



**TC06030**

**Appeal number: TC/2012/08190  
TC/2012/08191**

*INCOME TAX – Discovery Assessments – Whether assessments valid and extended time limit applies – Yes – Whether satisfactory evidence to displace assessments – No – Appeals dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**GUI HUI DONG  
HONG FANG**

**Appellants**

**- and -**

**THE NATIONAL CRIME AGENCY**

**Respondents**

**TRIBUNAL: JUDGE JOHN BROOKS  
ELIZABETH BRIDGE**

**Sitting in private at the Royal Courts of Justice, Strand, London on 31 October and 1 November 2016**

**Christopher Marsh-Finch, counsel, instructed by Hogan Brown Solicitors, for the Appellant**

**Christopher Stone, counsel, instructed by the National Crime Agency, for the Respondents**

## DECISION

### **Introduction**

#### *Private Hearing*

1. Contrary to the usual practice of appeals before the Tax Tribunal being heard in public this appeal was heard in private. This is because Mr Dong has been charged with money laundering offences and his trial is due to commence on 20 February 2017. Although an application for the appeal to be stayed behind the criminal proceedings was rejected by Judge Mosedale on 22 February 2016 (see *Dong and another v National Crime Agency* [2016] UKFTT 116 (TC)), she did direct that the appeal be heard in private and that neither this decision nor any transcript or recording of the proceedings is to be published or released to anyone other than the parties until after the jury has reached its verdict in the first instance hearing of the criminal trial.

2. It is appropriate, at this point, to remind the parties of Judge Mosedale's directions, which remain in force, and her observation, at [31] that:

“Insofar as the criminal trial is concerned, it is for the appellant's representatives to make such applications to the criminal court judge as they consider indicated in order to prevent any detrimental evidence from Mr Dong or findings (if any) in the civil case being used by the prosecution.”

#### *The Appeal*

3. On 23 March 2011 the Serious Organised Crime Agency (“SOCA”) served notices on HM Revenue and Custom (“HMRC”), under s 317 of the Proceeds of Crime Act 2002 (“POCA”), that it was adopting its revenue functions in respect of Mr Gui Hui Dong and his former wife Ms Hong Fang for the years 2004-05 to 2008-09 (inclusive). On 21 May 2012 SOCA issued Mr Dong and Ms Fang with ‘discovery’ assessments, made under s 29 of the Taxes Management Act 1970 (“TMA”), for those years amounting in total to £667,222.94 and £131,388.20 respectively (as set out in the schedules appended to this decision).

4. This is Mr Dong's and Ms Fang's appeal against those assessments.

5. Although the assessments had been issued by SOCA, it was abolished on 7 October 2014 by s 15 of the Crimes and Courts Act 2013 (“CCA”). Its functions were assumed by the National Crime Agency (“NCA”) which had itself been established by s 1 CCA. Under Part 1 of schedule 8 to CCA anything in the process of being done by SOCA at the time it was abolished may be continued by the NCA which automatically replaces SOCA as a party in any ongoing litigation, including that before the Tribunal. Therefore, the NCA is now the respondent in this case and where, throughout this decision, we have referred to the respondent as the NCA this should be read, where appropriate, as a reference to SOCA.

6. Mr Dong and Ms Fang are represented by Mr Christopher Marsh-Finch and Mr Christopher Stone appears for the NCA.

### **Evidence and Facts**

7. We were provided with bundles of documents, contained in seven lever arch files, comprising, *inter alia*, witness statements and exhibits including an affidavit of Ms Anna Petrarca of the NCA who made the assessments and a statement made in November 2013 by George Georgiou FCCA in support of an application by Mr Dong and Ms Fang for the postponement of tax in this appeal which Judge Mosedale granted in respect Ms Fang but not Mr Dong (see *Dong and another v National Crime Agency* [2014] UKFTT 126 (TC)). In addition, we heard from Mr Dong (through an interpreter) and Mr Roy Stoddart of the NCA.

8. It is on the basis of this evidence that we make our findings of fact.

### *Background*

9. Credit Lucky Limited (“Credit Lucky”) was established in August 2004 as a Money Service Bureau serving the Chinese community by offering money exchange and remittance of funds to China. It operated, under a Money Laundering Regulation licence from premises in London, Liverpool, Manchester, Birmingham, Belfast and Glasgow. Mr Dong was its sole director and shareholder and Ms Fang its Company Secretary. On 21 June 2013 the NCA’s petition to wind up Credit Lucky was granted by the Companies Court which confirmed the winding up on 29 January 2014.

