



TC04985

Appeal number: TC/2014/01284

Income tax - incorrect returns - HMRC amendments to self-assessment return in respect of profits of self-employment - whether HMRC had incorrectly disallowed expenditure - on the facts, no - whether assessment correctly calculated - yes - whether penalties correctly assessed - yes - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ANTHONY DIDLICK

Appellant

- and -

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

**TRIBUNAL: JUDGE: MICHAEL CONNELL
MEMBER: RAYNA DEAN FCA**

**Sitting in public at Nottingham Justice Centre, Carrington Street, Nottingham
on 14 October 2015**

Mr Anthony Didlick the Appellant in person and Mrs Catherine Didlick

Mr Philip Osborne, Officer of HM Revenue and Customs, for the Respondents

DECISION

The Appeal

5 1. This is an appeal by Anthony Didlick (“the Appellant”) against amendments to his self-assessment return in respect of the profits of his self-employment for the 2008-09 and 2009-10 tax years, pursuant to s 28A(1) and (2) Taxes Management Act 1970 (“TMA”), and discovery assessments raised pursuant to s 29 TMA 1970 in respect of the 2002-03 to 2007-08 tax years.

10 2. The Appellant also appeals against the penalty determination imposed for the submission of incorrect returns for the tax years 2002-03 to 2007-08, and the penalty assessments for the tax years 2008-09 and 2009-10. The penalties were raised under s 95 TMA 1970 up to and including 2008 and under Schedule 24 Finance Act 2007 for 2009 and 2010.

3. The points at issue are:

15 (1) whether the Appellant understated his profits from his self-employment profits from Birchwood Motor Co for tax years in question;

(2) whether HMRC are correct to impose penalties on the Appellant for making incorrect income tax returns for the tax years in question and, if so, in what amount.

20 Background

4. Throughout the period covered by the decisions under appeal the Appellant was self-employed, trading as Birchwood Motor Co, Birchwood Lane, Somercotes, Derbyshire.

25 5. On 3 December 2010, HMRC opened an enquiry into the Appellant’s Self-Assessment return for the year ended 5 April 2009 and requested his business records for the year ended 30 May 2008. The information HMRC requested included all business books and records including:

- 30
- Sales invoices
 - Purchase and expense invoices
 - Job diary
 - MOT records
 - Stock records
 - Wage records
 - Cash book
 - 35 • Business bank statements, cheque book stubs and paying in books.
 - Details of how the figure of sales has been arrived at.
 - Details of any estimates or balancing figures used in the preparation of the accounts with details of how those amounts were arrived at
 - 40 • Drawings analysis split between cash, cheque and other items.

6. The Appellant did not respond and therefore on 12 January 2011 HMRC served a notice under paragraph 1 of schedule 36 to the Finance Act 2008 on the Appellant

requiring him to produce the information previously requested within 30 days, that is by 12 February 2011

5 7. The Appellant responded on 25 January 2011 that his records had been lost in a fire on 11 January 2011. He said that the paper records which he retained in the garage were waterlogged and so there was nothing he could send HMRC except a copy of the profit and loss account that was on his computer. He said there had been £50K worth of damage to the garage. His equipment was leased but he had also lost his tools, built up over 19 years of trading there.

10 8. The Appellant also said that he needed to file his 2010 return on line but his password had been destroyed. He said that he used to go to the Alfreton Tax office and an inspector would help him with his return. HMRC explained how to obtain another password and also his right of appeal if a late filing penalty was charged. HMRC explained that it would be necessary to reconstruct the business records so far as possible, and for that purpose they would require copy bank statements both
15 business and private, paying in slips, cheque stubs and purchase invoices.

20 9. The Appellant did not comply with the Schedule 36 notice and therefore HMRC called the Appellant to ask what was happening. He said that he had been busy packing away as the garage was closing for two weeks from Friday 18 February 2011 to carry out repairs/redecoration following the fire. He reiterated that all his records had been lost in the fire, as all records past and present were kept at the garage.

