**[2022] UKFTT 00097 (TC)**

# TC 08427/V

*Income tax and VAT – COP9 investigation – suppression of business income – assessments for under-declared VAT – discovery amendments and closure notice in respect of under-declaration of income tax - penalties for dishonest, and for deliberate and concealed behaviours – ss 60(1) and 73 VAT Act 1994, ss 28B and 30B Taxes Management Act 1970, Sch 24 Finance Act 2007*

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

**Appeal number: TC/2018/00832**

**BETWEEN**

**BEST ON CONVENIENCE STORE (a firm)**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE ALEKSANDER**
**SIMON BIRD**

**The hearing took place on 28 February 2022. With the consent of the parties, the form of the hearing was V (hybrid video), with the partners of the Appellant attending the Tribunal's Manchester hearing centre, and the Tribunal panel and the other parties attending using the CVP video platform. A face-to-face hearing was not held because of the impact of the COVID pandemic.**

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

**Tasleem Balesaria and Salim Balesaria, partners, for the Appellant**

**Christopher Vallis, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents**

## DECISION

**INTRODUCTION**

1. At all relevant times Tasleem Balesaria and Salim Balesaria were married (they divorced after the events described in this decision, and now live separate lives). They had formed a partnership governed by the Partnership Act 1891, which traded as Best on Convenience Store ("the Appellant") from premises in Blackpool. Following a COP9 investigation, HMRC amended the Appellant's partnership income tax returns, assessed Mr and Ms Balesaria to income tax, and the Appellant to VAT, in respect of undeclared income and supplies. In addition, HMRC charged penalties for deliberate and concealed, and for dishonest, behaviours.

2. As regards the Appellant, HMRC had given notice of the following:

(1) Assessments of VAT under s 73 VAT Act 1994 ("VATA") for periods from 1 February 2005 to 31 October 2012.

(2) Penalty under s 60(1) VATA in respect of VAT periods 04/05 to 01/09.

(3) Penalty under Sch 24 Finance Act 2007 ("Sch 24") in respect of VAT periods 04/09 to 10/12

(4) Amendments to the Appellant's income tax return for tax years 2004/05 to 2009/10 inclusive under s 30B Taxes Management Act 1970 ("TMA")

(5) Closure notice in respect of the Appellant's income tax return for the tax year 2010/11 under s 28B TMA

(6) Amendments to the Appellant's income tax return for the tax years 2011/12 and 2012/13 under s 30B TMA.

3. The Notice of Appeal does not address the individual tax affairs of Mr and Ms Balesaria. In addition, it is not wholly clear from the Notice of Appeal which of the items listed in [2] above are subject to the Appeal. These issues were all flagged in HMRC's Statement of Case and in HMRC's covering email sent to the Tribunal and the Appellant's then representative. In the absence of any substantive response to HMRC's request for clarification the appeal has been treated as dealing solely with the Appellant's VAT liabilities, and the amendments made to the Appellant's partnership income tax return – namely as being against the following:

| **Type** | **Legislation** | **Date issued** | **Period** | **Amount** |
|---|---|---|---|---|
| VAT Assessment | s73 VATA | 25 November 2016 | 1 February 2005 to 31 October 2012 | £90,382 |
| VAT Penalty | s 60(1) VATA | 17 January 2017 | 1 February 2005 to 31 January 2009 | £45,993 |
| VAT Penalty | Sch 24 | 18 January 2018 | 1 February 2009 to 31 October 2012 | £20,344 |
| Income Tax Amendments | s30B TMA | 11 May 2017 | 2004/5 - 2009/10 and 2011/12 - 2012/13 | £63,616.77 |
| Income Tax closure notice | s28B TMA | 11 May 2017 | 2010/11 | £14,180.45 |

4. The hearing took a hybrid format, with Mr and Ms Balesaria attending at the Manchester tribunal centre, and everyone else (including the Tribunal panel) attending by video link using the CVP video platform.

5. Mr Vallis represented HMRC, and Mr and Ms Balesaria represented the Appellant. The Appellant had previously been represented by Mr Pervaiz of Pervaiz & Co, but it appears that he was no longer available to represent the Appellant due to illness.

6. Witness statements from Marc Shaw, the HMRC officer responsible for the assessments, and from Mr and Ms Balesaria were admitted in evidence, and were taken as read. In addition, we heard oral evidence on oath or affirmation from Officer Shaw and from each of Mr and Ms Balesaria. An electronic bundle of 2938 pages was also admitted in evidence.

## THE LAW

### Value Added Tax

7. The following are relevant provisions from VATA:

> **60 VAT evasion: conduct involving dishonesty**
>
> (1) In any case where—
>
> (a) for the purpose of evading VAT, a person does any act or omits to take any action, and
>
> (b) his conduct involves dishonesty (whether or not it is such as to give rise to criminal liability),
>
> he shall be liable, subject to subsection (6) below, to a penalty equal to the amount of VAT evaded or, as the case may be, sought to be evaded, by his conduct.
>
> [Note: s60 was repealed in relation to assessments falling within Sch 24 FA 2007 for periods on or after 1 April 2008.]

> **73 Failure to make returns etc**
>
> (1) Where a person has failed to make any returns required under this Act (or under any provision repealed by this Act) or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are incomplete or incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify it to him.
>
> […]
>
> (6) An assessment under subsection (1), (2) or (3) above of an amount of VAT due for any prescribed accounting period must be made within the time limits provided for in section 77 and shall not be made after the later of the following—
>
> (*a*) 2 years after the end of the prescribed accounting period; or
>
> (*b*) one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge,
>
> but (subject to that section) where further such evidence comes to the Commissioners' knowledge after the making of an assessment under subsection (1), (2) or (3) above, another assessment may be made under that subsection, in addition to any earlier assessment.

**77 Assessments: time limits and supplementary assessments**

[…]

(4) In any case falling within subsection (4A), an assessment of a person ("P"), or of an amount payable by P, may be made at any time not more than 20 years after the end of the prescribed accounting period or the importation or event giving rise to the penalty, as appropriate (subject to subsection (5)).