10. It is not disputed that Mr Dong has held 27 personal bank accounts with five different banks between 2004 and 2007 and that Ms Fang has held 17 personal accounts, also with five different banks, between 2005 and 2009. This, Mr Dong says, is partly explained by the difficulties encountered by Credit Lucky in opening a business account. Over a five year period some £74 million was deposited in these personal accounts. It is accepted that a substantial proportion of these funds were transferred to Credit Lucky.

11. This appeal is concerned with the significant amount that was not.

12. During 2004-05 £26,113,325.46 was paid into Mr Dong’s personal accounts. Although most of this was transferred to Credit Lucky £603,959 was not. Of the £992,320.21 paid into Ms Fang’s personal accounts £75,326 was not transferred to Credit Lucky.

13. Some £38,859,782.84 was paid into Mr Dong’s personal accounts during 2005-06. Of this £194,658 was not transferred to Credit Lucky. Similarly, other than £105,538, which was retained, the balance of the £8,135,987.35 paid into Ms Fang’s personal accounts was transferred to Credit Lucky.

14. In 2006-07 many of Mr Dong’s and Ms Fang’s personal accounts were closed. However, Mr Dong retained £49,765 of the total deposits of £52,715 to his personal

accounts. £34,277.67 was deposited in Ms Fang's personal account of which £31,120 was retained.

15. In 2007-08 the amount deposited in Mr Dong's personal account was £87,000 of which £13,932 was retained. For Ms Fang the 2007-08 figures are £125,233 and £114,901 respectively.

16. For 2008-09 of the total amount of £570,989 deposited in Mr Dong's personal accounts £569,823 was not transferred to Credit Lucky. The total amount deposited in Ms Fang's personal accounts that year was £14,131.71 of which £13,240 was retained.

17. The sums not transferred to Credit Lucky were used by Mr Dong and Ms Fang for their personal and private expenditure. This included the purchase of a Mercedes car on 27 June 2005 for £18,500; the acquisition of the leasehold of a property in the Old Kent Road, London for the restaurant business *Yummy Yummy* at a cost of £25,000 on 1 December 2005; and the purchase of a property in Coulsdon (the "Property") on 10 September 2008 by Mr Dong for £512,500 with the apparent assistance of a mortgage of £299,001, obtained from the Bank of Ireland, which was redeemed in full on 8 December 2008. A payment of £234,999 from Mr Dong's personal account on 29 August 2008 appears to relate to the Property as does a payment of £315,737.45 used to redeem the mortgage.

18. Following its purchase, the original Property was demolished and completely rebuilt and extravagantly fitted out at a cost of several hundred thousand pounds. The re-built Property, which was valued at up to £750,000 in November 2012, has marble floors and walls throughout the first floor and a purpose built entertainment room complete with a home cinema in the basement. It is the residence of Mr Dong and Ms Fang and their children.

19. Funds for the purchase of the Property were received into Mr Dong's bank account from Chinese sources. Mr Dong says that these were "investors" who transferred funds into Cohl Limited, a company of which he is the sole shareholder and director, that was involved in the demolition and reconstruction of the Property. Mr Dong explained that these investors intend to make a profit on the sale of the Property to which he would be entitled to a 10% commission. However, he kept no record of the costs of its demolition and re-construction.

20. In 2011 the Property was transferred by Mr Dong to a Mr Feng Xing. His solicitor's telephone attendance note, dated 13 May 2011, records:

"2.00pm

Attending Mr Dong personally. He wants me to act for him to change the name if the title deed to his brother in China. He provided evidence from his brother in respect of ID and proof of address and the English translation of the certificate.

He said that the brother is in fact holding the property on trust for him and I advised him to do a Trust Deed registered at the Land Registry to

ensure that his brother does not sell the property without his knowledge. He said that it is alright and does not wish me to do this Trust Deed.

He also does not wish for a restriction to be put on the title, as he does not wish and reference of his name on the title document.

He said that he will be looking to have the property transferred to his children when they reach 18 years old but I did point out to him that he has no means of compelling his brother to change the property back to his children in about 8 years time, unless he gets his brother to sign the Trust Deed. He says he is aware of my concern but that he does not wish to do so.

I indicated my fee of £250 plus VAT and land registration fee of £130 for the preparation and registering of the transfer. He confirmed that the property is probably worth about £600,000 now.

...