25 10. On questioning, the Appellant said that all sales income was banked, except for the wages paid to the part time workers on a Friday and his cash drawings. All purchases and suppliers are paid by cheque. The Appellant told HMRC that he had not kept records of wages or drawings and not all sales were invoiced or rung through the till. HMRC said they would send him a bank mandate for return.

30 11. On checking the accounts HMRC noted that depreciation had been claimed as a deduction against profits. HMRC explained that depreciation is commonly claimed in accounts for the wear and tear of business assets but is not allowable for the purposes of arriving at a business's net taxable profit. Further, Capital Allowances had not been claimed but in any event were not due. Depreciation had been claimed on the Appellant's MOT bay but the bay was on a hire agreement under which the Appellant did not own the asset at the end of the agreement. With regard to the other miscellaneous tools etc. the Appellant had erroneously claimed the full cost in his accounts

35 12. The Appellant attended a meeting with HMRC on 16 June 2011.

40 i. The Appellant advised that the majority of his work was MOTs; however he also did repairs and servicing. He did not sell any cars, and did not do any bodywork, insurance jobs or recovery work. He did mainly private work. He had one commercial contract with Nottingham City Couriers which he did the odd job for.

- 5 ii. He said that customers did not have an account; they paid when they came to pick up their vehicle up; ‘no money no car’. There was quite a bit of competition as there were roughly six other garages within close proximity. He said that the usual price for an MOT was £54, however they are allowed to charge what they like, so he charged £30 which is why he was so busy. He said that he does roughly 40 MOT tests a week at £30 each. MOTs make up the majority of his work.
- 10 iii. The Appellant advised that his invoices are not numbered but he does have a stamp which he uses. The other details he puts on the invoices are the car registration number, make of car, parts and labour and the date the invoice was paid. He added that if the repair work was paid by cash he would very rarely issue an invoice unless he was asked for one. All the invoices were put in a folder and added up at the end of the year. Some weeks he would hardly take any cash and it would all be paid for by card, he said it varies quite a bit. He said that he had quite a few problems with his card machine as it was recording more sales than there actually had been.
- 15 iv. He operates a till where all the cash is kept. All till rolls were retained, although the majority were destroyed in the fire. On inspection of the till roll, the date showed 29 December 2002. The Appellant explained that he doesn't know how to change the date on the till and the till roll was the same roll that had been in there since the fire in January. A Z reading confirmed that MOTs accounted for the majority of the sales recorded. The Appellant takes a Z reading at the end of each month but he could not remember when he had taken the last one and he does not do it daily or weekly. However he had not done one for several weeks.
- 20 v. HMRC showed the Appellant the till roll and transaction 769 showing an amount of £42,117.06 and asked whether it had been about six months since the last Z reading was taken. The Appellant explained that the till had never actually been re-programmed since the fire and the figures were showing a wrong reading which could not be relied upon. He agreed that he would have done more repairs than had actually been recorded. HMRC also mentioned that the till roll was showing a few dots. He confirmed that these were ‘no sales’.
- 25 vi. He tries to charge parts at cost plus 5%, plus labour at £30 an hour. He advised that he mainly used PCS Motor Factors, of Claycross, Derbyshire and PG Automotive, Matlock. Everything was paid for by cheque and he kept very little stock as he has items delivered when needed. He sometimes sells scrap metal. He weighs it in and whatever he gets goes in the till. He also advised that he would only get about £5 to £6 for a trailer load.
- 30 vii. The Appellant said that he did not hold any documentation on who he employed but explained that he had two assistants who worked part time, Ian Cartledge and Michael Denny and another, Scott Cartledge who was an
- 35 40 45

