customs (**HMRC**) issued in 2020 and 2021 relating to tax years 1999/2000 – 2015/2016 and therefore is aged and should be determined in the best way possible in all the circumstances.

(2) Haron Mayet (**Appellant**) lives in South Africa and is unable to travel to the UK for a face-to-face hearing. Prior to late 2024 this Tribunal was unable to take evidence from a witness in South Africa remotely (either by video or telephone hearing). Accordingly, I on 29 February 2024 I made directions for the management of the appeal facilitating a decision on the papers including directions that the parties prepare and have answered questions they would have wished to put to witnesses had there been a hearing. The directions also provided for the exchange of position statements/skeleton arguments.

(3) Although taking evidence virtually from South Africa is now permitted, the Appellant confirmed that a video hearing was unlikely to be achieved as a consequence of instability of internet connection. The parties indicated that they remained content that the matter be determined on the papers. The Appellant offered the alternative that the appeal be heard by telephone hearing and/or that I telephone him in order to clarify any uncertainties in the papers. I do not consider it in accordance with the overriding objective to conduct the matter by way of telephone hearing due to the length of the hearing and the volume of papers to be considered. I also note that it would be totally inappropriate for me to call one party (absent the other) to clarify any points of uncertainty as all communication between the Tribunal and the parties would need to be open to the other party. In any event there was no matter on which I required any additional information in coming to my conclusions.

DECISION

INTRODUCTION

1. This appeal concerns the following decisions of HMRC:

   (1) Discovery assessments made pursuant to section 29 Taxes Management Act 1970 (**TMA**) for each tax year ended 5 April 2000 to 5 April 2014 and tax year ended 5 April 2016 as varied on review and I was invited to uphold by HMRC in their skeleton argument (**Assessments**);

   (2) Penalties issued pursuant to schedule 18 Finance Act (No 2) 2017 for tax years ended 5 April 2000 to 2014 inclusive (**Sch 18 Penalties**); and

   (3) Penalties issued pursuant to schedule 24 Finance Act 2007 for tax years ended 5 April 2014 to 2016 inclusive (**Sch 24 Penalties**)

   (Together the Sch 18 Penalties and Sch 24 Penalties are referred to as **Penalties**).

2. HMRC issued closure notices (**CNs**) for the tax years ended 5 April 2017 and 2018. The CNs applied the same inferences and methodology to those applied in the later years of the Assessments. The amendments in these closure notices were conceded by HMRC and are no longer pursued.

3. The Assessments and Penalties were issued by HMRC because they considered that the Appellant had deliberately (as regards the Assessments and Sch 24 Penalties) failed to bring into account (1) income from his trade providing property management services to customers and (2) interest income from Isle of Man (**IoM**) bank accounts.

4. In the period covered by the Assessments the Appellant operated a property management business. Initially he traded as a sole proprietor, subsequently as a partnership and finally through and incorporated entity Alliance Residential and Commercial Limited (**ARCL**). HMRC contend that he failed to fully declare the income from that trade prior to the incorporation of ARCL and then continued to run an off-record trade as a sole proprietor in parallel to the activities of ARCL.

5. For the reasons set out below I uphold the Assessments and Penalties in the amounts set out in paragraph 76 below. These revised figures reflect the concessions made by HMRC arising from the information provided by the Appellant in the final months before determination of this appeal.

RELEVANT LAW AND STATUTORY TEST

6. Whilst there was no disagreement between the parties as to the law that applied the dispute centring on whether the facts justified the Assessments and Penalties, I start with a brief summary of the law to provide the context in which the evidence is considered and by reference to which I find the facts.

Residence

7. Since 6 April 2013 a person status as tax resident in the UK has been determined in accordance with the statutory residence test prescribed in Schedule 45 Finance Act 2013. Paragraphs 3, 5, and 7 provide for an individual to be resident automatically where the person is in the UK for at least 183 days in the tax year.

8. For tax years prior to 2012/13 determining UK residence could be more complicated. However, as with the later statutory residence test any person in the UK for more than 183 days in any one tax year was automatically UK resident with no exceptions. Where the number of

days were less than 183 an individual may nevertheless have been considered UK tax resident by reference to factors such as: whether the individual had a spouse, children, or other family ties to the UK; business activities including running, owning or employment in a UK business; property ownership or residential accommodation in the UK; together with UK social ties.

9. In the tax years relevant in this appeal where an individual was UK resident, they were generally liable to UK tax on all income and gains arising both inside and outside the UK. Special rules applied which permitted foreign income to be taxed in the UK only when such income was remitted to the UK. The Appellant has never claimed to be assessable on a remittance basis and I do not consider these rules further.

Discovery assessments

10. Pursuant to section 29(1) TMA HMRC have the power to raise assessments to tax (including as relevant in this case to income tax) where an officer discovers that income tax which ought to have been assessed has not been so assessed provided that (again so far as relevant in this case) the inaccuracy giving rise to the insufficiency in the original assessment was brought about carelessly or deliberately by the taxpayer or a person acting on the taxpayer's behalf (as per section 29(4)).

11. Case law establishes that HMRC will have made a discovery of an insufficiency where an officer forms a reasonable belief that there is an insufficiency (see *Jerome Anderson v HMRC* [2018] UKUT 0159 paragraphs 28 – 30).

12. It will be established that an inaccuracy is brought about deliberately where it can be shown that the taxpayer intended to mislead HMRC when providing them with a document (including a self-assessment return) which he knew was inaccurate and with the intention that HMRC would rely on the inaccurate document (see *HMRC v Raymond Tooth* [2021] UKSC 17). Deliberate conduct may also be established where the taxpayer suspects that a document rendered to HMRC is inaccurate and turns a blind eye to whether it is inaccurate (see *CPR Commercials Ltd v HMRC* [2023] UKUT 00061 (TCC)).

13. A careless inaccuracy arises where the taxpayer fails to take reasonable care to avoid the inaccuracy i.e. the taxpayer fails to act in the way expected of a prudent and reasonable taxpayer in the position of the taxpayer in question (see *Atherton v HMRC* 2019] UKUT 0041 (TCC)).

14. The time limit in which HMRC may raise a discovery assessment based on a careless inaccuracy is 6 years from the end of the tax year assessed. The time limit is extended to 20 years from the end of the tax year where the inaccuracy is brought about deliberately (section 36 TMA).

15. Where HMRC exercise their power to raise a discovery assessment they must assess the amount of tax which they consider ought to be assessed by reference to the information they have recognising that it is the taxpayer who has access to all the true and underlying information and records.

16. Where faced with limited information provided to them by the taxpayer, or otherwise obtained by HMRC, HMRC are left with no option but to draw inferences from the material they have. It is then for the taxpayer to produce evidence which challenges those assumptions. It is not the role of HMRC to do the work of the taxpayer (see *Johnson v Scott (Inspector of Taxes)* [1978] STC 48).

Sch 18 Penalties

17. Schedule 18 Finance Act (No 2) 2017 (**Sch 18**) created an obligation requiring anyone who had underdeclared UK tax liabilities in the period prior to 5 April 2017, involving, so far as relevant in this appeal, an offshore source of income or movement of income offshore, to

disclose them to HMRC on or before 30 September 2018. In this context paragraph 7(1) Sch 18 brings within scope of "offshore tax non-compliance" defined as non-compliance which involves an offshore matter whether or not it also involves an onshore matter including offshore income and/or movements of UK oncome offshore. Where the offshore jurisdiction was the IoM any failure to make the relevant declaration resulted in liability to a penalty of 200% of the potential lost revenue (**PLR**) associated with the uncorrected tax charge. Given that the definition of offshore non-compliance the PLR will include both onshore and offshore under declarations arising from the same facts and circumstances. Where a taxpayer provides full cooperation in telling, helping, and giving the penalty rate can be reduced to 150% of the PLR.

18. In addition to reductions for quality of disclosure HMRC have the power to grant a reduction in special circumstances. In *Barry Edwards v HMRC* [2019] UKUT 0131 (TCC) (***Edwards***) the Upper Tribunal explained that there is no particular magic to the assessment of whether circumstances are special. Essentially, HMRC must determine whether, in all the circumstances to raise the penalty in the calculated amount fits the intention of Parliament vis a vis the penalty in question.

19. A taxpayer is not liable for Sch 18 Penalties if they can show that they had a reasonable excuse for the failure to comply with the disclosure requirements of Sch 18. The test for establishing a reasonable excuse is articulated by the Upper Tribunal in *Christine Perrin v HMRC* [2018] UKUT 0156 (TCC) (***Perrin***). A reasonable excuse is established on the proven facts which the Tribunal must objectively assess as reasonable by reference to a person with the same attributes and in the same position as the taxpayer in question. If the excuse is proven and reasonable it must be determined if, and if so when, the excuse came to an end because a penalty will nevertheless apply unless the taxpayer has remediated the default giving rise to the penalty within a reasonable period after the reasonable excuse ended.

Sch 24 Penalties

20. Schedule 24 Finance Act 2007 (**Sch 24**) provides for penalties to apply where a person carelessly or deliberately gives HMRC an inaccurate document (i.e. in this case a self-assessment tax return) which understates tax liability.

21. Careless/deliberate conduct is determined on broadly the same basis as identified in paragraphs 12 and 13 above.

22. For penalties based on deliberate conduct where identification of the inaccuracy was promoted by HMRC the maximum penalty is 70% and may be reduced to 45% with full cooperation.

23. As with the Sch 18 Penalties, Sch 24 provides for reduction in special circumstances applying the same test identified in *Edwards*, and for the reasonable excuse defence.