His brother is Feng Xing, Feng being the surname.”

21. Notwithstanding its transfer, Mr Dong, Ms Fang and their children continued to live at the Property on what Mr Dong described as a “rent free” basis. The Property, like the other assets of Mr Dong, was subject to a freezing order made on 19 June 2016. There has been no application made by Mr Feng Xing to be released from that order.

#### *Assessments*

22. Ms Anna Petraca of the NCA did not consider the income declared by Mr Dong in his self-assessment tax returns filed for 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09 (as shown in the appended schedule) to be sufficient to support the acquisition of the assets or the lifestyle enjoyed by Mr Dong and Ms Fang, who did not submit tax returns for these years.

23. Therefore, following her analysis of the personal accounts, other than the amounts identified as being transferred to Credit Lucky and income from Mr Dong’s restaurant businesses (*Noodle Home* and *Yummy Yummy*) which maintain separate bank accounts, Ms Petraca treated all other income, in the absence of any other identifiable source, as the taxable income of Mr Dong and Ms Fang that had deliberately not been declared to HMRC and made the discovery assessments, under s 29 TMA, in the sums shown in the appended schedules.

24. For the years 2004-05, 2005-06 and 2008-09 the assessments were based on the sums treated as taxable income in accordance with the analysis of Mr Dong’s and Ms Fang’s personal bank accounts.

25. The assessments for 2006-07 were not based on bank records but on the presumption of continuity in the sum of £200,000 for Mr Dong and £110,000 for Ms Fang as the NCA did not consider that the banking information held for that year was

representative of the funds actually received by Mr Dong and Ms Fang. For 2007-08 the assessment of £220,000 on Mr Dong by Ms Petraca was also estimated on the presumption of continuity. Ms Fang's assessment for that year was, as in previous years, based on the analysis of her personal bank accounts.

26. On 16 August 2012 Mr Dong and Ms Fang appealed against these assessments to the Tribunal.

### **Discussion**

27. The following issues arise:

- (1) Whether s 317 POCA has been satisfied, ie whether the NCA had reasonable ground to suspect income arising to Mr Dong and Ms Fang for the years in question arises as a result of the person's or another's criminal conduct;
- (2) Whether the discovery assessments were validly made and in time; and
- (3) Whether the figures in the assessments are "fair" and if so, whether Mr Dong and/or Ms Fang have adduced satisfactory evidence so as to displace the assessments.

28. Before considering these issues, it is appropriate to make some observations on the evidence of Mr Dong who we did not find to be a credible or truthful witness. Even his own counsel, Mr Marsh-Finch, described Mr Dong's evidence as "unsatisfactory". Although Mr Marsh-Finch submits that we should not "disregard everything" there is very little, if anything, other than matters that were not in dispute, that Mr Dong said that did not contradict or was inconsistent with his own evidence.

29. For example, Mr Dong disputes the approach taken by the NCA to treat unidentified income in his and Ms Fang's personal accounts as taxable income. He originally said (contrary to the evidence of his forensic accounting "expert", Mr George Georgiou, that he relied on in the postponement hearing) that all sums passing through his and Ms Fang's accounts was Credit Lucky's money and that their personal accounts were emptied every night and all money transferred to Credit Lucky. However, during cross examination he accepted that the money in his accounts was a mixture of client deposits, Credit Lucky money and personal funds and confirmed that money used to purchase the Mercedes and restaurant, *Yummy Yummy*, (see paragraph 17, above) was not customer money.

30. Also, when examined in chief he stated unequivocally that during 2004-05 he earned £180 a week from Credit Lucky. However, when taken to his 2004-05 self-assessment tax return during cross examination, which showed his income from the company as being £4,680, he confirmed that this figure was correct and that this was the amount he, Ms Fang (who he said had no income) and their four children lived on during that year. He explained, for the first time during cross examination that he had been able to support Ms Fang and the children during 2009-10, when his tax returns showed he had not received any income from Credit Lucky, by borrowing from

friends although did not adduce any further evidence in support of such an assertion. Additionally, when it was pointed out to him that the purchase price of the Mercedes significantly exceeded his declared income for the year (2005-06), Mr Dong explained that he had “just remembered” that he had borrowed the money from an unnamed friend who he could no longer find to give evidence on his behalf.