(4A) Those cases are—

(*a*) a case involving a loss of VAT brought about deliberately by P (or by another person acting on P's behalf),

(*b*) a case in which P has participated in a transaction knowing that it was part of arrangements of any kind (whether or not legally enforceable) intended to bring about a loss of VAT,

(*c*) a case involving a loss of VAT attributable to a failure by P to comply with a notification obligation, and

(*d*) a case involving a loss of VAT attributable to a scheme in respect of which P has failed to comply with an obligation under paragraph 6 of Schedule 11A [or an obligation under paragraph 17(2) or 18(2) of Schedule 17 to FA 2017][5].

(4B) In subsection (4A) the references to a loss of tax brought about deliberately by P or another person include a loss that arises as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by that person.

8. The following are relevant provisions from Sch 24:

***Error in taxpayer's document***

**1—**

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

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

(*b*) Conditions 1 and 2 are satisfied.

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

(*a*) an understatement of a liability to tax,

(*b*) a false or inflated statement of a loss, or

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

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

[…]

| | |
|---|---|
| VAT | VAT return under regulations made under paragraph 2 of Schedule 11 to VATA 1994 |

[…]

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

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

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

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

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

[…]

**4A**

(1) An inaccuracy is in category 1 if—

(*a*) it involves a domestic matter, […]

9. Paragraph 5 of Schedule 24 defines the "potential lost revenue" as being (in the circumstances of this case) the amount of additional tax due or payable as a result of correcting the inaccuracy or assessment. Paragraph 9 of Schedule 24 provides for the amount of a penalty to be reduced where the taxpayer discloses the inaccuracy, by telling HMRC about it, giving HMRC reasonable help in quantifying the inaccuracy, allowing HMRC access to records, and providing HMRC with additional information. Disclosure is unprompted if it is made at a time when the taxpayer has no reason to believe that HMRC have discovered (or are about to discover) the inaccuracy. In the case of prompted disclosures, the penalty for deliberate but not concealed inaccuracies can be reduced from 70% to 35%, and in the case of deliberate but concealed disclosures, the penalty can be reduced from 100% to 50%.

## Income Tax

10. The following are relevant provisions from TMA:

**28B Completion of enquiry into partnership return**

(1) This section applies in relation to an enquiry under section 12AC of this Act.

[…]

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

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

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

In this section "the taxpayer" means the person to whom notice of enquiry was given or his successor.

(2) A partial or final closure notice must state the officer's conclusions and—

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

(*b*) make the amendments of the return (including anything included in the return by virtue of section 12ABZB(7)(*b*) (amendment of partnership return following reference to tribunal)) required to give effect to his conclusions.

(3) A partial or final closure notice takes effect when it is issued.

(4) Where a partnership return is amended under subsection (2) above, the officer shall by notice to each of the partners amend—

(*a*) the partner's return under section 8 or 8A of this Act, or

(*b*) the partner's company tax return,

so as to give effect to the amendments of the partnership return.

**30B Amendment of partnership statement where loss of tax discovered**

30B(1) Where an officer of the Board or the Board discover, as regards a partnership statement made by any person (the representative partner) in respect of any period—

(a) that any profits which ought to have been included in the statement have not been so included, or

(b) that an amount of profits so included is or has become insufficient, or

(c) that any relief or allowance claimed by the representative partner is or has become excessive,

the officer or, as the case may be, the Board may, subject to subsections (3) and (4) below, by notice to that partner so amend the partnership return as to make good the omission or deficiency or eliminate the excess.

[…]

(4) No amendment shall be made under subsection (1) above unless one of the two conditions mentioned below is fulfilled.

(5) The first condition is that the situation mentioned in subsection (1) above was brought about carelessly or deliberately by—

(a) the representative partner or a person acting on his behalf, or

(b) a relevant partner or a person acting on behalf of such a partner.

**36 Loss of tax brought about carelessly or deliberately etc**

(1) An assessment on a person in a case involving a loss of income tax or capital gains tax brought about carelessly by the person may be made at any time not more than 6 years after the end of the year of assessment to which it relates (subject to subsection (1A) and any other provision of the Taxes Acts allowing a longer period).

(1A) An assessment on a person in a case involving a loss of income tax or capital gains tax—

(*a*) brought about deliberately by the person,

[…]

may be made at any time not more than 20 years after the end of the year of assessment to which it relates (subject to any provision of the Taxes Acts allowing a longer period).

(1B) In subsections (1) and (1A), references to a loss brought about by the person who is the subject of the assessment include a loss brought about by another person acting on behalf of that person.

(2) Where the person mentioned in subsection (1) or (1A) ("the person in default") carried on a trade, profession or business with one or more other

persons at any time in the period for which the assessment is made, an assessment in respect of the profits or gains of the trade, profession or business in a case mentioned in subsection (1A) or (1B) may be made not only on the person in default but also on his partner or any of his partners.

**114 Want of form or errors not to invalidate assessments, etc**

(1) An assessment or determination, warrant or other proceeding which purports to be made in pursuance of any provision of the Taxes Acts shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts, and if the person or property charged or intended to be charged or affected thereby is designated therein according to common intent and understanding.

**BACKGROUND FACTS**

11. Mr and Ms Balesaria acquired the Best On Convenience shop in December 2004. At the time they acquired the lease of the shop it was run down. The landlord was Blackpool Council. They refurbished the shop and restocked it. The shop reopened on 19 December 2004.

12. The shop was located in a depressed part of Blackpool. Mr and Ms Balesaria's evidence was that Lidl opened a supermarket nearby midway through the 2007/08 tax year, and that the competition from this supermarket (and other new retailers in the area) forced them to drop prices, reducing their profits. In 2008/09, Lidl obtained an alcohol licence, which further increased the competitive pressure. Mr and Ms Balesaria's evidence was that although they increased the opening hours of the shop, and further reduced prices, the shop's turnover reduced.

13. Plans for redevelopment of the area had been under discussion since 2008. During 2011 Blackpool Council adopted plans for the redevelopment of the area. People started moving out of the area, and homes started to be boarded-up. Mr and Ms Balesaria had discussions with Blackpool Council about compensation in respect of the demolition of the shop (which was to take place in about five years' time), but Blackpool apparently required them to continue to continue to rent the shop premises for those five years, and only after that time would they be eligible for compensation. In the tax year 2012/13 it became clear to Mr and Ms Balesaria that the shop was no longer sustainable, and agreed with Blackpool Council to surrender their lease on 31 October 2012. Blackpool Council required them to give vacant possession – in other words they were required to ensure that the shop was empty and cleared of stock and fittings. Their evidence was that in the period leading up to the closure of the shop, they stopped buying new stock, and started to sell the shop's fittings. Towards the end of trading, they gave away the remaining stock and fittings, as no one was prepared to buy them.