BURDEN OF PROOF

24. In this appeal as HMRC have assessed for 20 years it is for HMRC to demonstrate, on the balance of probabilities, that they discovered that the Appellant had rendered inaccurate self-assessment returns for the tax years in dispute and that the inaccuracies were brought about as result of deliberate conduct. Establishing deliberate conduct will also meet the burden on them vis a vis the Penalties.

25. If the primary case for the Assessments and Penalties is established it is then for the Appellant to show, again on the balance of probabilities on the evidence, that the sums assessed are overstated.

EVIDENCE

General points on evidence

26. I was provided with a bundle of documents consisting of all correspondence between the parties, and other documents provided by each side together with a witness statement from Officer Leese, the statement of facts prepared by the Appellant, their respective position papers and the questions and answers provided in lieu of cross examination. The bundle consisted of 3929 pages. As this matter was determined on the papers, I have looked at every page in the bundle and I have read thoroughly all those to which either party specifically referred in correspondence or in their position papers.

27. I note at this stage that when considering the evidence available I need to be cognisant of a number of factors. First and foremost of the fact that the period covered by the Assessments is 20 years the earliest of which is now more than 25 years ago. As I reflected in my own judgment in *Cry me a River v HMRC* [2022] UKFTT 182 (TC) memory and recollection over such a period is inherently unreliable and contemporaneous documentary evidence is to be preferred where it is available or where inferences can reasonably be drawn from such documents.

28. This case is also one where the challenge to oral testimony by way of cross examination was precluded because the Appellant is now out of the jurisdiction and was unable to participate in a video hearing. I have the benefit of the questions out and answered by both sides, but it is not a comparable substitute to live cross examination which is responsive and dynamic.

29. I also now deal with the serious allegations raised by the Appellant against Mr Leese's professionalism and integrity thereby also challenging the justification and basis of the Assessments and the decision to penalise. I note first that as a statutory Tribunal my jurisdiction and powers are limited to determining whether the Assessments and Penalties have been raised in accordance with the relevant statutory provisions identified above and represent a correct assessment of the amount of tax and penalty due. I have no power to consider HMRC behaviours, any challenge in that regard is a matter for the administrative courts by way of judicial review. That said, however, I can assure the Appellant that I read and considered the allegations carefully. It is plain that the Appellant considers that his own efforts to overcome the challenges he perceived as an Indian born South African who felt forced to leave South Africa with the aim of establishing a prospering business in the UK have not been acknowledged by HMRC and that the Assessments and Penalties represent further manifestation of perceived prejudices suffered. However, on the basis of all of the information contained in the bundle, particularly the picture presented through the 6 years of correspondence, I consider that Mr Leese has acted in a professional manner in accordance with the powers statute has bestowed upon him as an officer of HMRC.

30. The Appellant also challenges Officer Leese's evidence as hearsay evidence. The rules of evidence which apply in this Tribunal are more flexible than in other civil courts. In accordance with Rule 15 FTT Rules. I have the power to admit or exclude evidence whether or not it would be admissible in other civil proceedings. When I admit evidence, I am entitled and should place such weight on it as is appropriate in the interests of justice. I have considered Officer Leese's evidence. I note that it reports matters that are within his knowledge and belief by reference to the documents available to him. I do not consider that it represents hearsay even in a strict sense. The thrust and purpose of the statement is to explain how the decisions to assess and penalise were taken and to elucidate the basis of calculation of the assessments and rates of penalty. These are all matters within the direct knowledge of Office Leese.

Chronology

31. From the documentation provided to me I derive the following chronology. Paragraph 149 below contains my findings of fact derived from the evidence.

32. The Appellant was registered for self-assessment in the UK from 28 February 1997. He rendered full tax returns for each year relevant to this appeal. None of the returns so rendered indicated that the Appellant was non-resident in the UK. There is no record of any compliance check into the Appellant's personal tax affairs prior to March 2016.

33. On 16 March 2016 HMRC, acting through the first officer assigned, commenced a compliance check having received information from banks operated on IoM regarding accounts held by the Appellant. HMRC issued an non-statutory request for information and documentation regarding the bank accounts for the tax year 6 April 2012 to 5 April 2013. Their stated purpose in undertaking the compliance check was to identify whether tax had been correctly accounted for on the interest received on deposits in the accounts and to ensure that the deposits themselves had been correctly returned for tax purposes.

34. The Appellant, through his first representatives, challenged the vires of the check undertaken and did not provide the requested information and documentation. As a consequence, on 31 May 2016, HMRC issued a formal notice to produce information using their powers under Schedule 36 Finance Act 2008 (**Sch 36**). The Appellant, through new representatives, appealed the notice. HMRC, through the second appointed officer, addressed the basis of the appeal and reissued the notice on 20 July 2016. Having terminated the engagement with his second representatives, the Appellant appealed the reissued notice and continued corresponding with HMRC. His stated position was that the IoM accounts had been opened by family members using South African passports but using his UK address as a consequence of concerns arising with the political uncertainty in South Africa. The Appellant challenged HMRC's entitlement to be provided with information regarding the source of funds deposited in the IoM accounts as the funds were said to belong to family members who had never resided in the UK and/or to movements of funds prior to his own arrival in the UK. The Appellant explained that all funds in the accounts had been repatriated to South Africa and tax appropriately declared on them in South Africa.

35. A third UK representative was appointed who continued to challenge HMRC's jurisdiction to undertake a compliance check for tax year 2012/13 on the basis that the Appellant was not resident in the UK for that year. The representative advised HMRC that they proposed to gather evidence on the residence position prior to meeting the terms of the information notice.

36. At a meeting on 23 February 2017 attended by the representative (but not the Appellant) it was again explained to HMRC that the IoM accounts were opened to remove funds from exposure in South Africa, that the account was in the Appellant's name but that the funds were owned by him and this 4 siblings. The Appellant's business activity of property letting in the UK was also discussed. The representative agreed to provide certain identified information to HMRC.

37. Subsequent to that meeting, on 19 March 2017, the Appellant emailed HMRC, reiterating that the funds in the IoM accounts were family savings removed in a depleted state from South Africa in consequence of the seizure of assets of his late father by the post-apartheid government under the Group Areas Act. It was further stated that he had properly returned interest on the interest received on the IoM account in his South African tax returns. The Appellant expressed concern that HMRC had been in contact with the South African authorities as it was contended that it led to safety risks. He challenged HMRC's right to information

concerning his siblings and reiterated that no other family members had ever been resident in the UK.

38. Following a telephone conversation in which the Appellant confirmed that the latest representatives were no longer acting for him, in a further email dated 30 March 2017, the Appellant states again that the IoM funds were family money moved from South Africa "mainly due to uncertainty after apartheid, volatile currency, reserve bank controls and possible move to a third country". He reiterates that when the accounts were opened, he was not a British national and that all tax had been appropriately paid in both the UK and South Africa.

39. HMRC raised a further information request on 11 April 2017 seeking to establish the Appellant's residence position and confirming that their intention was to establish whether the Appellant had correctly returned his income. They also responded to the questions put by the Appellant. Penalties were issued in respect of the Appellant's failure to comply with the information notices previously issued.

40. Communication continued and there was a telephone call on 30 May 2017 (for which I was provided with a telephone attendance note) in which it is recorded that the Appellant believed that he had provided the evidence HMRC needed to be satisfied them of his South African residence and expressing concerns of being subject to double taxation. The note demonstrates that HMRC provided an explanation of the operation of double tax treaties as relieving tax paid in South Africa if tax was also due in the UK. During the call the Appellant also explained that the IoM accounts had been opened in his name because he was the only sibling with a non-South African address and that he had completed his UK tax returns on the basis that he was resident in the UK on advice that to do otherwise would carry consequences for his UK residential mortgages. He requested a stay on time limits for payment of the penalties and provision of outstanding information to allow him to return to the UK, appeal the penalties and thereby confirm his good standing. These points were reiterated in a subsequent email.

41. HMRC treated the correspondence as an appeal against the penalties but absent compliance with the notice and no real explanation amounting to a reasonable excuse, the penalties were upheld but a review offered. The Appellant requested a review of the decision on the basis that he considered he was being harassed by HMRC who had no jurisdiction to request the specified information which, in any event, was not in his possession. HMRC's review was provided on 23 November 2017 in which they explain that the information is reasonably required because the Appellant claimed to be non-resident but had rendered his UK tax return on the basis that he was UK resident and that demonstration of residence in South Africa was not evidence that the Appellant did not also have UK residency. On the premise of UK residence all worldwide income was taxable in the UK (with appropriate relief under double tax treaties for tax paid elsewhere). HMRC stated they were entitled to the information requested and, given the IoM accounts were in the Appellant's sole name, it was for him to demonstrate that he was not the owner of them. This he had failed to do. The penalty was upheld. Whilst I was not provided with a copy of the notice of appeal it appears from subsequent correspondence that rather than notifying an appeal against the penalties or the Sch 36 Notice the Appellant applied to the Tribunal for a closure notice to be issued. On the basis that there was no open section 9A TMA enquiry at the time, HMRC treated the application as an appeal to the Tribunal against the Sch 36 notice and associated penalty. The matter proceeded to listing but, in view of the Appellant's then (but unsupported) contention made in correspondence and in the Tribunal proceedings (including at a video hearing) that he was not UK resident in tax year 2012/13, HMRC subsequently withdrew the penalty assessment and did not pursue the notice.

