



TC01806

Appeal number TC/2011/02880

Amendments to self-assessment returns – whether expenditure wholly and exclusively for the purposes of the business – expenditure on premises, wardrobe costs and subsistence – appeal allowed in part – factual finding of misdirection

FIRST-TIER TRIBUNAL

TAX

LOUISE STONES

Appellant

- and -

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

Respondents

**TRIBUNAL: JONATHAN CANNAN (TRIBUNAL JUDGE)
RAYNA DEAN FCA**

Sitting in public at Stoke on Trent on 16 January 2012

The Appellant appeared in person with assistance from her father, Mr M Stones

Mrs S Whitley of HM Revenue and Customs for the Respondents

DECISION

Background

- 5 1. Miss Louise Stones is a self-employed radio presenter who has a daily show on a radio station called Signal 1 based in Stoke on Trent. At all material times she presented and continues to present an early morning show between 6am and 10am.
- 10 2. Miss Stones appeals against amendments to her self-assessment returns for tax years 2006/07, 2007/08 and 2008/09 following a review by HMRC which varied an earlier decision amending those self-assessments. The decision to amend Miss Stones' returns was taken following an aspect enquiry which commenced on 14 May 2008. Mrs Brenda Moxon an officer of HMRC conducted that enquiry and issued closure notices on 24 September 2010. Miss Stones requested a review which was carried out by Mrs Helen Durkin and notified to Miss Stones by letter dated 28 February 2011.
- 15 The outcome of the review was to vary the amendments to the returns.
3. On behalf of the Appellant we heard evidence from Miss Stones herself and from her father, Mr Michael Stones. Mr Stones also assisted his daughter in the presentation of her case. On behalf of the Respondents we heard evidence from Mr Michael Childs and from Mrs Moxon.
- 20 4. The aspect enquiry which led to this appeal was concerned with various expenses which Miss Stones claimed were incurred for the purposes of her business.
5. The expenses at issue for 2006/07, following the review decision may be summarised as follows:

Description	Claim £	Review Decision £	Disallowed £
Premises	2,148	1,445	703
Other Expenses	5,046	719	4,327
Travel/Subsistence	3,048	2,517	531

- 25 6. The amount claimed by Mrs Stones in the 2006/07 return for 'other expenses' was £5,311. We are not sure why HMRC state the figure claimed as £5,046, but in any event the amount actually disallowed was £4,327.
7. The sums which were disallowed for 2006/07 also formed the basis of amendments to the self assessments for periods 2007/08 and 2008/09. In total, the expenses disallowed for each of those years, including small sums in respect of which there is no dispute, are as follows:
- 30

Tax Year	Disallowed £	Additional Tax £
2006/07	5,641	1,692
2007/08	5,877	1,763
2008/09	5,809	1,626

8. The burden is on Miss Stones to satisfy this Tribunal that the amendments to the self-assessments should be varied.

9. The basis of Miss Stones' appeal as presented to the Tribunal was, on its face, straightforward. She claimed that two HMRC officers (Mr Childs and a Mr Shaun Gloyne) had visited her in connection with completing her self-assessment returns. They had both specifically advised her which expenses she could claim and this included expenditure of the type at issue in the appeal. The substance of Miss Stones' appeal was set out in a letter she wrote to the Tribunal on 29 August 2011, copied to Mrs Whitley, the HMRC officer with conduct of this appeal:

“My case is not to depict whether or not my claimed ‘items’ are said to be for sole work purpose. This bares no relevance to the issue at hand. My case is very simple – I sort instruction from HMRC. I was misinformed. I followed HMRC Charter, yet I am being persecuted? The issues at hand lie with the misinformant not myself. At every stage, I have initiated and sort precise instruction from the HMRC. I complied at all times to both their instruction and charter.”

10. Miss Stones confirmed during the course of the hearing that the basis of her appeal was misdirection by HMRC. That raises certain questions as to the jurisdiction of this Tribunal. Notwithstanding the narrow basis of the appeal the evidence and questioning by both parties was directed at times towards the wider issue of whether the expenditure was allowable in law as being wholly and exclusively for the purposes of Miss Stones' business. It is convenient to deal with that matter first because it is only once that question is answered that we can identify whether there has been any misdirection by HMRC.

The Nature of the Expenditure

11. The expenditure which was the subject of the enquiry may be more particularly described as follows.

12. The “premises” costs claimed by Miss Stones on her 2006/07 return were £2,148. They arose because of the fact that she used one room in her home as an office in connection with her business. For present purposes there is no dispute between the parties that Miss Stones was advised by Mr Childs that she could take all the costs associated with running her home such as mortgage interest, utility bills and insurance. She should then divide that by 4 to reflect the number of rooms in the

house. The resulting figure would then be accepted as wholly and exclusively incurred for the purposes of the business.

13. That is the calculation that Miss Stones says she carried out in completing her returns. By implication it meant that she had identified total premises costs of £8,592 for tax year 2006/07.

14. The “other expenses” identified by HMRC relate to various types of expenditure. Those in issue on the appeal are broadly the costs of clothing, cosmetics, hairdressing and accessories which Miss Stones says she incurred wholly and exclusively for the purposes of her business. For present purposes we shall refer to these as “wardrobe costs”.