14. On 12 November 2012 HMRC opened an enquiry under s12AC TMA into the Appellant's partnership income tax return for the tax year ended 5 April 2011. The HMRC officer undertaking the enquiry was Officer Booth. Officer Booth referred the file to Officer Shaw, who reviewed the correspondence between Officer Booth and the Appellants' accountants (Pervaiz & Co) and notes of meetings. It appeared to Officer Shaw that both purchases and sales had been omitted from the Appellant's accounting records. He therefore decided to open an investigation under HMRC's Code of Practice 9 ("COP9") and wrote to Mr and Ms Balesaria to this effect on 10 March 2014. COP9 applies where HMRC suspect that there are irregularities in the affairs of a taxpayer. The taxpayer is invited to enter into a contractual disclosure facility ("CDF"). Under the terms of the CDF, HMRC agree not to pursue criminal prosecution providing the taxpayer provides a complete and accurate disclosure of all irregularities in their tax affairs.

15. By letters dated 8 May 2014 both Mr and Ms Balesaria accepted the offer of the CDF. On 12 June 2014, Pervaiz & Co wrote to Officer Shaw enclosing a joint statement of Mr and Ms Balesaria setting out their disclosure of the tax affairs of the Appellant from 19 November 2004 to 30 October 2012 and the circumstances under which those irregularities arose. A schedule enclosed with the letter set out a table with the declared income tax position of the Appellant, a table with the adjusted income tax position of the Appellant in the light of Mr and Ms Balesaria's disclosures, and a computation of the additional income tax and NICs payable – being £21,451.70 in total for the tax years 2004/05 to 2012/13 inclusive.

16. On 2 July 2014 Mr and Ms Balesaria both signed outline disclosure forms in substantially identical terms. Both statements included the following:

> To the Commissioners of HM Revenue and Customs
>
> As part of my Contractual Disclosure Facility undertaking, which I signed on [….] I admit that I have deliberately brought about a loss of tax through conduct which HMRC may suspect to be fraudulent. In outline –
>
> Description of fraud
>
> There is no such thing that I would call as fraudulent activity that took place from the business called Best on Convenience run by me as a partner during the period of trading but yes as I admitted in the Admission Statement submitted with my accountant's letter dated 12th June 2014, there were irregularities in declaring the correct profits which were subject to Income Tax and Class 4 National Insurance Contributions.
>
> […]
>
> Other information you think is relevant
>
> Please make a note that a fully joint detailed admission statement has already been submitted with our accountant's letter dated 12th June 2014
>
> […]
>
> I intend to make an accurate, honest and complete formal disclosure of all my tax irregularities

17. In these statements, both Mr and Ms Balesaria admitted that there were irregularities in the returns of the Appellant's profits and supplies but denied that there were any fraudulent activities.

18. Officer Shaw's evidence is that on 17 June 2014, when he received the joint statement, he discovered that the Appellants had understated the profits of the Appellant, resulting in a loss of tax to the Exchequer.

19. Officer Shaw had a meeting with the Appellants and Mr Pervaiz (from their accountants) on 21 October 2014. The notes of the meeting say that Officer Shaw reviewed the Appellants' outline disclosure with Mr and Ms Balesaria and asked them whether there was anything they wished to add. Both advised that they had nothing to add, and Mr Balesaria stated that "everything crucial" was included within the outline disclosure. The notes also record a discussion about the preparation of a disclosure report. Mr and Ms Balesaria said that they would be commissioning a report to be prepared by their accountants. Officer Shaw advised that the disclosure report would need to be a "full, accurate and complete disclosure of all irregularities to the best of their knowledge and belief" and that they would be expected to sign a certificate to this effect. Officer Shaw also advised that he would test the report, and this may involve approaching third parties for information or documents.

20. The notes of the meeting include the following points:

(1) Mr and Ms Balesaria explained that they purchased stock from cash and carry wholesalers, and that when they returned to the shop and opened the boot to unload the stock, the purchase invoices regularly blew away. They were asked why they did not take steps to prevent this from happening (such as keeping the invoices in the glove compartment), the response was that they were always rushing, so they did not ever learn from their mistakes. In consequence, the purchases, daily gross takings, and profits had been disclosed on an estimated basis.

(2) Officer Shaw questioned Mr and Ms Balesaria about the fact that their updated declared profits for 2006/07 and 2007/08 remained the same (£35.5k), but their declared turnover had reduced to £95.1k (from £152.9k), and they had said that they had reduced their prices (and profit margin) over this period because of the competition from Lidl. Officer Shaw could not understand why, in these circumstances, their profits had not reduced. The notes record that Mr and Ms Balesaria could not give an explanation for this.

(3) Mr and Ms Balesaria stated that the Z register of their till was read each day and recorded. And the Z readings would be totalled each week and recorded on a sheet that was passed to their accountant. However, the audit rolls from their till were not retained.

(4) Officer Shaw said that it appeared that there were undeclared purchases of approximately £200,000 during 2010/11, to which Mr Pervaiz response was that this was impossible for a business of the size of the Appellant.

21. Mr Pervaiz confirmed that he and Mr and Ms Balesaria were happy with the content of these notes (which had been circulated to them) when Mr Pervaiz next met Officer Shaw on 16 February 2015.

22. A follow-up meeting with Mr Pervaiz was held on 16 February 2015. Mr Pervaiz explained that the suppression of turnover and profits had grown in the last three to four years of the business, in the periods before it ceased to trade. At the meeting Officer Shaw told Mr Pervaiz that due to lack of progress in preparing a disclosure report, he would have to consider taking over the investigation. He reminded Mr Pervaiz that he had said in the previous meeting that there were undeclared purchases of £200k during 2010/11. Since that meeting, Officer Shaw had reviewed information provided by various wholesalers and compared it with the Appellant's VAT returns: the gross VAT on purchases declared during 2010/11 was £134,553, yet the Bestway Cash & Carry records suggested purchases of £185,805 plus £92,525 from other suppliers. The purchases totalled £278,330 leaving an unexplained difference of approximately £144k.