42. Absent the provision of the requested information HMRC contacted the South African Revenue Service (**SARS**) pursuant to the bilateral basis of co-operation provided for under the UK South Africa Double Tax Treaty Article 25(2) Protocol between Government of the Republic of South Africa and The Government of the United Kingdom of Great Britain and Northern Ireland to amend the Convention for the Avoidance of Double Taxation. On 23 May 2018, SARS provided HMRC with confirmation: (1) of the number of days spent by the Appellant in South Africa (for 2011/12 29 days and for 2012/13 9 days – years to end of February) and that the Appellant was not therefore considered resident in South Africa for either year; (2) that the Appellant had not declared interest income from the IoM accounts on his South African tax returns; (3) neither did the Appellant declare any other foreign income on his South African return; (4) the Appellant had declared property rental income in respect of the residential property in South Africa that the Appellant had maintained was his South African residence; and (5) that the Appellant had declared to those authorities that his physical address was in London.

43. A third HMRC officer took over the investigation and on 19 July 2018 HMRC notified the Appellant that, contrary to his persistent assertion of residency in South Africa for tax year 2012/13 SARS had confirmed otherwise.

44. HMRC opened an enquiry under section 9A TMA for the tax year ended 5 April 2017 on 26 November 2018.

45. On 28 November 2018, HMRC notified the Appellant that they had requested information pursuant to Article 5 of the Agreement for Exchange of Information with IoM from the IoM authorities to obtain the bank statements for the IoM accounts. The IoM authorities responded providing information regarding 5 accounts held by the Appellant. The information provided included: know your customer information for two of the accounts showing the date of opening, immediate source of the initial deposit and declared sources of continued deposits; evidence that the Appellant was on the electoral role for his stated London address, companies house documentation for the limited companies of which the Appellant was a director, correspondence between the Appellant and the IoM bank, bank statements, account closure information, and correspondence concerning withholding tax.

46. HMRC analysed the information provided in the records identifying that the accounts were held in the Appellant's name only and that there had been over 400 cheque deposits from UK bank accounts totalling £764,665 in the period 1999/00 – 2012/13.

47. A notice of assessment was issued on 18 March 2019 for the tax year ended 5 April 1999 (the time limit under the 20-year extended time limit for that tax year expired on 5 April 2019). The tax assessed was £13,009.51. HMRC issued human rights and penalty fact sheets on 26 March 2019. In response the Appellant's brother wrote to HMRC. His email followed a similar mantra to that of the Appellant asserting that HMRC's checks represented harassment intended to cause distress and harm. This email indicates that the investigation was racially motivated. The email restates the Appellant's position that he had paid all due taxes and incurred significant costs in advisors fees in looking to ensure that position. The claim that the funds in the IoM accounts were family savings was repeated. Certain allegations were made regarding the integrity of the IoM banks who were said to have targeted South Africans in the post-apartheid era and engaged in dubious practices ultimately resulting in their having their banking licences withdrawn.

48. Office Leese was assigned following the issue of the assessment for 1998/9. He reviewed the investigation to date and the documents obtained from the IoM banks and SARS. Cognisant of the Appellant's claim that he was not UK resident, despite the SARS evidence the Officer extracted historic data from the website for the property letting business previously operated

by the Appellant as a sole trader and subsequently by ARCL. This research satisfied the Officer that the Appellant had been actively engaged in a UK business since 1994 and throughout the period to 2018. Taking all the information together the Officer was concerned that the Appellant had not correctly returned income from his trade and wanted to substantiate the position.

49. By way of a lengthy letter dated 17 June 2019, HMRC provided an analysis of their view on the Appellant's residence status. HMRC had established that for each of the tax years 2014/15 – 2017/18 the Appellant had been in the UK for more than 183 days and was therefore automatically UK tax resident for those years. HMRC only held partial data for the tax year 2013/14 but for the period for which data was held they knew he had been in the UK for 140 days. They considered it reasonable to infer from his pattern of travel and his life commitments in the UK that he was also automatically UK tax resident for 2013/14. For earlier years they also considered it reasonable to conclude that the Appellant was UK tax resident as the Appellant had maintained a habitual base in the UK from the mid-1990s when the Appellant established his property letting business. As a UK resident HMRC maintained that it was reasonable for them to investigate whether the Appellant had correctly returned his income. The officer noted that the IoM bank accounts recorded a large volume of cheque deposits which could not be reconciled to the amounts returned for income tax purposes. HMRC challenged the contention that the source of the deposits were family savings. Concern was also expressed as to the source of funds for the purchase of property in London. Further, it was noted that interest payments received in each year from the IoM accounts had not been declared. HMRC indicated they had identified UK private bank accounts in which they were interested and for which they required access to the bank statements and associated documentation.

50. On 17 June 2019 HMRC also opened a s9A TMA enquiry into the self-assessment return for tax year ended 5 April 2018.

51. The Appellant's response to HMRC's letter was to state that SARS had confirmed that he was compliant and had no case to answer.

52. Correspondence regarding the UK bank accounts ensued. The Appellant persistently asserting that HMRC had no power to require the production of the information on the basis that they were accounts of a company or South African nationals.

53. An enquiry was opened, and an information notice issued to ARCL on 17 June 2019.

54. As recorded in a note of telephone call between the Appellant and HMRC on 15 July 2019 the Appellant informed the investigating officer that he had held funds on behalf of family members which would facilitate their departure from South Africa. He stated that he had not taken income from ARCL other than the sums declared but assured HMRC he would provide the requesting bank information for ARCL. Publicly available information accessed by HMRC concerning the properties under management by ARCL was challenged by the Appellant.

55. On 30 July 2019 the Assessment for 1998/99 was withdrawn by way of a settlement agreement between the parties.

56. Subsequent to that conversation the Appellant continued to advance the view that HMRC had no jurisdiction to require the production of information or to assess him to tax as he was a South African citizen and refused to provide any personal bank statements. He asserted that ARCL was barely profitable, and that he took no salary from it and the property which HMRC considered had been purchased using undeclared trading income had been purchased with a mortgage and familial assistance. The allegations regarding the IoM banks originally articulated by his brother were repeated.

57. Responding to this correspondence HMRC addressed each point made by the Appellant confirming their intention to issue third party Sch 36 notices to the UK banks. Pursuant to that intention HMRC provided the Appellant with a final opportunity to provide the requested information without the need to seek a direction from the Tribunal. The documents were not provided and, consistent with the provisions of Sch 36, HMRC issued the Appellant with a statement of reasons and opportunity letters to the banks then applying to the Tribunal for a decision authorising the issue of the notices to the banks. Sch 36 notices were approved by the Tribunal on 26 November 2019. One of the banks provided the requested information following the opportunity letter as such no formal notices was required in respect of that bank. The other banks provided the information upon receipt of the directions issued by the Tribunal.

58. Formal Schedule 36 notices were also issued to ARCL to obtain statutory records not previously provided voluntarily by ARCL. The records were then duly provided through the Appellant's representatives (presumably acting on behalf of ARCL). Examination of the statutory records indicated certain VAT anomalies and caused HMRC to have other concerns regarding the accuracy of the records in particular when compared to the pattern of operations of the business prior to incorporation.

59. At this point the Appellant reappointed his first representatives to whom HMRC then provided a comprehensive pack of information concerning the investigation.

60. Analysis of all the bank records held by HMRC in excess of £1,300,000 of deposits were made into IoM and UK bank accounts held by the Appellant across the tax years 1999/00 – 2017/18 inclusive. Those compared to total income declared of approximately £317,000. Where provided, the bank account opening documents confirmed that the accounts were in the Appellant's sole name. The account opening documents for one of the UK accounts, signed in October 2007, demonstrated that the Appellant had informed the bank that his annual income was £80,000 (the form appears to have been originally completed on the basis of £80,000 annual salary and amended to £40,000 for each annual salary and other income but no explanation of the source of the other income).

61. On the basis of this information, and absent any evidenced explanation from the Appellant concerning the deposits into personal bank accounts including those in the IoM accounts, HMRC issued the Assessment for tax year 1999/2000 on 20 March 2020 in the sum of £13,058.00. That Assessment was limited to the deposits into the IoM bank accounts. HMRC had no information for that year relating to the UK bank accounts.

62. The Assessment for 1999/2000 was appealed by email on 2 April 2020. No grounds were articulated.

63. The remaining Assessments were issued and notified together on 25 March 2021 as follows.

Tax year	Amount assessed
2000/2001	28,187.20
2001/2002	24,216.80
2002/2003	29,033.74
2003/2004	15,060.30
2004/2005	11,390.05
2005/2006	23,681.53
2006/2007	27,811.10

2007/2008	39,116.17
2008/2009	24,671.33
2009/2010	13,244.02
2010/2011	20,895.92
2011/2012	18,409.65
2012/2013	21,569.93
2013/2014	10,066.61
2014/2015	24,716.86
2015/2016	12,853.16

64. It is apparent from his witness statement that Officer Leese also had some concerns regarding the source of funds for property transactions undertaken by the Appellant in the periods covered by the Assessments. In the end the Officer determined not to make any assessment to tax associated with these properties and accordingly I do not consider them further. I note however, that Officer Leese did exclude from the Assessments deposits into both the UK and IoM accounts which he accepted as not arising from trading income and associated with the property purchases.