- 5 apprentice. Both assistants helped out with servicing and MOT's, working about 15/16 hours a week. The apprentice worked three days a week, 15 hours in total. No family members work for the business. He does not give his staff payslips and they are paid in cash each week. He went on to say that he tots it all up at the end of the year but there are no records to look at. Staff are paid every Friday in cash and that his wage was £150. There was no overtime or bonuses paid to staff and nothing was recorded. He said that he also used to employ a Lee Mallam who was freelance and ran his own business called Birchwood Diagnostics. He paid him roughly £300 a week but he has now left the area. He advised that he did not record his own cash drawings and the money was given to his wife.
- 10
- viii. He also explained that the only other money apart from wages that is taken from the till was for tea and coffee, if there is no money left in the £20 float he keeps.
- 15
- ix. The Appellant said that some private items were put through the business. He serviced his own car and put the cost through as business expenses and said he understood that could claim four-fifths. He had also purchased a motorbike through the business.
- 20
- x. He has a business credit card which he uses to buy petrol. He said that he also uses it to buy MOT's as you have to buy 100 at a time which roughly works out to be about £200. He had no private credit card that was used for business purposes. The bills are paid by direct debit from his NatWest business account.
- 25
- xi. The Appellant said that at the end of each day, cash is added up and written down on a piece of paper, then taken home in a wallet in his briefcase. It is then brought back the next day. He goes to the bank on a Saturday and banks everything that is left (cash and cheques). He said that the bankings plus the wages paid equalled the turnover.
- 30
- xii. The Appellant said he had the NatWest Business Account and a Lloyds TSB savings account.
- xiii. HMRC asked the Appellant to supply the addresses of all employees of the year ended 30 May 2008; the landlord to whom he paid rent, a completed expenditure summary and copy credit card statements for the year to 30 May 2008.
- 35
13. The Appellant did not supply the information requested and therefore on 28 July 2011 HMRC issued a notice under paragraph 1 of schedule 36 to the Finance Act 2008 formally requesting the information previously asked for.
- 40
14. The Appellant provided the information requested save for the expenditure statement and the credit card statements which he said had been destroyed in the fire. He was however able to provide copy business bank statements account. With regard

5 to the employees, the Appellant said that in fact Mr Cartledge and Mr Denny were self-employed. He said that Mr Cartledge's hours were dictated by his workload and availability, suggesting that Mr Cartledge had other employment and that he was responsible for payment of his own tax and NIC. With regard to Mr Denny the Appellant believed he was registered with the unemployment office as he often had to confirm with Mansfield unemployment office the hours Mr Denny worked. At no time was he advised that he needed to deduct PAYE or contribute anything towards his NIC.

10 15. HMRC were able to obtain duplicates MOT records, together with details of purchases. HMRC found that the total sales shown on his returns were insufficient to cover the amounts deposited in the business bank account, the amounts used to pay wages and taken as drawings. HMRC said that the deficit for the year ending April 2008 was almost £9,000. The Appellant was unable to provide any explanation other than that he had got his figures wrong. HMRC warned the Appellant that they may have to charge a penalty because he had submitted incorrect tax returns.

16. HMRC provided a breakdown of the computations in respect of the Appellant's correct turnover, (excluding any further added back profit as then not yet determined in respect of depreciation erroneously claimed) as follows:

20	Total bank deposits	£87,885
	Plus wages (including drawings)	<u>£26,000</u>
	Turnover	£113,000
	Declared	<u>£104,950</u>
	Difference	£8,935

25 Subject to any further adjustment regarding the disallowed depreciation claim this resulted in additional tax of £1,174.40. The Appellant offered to pay the tax starting with instalments of £250 per month.

30 17. HMRC expressed their concern that having looked at the Appellant's accounts back to 1999-2000 he had been returning extremely low levels of profit compared to the profits that should have been returned.

35 18. The Appellant said that there was a period of time falling within HMRC's assessments when he attended HMRC's Alfreton office with all of his account books, receipts and banking documents. At a meeting with an HMRC officer he was shown how to collate information from invoices, receipts and banking documents, receipts for rent/maintenance, and to enter these figures in his return. Thereafter he followed this system to complete future profit and loss accounts, which he then took to HMRC Alfreton office and received support to complete the relevant Tax Return. He carried on with this practice every January until the office closed and then started to complete 40 the returns without support.

19. HMRC said that they had also discovered other errors. The Appellant's state pension only appeared to have been declared in the 2008-09 year. It appeared that deposits paid into his wife's bank account were from his business and had been

omitted from the sales turnover in his accounts and returns. The Appellant said that some of the deposits were from sources other than the business, such as contributions to family expenditure by their son, Mrs Didlick's mother, monies received from an insurance claim, items that they had sold and monies paid in by the Appellant. HMRC said that they would consider excluding those deposits where the Appellant could provide evidence of the source.