23. Following this meeting, Mr and Ms Balesaria provided Officer Shaw with mandates authorising their bankers to provide information to HMRC.

24. On 8 April 2016 Mr Pervaiz telephoned Officer Shaw to say that he had been provided with a report prepared by a forensic accountant on behalf of Mr Balesaria. On 9 May 2016, Officer Shaw collected a copy of the report from Mr Pervaiz office. The report had been prepared by BDO in connection with confiscation proceedings under the Proceeds of Crime Act 2002. Mr Balesaria had been found guilty of trading in counterfeit tobacco for which he had received a suspended custodial sentence. The prosecution was now seeking to confiscate Mr Balesaria's criminal benefits. Mr Balesaria's solicitors had commissioned BDO to prepare a report analysing the movements in four bank accounts – three sole accounts and one joint account with Ms Balesaria (I note that BDO's analysis did not extend to Ms Balesaria's sole bank accounts). As part of this analysis, BDO reviewed the Appellant's accounting records, and the noted discrepancies between the disclosed business levels shown in its annual accounts, and the level of cash takings deposited in the bank accounts that BDO reviewed. The BDO

report states that Mr Balesaria's explanation for these discrepancies was that "the financial information provided to the accountants was incomplete, and therefore the accounts do not reflect the true trading position of the business".

25. On 27 May 2016, Officer Shaw wrote to Mr Pervaiz seeking explanations for discrepancies he had identified in the financial years ended 31 March 2007 to 31 March 2013 inclusive. Enclosed with the letter were schedules setting out the deposits into Mr and Ms Balesaria's bank accounts, and recording the explanations previously given (excluded from the schedules were inter-bank transfers and payments of tax credits and child benefit). Mr and Ms Balesaria were asked to complete the schedules by providing explanations for those deposits where no explanation had been given previously.

26. The shop had "self-filled" ATM machines, and had Alphyra Payzone and Paypoint Collection terminals (allowing the Appellant to collect payments on behalf of utilities and others). Cash received in respect of these payments should equal the payments made to Alphyra Payzone and Paypoint Collection, but the Appellant would receive a commission payment from Alphyra Payzone and Paypoint Collection. The 27 May 2016 letter enclosed schedules setting out a breakdown of payments made to Alphyra Payzone and Paypoint Collection, and the corresponding commissions received. A further set of schedules showed amounts received from the providers of the ATM machines. Officer Shaw stated in his letter that he assumed that Mr and Ms Balesaria would have filled the ATM machine with cash received from sales and Paypoint/Payzone receipts.

27. As Officer Shaw received no response to his enquiries, he issued a notice of VAT assessments to the Appellant on 25 November 2016, and a notice of amendments to the Appellant's income tax return on 19 December 2016.

**Calculation of under-declared tax**

28. Officer Shaw calculated the VAT and revised partnership profits as follows:

(1) First, Officer Shaw created a master spreadsheet that contained all the entries from the statements he had obtained in respect of Mr and Ms Balesaria's bank accounts.

(2) He then analysed the transactions into the various tax years, and summarised the transactions under various headings:

- (a) Money Box (ATM machine)
- (b) TRM ATM Corp (ATM machine)
- (c) Notemachine (ATM machine)
- (d) Alphyra Payzone
- (e) Paypoint Collection
- (f) All other receipts

(3) Officer Shaw excluded all inter-account transfers, and tax credit and child benefit receipts. However, where a transfer was from an account for which no statements had been provided, he included this within the receipts.

(4) Officer Shaw assumed that all amounts recorded as having been paid through the Alphyra Payzone or Paypoint Collection terminals had either been deposited into one of the bank accounts, or had been used to load the ATM machine. Officer Shaw totalled the payments made directly to Payzone and Paypoint, and deducted these from the totals of receipts deposited into the bank accounts – on the basis that the amounts paid to

Paypoint/Payzone should equal the money received over the counter for the services provided by Paypoint/Payzone.

29. HMRC had previously approached the Appellant's suppliers for information covering the year ended 31 March 2011. In addition, Bestway, one of the Appellant's suppliers, had provided HMRC with a summary of the invoices issued to the Appellant for the period from 1 April 2008 to 19 March 2012. Officer Shaw scheduled this information along with the Appellant's VAT summaries. The Appellant's VAT records showed total Bestway purchases of £91,185, whereas the information provided by Bestway for the same period showed purchases of £200,178. The schedule showed that purchases had also been supressed from other suppliers.

30. Using the year ended 31 March 2011 as a base year, Officer Shaw calculated a ratio of all purchases from suppliers (other than Bestway) compared with the Bestway purchases. He then extrapolated the information provided by those suppliers for the year ended 31 March 2011 to the years ended 31 March 2009, 31 March 2010 and 31 March 2012 using the same ratios. Officer Shaw did not have an analysis of Bestway purchases for the years ended 31 March 2005 to 31 March 2008 (inclusive) and for the year ended 31 March 2013. For these years Officer Shaw assumed an average purchase suppression rate of 164.64%. This was calculated using the total of purchase and expenses figures from the Appellant's partnership tax return, and comparing this with his revised purchase figures. Officer Shaw's evidence was that he considered that this percentage was probably an underestimate, as – on reflection – he should not have included expenses in the calculation. Officer Shaw considered that it was appropriate to apply this average purchase suppression rate to these years based on the presumption of continuity, as there had been no material change in the conduct and operation of the business, and this presumption was supported by the statements and disclosures made by Mr and Ms Balesaria.

31. Officer Shaw assumed that in addition to the purchases recorded in the bank statements, purchases of stock would also have been funded by cash. He scheduled all cash withdrawals and cheque payments from the bank accounts and compared this amount with the amount spent on stock purchases that he had included in his master spreadsheet and noted that there was a difference. He assumed that the excess represented the purchase of stock made from unbanked cash.

32. In order to calculate the amount of undeclared sales, Officer Shaw totalled the net bank receipts and cash used for purchases to establish a revised figure for sales. He then deducted the amount declared on the Appellant's tax return to arrive at the undeclared sales amount.