65. Officer Leese prepared detailed schedules in which he itemised each deposit into the IoM and/or UK private bank accounts which he considered represented underdeclared trading income. From these schedules I summarise the methodology adopted for assessment of each tax year reflected the information held for that year as follows:

(1) 1999/00, 2000/01 and 2001/02 – assessment based only on IoM deposits. No UK banking records were obtained for this year. Officer Leese determined that all deposits into the IoM accounts were undeclared trading income on the basis that in later years deposits into the UK accounts reflected at least the declared trading income for those years. Any deposit received in the IoM account from the UK business trading account was excluded from the assessment calculation.

(2) 2002/3 – a similar basis of assessment was used as in (1) above. HMRC had 6 months UK private banking statements for this year. Those statements corroborated that it was likely that the UK deposits represented at least the value of the declared trade .

(3) 2003/4 and 2004/5 – HMRC held statements for the IoM accounts and one UK account; though further bank accounts existed in these periods, bank statements were not available for these accounts. From these bank statements Officer Leese identified deposits exceeding the declared turnover of the business. Despite concerns that it was likely that there were further unidentified deposits into UK private accounts for which HMRC did not have statements the assessments for these years were limited to deposits shown on the statements held in so far as the deposits exceeded declared income from trade.

(4) 2005/6 onwards – All deposits shown on the bank statements held by HMRC were summed and those exceeding declared income (adjusted upwards to account for gross rental income rather than declared rental profits) were subject to assessment.

(5) No account was taken directly of the inconsistencies in the business records; however, the inconsistences corroborated concerns that trading income had not been fully

declared and thereby justified a conclusion that deposits into the personal accounts were in fact undeclared trading income.

66. HMRC also gave their view of the matter in respect of the 1999/00 Assessment by letter dated 25 March 2021. This letter particularised the basis of all the Assessments as follows:

(1) Over the period between 06/04/1999 and 27/09/2012 over 400 cheques amounting to in excess of £760,000 had been posted from the UK to IoM and deposited into IoM accounts in the Appellant's name.

(2) When opening the IoM accounts the Appellant had identified income from his property management company as one of his sources of income.

(3) On the evidence there were reasonable grounds for concluding that deposits into personal accounts were likely to be undeclared income from the Appellant's property rental trade.

(4) Deposits across all the Appellant's accounts exceed income declared for tax purposes by at least £883,526.

(5) HMRC were satisfied that some large value deposits were not underdeclared income from trade and were therefore excluded from the Assessment calculations.

(6) As the Appellant was UK resident by reference to the Schedule 45 Finance Act 2013 test from its introduction and by reference to the known ties to the UK (business interests, residential property, bank accounts etc) it was reasonable to conclude that the Appellant was resident in the UK throughout the period 1999 – 2016.

(7) All interest totalling £149,866 earned on IoM accounts was therefore assessable to tax in the UK.

67. On 9 April 2021 HMRC issued closure notices in respect of tax years 2016/17 and 2017/18.

68. HMRC determined to charge penalties to the Appellant. For tax years 1999/00 – 2012/13 Sch 18 Penalties were imposed at a rate of £192.5% of the PLR i.e. the full value of the Assessments as HMRC considered the undeclared deposits across all accounts met the definition of an offshore non-compliance. For the tax year 2013/14 a Sch 18 Penalty was imposed in respect of the undeclared foreign interest income only (there being no IoM deposits in that year). Sch 24 Penalties were imposed at 66.25% of the PLR for tax years from 2013/14 – 2015/16 i.e. the deposits into the UK private accounts. The Penalties were issued on 12 May 2021.

69. The Sch 18 Penalties were imposed because HMRC had concluded that deposits made into the IoM bank accounts were of undeclared income originating in the UK and thus income which had been transferred to a territory outside the UK prior to 5 April 2017. Further, the interest on the accounts was income received outside the UK and thus an "offshore matter" in its own right. The Appellant had been obliged to correct his failure to bring the sums within the UK charge to tax and was thus liable to a penalty calculated by reference to the PLR. The percentage of the penalty was determined on the basis that the correction had been made on a non-voluntary basis (having been identified and assessed by HMRC) arising in a Category 1 jurisdiction putting the penalty in the range of 150 – 200% of the PLR. In this context, and for the tax years from 2002/03, the PLR also included the value of deposits into the UK accounts which exceeded the Appellant's declared income. HMRC permitted a 5% reduction for each of telling, helping, and giving as the Appellant had substantively failed to provide HMRC with any assistance in the identification or quantification of the correction required. The 5% was given under each head to reflect that the business records of ACRL had been provided.

70. The Sch 24 Penalties were imposed in the relevant periods in connection with the unexplained deposits on the basis that the inaccuracies were prompted and deliberate giving a penalty range of 45 – 70%. As with the Sch 18 Penalties a 5% reduction was given for each of telling, helping, and giving.

71. HMRC formed the view that the relevant income tax had been under declared deliberately on the basis that significant income was diverted to the private accounts. The IoM accounts built up significant funds which were then used for private purposes.

72. The Assessments, Penalties and CN were all appealed; they were initially upheld in HMRC's view of the matter letter and were subject to statutory review.

73. In support of the request for statutory review the Appellant (having again dispensed with the services of advisors on the grounds of cost) provided an explanation of transactions in relation to tax years 1999/00, 2006/7, 2013/14, 2015/16 and 2017/18 together with a document from the national careers service indicating the average salary for a property letting agent and an email from Mohamed Mayet which states:

> "I am writing on behalf of Mr Mohammed Mayet brother of Mr Haron S Mayet who has asked me to communicate this message to you.
>
> Mr Mohammed Mayet can confirm and swear that for many years he sent personal and family savings to his brother in London for safety. He also assisted his brother financially to start his business and continued to help him through difficulties in England.
>
> We are a law-abiding family and have always supported out family members."

74. The statutory review was undertaken in light of information provided by the Appellant. HMRC did not accept the Appellant's brother's letter as satisfactory evidence that deposits were from family sources, but they took the view that other evidence provided did demonstrate that particular deposits were not underdeclared trading income and should be excluded from the Assessments. HMRC upheld the Assessments and Sch 18 Penalties for 1999/00, 2000/01 and 2001/02 in full but varied the Assessments (and consequently the Penalties) for 2002/03 to 2015/16. The CNs were cancelled, HMRC accepting the evidence provided for those years. The Assessments for 2002/03 – 2015/16 were all varied downwards; however, during the review it was identified that the Assessments had, misattributed interest income on a tax year rather than income accrued basis. The net effect of the amendments is set out in the table below:

Tax year	
1999/2000	£13,058.00
2000/2001	£28,187.20
2001/2002	£24,216.80
2002/2003	£18,233.74
2003/2004	£15,042.67
2004/2005	£10,930.05
2005/2006	£24,809.28
2006/2007	£15,665.20
2007/2008	£38,679.92
2008/2009	£24,241.65

2009/2010	£13,164.34
2010/2011	£11,940.44
2011/2012	£10,950.43
2012/2013	£10,713.33
2013/2014	£3,051.42
2014/2015	£14,978.81
2015/2016	£2,869.13

75. In compliance with the directions I granted on 29 February 2024 the Appellant served additional documentation alongside his statement of facts and position paper. HMRC have considered that additional documentation and accepted that further deposits were not underdeclared trading income. By their skeleton argument HMRC invite me to determine the assessments in the sums set out below:

Tax year	
1999/2000	£13,058.00
2000/2001	£28,187.20
2001/2002	£23,739.20
2002/2003	£18,233.74
2003/2004	£15,042.67
2004/2005	£6,427.24
2005/2006	£16,207.48
2006/2007	£12,959.20
2007/2008	£36,101.72
2008/2009	£243,032.32
2009/2010	£13,164.34
2010/2011	£11,025.92
2011/2012	£10,566.76
2012/2013	£3,835.80
2013/2014	£3,923,36
2014/2015	Nil
2015/2016	£2,504.31

76. By their skeleton argument HMRC also invite me to uphold the Penalties in identified sums. I have spent some considerable time trying to calculate the basis on which the revised Penalties have been calculated. The Penalties for 1999/00 and 2000/01 remain at 192.5% of the tax assessed. However, for later periods the relevant correlation no longer applies. I have

tried to determine whether HMRC has sought to split the calculation between onshore and offshore errors but that does not appear to be the case. I do not therefore know on what basis the Penalties have been calculated but set out below the percentages for each year. On the basis that the penalty percentages are equal to or less than 192.5% for Sch 18 I am satisfied that I consider them as presented to me.

Year	Tax	Penalty	Percentage
1999/00	£13,058	£21,136.65	192.5%
2000/01	£28,187.20	£54,260.36	192.5%
2001/02	£23,739.20	£45,697.96	192.5%
2002/03	£18,233.74	£33,983.41	186.4%
2003/04	£15,042.67	£26,787.49	178.1%
2004/05	£6,427.34	£10,073.52	156.7%
2005/06	£16,207.48	£27,485.49	169.5%
2006/07	£12,959.20	£22,786.78	175.8%
2007/08	£36,101.72	£65,863.76	182.4%
2008/09	£23,032.32	£39,068.11	169.6%
2009/10	£13,164.34	£21,996.63	167.1%
2010/11	£11,025.92	£17,375.82	157.6%
2011/12	£10,566.76	£17,814.34	168.6%
2012/13	£3,835.80	£7,383.91	192.5%
2013/14	£3,923.46	£2,091.70 (Sch 18)	192.5% (IoM interest)
		£1,879.42 (Sch 24)	66.25% (UK depoits)
2015/16	£2,504.31		66.25%

Appellant's evidence

77. In this section I summarise the evidence provided by the Appellant in support of his case and my assessment of its relevance to the issues I have to determine.