20. The amount that HMRC treated as un-recorded sales was as follows:

	Total unidentified bank deposits in Mrs. Didlick's account	£16,411
	Less	
10	Monies from Mrs. Didlick's mother	£2,325
	Insurance claim	£300.00
	Withdrawal on 6 August 2007 from your savings account	<u>£400.00</u>
	Balance	<u>£13,386</u>

15 21. HMRC determined that the Appellant's returned turnover should be increased by:

	Cash deficit	£8,935
	Balance of unidentified deposits into Mrs. Didlick's account	£13,386
	Depreciation claimed in the accounts and added back.	<u>£6,270</u>
20	Total adjustments	<u>£28,591</u>

22. This resulted in a revised net profit for 2008-09 of:

	Original net profit	£1,097
	Plus total adjustments	<u>£28,591</u>
	Revised net profit	<u>£29,688</u>

23. HMRC recalculated the Appellant's profits for year ended 5 April 2009 and applied the same adjustments to all other years from 2003 to 2010 inclusive, adjusted for inflation by applying the Retail Price Index. Additional assessments were issued for 2003 to 2008 inclusive.

24. On 15 February 2013 HMRC opened an enquiry into the Appellant's Self-Assessment return for the year ended 5 April 2010. The return contained similar errors and therefore adjustments were made similar to those in previous years.

25. On 13 September 2013 HMRC closed their enquiry into the Appellants 2010 return and amended his self-assessment Returns for 2008-09 and 2009-10. Amendments for the years 2002-03 to 2007-08 were issued together with HMRC also issued penalty determinations covering 2003 to 2008 inclusive.

26. Summary of changes to net profit

Year	Original net profit	Additions required	Revised net profit
2002-03	3,487	21,947	25,434
2003-04	1,519	24,547	26,066
2004-05	1,614	25,280	26,894
2005-06	1,111	26,471	27,582
2006-07	3,185	25,646	28,831
2007-08	2,528	23,090	25,618
2008-09	1,097	28,591	29,688
2009-10	4,478	26,796	31,274

27. On 16 October 2013 HMRC issued a penalty assessment covering 2009 and 2010.

28. A request for statutory review was made on 11 October 2013 and the review was carried out by HMRC, resulting in a reduction in net profits. The revised net profits were:

Year	Revised net profit
2002-03	£13,966
2003-04	£14,313
2004-05	£14,768
2005-06	£15,145
2006-07	£15,831
2007-08	£16,494
2008-09	£16,302
2009-10	£17,172

29. An Appeal was made against HMRC's decisions on 2 March 2014.

30. Further amendments were made to the profits by HMRC on 17 November 2014 to amend the figures disallowed for depreciation and to apply the Retail Prices Index to additional sales only. These resulted in a reduction of tax and penalties to a total of £22,361.53.

Legislation

31. Under s 29(1) TMA 1970, if an officer of the board or the board discovers as regards any person and a year of assessment, that any income which ought to have been assessed to income tax, or chargeable gains which ought to have been assessed
5 to capital gains tax, have not been assessed, or that any assessment to tax is or has become insufficient, or that any relief which has been given is or has become excessive, the officer, or as the case may be the board, may subject to subsections (2) and (3) make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax.

10 32. The relevant legislation with regard to penalties for the submission of an incorrect return for income tax or capital gains tax is contained in s 95 TMA 1970, which states:

“95

(1) Where a person fraudulently or negligently –

15 (a) delivers any incorrect return of a kind mentioned in [section 8 or 8A of this Act (or either of those sections)] as extended by section 12 of this Act ...), or

(b) makes any incorrect return, statement or declaration in connection with any claim for any allowance, deduction or relief in respect of
20 income tax or capital gains tax, or

(c) submits to an Inspector or the Board or any Commissioners any incorrect accounts in connection with the ascertainment of his liability to income tax or capital gains tax,

25 he shall be liable to a penalty not exceeding [the amount of the difference specified in subsection (2) below.]