33. Officer Shaw used the percentage from the VAT Flat Rate Scheme to calculate the VAT assessment. The Appellant had been using the VAT Flat Rate Scheme to calculate its quarterly VAT figures, and in the absence of business records, Officer Shaw considered that the use of the VAT Flat Rate Scheme percentage provided a fair basis for assessing VAT - irrespective of whether the Appellant was (or ought to be) using the Scheme.

34. As regards the income tax assessments, Officer Shaw calculated undeclared purchases by deducting the purchases (as declared in the Appellant's tax returns) from the purchases he had calculated using the assumptions discussed above. He then calculated the additional net profits by deducting the undeclared purchases and the assessed VAT from the undeclared sales (calculated using the assumptions discussed above). He then added the additional net profits to the profits declared on the Appellant's tax returns to determine the revised profits.

35. Officer Shaw is of the view that HMRC are entitled to raise assessments going back to 1 February 2005 in the case of VAT, and going back to the tax year 2004/05 in the case of income tax. This is because he considered that the Appellants behaved deliberately in understating their

profits and turnover in the Appellant's VAT and income tax returns. His evidence was that he reached this conclusion on the basis of the following:

(1) As the persons responsible for the business, the amount of the discrepancies is such that the Appellants must have known that the amounts being declared on both the VAT returns and partnership returns were incorrect.

(2) Although the Appellants explained that they would not describe their behaviour as fraudulent, to the contrary they have completed an outline disclosure which is an admission that they have deliberately brought about a loss of tax which HMRC may suspect as fraudulent.

(3) The Appellants provided an outline disclosure that included a commentary to describe the fraud, the individuals and the entities involved, the period of time over which the fraud took place and provided an estimate of the monies that had been extracted from the business.

(4) Information provided by the suppliers confirm that the Appellants have grossly understated the purchases for the business.

(5) Officer Shaw's analysis of the Appellants' bank statements raised doubts over the level of turnover declared to HMRC.

(6) Mr Balesaria appears to have been trading in counterfeit tobacco which may explain the unexplained deposits credited into four separate bank accounts in which Mr Balesaria had an interest.

(7) The expert report which was subsequently prepared is flawed because it did not take into consideration any receipts deposited into Ms Balesaria bank accounts.

**Penalties**

36. Officer Shaw's evidence was that, for the reasons described previously in this decision, the Appellants dishonestly filed incorrect VAT returns for the VAT quarters 04/05 to 01/09. In consequence he was of the view that a civil evasion penalty was due under s60 VATA. He considered that a penalty of 70% of the underdeclared VAT was appropriate in the light of the following factors:

(1) Early and truthful explanation

(a) Mr and Ms Balesaria admitted in their outline disclosures that they had under-declared their income. Therefore, they knew that when they submitted their VAT returns, they did not contain all the income and so this conduct was dishonest.

(b) Mr and Ms Balesaria did not take their opportunity to make an early and truthful explanation. Although there was an admission that the purchase and sales figures were incorrect, they never disclosed the full extent of the irregularities.

(c) During April 2016 he was informed that an expert accountant's report had been prepared because Mr Balesaria had been trading in counterfeit tobacco. Although the report helped to expedite Officer Shaw's investigation, it also brought the sale of counterfeit tobacco to his attention for the first time. This was approximately two years after his investigation commenced and 3 1/2 years after Officer Booth opened the enquiry into the Appellant's income tax return. The expert accountants report considered only Mr Balesaria's personal bank statements and the joint account he held with Ms Balesaria. However, even though the business was operating as a partnership, no consideration had been given to Ms Balesaria's bank accounts.

(d) The Appellants was given the opportunity to provide an explanation for otherwise unexplained bank deposits, but a response was never received.

(e) An early and truthful explanation has not been fully provided by the Appellants.

In view of this Officer Shaw considered that the mitigation for early and truthful explanations should be 15% out of 40%.

(2) Fully embracing and meeting responsibilities

(a) Mr and Ms Balesaria had agreed to cooperate with Officer Shaw's investigation. They attended meetings when requested and provided written authorities giving HMRC permission to approach third parties on their behalf.

(b) Mr and Ms Balesaria accepted HMRC's offer of CDF. However, Officer Shaw had to take over the investigation due to the lack of progress in preparing a disclosure report.

(c) The Appellants did not provide all the relevant facts to help HMRC work out the correct amount of tax. They had not fully embraced and met their responsibilities.

In view of the above, Officer Shaw believed that the mitigation for embracing and meeting responsibilities should be 15% out of 40%.

37. The total mitigation was therefore 30% bringing the percentage penalty down from 100% to 70%.

38. He considered that penalties under Sch 24 FA 2007 arose in respect of VAT quarters 04/09 to 10/12 as the Appellants had deliberately filed incorrect VAT returns. He considered that any disclosure was prompted by HMRC's offer of the CDF. Officer Shaw believed that the Appellant deliberately omitted income from its VAT returns, and concealed this through suppressing purchases in order to mask the suppression of a larger amount of sales. The undeclared sales were then concealed in "off record" bank accounts.

39. For these reasons, Officer Shaw considered that the penalty range is between 50% and 100%. He considered that a penalty percentage of 82.5% was appropriate based on the following factors:

(1) Telling

(a) Mr and Ms Balesaria admitted that the VAT returns were incorrect. However, they provided no assistance in disclosing the inaccuracies in full.

(b) Mr and Ms Balesaria did not truthfully explain how and why the inaccuracies arose. Instead, they tried to explain their deliberate actions by claiming that the purchase invoices were blown away.

(c) Mr and Ms Balesaria did not mention that Mr Balesaria had been selling counterfeit tobacco until several years after HMRC's investigation had begun.

Officer Shaw believed that the reduction due for telling should be 10% out of 30%.

(2) Helping

(a) Mr and Ms Balesaria attended the opening meeting, answered questions and provided authorities for HMRC to approach suppliers on their behalf. However, they did not answer the questions truthfully.

(b) Mr and Ms Balesaria provided an outline disclosure, but this was only a partial disclosure.

(c) Mr and Ms Balesaria signed up to the CDF process but did not complete a disclosure report.

(d) Mr and Ms Balesaria provided little help to quantify the true amount of the partnership turnover.