Documents submitted with request for statutory review

78. For the statutory review as identified above the Appellant provided some analysis of deposits for selected years. For 1999/00 the Appellant has listed each of the deposits shown in the IoM banking information and annotated it as "Fronted Payment, Reimbursement, Family Savings" but has provided no further narrative as to the identity of the family member, what was being re-imbursed or what payment was fronted.

79. For 2005/6 the deposits into the IoM accounts are identified individually (rather than for 1999/00 compositely) as "Relative Cheque", "Contra reimbursement fronted payment", "Reimbursement" or "Relative Funds". As previously the individuals from whom the payments are received are not identified.

80. For other years (2006/07, 2013/14, 2015/16, 2017/18 more detail was provided against individual deposits into the UK bank accounts some of which was accepted by HMRC as demonstrating a non-trading income source for the deposits.

81. This evidence is relevant to the detail of the assessments but, as noted, HMRC have accepted the detailed evidence but rejected the general assertions and statements.

Biodata

82. The Appellant has provided a narrative on his family history and in particular the family's nationality with information regarding his ties to South Africa. He has also provided Wikipedia information on various matters concerning the political situation in South Africa particularly concerning the Indian community under the pre- and post-apartheid regime.

83. I do not consider this evidence to be particularly relevant to the issues I have to determine. There is no dispute that the Appellant's nationality is South African. The political difficulties in South Africa are broadly matters of general public knowledge but the documents provide no concrete or detailed information concerning the deposits.

National careers service information of national average salary for property rental agent

84. Showing £16,000 - £35,000.

85. I find this information to be largely irrelevant. The Appellant ran his own business providing property management services either as a sole trader, partner or director and was not employed in a relatively junior capacity as would be reflected in the information provided by the national careers service.

Email from M Mayet

86. The terms of this email are set out in paragraph 73 above. As apparent it provides a simple statement with no detail. It do not therefore consider it provides any specific evidence capable of consideration in determining whether the Assessments are overstated.

Response to statutory review and attachments

87. The respond to the statutory review repeats the statements made throughout as to the conduct of Office Leese; to the asserted absence of a request during the investigation for the production of private bank statements; reconciliation of accounts etc. As with other bald statements I must determine whether they are supported by the evidence more generally.

Copy bank documents from IoM

88. These are replicated in the documents provided by the IoM bank to HMRC. They very much form the basis of the decision I must take.

Letter from a specimen landlord to tenant confirming appointment of the Appellant

89. A handwritten annotation to this letter indicates that monthly rent for this premises was £953.33.

90. I found this document to be of no particular assistance other than to confirm that the Appellant traded and that in his area of operation monthly rents collected were, ion an isolated incident £953.33.

Response to Officer Leese's witness statement

91. A number of factual assertions are made by the Appellant in his response to Officer Leese's statement:

> (1) The Appellant operated a letting business in difficult circumstances having to cold call in order to generate business "fronting" landlords to secure business from rival agents due to a lack of advertising budget.
>
> (2) By 1999 the business remained fledgling and dependent on support from family to remain afloat. Deposits received into the personal accounts from family were for the

purposes of supporting the business which was capital intensive (examples given of payments for repairs, contractors, furniture cleaning etc.)

(3) The Appellant and his family have properly accounted for tax in South Africa.

(4) The accounts of the business were reconciled professionally.

(5) The account for which the opening information shows annual income of £80,000 was opened with a view to obtaining a mortgage. The £80,000 annual income recorded was inserted in error by his bookkeeper and subsequently corrected to £40,000.

(6) No business of the nature of that carried on by the Appellant is capable of generating the income indicated by the Assessments.

(7) HMRC's actions caused the Appellant to have to cease business operations and lose his home in the UK having to return to South Africa.

92. The general background provided by these statements provides some context to the Appellant's submissions in this appeal but, in the main, the statements are not supported by contemporaneous evidence and there is no specific information regarding the deposits which lie at the centre of the appeal.

93. The statement made and identified in subparagraph 91(3) is also contradicted by the information received from SARS.

Statement of fact 8 May 2022 and attachments (as updated on 24 June 2022)

94. The Appellant explains that the business he set up and operated (as a sole practitioner, partnership, and limited company) arose from identifying a gap in the market for low end properties. The landlords of such properties were said to want to deal in cash and wanted someone to deal with their repair issues. The Appellant asserts that he guaranteed each landlord cash rentals to be funded by the Appellant if the Appellant was unable to let the properties withing 24 hours. The Appellant also claimed that he funded repairs and other administration on behalf of landlords. This funding came from his family members through the IoM accounts who were prepared to support him in this was as it provided a hedge against reserve bank controls and emigration.

95. Further, the Appellant challenges that he failed to produce documents requested by HMRC and states that it is impossible for him to produce documentation to support his position given the period covered by the Assessments. He relies on HMRC's own historic verification of the business records.

96. The Appellant asserts that he and his wife took minimal salary from the business and worked long hours renting property and receiving only dividends from the business.

97. He provides a list of the type of payments made through the private bank account:

(1) Family estate disbursements

(2) Rent and rates on the business premises as the landlord of that property required the use of a personal account

(3) Urgent repairs on properties undertaken and then reimbursed by landlords

(4) Petty cash payments, office supplies etc.

(5) Declared rental income, premium bonds and dividends wrongly included.

98. The Appellant explains that the large number of accounts opened and operated was as a result of "the carpet bagger's era" and for the purposes of capitalising on demutualisation.

99. The statement addresses HMRC's conclusions as to the Appellant's conduct denying deliberate behaviour and pointing to the historic verification of company records by HMRC.

100. The consistent mantra of law-abiding behaviour, lack of means and disconnection between lifestyle and the asserted under declarations is made.

101. The statements made in this statement must be considered in the context of the answers to the cross-examination questions put and answers given (as summarised in paragraph 119 below and in light of the weight it is appropriate to put on the Appellant's testimony to the extent that there is no corroborating evidence.

Annex 1, 1A and 1B (response to Caitlin McDonald)

102. The Appellant explains the change in business receipts and turnover between 2003 and 2014 as arising through the collection of rents from which monthly commission was deducted (presumably as distinct from weekly) and hence significantly increased client account figures.

103. Reimbursements are explained as being necessary so as to admit tenants using the Appellant's cleared funds to pay landlords.

104. These explanations challenge conclusions reached by HMRC which do not underpin the calculation of the Assessments and Penalties it is not therefore relevant to the issues I have to determine.

Letter from bookkeeper

105. The letter states that "all accounts were properly reconciled monthly, and expenses methodically accounted for and recorded by me personally."

106. The Appellant did not obtain a witness statement from the bookkeeper and no detail is provided as to what source records were used. The terms of the letter therefore limit the extent to which it is helpful.

Letter from Appellant's brother

107. This letter states "I can confirm that we as a family sent savings to my brother in England for safekeeping. We also helped him to stary a business. The savings originate from our family and relatives businesses in Krugersdorp and Lenasia South Africa and some from overseas. I can also confirm, that I gave instructions to [IoM bank] and sent them cheques payable to them as they told me for our account."

108. The letter provides no detail of when payments were made, by whom or the amounts. In particular there is no indication that the UK bank accounts from which the deposits were made into the Appellants private accounts were accounts in the name of the family members and/or into which family funds were paid. The letter is therefore of limited assistance to the issues I have to consider.

Letter from Appellant's sister

109. The Appellant's sister writes: "I can confirm that I sent savings to my brother and several cheques to the Iom account which were Investment-related. The source of the Funds are genuine family and business savings From many years."

110. As for her brother's letter, this letter provides no detail of when payments were made, by whom or the amounts and is of limited assistance.

Copy correspondence regarding non-domicile declaration from IoM bank

111. It is recorded that on 18 September 2008 the IoM bank had amended the Appellant's record to show him as non-domiciled and that interest would then be paid gross.

112. There is no supporting material to indicate the basis on which the bank determined that the appellant was non-domiciled. The conclusion contradicts the basis on which the Appellant's tax returns were completed. However, as there is no pleaded dispute as to the Appellant's domicile the letters are not relevant to the issues I have to determine.

Appellant's bundle of documents for paper determination

113. The Appellant provided a bundle of documents many of which I have already reviewed and summarised above the further documents relevant to the periods under appeal and within that bundles are:

(1) Certificate of good standing from SARS

(2) Documents demonstrating the purchase of the Appellant's residential property with the assistance of a 50% mortgage.

114. The certificate of good standing provides no detail as to the declarations made by the Appellant for tax purposes in South Africa and must be set in the context of a prior confirmation that the interest on the IoM accounts had not been declared in South Africa. On the basis that the Appellant was resident in the UK there would have been no requirement to account for the interest in the South African tax returns and thus not doing so would not constitute a failure which might have impacted his good standing. To that extent therefore the document supports and inference that the Appellant should have declared tax in connection with at least the IoM accounts on his UK returns.

115. There is no dispute that the Appellant's residential property was purchased with the assistance of a mortgage. Further, HMRC have not assessed on the basis that the balance was funded through underdeclared trading income. The document is therefore irrelevant to the decision I have to make.

116. Other documents in the bundle did not concern the periods under appeal and whilst I looked at them, I did not consider that they were relevant to the issues I have to determine.