(2) The difference is that between -

(a) the amount of income tax and capital gains tax payable for the relevant years of assessment by the said person (including any amount of income tax deducted at source and not repayable), and

30 (b) the amount which would have been the amount so payable if the return, statement, declaration or accounts as made or submitted by him had been correct.

35 (3) The relevant years of assessment for the purposes of this section are, in relation to anything delivered, made or submitted in any year of assessment, that, the next following, and any preceding year of assessment; ...”

33. Section 100 TMA 1970 allows an authorised Officer of the Board in making a penalty determination to set it at such an amount as in his opinion is correct or appropriate.

40 **The Appellant’s case**

34. In his Notice of Appeal, the Appellant says:

- 5 'I appeal against the self-assessment for the years including 2003-2010 whereby HMRC state I owe a figure of £18,524.95. I have attempted to explain on numerous occasions how I may have made errors in the calculation and also circumstances surrounding my financial situation, but this appears to have been disregarded. I have spent several hours trying to explain the nature of my accounting and the manner in which I was shown how to complete my tax returns by HMRC but this has not been accepted by the original investigating officer. I have provided relevant documentation and given permission for HMRC to gain information from relevant sources as necessary.
- 10 I believe that there may be some tax owing due to an error in my accounting, although this was based on inaccurate information being given when shown how to complete my tax returns and I have to take some responsibility for being naïve. There is a period of time when the Inland Revenue actually completed my tax return for me as a manner of support which resulted in a payment being due of £686 for that year. As my business made a loss on some occasions I cannot see how the Inland Revenue have concluded such a high figure on some years but accept that there was an error in some areas of completion which would have made a slight difference, for example calculation of personal wages together with the part time employee's wages.
- 15
- 20 I recently received a pension premium of approximately £4,000.00 and HMRC deducted around £1,000 and this has never been mentioned in the paperwork
- In my opinion I feel that I should not have any penalties as I have made great efforts to work with the department and even at times of distress I have attempted to either provide information or have given permission for the department to seek out information.
- 25
- In addition I have made some interim payments to HMRC via a debt collection agency which again have not been mentioned and therefore I would want proof of where these amounts have been allocated.
- In my opinion the decision made in regard to the penalties mentioned above does not reflect my cooperation with HMRC and willingness to work together with the department to resolve the issues stated in their investigation.
- 30
- At the onset of the investigation I agreed to make a payment of £5.00 per week to continue whilst the investigation was being completed. This was not an acceptance of any figure that may be concluded but as a gesture of making some payment toward a potential debt. This was not discussed or even negotiated. The reason for my offer of this amount was due to my financial and personal situation being semi-retired at 74 years and employed at a basic rate of pay.'
- 35
35. The Appellant told us that the Alfreton tax office used to assist him in producing a profit and loss account and calculating tax due. That office closed and then he had to do the returns without any assistance.
- 40 36. At the hearing the Appellant reiterated his contention that:
- The Appellant agrees that he has made errors when submitting his Tax Returns and there will be a deficit between payments made and owed.

However he does not agree that the deficit is anywhere near the amount HMRC estimate, even without fines and interest.

- The level of penalties do not reflect his co-operation and willingness to resolve the issues stated in the course of the investigation.
- 5
- He cannot afford to pay the amounts calculated by HMRC. He is willing to discuss a payment plan but he is 74 years of age, employed on a part time basis and in regard to income/expenditure has very little savings or saleable assets.

HMRC's submissions

10 37. Where an amendment is made to a return following an enquiry, the burden of proof is on the Appellant to show that the amendment is wrong and the amount by which it is wrong.

15 38. It is not in dispute that the figures shown on Appellant's Self-Assessment return for the year ended 5 April 2009 understate the true profits from his business. HMRC is under an obligation to determine the profits on a fair and reasonable basis. From the outset of the enquiry HMRC had asked for information and evidence in order to arrive at a revised profit figure.