31. Further examples of the of the lack of credibility of Mr Dong’s evidence can be seen in relation to the Property in which, despite his claims to the contrary, we consider he has a beneficial interest. If, as Mr Dong claimed the Property was owned by Mr Feng Xing there is, in our judgment, little doubt that he would have applied to be released from the freezing order to realise his asset and would not have permitted Mr Dong to continue to reside at the Property without payment of rent.

32. Returning to the inadequacy of Mr Dong’s evidence, he explained that he was unable to obtain bank statements or other documentary evidence in support of his assertion that funds were transferred by Chinese investors into Cohl Limited, a company of which he is the sole shareholder and director, because he could not remember the company’s name. This is simply not credible. Neither is his refusal to accept his solicitor’s contemporaneous telephone attendance note recording his instructions regarding the transfer of the Property to Feng Xing (see paragraph 20, above). Mr Dong now says Feng Xing is not his brother and the note is unreliable because of a “misreading” or “misunderstanding” by the solicitor. Additionally, he said, for the first time at the hearing without being able to produce any evidence in support, that a Mr Wang gave him a large amount of cash to pay the builders and other bills.

33. Although Mr Marsh-Finch was somewhat critical of Mr Stoddart’s evidence, contending that he did not make a genuine attempt to get to the bottom of the case we disagree. Given the statutory requirements and onus of proof, which we describe below, in contrast to Mr Dong we have no reason to question or doubt the credibility of Mr Stoddart.

34. We now turn to the issues.

#### *Section 317 POCA*

35. Under s 317 POCA the enforcement authority designated under Part 6 of that Act, the NCA, may serve a notice on HMRC that it intends to carry out the “Revenue functions” specified in the notice that are vested in it as an enforcement authority if it:

... had reasonable grounds to suspect that income arising or a gain accruing to a person in respect of a chargeable period is chargeable to income tax or is a chargeable gain (as the case may be) and arises or accrues as a result of the person’s or another’s criminal conduct (whether wholly or partly and whether directly or indirectly).

The “Revenue functions” include the power to assess and charge income tax, capital gains tax and national insurance contributions (see s 323 of the POCA).

36. It is common ground that it is for the NCA to show that s 317 POCA has been satisfied. But, as the Tribunal (Judge Demack and Mr Laws) observed in *Fenech v SOCA* [2013] FTT UKFTT 555, at [100]:

“... all that s.317(1) requires is that SOCA has reasonable grounds to suspect criminal conduct, and that there is income, however indirect and however little, flowing from it. SOCA does not have to prove that any of the income assessed on Mr Fenech arose from criminal conduct; it merely has to have a reasonable suspicion that he received some income (even if only £1) directly or indirectly from criminal conduct for that year; there is no need to trace the gain into cash.”

37. In the present case, given the forthcoming money laundering criminal proceedings against Mr Dong and Ms Fang’s link to Credit Lucky monies, even if the matter had been raised as a ground of appeal or it had been seriously contended otherwise, we find that s 317 POCA has been satisfied.

#### *Discovery assessments*

38. Insofar as applicable to this appeal s 29 TMA provides:

(1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a year of assessment—

(a) that any income which ought to have been assessed to income tax, or chargeable gains which ought to have been assessed to capital gains tax, have not been assessed, or

(b) that an assessment to tax is or has become insufficient, or

(c) 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) below, 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.

(2) ...

(3) Where the taxpayer has made and delivered a return under section 8 or 8A of this Act in respect of the relevant year of assessment, he shall not be assessed under subsection (1) above—

(a) in respect of the year of assessment mentioned in that subsection; and

(b) ... in the same capacity as that in which he made and delivered the return,

unless one of the two conditions mentioned below is fulfilled.

(4) The first condition is that the situation mentioned in subsection (1) above was brought about carelessly or deliberately by the taxpayer or a person acting on his behalf.



39. The Upper Tribunal summarised the test for discovery in *HMRC v Charlton Corfield & Corfield* [2013] STC 866 at [37] as being:

“In our judgment, no new information, of fact or law, is required for there to be a discovery. All that is required is that it has newly appeared to an officer, acting honestly and reasonably, that there is an insufficiency in an assessment. That can be for any reason, including a change of view, change of opinion, or correction of an oversight. The requirement for newness does not relate to the reason for the conclusion reached by the officer, but to the conclusion itself. If an officer has concluded that a discovery assessment should be issued, but for some reason the assessment is not made within a reasonable period after that conclusion is reached, it might, depending on the circumstances, be the case that the conclusion would lose its essential newness by the time of the actual assessment.”