Appellant's response to hearing bundle

117. Within the covering note to the response the Appellant provides an explanation for the following deposits:

Deposit	Date	Explanation
£20,979.20	20/11/05	Proceeds from father's estate
£34,553,52	11/02/15	Distribution from mother's estate
£10,808.32	08/04	Distribution from grandfather's estate
£6,600	13/11/06	Personal sale of white goods and a watch
£500, £1,000, £1,500	monthly	Petty cash
£13,500	08/04/12	Identified as payments between UK private accounts
unquantified		Challenge to adjustment for contras associated with payments made to business landlord
£10,257	2015/16	Challenge to inclusion of asserted reimbursements
£12,181	2013/14	Analysis provided as part of statutory review and rejected by HMRC represented.

118. I note that HMRC subsequently accepted that the first two entries in the above table justified a reduction in the Assessments for 2005/6 and 2014/15. Only the third entry is specific and, unlike the entries for the distributions from his father and mother's estates there is no supporting evidence. The remaining general entries suffer from the same evidential issues I have identified above because they are so general they provide no basis on which I can conclude that the Assessments are overstated, even were I to accept the general position as states, as to which see my findings of fact.

Appellant's response to HMRC's cross examination questions

119. By way of his response to HMRC's questions, the Appellant:

(1) Provided a further recitation of the difficulties faced by him as a property letting agent operating in the UK;

(2) Reviews his perspective on HMRC's investigation;

(3) Denies that the bank opening form showing £80,000 as annual income, or the purchase of properties demonstrates income greater than that declared on his tax returns;

(4) Denies that there are any inaccuracies in accounting for business income or in connection with the VAT accounting;

(5) Maintains his position that there had been a previous tax review of his affairs by HMRC which had left him satisfied that all was in order;

(6) Confirms the transfer of the business from sole proprietor to partnership to limited company and denies that he continued to trade as a sole proprietor/in partnership after incorporation of ARCL;

(7) Confirmed that self-assessment tax returns were rendered but does not answer whether he intended HMRC to rely on the declarations made;

(8) In response to a direct question whether he was sole beneficial owner of the IoM funds he answers that "the account was always family related opened during uncertainty at home. British postal address used due to insecurity reasons" (attaching a letter from IoM bank expressing concerns about the dispatch of a cheque to South Africa and not more generally).

(9) Implicitly confirming that interest was earned on the IoM accounts but stating that withholding tax had been deducted until 2008 and then South African tax paid thereafter, "by the family" (confirmation of the change in 2008 provided but no evidence of payment of South African tax).

(10) In response to a question concerning the cheque deposits into the IoM account, stated that family savings originated "from years ago" and reiterated that he had "always supported [his] family and relatives back home" again claiming that all tax had been properly accounted on trading income.

(11) In response to a question as to the value of the deposits into the IoM account: "the deposits were over a twenty-year period, payments to [IoM bank] belonging to family and relatives. I merely supported them and included reimbursements and sale proceeds reported to HMRC."

(12) Concerning the UK accounts responded "The income in the UK has no relevance to family and relatives overseas. … The accounts received different deposits over the years, late parents' estate money, family and relatives, reimbursement, and petty cash."

(13) Indicated the view that the bookkeeper and accountant had declared the correct tax on his behalf.

(14) Asserted that IoM bank had targeted South Africans and were unconcerned with the source of the funds deposited.

(15) Accepted that the business accounts did not show liability to family members but contends that such position was accepted by the accountants.

(16) Implied that capital had been introduced into the business despite there being no records of it in the business accounts.

(17) Confirmed that a property purchase had been made for £460,000 with a 50% mortgage and asserting the balance of the funds had been sent from South Africa. Attached are emails which indicate that funds were to be sent from South Africa and that proof of source would be provided but there is no evidence the proof of funds was so provided, and none is included in the additional documentation provided in this appeal.

(18) Indicates that the transfer of funds on the closure of the IoM accounts was to a family account in South Africa (contrary to that indicated in the papers provided by IoM bank which demonstrate that the account at the South African bank to which a total of £670,927.08 was transferred was an account in the Appellant's name and registered to his UK address).

(19) Accepts that other payments made from the IoM account were made to him personally.

(20) Denies that £80,000 is an accurate reflection of his annual income and that the account opening form was completed by a member of staff.

(21) Claims the deposits from the UK bank accounts had their source as payments from South Africa.

(22) Claims that family loans were repaid.

(23) Attached some business records as an asserted demonstration that the business records were reconciled.

(24) Categorically denies any under declaration of income tax associated with the deposits or any deliberate or other wrongdoing.

(25) Maintains his honesty, long hours and hard work, meagre living, and the contribution to the UK economy through his business.

SUBMISSIONS

Appellant's submissions

120. I have extracted the arguments set out below from the documents identified.

Position taken in correspondence before the notification of the appeal

121. The critical issues raised by the Appellant in correspondence concern HMRC's power to assess him at all in respect of the deposits into the IoM accounts on the basis that he was not resident and/or that the deposits were not of his money.

122. Less is said regarding the UK deposits though I note that it was contended that for all periods post 14 December 2007 when ARCL was incorporated and the property letting business transferred to it, any additional income considered to be derived from property letting would properly be assessable to ARCL and not the Appellant.

123. Much of the correspondence is hyperbole regarding HMRC's conduct. Allegations of racism and inappropriate behaviour are made.

Notice of appeal

124. The grounds of appeal as per the Notice of Appeal are as follows:

> "Attached statement of fact separate.
>
> 1. Investigation from 1999 onwards
> 2. Very wide ranging personal and business accounts and foreign family savings.
> 3. I do not have paperwork
> 4. Four different HMRC investigators since March 2016
> 5. Forced to close business and sell home in the UK
> 6. I do not have the means to fund this investigation from my home country after six long years
> 7. I have always submitted and paid taxes
> 8. All account audited and reconciled accurately over the years
> 9. HMRC found no issues in the past.
> 10. I was led to believe statutory limits apply in the UK for document storage.
> 11. HMRC investigator collected five years of original business documents and bank statements and have not returned them.
> 12. The entire investigation based on investigators assumptions, best of his knowledge and hearsay.
> 13. Assessed additional tax, fines, penalties interest are such that never earned that amounts, do not have and can never pay.
> 14. Retired and do not receive state pension in South Africa
> 15. No Police records or judgement ever issued in the UK
> 16. I am 67 years of age, ill health and asked to defend transactions form small transactions from years ago.
> 17. I no longer reside in the UK."

125. In the accompanying statement the Appellant protests his innocence and provides an expanded narrative to the 17 points listed. He claims that HMRC have acted without full knowledge of the facts and ignorant of the nature and operation of a small letting business. The Appellant perpetuates criticism of HMRC regarding failure to provide full workings to justify the Assessments and claims to have undertaken his own methodical review of the statements to the extent possible without the underlying historical documents. Specifically the Appellant contends:

(1) No account was taken by HMRC of "contras" in the UK bank account entries and they failed to consider expenses in the business including, in particular, rent paid from the Appellant's personal account to the business's landlord

(2) The IoM account deposits were reimbursement paid from family funds to support the business.

Email 7 October 2022 and attachments

126. By this email the Appellant refers to the Tribunal decision in *Oppenheimer v HMRC* [2002] UKFTT 00112 (a case concerning the interpretation of the UK:South Africa double tax treaty as to the question of residence). Relying on that case, and by reference to documents attached (including his and his family's biodata), he urges that the focus of the Tribunal in this appeal should be to consider all the facts and circumstances of the operation of his business and lifestyle and the difficult political situation in South Africa to confirm that no further tax should be due from him.

Reply to Office Leese's witness statement

127. Much of the Appellant's response to Officer Leese's witness statement represents a direct attack on him for the reasons already given I accept Officer Leese's evidence. In this section I limit my review to matters which are properly considered submission. By this document the Appellant contends:

(1) His family is "interconnected" sharing homes, jointly funding property, saving jointly and collectively owning businesses such that reliance only upon banking entries does not give a true or fair reflection of the underlying position.

(2) The Appellant was a recipient of funds from family trusts from a young age such funds being deposited into his private accounts.

(3) Whilst accepting that he is UK tax resident in the years assessed he is nevertheless not "treaty resident".

(4) When completing his tax returns, he acted with reasonable care and on the advice of his accountants who professionally reconciled his accounts.

(5) He has an unblemished personal history acting with honesty and integrity having worked hard and taken no benefits. Throughout the investigation he has been subjected to unfair treatment which has caused him to lose his business and livelihood.

(6) The interest paid on the IoM bank accounts should be subject to tax in South Africa based on his South African nationality and residence.

(7) Given that the assessments span a period of 20 years (the earliest period now 25 years ago) it is entirely reasonable that he does not hold documents which enable him to substantiate his assertions that the funds were family funds.

(8) Documents which would corroborate that the funds in the IoM accounts were family funds were documents belonging to other family members over which he had no power. Further, disclosure of those documents would bring "harm" onto those individuals justifying their non-production.

(9) The Assessments are based solely on bank records obtained and not the whole picture presented by way of his own explanation as to the source of the funds.

(10) The sums deposited included amounts properly due to the Appellant's clients (by way of rent) and for expenses of the business but paid from the private bank accounts.

(11) The amounts for which he has been assessed are not reflected in his lifestyle.

Preface to the Appellant's bundle of documents

128. This documents reiterates the arguments made in previous correspondence and submissions as summarised above.

Response to HMRC's proposed hearing bundle

129. Again largely a recitation of previous submissions. The principal contentions are that the deposits into both the IoM and UK private bank accounts are "business expenses, petty cash, reimbursements, late mother's probate, estate distribution from South Africa, taxed rental income … reimbursements and fronting landlords to secure business". The inability to meet the burden on him to disprove the Assessments is said to be founded on a mismatch between the statutory requirement to hold documents for 6 years and a 20-year assessment.