(e) Mr and Ms Balesaria provided an expert accountant's report. But the report was flawed.

Officer Shaw believed that the reduction due for helping should be 10% out of 40%.

(3) Giving

(a) Mr and Ms Balesaria responded to requests for information and provided mandates giving HMRC authority to approach third parties on their behalf.

(b) There have been long delays in responding to Officer Shaw's letters. They provided a copy of the expert accountant's report. However, they did not respond to Officer Shaw's letter of 27 May 2016 in which he requested further information and explanations.

Officer Shaw believed that the reduction due for giving should be 15% out of 30%.

40. The total mitigation ratio was therefore 35%. The penalty range was 50% to 100%, and 35% of the range is 17.5%. The resulting penalty percentage is therefore 82.5%.

41. Although HMRC has power to suspend penalties, this only applies if the behaviour of the taxpayer is careless. As Officer Shaw considered that the behaviour of the Appellants was deliberate, suspension was not available. Officer Shaw also considered whether there were any reasons for a special reduction to apply because of special circumstances. Officer Shaw considered that there were no such circumstances.

**THE APPELLANT'S CONTENTIONS**

42. The evidence of both Mr and Ms Balesaria was that the street outside the shop was like a wind tunnel, and therefore when they unloaded stock from their car, any invoices in the boot would blow away. They were asked why they did not take precautions to prevent this from happening, and the response from both of them was that they were busy with the shop and did not learn from their mistakes.

43. As regards the Z readings from the shop's till, Mr and Ms Balesaria denied destroying the audit rolls from the till. Rather the audit roll was replaced whenever it ran out. The used roll was just kept on the counter and could accidentally be thrown away. The audit rolls were not destroyed deliberately.

44. Mr and Ms Balesaria asserted that the Appellant could not have been making profits in line with Officer Shaw's calculations, given the financial difficulties that they were in at the time – with the banks returning payments, and bailiffs coming to the house to collect debts. The business was struggling, and their profits declined. Whilst they admitted that there were discrepancies (particularly in relation to stock purchased from cash and carry wholesalers such as Booker and Bestway), those were not intentional.

45. Mr and Ms Balesaria's evidence was that they had not acted deliberately or dishonestly. They had never agreed that there had been any suppression of purchases or sales. The errors arose because they did not have information available for every year. They explained that the

reason why there was a gap in communications between the Appellant and HMRC was because Mr Pervaiz had had a stroke.

46. Mr and Ms Balesaria explained in addition to Mr Pervaiz's illness, delays also arose due to Mr Balesaria's criminal trial and subsequent imprisonment.

47. Mr and Ms Balesaria were challenged by Mr Vallis about the truthfulness of their evidence and the statements they made to Officer Shaw during the course of the enquiry. In particular, Mr Vallis accused Mr and Ms Balesaria of lying about invoices being blown away, and that they deliberately supressed their purchases and sales in order to reduce their tax bill -- especially when trading became difficult. Mr and Ms Balesaria denied this.

48. Mr Vallis accused Mr and Ms Balesaria of deliberately providing inaccurate information to Mr Pervaiz for the purposes of preparing the disclosures included with Mr Pervaiz's letter of 12 June 2014. Mr and Ms Balesaria's evidence was that the schedule was prepared for the purposes of starting a negotiation with Officer Shaw and was not intended to be a final submission.

49. Mr and Ms Balesaria criticised the calculations produced by Officer Shaw. Their evidence was that they had borrowed between £60,000 and £70,000 in order to support the business. Officer Shaw's evidence was that during the course of his enquiries he had asked for evidence of these loans, but none was provided. At the hearing Ms Balesaria produced at the hearing copies of a report from a credit reference agency showing that she had a personal loan from Halifax of £13,000 in the tax year 2006/07. She also gave explanations for other transactions through her bank accounts, namely a loan of £3500 from an aunt in tax year 2007/08, loans from family and friends in tax year 2010/11 totalling £16,000, in 2011/12 a loan from her aunt of £8,000 and a loan from a friend of £1000, and loans of £51,910 from family and friends in 2012/13. Officer Shaw said that the £51,910 transaction occurred after the Appellant had ceased trading and had therefore been excluded from his spreadsheets anyway. As regards the other loans mentioned in Ms Balesaria's evidence at the. Hearing, Mr Vallis accepted that the £3500 Halifax loan and the loans from the aunt of £3500 and £8000 were true – but did not accept the truth of the other loans.

50. Mr and Ms Balesaria also complained that Officer Shaw's calculations included double counting and referred to one of the schedules prepared by Officer Shaw. Officer Shaw explained that this spreadsheet was an analysis of the expense side of the business, it was used as part of his analysis to determine the extent to which cash received on sales of stock, or in respect of Paypoint/Payzone transaction, were kept as cash, were banked, or were used to fill the ATM.

**ISSUES TO BE RESOLVED**

### VAT assessments

51. Has the Appellant failed to make returns required under VATA, or failed to keep any documents necessary to verify such returns (s73 VATA)?

52. If so, was the amount assessed determined to Officer Shaw's best judgment?

### VAT penalties

53. Did the Appellant take action for the purposes of evading VAT, and if so, did the Appellant's conduct involve dishonesty (s60 VATA)?

54. If so, what was the amount of VAT evaded?

55. Did the Appellant give HMRC a VAT return which contained an inaccuracy which amounted to an understatement of its tax liability (Sch 24)?

56. An if so, was the inaccuracy deliberate and concealed?

**Income tax**

57. Did Officer Shaw discover that the amount of profits included in the Appellant's partnership income tax return was insufficient (s 30B TMA)

58. If so, was this brought about deliberately?

59. Was the s28B closure notice issued for the correct amount.

**Burden of proof**

60. In respect of the VAT assessments, the burden of proof lies on HMRC to show that these were determined in accordance with best judgment. What amounts to best judgement was set out by Woolf J in *Van Boeckel v Customs and Excise Commissioners* [1981] STC 290 (not cited to us) as follows:

(1) HMRC should not be required to do the work of the taxpayer,

(2) HMRC must perform their function honestly and above board,

(3) HMRC should fairly consider all the material before them and on that material, come to a decision which is reasonable and not arbitrary, and

(4) There must be some material before HMRC on which they can base their judgement.