20 39. On the basis of the evidence supplied and information given HMRC has arrived at figures which formed the basis of the Closure Notices and Discovery Assessments. These figures were determined by three elements:

- i. The Appellant did not keep a full record of his business transactions. Sales were not always invoiced or rung into his till. Neither wages paid nor drawings were recorded.
- 25 ii. The Appellant says that takings not used to pay wages or fund his drawings were banked into his business bank account. There is no evidence that any deposits came from non-business sources during the year ended 30 May 2008. Deposits into the business bank account in the year ended 30 May 2008 were £87,885 to which was added cash expenses of £26,000 being wages and drawings. The total receipts were therefore £113,885 but the Appellant 30 declared the turnover on his Self-Assessment return to be £104,950 - a shortfall of £8,935.
- 35 iii. The amount of Depreciation claimed by the Appellant. Depreciation is not an allowable expense for income tax purposes and therefore HMRC disallowed the amount claimed of £6,270 for 2009. The amounts of depreciation disallowed was determined by reference to the amounts declared on the Appellant's Self-Assessment returns. The Appellant explained that the various business assets on which depreciation was claimed had been leased, and hire charges of £7,517.22 had also been claimed in his accounts for the year ended 40 30 May 2008. HMRC explained that Capital allowances can be claimed, but only if the asset was owned. If something was leased or hired then those

charges are allowed instead of capital allowances. There was no evidence to support a claim for capital allowances for 2009. Instead of claiming capital allowances on the equipment, the Appellant had claimed the full cost by including the payments under the Lease agreement in his accounts.

- 5 iv. The deposits into Mrs Didlick's bank account. Initially HMRC considered that additional amounts of omitted takings of £13,386 were banked in Mrs Didlick's account. On review it was decided that HMRC had not gathered sufficient information to support that further assessment.

10 40. HMRC concluded that the Appellant's profits had been understated for 2009. The correct figure was £16,302, calculated as follows:-

Declared profits	£1,097
Understated takings	£8,935
Disallowed depreciation	<u>£6,270</u>
Revised profits year ended 31 May 2008	<u>£16,302</u>

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41. HMRC taxed additional profits for other years from 2003 to 2010 inclusive on the basis that the errors established by their enquiry for the year ended 30 May 2008 did not occur in that year alone. The Appellant had confirmed that the business had been run in the same way over a period of years and it was decided that on the balance of probabilities the Appellant's profits had been understated over a period of years because of the shortcomings in his record keeping.

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42. HMRC's conclusion was that the Appellant's figures of profits based on the profit figure for 2009 of £16,302, and adjusted for inflation using the retail price index should be varied to the following amounts. The additional tax due is also shown.

Year	Revised Assessed profits	Additional tax and NIC
2003	£11,142	£1,662.43
2004	£11,060	£1,695.30
2005	£13,684	£1,980.60
2006	£13,387	£1,134.54
2007	£14,729	£1,380.78
2008	£17,975	£3,374.28
2009	£16,302	£2,442.40
2010	£18,790	£3,031.20
Total		£16,701.53

43. In the absence of any evidence to the contrary HMRC contends that the amounts assessed are reasonable.

44. Penalties are chargeable for making an incorrect income tax return. It is for HMRC to show incorrect return were submitted negligently, and to show that the

inaccuracies in the returns were a result of careless behaviour. If this is established the onus of proof reverts to the Appellant to show the quantum of the penalty is wrong. The statutory onus of proof is on the Appellant (s 50(6) TMA 1970). HMRC assert that the Appellant had not discharged that onus.

- 5 45. Up to and including 2008, penalties were chargeable under s 95 TMA 1970. The maximum statutory penalty under s 95 TMA 1970 is 100% of the additional duties arising from the omissions and understatements. Section 100 TMA 1970 allows an authorised Officer of the Board in making a penalty determination to set it at such an amount as in his opinion is correct or appropriate.
- 10 46. HMRC initially charged a penalty of 45% of the additional tax made up as follows:
- Disclosure of matters (maximum 20% reduction). A reduction of 5% was given on the basis that the Appellant had not made a disclosure of any irregularities in his return.
 - 15 • Cooperation with the enquiry (maximum 40% reduction). A reduction of 30% was given because on the whole, cooperation by the Appellant had been good although formal information powers had been used on two occasions.
 - Seriousness -the nature of the offence (maximum 40% reduction). A reduction of 20% was given because the omitted profits were large in relation to the total profits returned.
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The total reductions amounted to 55% which meant that the penalty loading was 45%. On review the penalty loading was reduced to 30% to reflect the disclosures the Appellant had made regarding the accuracy of his records

25 47. The s 95 penalties up to 2008 were therefore $£11,227.93 \times 30\% = £3,360$ (rounded down).