HMRC's submissions

130. HMRC obtained bank statements for five IoM and ten UK bank accounts in the sole name of the Appellant. These statements were not voluntarily provided by the Appellant and had to be obtained through official channels. HMRC contend that they undertook a full and thorough review of the statements. They identified deposits totalling in excess of £1,300,000 (approx. £760,000 into the IoM accounts and the balance into the UK accounts). HMRC contend that except where there is direct evidence to show the source of a particulars deposits it is reasonable to infer that the deposits are income from trade and that they are assessable to tax to the extent that the exceed the income declared on the Appellants and in the relevant period ARCL's tax returns.

131. Such conclusion is consistent, as regards the IoM accounts, with the account opening information provided by the Appellant to the IoM bank which stated the Appellant's sources of income as including income from trade (but not family savings) and as regards the UK accounts, with the account opening information provided to one of the UK banks (in which the Appellant declared income – whether trading or trading and other as £80,000 per annum). The diversion of commission income associated with the management of property (and not the letting of property) was also consistent with both the size and volume of the deposits.

132. For the period following the incorporation of ARCL, HMRC contend that it may be inferred that the Appellant operated the business declared for tax purposes through ARCL but continued to receive the suppressed trading income himself, as evidenced by the deposits. HMRC contend that such an inference is permissible on the evidence. Alternatively, that the deposits represented a taxable distribution or salary payment to the Appellant by ARCL.

133. HMRC contend that the Appellant's contentions regarding the source of the deposits are not credible. They say that the Appellant's explanation has varied over time and is not evidenced. Initially the Appellant contended that he was not the owner of the IoM accounts and that they were jointly held family accounts. That was disproven when the bank statements for the IoM accounts were obtained. Current but unparticularised and general letters have been produced by the Appellant said to be from his brother and sister confirming that funds were family savings, but those letters do not represent testimony and provide no detail as to when payments were made, the size of payments etc. None of the payments into the IoM account originated outside the UK. The accounts were used to fund significant personal expenditure and when the IoM accounts were closed the funds were transferred by the Appellant to accounts in his own name further testing the credibility of an assertion that their source was South African family money.

134. The Appellant has inconsistently stated that the sums were and were not from inheritance. In the end HMRC have accepted two substantial deposits were sums received following the death of family members.

135. It has also been asserted that the funds were collected to repay his family members but no evidence of loans from family have been provided, in particular no corresponding liabilities were declared in the business accounts or on the Appellant's tax returns, and these loans are not referenced in the letters from the Appellant's siblings.

136. Finally, the Appellant has explained the deposits represent amounts received on behalf of landlords and which should be subject to reduction to account for associated expenditure. HMRC contend that this explanation is tantamount to an admission that the accounts received undeclared income.

137. As regards the contention that income should have been assessed ARCL HMRC contend that it is for the Appellant to establish the nature of the income and to whom it properly belonged. It was reasonable for HMRC to conclude on the evidence before them that sums deposited in the Appellant's personal bank accounts represented income for which he was assessable.

138. As regards the interest accruing on the IoM accounts HMRC contend that the Appellant was resident in the UK throughout the period for which interest was paid to him (and not, for the reasons identified above, to or for the benefit of other family members) requiring him to bring the interest income into account but he did not do so. They base their submissions as to the Appellant's residence status on: his London address, from which for example he lodged an objection to a planning application identifying himself as a local resident; his involvement in the property management business conducted in the UK; UK bank accounts with regular flows of credit and debits; and his tax returns which presumed UK residence (absent a claim to being non-resident and the inclusion of non-resident pages).

139. HMRC contend that it is not for them to demonstrate that the Appellant's lifestyle is commensurate with having failed to declare the assessed income. However, and despite this HMRC point to his purchase of his residence in 2000 and the purchase of a second property in 2005. By reference to the Appellant's declared income the purchases would not have been possible.

140. In light of the analysis of the bank statements and by reference to the considerations reached on them HMRC contend that Office Leese made a discovery for the purposes of section 29 TMA. They contend that the information caused him to believe there was an insufficiency of tax declared in each year and that such belief was a reasonable one.

141. On the basis that they consider there is sufficient evidence, despite the Appellant's denials, to support a conclusion that the Appellant submitted returns knowing or at least closing his mind to an inaccuracy and cognisant that HMRC would rely on the returns rendered, HMRC contend that the returns contain deliberate inaccuracies both as regards justifying the making of a discovery assessment in each year and also justifying the use of extended time limits under section 36 TMA. In the alternative to deliberate conduct HMRC contend that the Appellant's behaviours were at least careless.

142. The basis of calculation of the Assessments are set out in paragraph 65 above. HMRC contend that they represent a reasonable estimation of the quantum of tax due for each year. They contend that Officer Leese used the best information available to him (the bank account deposits) corroborated by other evidence (concerns regarding the business accounting, including VAT inaccuracies). They excluded deposits which had a reasonable and demonstrated alternative explanation. The deposits have been compared to declared income and only those exceeding the income declared have been assessed. Interest has been assessed on the basis that as a UK resident taxpayer the Appellant was required to bring it into account. They note that they have not also sought to establish and bring into account interest on South African accounts as they would also have been entitled to do and consider, to that extent at least, the assessments are likely to be understated.

143. As indicated above HMRC invite me to uphold the Assessments in varied amounts which take account of the further evidence provided by the Appellant post the statutory review. In this regard HMRC have also excluded deposits from bank account branches outside London as

unlikely to relate to the Appellant's property management business. HMRC have invited me to remove all deposits for 2012/13 accepting the Appellant's evidence concerning them. As regards 2013/14 they invite me to now include an additional deposit not originally assessed but note that the net adjustments made reduce the original Assessment for that year. They withdrew the Assessment for 2014/15. For 2015/16 the Appellant indicated that he accepted that a sum of £3,100 deposited in that year represented a dividend paid by ARCL. As no dividends were declared HMRC have treated the payment as salary from ARCL taxable pursuant to section 62 Income Tax Employment and Pensions Act 2003 rather than trading income.

144. HMRC defend the Sch 18 Penalties on the basis that, in accordance with the provisions of Sch 18 the Appellant was relevantly offshore non-compliant i.e. that trading income had been moved offshore without having UK tax declared on it and interest income earned had also not been declared for UK tax purposes in years prior to 5 April 2017 giving rise to potential lost revenue in tax years 1999/00 – to 2013/14 (when the IoM accounts were closed) for which HMRC would have been entitled to assess (thereby meeting the detailed provisions of paragraphs 1 – 7 Sch 18). As such the Appellant rendered himself liable to penalties under paragraph 11 Sch 18.

145. Pursuant to paragraph 14(1) Sch 18 the starting point is that the penalty shall be 200% of the offshore PLR (there is no requirement for the behaviour to be careless or deliberate) the fact of the non-compliance is enough. Paragraph 16 Sch 18 provides for reductions to the penalty by reference to the quality of the taxpayer's disclosure. As the disclosure was following identification of the IoM account by HMRC it was "non-voluntary" which carried the consequence that the minimum penalty after reduction is 150% of the PLR. HMRC contend that having allowed 5% against each of helping, telling, and giving, they have afforded a generous reduction given the resistance of the Appellant to provide any substantive assistance in determining the extend of the under declaration of offshore matters.

146. They contend that the Sch 18 Penalties were correctly made and notified.

147. HMRC also contend, in accordance with the test articulated in *Edwards* there are no special circumstances which justify a reduction in the Sch 18 Penalties and that by reference to *Perrin* no reasonable excuse has been evidenced by the Appellant

148. The Sch 24 Penalties are also said to have been validly raised. For the same reasons as an extended time limit and discovery Assessments are justified the Appellant's conduct was to deliberately render inaccurate returns and thus following the enactment of Sch 24 the associated behavioural penalties are correctly imposed and calculated.

FINDINGS OF FACT

149. As indicated in paragraph 29 above I found Officer Leese's to be honest and credible. Unfortunately, the same cannot be said for that of the Appellant. Whilst plainly I do not reject everything said or asserted by the Appellant the statements he has made as to the facts if this case have been internally inconsistent, and many are not credible.

150. From the evidence available I find the following facts:

Business operations

(1) I reject the Appellant's statements and assertions that he ran his business by way of legitimate business principles. In correspondence he has accepted that he used his private bank accounts for business purposes and that is contrary to legitimate business.

(2) I also find business practices of advancing rent to landlords without having found a tenant and otherwise fronting payments for tenants to have been highly risky and thereby unlikely to have happened.

(3) If either of these purported business practices, had in fact carried out, the Appellant could have evidenced them for some of the periods assessed by reference to statutory records. At the start of the investigation the Appellant should have retained records back to 2010; a significant proportion of the UK deposits were made in the period 2010 – 2016 but the Appellant chose not to produce records supporting these practices.

(4) The business records did not record the receipt of any loans from family to support the business.

(5) I am prepared to accept that the bookkeeper and accountants prepared the books and accounts believing them to be correct by reference to the documents provided to them by the Appellant but that assumes that full records were provided to them. In view of the level of deposits into personal accounts and the pattern of such deposits (small in value and large in number/frequency) I consider it reasonable to infer and so decide that the Appellant did not provide full records of his activities to those producing his accounts and tax returns.

(6) That conclusion is corroborated by the inconsistencies identified by HMRC in the business records.