61. The burden of proof rests with HMRC to show that Officer Shaw made a "discovery" for the purposes of s30B TMA. This is not an onerous requirement A discovery occurs when HMRC officer reaches a reasonable conclusion or forms a reasonable opinion that there is an insufficiency of tax. A discovery having validly been made, the burden of proof shifts to the taxpayer to show that the amount assessed by HMRC is wrong. In the case of *Johnson v Scott* (1977) 52 TC 383 at 393 (not cited to us) in the High Court, Walton J observed:

> The true facts are known, presumably, if known at all, to one person only - the Appellant himself. If once it is clear that he has not put before the tax authorities the full amount of his income, as on the quite clear inferences of fact to be made in the present case he has not, what can then be done? Of course all estimates are unsatisfactory; of course they will always be open to challenge in points of detail; and of course they may well be under-estimates rather than over-estimates as well. But what the Crown has to do in such a situation is, on the known facts, to make reasonable inferences. When, in para 7(b) of the Case Stated, the Commissioners state that (with certain exceptions) the Inspector's figures were 'fair", that is, in my judgment, precisely and exactly what they ought to be - fair. The fact that the onus is on the taxpayer to displace the assessment is not intended to give the Crown *carte blanche* to make wild or extravagant claims. Where an inference, of whatever nature, falls to be made, one invariably speaks of a "fair" inference. Where, as is the case in this matter, figures have to be inferred, what has to be made is a "fair" inference as to what such figures may have been. The figures themselves must be fair. So far from representing an inference that the Commissioners did not appreciate the Inspector's figures fully, this demonstrates that they did. I think the point can be put conversely in another way. At times during Mr. Hall's address to me it almost appeared as if what he was requiring by way of his "lawful proof" was a duly audited certificate as to the Appellant's undisclosed expenditure. Of course, this was not what he was seeking; but once it is clear that this is not, and in the nature of things cannot be, available, then it follows as night follows day that some form of estimate must be made.

**FINDINGS**

62. Mr and Ms Balesaria in their witness statement and their oral evidence deny that they were dishonest or that they supressed takings, but they had acknowledged that there were irregularities in their tax returns in the declarations made as part of the contractual disclosure facility.

63. We therefore agree with Officer Shaw's evidence and find that he made a "discovery" for the purposes of s30B TMA that the amount of profits included in the Appellant's partnership income tax returns were insufficient. We find that the Appellant failed to make accurate returns required under VATA and failed to keep the documents necessary to verify such returns.

64. We do not believe Mr and Ms Balesaria's evidence as to the reasons why these irregularities arose.

65. It is not credible that invoices blew down the street on virtually every occasion that they opened the boot of their car to unload stock purchased from cash and carry wholesalers. Whilst we might have believed that this could have occurred occasionally, we do not believe that it occurred repeatedly over a period of many years. We find that the missing invoices were thrown away deliberately in order to conceal the true extent of the Appellant's purchases of stock.

66. We do not believe Mr and Ms Balesaria that the audit rolls from their till were thrown away through carelessness. Whilst we might have believed that one or two audit rolls could have gone missing over the period of trading, we do not believe their evidence that every single audit roll went missing through carelessness. We find that the audit rolls were thrown away deliberately in order to conceal the true extent of the Appellant's gross daily takings.

67. Nor do we accept the evidence of Mr and Ms Balesaria that the tables provided by Mr Pervaiz under cover of his letter of 12 June 2014 were intended to be just a starting position for a negotiation with Officer Shaw. Mr Pervaiz as a professional accountant advising Mr and Ms Balesaria would have been aware that under the terms of a contractual disclosure facility, the taxpayer was required to provide a complete disclosure of all irregularities – and not a starting position for negotiations. This was also evident from HMRC's explanatory leaflets provided to Mr and Ms Balesaria when the COP9 investigation was opened. We find that the discrepancies could only have arisen because Mr and Ms Balesaria did not make a complete disclosure to Mr Pervaiz of all relevant information. We do not consider that it is credible or true that Mr Pervaiz would have deliberately massaged his calculations in order to reduce the profits of the business as a negotiating tactic.

68. We note that there were discrepancies between the purchases of stock as shown in the Appellant's tax returns, and the amounts shown in the information provided by the various suppliers. To give just one example from the documentary evidence before us, in the tax year 2010/11, the declared purchases from Bestway were £91,185. However, the amount Bestway told HMRC that they sold to the Appellant in that same period was £200,178. This is far too large to be explained away by inadvertent or careless errors.

69. Except for the evidence provided by Ms Balesaria at the hearing in relation to some loans (discussed at [49] above), the criticisms made by Mr and Ms Balesaria in relation to Officer Shaw's calculations were vague and very general in nature. We note that they did not challenge Officer Shaw's methodology and that Officer Shaw was able to give robust and credible answers to the questions that they put to him at the hearing about his calculations.

70. We find that Mr and Ms Balesaria, when they filed the Appellant's income tax and VAT returns, knew that the amounts returned were incorrect. We find that they knowingly filed these

incorrect returns in order to reduce the tax liabilities. As such, we find that they acted deliberately and dishonestly.

71. We find that Mr and Ms Balesaria deliberately concealed the true tax liability of the Appellant by concealing purchase invoices and understating the amount of gross daily takings. They further concealed their true tax liability by not providing Mr Pervaiz with a true and complete disclosure of the Appellant's transactions for the purposes of HMRC's contractual disclosure facility.

72. During the course of the hearing, HMRC accepted that Ms Balesaria had a personal loan from Halifax of £13,000 in the tax year 2006/07, a loan of £3500 from an aunt in tax year 2007/08, and another loan from her aunt of £8000 in 2011/12. We find that it is more likely than not that Ms Balesaria also had loans from family and friends in tax year 2010/11 totalling £16,000, in 2011/12 a loan from a friend of £1000. We do not need to make any findings as to whether there were loans of £51,910 from family and friends in 2012/13, as the relevant transactions were outside the time frame analysed by Officer Shaw, and these amounts were not included in Officer Shaw's calculations.

73. For the years 2006/07, 2007/08, 2010/11 and 2011/12 an adjustment should be made to Officer Shaw's calculation of unexplained receipts by deducting the amounts of the loans we find were made to Ms Balesaria.