40. In *Burgess & Brimheath Developments Ltd v HMRC* [2015] UKUT 0578 (TCC) the Upper Tribunal held that it was for HMRC (and therefore the NCA in the present case) to establish that the relevant conditions for the issue of a discovery assessment under s 29 TMA have been met.

41. In our judgment a discovery of an insufficiency of tax was made by Ms Petraca following her review and analysis of the bank accounts of Credit Lucky, Mr Dong and Ms Fang when she identified income enjoyed by them. We find this income was deliberately not declared to HMRC by Mr Dong resulting in the insufficiency of tax.

42. As Ms Fang did not file any tax returns for the years in question the discovery assessment is, subject to the any time limit issue considered below, valid. In the case of Mr Dong, because he did make and deliver tax returns to HMRC during those years, for the assessment to be valid the NCA must, under with s 29(3) and (4) TMA, establish that the insufficiency of tax was brought about carelessly or deliberately by him. However, given our finding that Mr Dong and Ms Fang enjoyed income during the years under appeal which Mr Dong deliberately did not declare to HMRC, it must follow that the discovery assessments were validly made by the NCA.

43. Turning to the time limits, it is clear from *Burgess & Brimheath Developments* that it is for the NCA to establish and that the assessments were in time by reference to s 34 TMA. Under s 34 TMA an assessment to income tax or capital gains tax may not be made “more than 4 years after the end of the of the year of assessment to which it relates”.

44. However, s 36 TMA provides:

(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,
- (b) attributable to a failure by the person to comply with an obligation under section 7, or

...

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.

45. Section 36(1A) was inserted into the TMA by the Finance Act 2008 and brought into force by the Finance Act 2009, Schedule 39 (Appointed Day, Transitional Provision and Savings) Order 2009, Article 7 of which provides that s 36(1A)(b) shall not apply:

... where the year of assessment is 2008-09 or earlier, except where the assessment on the person ("P") is for the purposes of making good to the Crown a loss of tax attributable to P's negligent conduct or the negligent conduct of a person acting on P's behalf.

46. Although the 2008-09 assessments on Mr Dong and Ms Fang were made in time, in order to rely on the extended time limits for earlier years the NCA must establish, in the case of Ms Fang, negligent conduct by her for the years 2004-05 to 2007-08 (inclusive) but for subsequent years can rely on her failure to give notice that she was liable to tax as required by s 7 TMA. For Mr Dong, who did file tax returns, the NCA must establish that there was a loss or insufficiency of tax brought about carelessly, for 2006-07 and 2007-08 and deliberately for 2004-05 and 2005-06.

47. We have found that both Mr Dong and Ms Fang have enjoyed income that was not declared to HMRC and that in the case of Mr Dong the failure to declare that income was deliberate. In Ms Fang's case we consider that the failure to declare that income was, at the very least negligent/careless.

48. Accordingly, we find that the NCA are entitled to rely on the extended time limits of s 36 TMA.

### *Assessments*

49. Having found that the discovery assessments were valid and that the extended time limits are applicable, s 50(6) TMA applies, as it does for in-date assessments, and the assessment "shall stand good" with the burden resting on the taxpayer to establish that it is wrong (see eg *Johnson v Scott (Inspector of Taxes)* [1978] STC 48 at 53).

50. Section 50(6) TMA provides:

If, on an appeal notified to the tribunal, the tribunal decides—

- (a) that the appellant is overcharged by a self-assessment;
- (b) that any amounts contained in a partnership statement are excessive; or
- (c) that the appellant is overcharged by an assessment other than a self-assessment,

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

51. In the decision of the Court of Appeal in *T Haythornwaite & Sons v Kelly (HM Inspector of Taxes)* (1927) 11 TC 657 Lord Hanworth MR, referring to a previous incarnation of s 50(6) TMA, said, at 667:

“Now it is to be remembered that under the law as it stands the duty of the [Tribunal] who hear the appeal is this: Parties are entitled to produce any lawful evidence, and if on appeal it appears to [the Tribunal] by examination of the Appellant on oath or affirmation, or by other lawful evidence, that the Appellant is over-charged by any assessment, the [Tribunal] shall abate or reduce the assessment accordingly; but otherwise every assessment or surcharge shall stand good. Hence it is quite plain that the [Tribunal is] to hold the assessment as standing goods unless the subject – the Appellant – establishes before the [Tribunal], by evidence satisfactory to them, that the assessment ought to be reduced or set aside.”