(7) I consider these inconsistencies permit a reasonable inference that prior to incorporation of ARCL the Appellant operated on record and off record property management businesses. Post the formation of ARCL the Appellant continued to operate an off-record property management business in his own right.

Tax records

(8) The Appellant rendered personal self-assessment tax returns for each year for which HMRC have issued the Assessments and Penalties. Each return offered the Appellant the opportunity to indicate that he considered himself to be non-UK resident in that year. In no year did he so indicate. Similarly, the Appellant's returns were completed on the basis of a UK domicile. It is therefore reasonable to conclude that the Appellant considered himself domiciled and resident in the UK throughout the period covered by the Assessments and Penalties.

(9) The statutory declaration on each return requires confirmation as to the accuracy and completeness of the return. Each return was duly signed by the Appellant.

(10) No evidence was produced from the Appellant's accountants to support a contention that there had been prior visits or confirmation provided by HMRC and no witness statement from the accountant in question was provided which independently confirmed the assertion made by the Appellant in this regard.

Residence

(11) The Appellant is a national of South Africa and was throughout the periods assessed.

(12) By reference to the day count information disclosed by HMRC and undisputed by the Appellant, the Appellant was automatically UK tax resident in 2014/15 and 2016/16.

(13) On the basis of data for part of 2013/14 it is reasonable to infer that the Appellant was UK tax resident in that year.

(14) For the period prior to the introduction of the statutory residence test I do not have day count information but consider it reasonable to infer that it is likely that the Appellant probably spent more than 183 days per year in the UK. Even were that not the case there is no dispute that the Appellant operated a property letting business in London, had a

house in which he lived and from which he corresponded; he also had operational UK personal bank accounts from no later than the tax year 2005/06 which would meet the test for UK residence status.

(15) I therefore consider that he was resident in the UK throughout the tax years for which HMRC seek me to uphold the Assessments and Penalties.

(16) Having so concluded it is irrelevant for UK tax purposes whether he was also resident in South Africa. However, I note that SARS did not consider him to be so resident.

IoM bank accounts

(17) The Appellant held 5 banks accounts in the IoM at least for the period 6 April 1999 to various November 2013.

(18) At least one account of the actively used accounts was opened on the basis that the Appellant declared that the sources of funds to be deposited in the accounts included his property management trade. No mention was made of family savings as a source of funds and the account was not opened on the basis that the Appellant was acting as a trustee or that there were any other beneficiaries of the accounts.

(19) In the period 6 April 1999 – 27 September 2012 over 400 cheques totalling £764,655 were deposited in the accounts. The cheques were all from UK bank accounts owned by parties other than the Appellant and were sent by post by the Appellant to the IoM.

(20) The value and frequency of the deposits reflect that they were part of a trade rather than savings deposits.

(21) On closure of the accounts a transfer of £85,199,38 was made to one of the Appellant's UK bank accounts and two transfers totalling £716,017.08 were transferred to his own bank accounts in South Africa and not, as would be consistent with his position in this case, to other family members.

(22) Given my findings in subparagraphs (17) – (21) above I consider there is no evidence that the deposits which remain part of the assessed amounts represent family savings. I consider it is reasonable to infer without alternative explanation that they are income from a property management trade.

(23) £149,866 was paid in interest to the Appellant as the sole owner of the IoM accounts.

UK private accounts

(24) The Appellant operated ten UK bank accounts in the period covered by the Assessments two of which were used very regularly for the purposes of making deposits. Four further accounts had more infrequent deposits made.

(25) HMRC have analysed the deposits into each of these bank accounts. As with the IoM deposits all were from UK bank accounts, the majority were made at frequent intervals and in low amounts. HMRC excluded from the analysis transfers between the Appellant's personal accounts and any transfer from the business account for the property letting business (whether carried on at the relevant time by the Appellant as a sole trader/partnership or ARCL). HMRC have also excluded deposits for which there was a demonstrable explanation.

(26) The deposits into the Appellant's accounts cannot be explained as dividends or employment income paid by ARCL in the relevant periods as the statutory records for ARCL do not show such payments has having been made.

(27) All other explanations provided by the Appellant lack credibility in all the circumstances and have not been proven by reference to any other evidence. Whilst I accept that the Appellant was not required to retain records for more than 6 years, he has provided no evidence from within the records he was required to maintain (which at the start of the enquiry would have gone back to 2010) to support any contentions made as to the source of the deposits.

(28) The unexplained deposits into these accounts exceeded declared turnover for the business. It is reasonable to infer that thereby represent undeclared income from the business.

(29) That finding is corroborated by the declaration made as to the Appellant's earnings when opening one of the UK bank accounts in which he stated that his total income was £80,000.

(30) It is further corroborated by the inconsistencies in the business records disclosed to HMRC.

Discovery

(31) Having considered Officer Leese's evidence and in the context of the documents I find that he discovered that the Appellant had rendered inaccurate returns for each year for which an Assessment is maintained and that his discovery in this regard was reasonable on the evidence available to him.

Behaviour

(32) The number and total value of the deposits is significant in total and on a year in year basis. When signing the return declarations it would or certainly should have been obvious to the Appellant that they were incorrect and that by signing the return HMRC would rely on the return and the declarations.

(33) I consider that the Appellant deliberately rendered to HMRC tax returns which he knew to be incorrect. The figures are material.

(34) Whilst not directly relevant to whether the returns were rendered on the basis that they were deliberately inaccurate I also note that the Appellant has sought to and actively misled HMRC on a number of occasions:

> (a) By asserting that for 2012/13 he was not resident in the UK and was resident in South Africa despite the basis on which his returns were rendered and having only spent 9 days in South Africa. The Tribunal was also misled in this regard.
>
> (b) He has asserted that he has correctly accounted for all income, in particular the interest on the IoM accounts, in South Africa but SARS has confirmed that he did not.
>
> (c) His explanation for the deposits has varied over time evolving as each previous explanation was refuted or challenged.

(35) A further propensity to mislead is demonstrated by the Appellant's explanation of the reason for recording £80,000 on one of the UK bank accounts (i.e. that the account was opened with an aim of securing a mortgage) and his explanation for not completing returns on the basis that he was non-resident (again stated to be for mortgage purposes).

Cooperation

(36) The extent of cooperation provided by the Appellant in HMRC's investigation was to provide the statutory records for ARCL (a different but planning connected taxpayer) but only after the issue of a Sch 36 notice.

(37) HMRC repeatedly asked the Appellant to provide both the IoM and UK private bank account statements but in the end only obtained them through the IoM authorities and by way of third-party directions from the Tribunal.

(38) The Appellant has, unjustifiably, accused HMRC of impropriety and racism.

(39) Further, he failed to make any obvious attempt to substantiate his assertions as to family involvement. He could have produced family bank statements showing the payments made as these are records held by the banks for periods exceeding the statutory minimum (as evidenced by the statements received by HMRC). He could have traced such payments through the UK bank accounts from which the actual deposits were made but he did not.

DISCUSSION

151. The Appellant's principal arguments throughout have concerned the asserted unfairness of the compliance check and conclusions. As indicated these are not matters in respect of which I have jurisdiction. The issues I have to determine are:

(1) Did HMRC discover inaccuracies in the Appellant's tax returns for years 1999/00 – 2013/14 and 2015/16?

(2) If so, were the inaccuracies deliberate (or careless)?

(3) Are the Assessments made in accordance with the statutory framework?

(4) On the basis that the Assessments are valid, has the Appellant satisfied me that they are overstated?

(5) Was there offshore non-compliance within the terms specified in Sch 18 for tax years 1999/00 – 2013/14?

(6) If so, are the penalties correctly raised?

(7) Does the Appellant have a reasonable excuse for any of the Penalties?

152. I have found as a fact that Officer Leese subjectively made a discovery, and that the discovery was reasonable on the facts.

153. I have also found that the inaccuracies were deliberate. The Appellant rendered returns which understated his liability to tax in each year knowing or turning a blind eye to whether they were incorrect.

154. In light of the discovery made by Officer Leese, and the Appellant's deliberate behaviour, HMRC were entitled to raise discovery assessments determining the amounts they considered, on the evidence, had been under declared. That process was comparatively simple vis a vis the foreign interest income as it could be extracted directly from the IoM bank account statements. The position was more difficult for the under declared trading income. I am satisfied that HMRC have considered all the evidence available to them and reasonably concluded that any deposit not from another of the Appellant's other personal accounts, not from the business account of the property letting business or an otherwise identified source, might reasonably be considered to be trading income and that to the extent that those deposits exceeded declared turnover they were assessable.

155. HMRC were entitled to assess for a period of 20 years.

156. Accordingly, the Assessments were validly raised.

157. The burden then moves to the Appellant who is required to show that such reasonable conclusion is, in fact, wrong. In this regard I note that the Appellant's explanation for the deposits have been inconsistent and has not been supported by any evidence. Put shortly the Appellant, through his refusal to provide additional information which I consider was or would have been available to him despite the requirement that he retain statutory records for only 6 years has prevented me from determining that the Assessments are overstated. Put simply the Appellant through his resistance has failed to evidence his own case. There were means by which he could have done but rather than do so he blamed HMRC for harassing him and failing to understand his business.

158. As regards the Penalties, on the basis of my factual findings I conclude that the Penalties were validly raised. I consider the reduction given for helping, giving, and telling to be generous. There are no special circumstances, and no reasonable excuse was offered the Appellant simply denying the under declarations.

159. For these reasons I dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

160. 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.

Release date: 16th JANUARY 2025