30 48. For 2009 and 2010 penalties are chargeable under Schedule 24 Finance Act and the legislation sets a level of penalties of 35% minimum to 70% maximum for deliberate behaviour, which means knowingly providing an inaccurate document to HMRC. As the Appellant failed to take action in respect of his records to ensure that his return was accurate, a penalty was chargeable on that basis.

49. HMRC decided that a penalty reduced to 42% properly reflected the disclosures the Appellant had made about the accuracy of his records and the access to information he had given HMRC. The penalties for 2009 and 2010 totalled £4,981.20

35 50. The Schedule 24 penalty is therefore $£5,473.60 \times 42\% = £2,300$ (rounded down).

51. Penalties therefore totalled £5,660.

Conclusion

52. The Appellant maintains that his profits were 'nowhere near as assessed by HMRC' but accepts that he made mistakes on his returns. However HMRC were able to establish that his total sales as shown on his returns were insufficient to cover the amounts deposited in the business bank account, the amounts used to pay wages and taken as drawings. The deficit for the year ending April 2008 was £8,935. The Appellant is unable to provide any explanation other than that he had got his figures wrong.
53. The Appellant does not disagree that he wrongly claimed depreciation as a deduction against profits. Capital Allowances had not been claimed but in any event were not due. Depreciation had been claimed on an asset of the Appellant that was on a hire agreement under which the Appellant would not own the asset at the end of the agreement. With regard to the other miscellaneous tools, the Appellant had erroneously claimed the full cost in his accounts.
54. Deposits paid into the Appellant's wife's bank account were from his business and had been omitted from the sales turnover in his accounts and returns. The Appellant said that some of the deposits were from sources other than the business. HMRC excluded those deposits where the Appellant was able to provide evidence of the source but that left a balance of unidentified deposits paid into Mrs Didlick's account of £13,386. The Appellant was unable to show that these deposits were not from his business but on a reconsideration of the review it was decided by HMRC that they had not gathered sufficient information to support that further assessment.
55. It has to be said that the Appellant's record keeping was woefully inadequate. He says that if a customer paid for repair work by cash, he would very rarely issue an invoice unless asked for one. The till could not be relied upon. The Appellant did not take regular readings He did not set the date on the till. He agreed that he would have done more repairs than had actually been recorded.
56. The Appellant did not hold any details of who he employed. Staff were paid weekly in cash. The Appellant took his wage of £150 in cash which was never recorded.
57. Private items were put through the business such as the servicing of his own car. He had also purchased other non-business items through the business
58. The onus is on the Appellant to show that he has been overcharged by the amendments to his self-assessment. In our view he has not discharged that burden. Irrespective of the loss of records in the fire, the Appellant had failed to take reasonable care in both maintaining records and submission of correct tax returns. He has not provided any evidence to show that HMRC's assessments for the years under appeal are incorrect.
59. The amendment to his self-assessment for the 2009-10 tax year and the discovery assessments raised in respect of the 2002-03 to 2008-09 tax years are accordingly confirmed.

60. Following the closure of the Alfreton tax office the Appellant took no steps to obtain assistance in complying with his responsibilities to submit correct tax returns. As a result of this negligence he submitted incorrect tax returns.

5 61. We concur with HMRC that the penalties imposed have been correctly calculated. The penalties imposed are reasonable and the Appellant has not discharged the onus upon him to demonstrate that they are excessive or have been calculated incorrectly. They are therefore also confirmed.

62. The appeal is accordingly dismissed.

10 63. 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
15 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

MICHAEL CONNELL
TRIBUNAL JUDGE

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RELEASE DATE: 22 MARCH 2016