52. With regard to assessments, as Walton J said, in *Johnson v Scott (HM Inspector of Taxes)* (1978) 52 TC 383 at 394, in a passage approved by the Court of Appeal (at 403) in that case:

“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. ... 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.”

53. Therefore, provided the figures in the assessments are “fair” and not “wild and extravagant” claims it is not necessary for the NCA to have undertaken any further investigation, it being for Mr Dong and Ms Fang to establish that the assessments should be reduced or set aside. In this case, as we have noted, the analysis of the various bank statements formed the basis of the assessments for 2004-05, 2005-06, 2007-08 (for Ms Fang only) and 2008-09. These therefore, are clearly not wild or

extravagant claims which, in the absence of satisfactory evidence to the contrary, must stand good.

54. The 2006-07 and 2007-08 assessments on Mr Dong and 2006-07 assessments on Ms Fang were based on the presumption of continuity of which Walton J, in *Jonas v Bamford (HM Inspector of Taxes)* (1973) 51 TC 1, said (at 24):

“... once the inspector comes to the conclusion that, on the facts which he has discovered, Mr Jonas has additional income beyond which he has so far declared to the Inspector, then the usual presumption on continuity will apply. The situation will be presumed to go on until there is some change in the situation, the onus of proof of which is clearly on the taxpayer.”

55. However, as the Tribunal noted in *Guide Dogs for the Blind Association v HMRC* [2012] UKFTT 687 (TC) and *Aeroassistance Logistics Ltd v HMRC* [2013] UKFTT 214 (TC), the presumption of continuity is only a presumption which may be rebutted

56. Ms Fang did not adduce any evidence either to counter the assessments or rebut the presumption of continuity. Although Mr Dong did give evidence which, at best, was unreliable, he did not provide any credible alternative explanation for his income.

57. The suggestion, advanced by Mr Marsh-Finch in his skeleton argument that any payments from Credit Lucky to Mr Dong should be treated as debits to a director's loan account and not taxable on Mr Dong is simply not supported by evidence. We are also unable to accept the submission of Mr Marsh-Finch that we should prefer the evidence of Mr Georgiou to reduce the assessments.

58. Mr Georgiou's witness statement was made for the purposes of the postponement application and had its limitations then. As Judge Mosedale said at [89] of the decision in that application:

“Mr Georgiou was not appointed until after the event, in 2012 and after Mr Dong had left for China. He had no first hand knowledge of what happened. So far he is unable to provide evidence to corroborate what Mr Dong says.”

There has been no attempt to address the weaknesses in this evidence either in advance or during the hearing itself. In any event not only was Mr Georgiou's evidence contrary to that given by Mr Dong but Mr Georgiou was not called as a witness as required by the directions of the Tribunal issued on 30 September 2015 if his evidence was to be relied upon.

59. Therefore, in the absence of satisfactory evidence to displace the assessments or rebut the presumption of continuity neither Mr Dong's nor Ms Fang's appeals can succeed.

**Decision**

60. For the reasons above, both appeals are dismissed.

**Appeal Rights**

61. 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.

**JOHN BROOKS**

**TRIBUNAL JUDGE**

**RELEASE DATE: 11 NOVEMBER 2016**

## Appendix

### Schedules of Assessments

#### 1. Mr Gui Hui Dong

<b>Tax Year</b>	<b>Estimated Assessable Income £</b>	<b>Declared Income £</b>	<b>Additional Income £</b>	<b>Tax £</b>
2004-05	603,900	4,680	599,220	233,767.60
2005-06	194,600	9,680	184,920	68,334.20
2006-07	200,000	9,791	190,209	70,839.57
2007-08	220,000	15,813	204,187	77,680.00
2008-09	569,800	15,791	554,009	216,601.57
<b>Total</b>	<b>1,788,300</b>	<b>55,755</b>	<b>1,732,545</b>	<b>667,222.94</b>

#### 2. Ms Hong Fang

<b>Tax Year</b>	<b>Estimated Assessable Income £</b>	<b>Declared Income £</b>	<b>Additional Income £</b>	<b>Tax £</b>
2004-05	75,300	0	75,300	22,327.60
2005-06	105,500	0	105,500	34,159.20
2006-07	111,000	0	111,000	36,134.00
2007-08	114,900	0	114,900	37,374.40
2008-09	13,000	0	13,000	1,393.00
<b>Total</b>	<b>419,700</b>	<b>0</b>	<b>419,700</b>	<b>131,388.20</b>