74. We disagree with Officer Shaw that the presumption of continuity applies in the final period of trading from 1 April 2012 to 31 October 2012. In this period, we consider that it is credible that Mr and Mrs Balesaria would have been running stock down, and that they were discounting their remaining stock (or even giving it away) in order to empty the shop by the time the lease terminated on 31 October 2012. In these circumstances we consider that the suppression ratio would have been less than 164.64% for the final period of trading from 1 April 2012 to 31 October 2012. As we have no reliable quantitative evidence on which to base a suitable suppression ratio, the amount which we determine to be appropriate will, of necessity, have to be rather rough and ready. We consider that the ratio is likely to have declined from 164.64% at the beginning of this period to 0% at the end. So, taking a midway figure (80%) is a reasonable estimate. We find that the suppression ratio for the period 1 April 2012 to 30 October 2012 should be 80%.

75. We therefore find that the calculations of the Appellant's liability to VAT and its profits will need to be adjusted to take account of the matters discussed in [71] to [74].

76. Subject to the adjustments described in [71] to [74], we find that

(1) Officer Shaw's VAT assessments were made to his best judgment; and

(2) The s30B adjustments and the s28B closure notice were issued for the correct amount.

77. We find that for the VAT quarters 04/05 to 01/09 inclusive, Mr and Ms Balesaria (and therefore the Appellant) had taken action for the purposes of evading VAT, and that their conduct was dishonest. We find that for the VAT quarters 04/09 to 10/12 inclusive, the Appellant had given HMRC VAT returns which contained inaccuracies which amounted to an understatement of its tax liabilities. We find that the inaccuracies were deliberate and concealed.

78. We find that the Appellant is liable for penalties under s60 for dishonest conduct and under Sch 24 for deliberate and concealed conduct. We have reviewed the mitigation given by Officer Shaw in his assessment of penalties. In doing so, we have taken into account the submissions made by Mr and Ms Balesaria, including their submission that the problems with

Officer Shaw's enquiries (at least in part) arose in consequence of Mr Pervaiz's stroke and Mr Balesaria's criminal proceedings and imprisonment. As regards Mr Pervaiz's illness, we had no evidence before us about the date on which his stroke occurred and its impact on the tax enquiry. The correspondence included in the bundle indicates that Mr Pervaiz was actively dealing with correspondence until at least January 2018, when the Notice of Appeal was filed with the Tribunal electronically signed by Mr Pervaiz in his capacity as the "legal representative" of the Appellant. We note that in July 2019 Outhwaite Associates were appointed as the Appellant's agent in the place of Pervaiz & Co, and we wonder whether the change in representatives was due to Mr Pervaiz's stroke. In any event, there is nothing in the evidence before us that would suggest that Mr Pervaiz's illness had any impact on the HMRC enquiry, and we so find.

79. As regards Mr Balesaria's criminal trial and conviction, no evidence was given of the dates of the trial (and the time taken for preparation of his defence), nor of the dates of his imprisonment. No explanation was given as to why these had an impact on the HMRC enquiry – and there has been no indication that Mr Balesaria's term of imprisonment commenced before the HMRC enquiry concluded. He appears to have been able to give instructions to Mr Pervaiz to provide Officer Shaw with the BDO report and to instruct Mr Pervaiz to file the notice of appeal with the Tribunal. We find that the criminal proceedings and Mr Balesaria's subsequent imprisonment did not have any material impact on HMRC's enquiry.

80. We consider that the mitigation given in relation to the periods 04/05 to 01/09 is generous, and have considered whether the overall mitigation should be reduced so that the penalty rate for these periods is increased to be the same as the percentage penalties charged under Sch 24 for the other VAT quarters. However, on balance, we have decided not to increase the penalty percentages for these periods.

81. We are satisfied that the mitigation given for the penalties raised under Sch 24 are appropriate.

82. We note that the Appellant did not file a partnership return for the tax year 2011/12. Officer Shaw should therefore have made a determination of income for that year under s28C TMA, rather than amend a (non-existent) return under s30B. We consider and find that this error falls within s114 TMA, and uphold the amount of income (as adjusted as discussed above) that Officer Shaw has determined arose in that year.

**CONCLUSION**

83. The appeals in respect of the VAT assessments and determination of the Appellant's income are allowed in part to take account of the adjustments to the calculation of the Appellant's liability to VAT and its income. But otherwise, these appeals are dismissed.

**NEXT STEPS**

84. There will need to be adjustments made to the VAT assessments and determinations of income to take account of the adjustments discussed above. We direct HMRC to prepare an updated calculation of the amounts. The calculations must be served on the Tribunal (copied to the Appellants) within 30 days of the release of this decision. The calculations should include the VAT and adjusted income, and the consequent adjustments to the amount of penalties. The Appellants will then have 14 days from receipt to file with the Tribunal any written submissions they may have on the updated calculations. The submissions should be copied to HMRC at the same time as they are sent to the Tribunal. The Tribunal will then determine the amount of tax and penalties payable.

85. Mr and Ms Balesaria asked at the hearing how the liabilities for taxes and penalties would be allocated between them.

86. As regards the VAT and VAT penalties, it is the Appellant, as the registered VAT trader, that is the subject of these assessments. As the Appellant is a partnership governed by the Partnership Act 1891, the partners (Mr and Ms Balesaria) are both jointly and severally liable for the VAT and VAT penalties.

87. As regards the adjustments to the Appellant's income tax returns, the Appellant's income will be allocated between the partners (Mr and Ms Balesaria) pro-rata to their respective profit-sharing ratios in each of the relevant periods. HMRC will then make the necessary consequential amendments to each partner's individual income tax self-assessment return for those periods.

88. The tax becomes due for payment (together with interest) in full following the release by the Tribunal of its final decision. Any arrangements for Mr and Ms Balesaria to pay the tax due in instalments is a matter they will need to agree with HMRC, and is outside the scope of this Tribunal's powers.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

89. 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.

**NICHOLAS ALEKSANDER**
**TRIBUNAL JUDGE**

**Release date: 16 MARCH 2022**

**Cases mentioned in skeletons but not referred to in this decision:**
Jonas v Bamford (1973) 51 TC 1