15. The “travel/subsistence” expenditure refers to the cost of travel between Miss Stones’ home and the radio station and the cost of food and drink. We were told that she lived some 5 miles from the radio station. Miss Stones doesn’t drive and needs to leave home at 4.30 in the morning so she takes a taxi. The travel element has been allowed as a deduction by HMRC although this appears to have been on a concessionary basis that is not intended to apply for the future. What is in issue in the present appeal mainly relates to expenditure on food and drink.

The Law

16. Section 34 Income Tax (Trading and Other Income) Act 2005 provides as follows:

“34(1) *In calculating the profits of a trade, no deduction is allowed for –*

- a) expenses not incurred wholly and exclusively for the purposes of the trade, or*
- b) losses not connected with or arising out of the trade.*

(2) *If an expense is incurred for more than one purpose, this section does not prohibit a deduction for any identifiable proportion of the expense which is incurred wholly and exclusively for the purposes of the trade.*”

17. The ‘wholly and exclusively’ test is well known and well established. The leading authority is the House of Lords in *Maillalieu v Drummond* 57 TC 330 where Lord Brightman gave the opinion of the majority. The case concerned the costs incurred on clothing for court wear by a barrister. The general issue was stated as follows:

“*Whether any person carrying on a trade, profession or vocation on his own account is entitled to a similar deduction if he chooses to set apart clothes, underclothes and footwear for use only at his place of work, and when proceeding to and from his place of work.*”

18. In answering that question the House of Lords distinguished the object of the expenditure and the effect of the expenditure in the following terms:

5 *“The object of the taxpayer in making the expenditure must be distinguished from the effect of the expenditure. An expenditure may be made exclusively to serve the purposes of the business, but it may have a private advantage. The existence of that private advantage does not necessarily preclude the exclusivity of the business purpose. For example, a medical consultant has a friend in the South of France who is also his patient. He flies to the South of France for a week, staying in the home of his friend and attending professionally upon him. He seeks to recover the cost of his air fare. The question of fact will be whether the journey was undertaken solely to serve the purposes of the medical practice. This will be judged in the light of the taxpayer's object in making the journey. The question will be answered by considering whether the stay in the South of France was a reason, however subordinate, for undertaking the journey, or was not a reason but only the effect. If a week's stay on the Riviera was not an object of the consultant, if the consultant's only object was to attend upon his patient, his stay on the Riviera was an unavoidable effect of the expenditure on the journey and the expenditure lies outside the prohibition in section 130.”*

20 19. The House of Lords held, by majority, that the cost of the clothing was not deductible. In doing so Lord Brightman stated:

25 *“... she needed clothes to travel to work and clothes to wear at work, and I think it is inescapable that one object, though not a conscious motive, was the provision of the clothing that she needed as a human being. I reject the notion that the object of the taxpayer is inevitably limited to the particular conscious motive in kind at the moment of expenditure.”*

20. Similar considerations arise in relation to expenditure on food and subsistence. Here the leading case is the judgement of Templeman J in *Caillebotte v Quinn* (1975) 50 TC 222. The opening paragraph of the judgement puts the matter succinctly:

30 *“The question is whether a businessman who pays for his own lunch spends the money exclusively for the purposes of his business: the answer in the present case is no.”*

35 21. We were also referred to *Norman v Golder* 26 TC 293 and *Williams v HMRC* TC00397. In all cases in this area, the question posed and answered by the courts and tribunals is whether there is duality of purpose in the expenditure. If there is, the expenditure will be disallowable. If it is possible to identify a part of the expenditure which is incurred wholly and exclusively for the purposes of the business then the apportioned part may be allowable. That is the basis upon which a portion of premises costs are treated as an allowable expenditure. However, when it comes to subsistence and wardrobe costs it is difficult to see how the cost can be apportioned.

22. There are circumstances where duality of purpose may not be present. For example HMRC accept that expenditure on costumes to an actor may be a deductible expense. Indeed Miss Stones drew an analogy between her expenditure on clothing and the costumes of an actor.

5 23. To some extent there is a divergence between the law as stated in the authorities and the position of HMRC as to what expenditure is allowable in practice. For example in certain circumstances HMRC will allow the cost of food and drink when away from the main place of business. Miss Stones gave us examples of certain types of expenditure which accountants had told her were allowable. We think that the
10 discretion which HMRC operates in individual cases may have contributed to Miss Stones' view that she was not being treated fairly. We say more about that below.

Treatment of the Expenditure Claimed

15 24. As far as premises costs are concerned, HMRC's position was that Miss Stones had not provided evidence to support expenditure of £8,592 in 2006/07. From the records Mrs Moxon had seen she had only been able to establish expenditure of £5,781. Miss Stones maintained that the expenditure had been incurred. However she has not produced to the Tribunal any analysis of the total figure claimed, nor any receipts to support it.

20 25. HMRC contends that the expenditure in relation to wardrobe costs and subsistence which they identified from Miss Stones records during the enquiry was not deductible as a matter of law. They considered that it failed the duality of purpose test. Miss Stones criticised Mrs Whitley for raising the issue and questioning her about it when it was not part of her appeal. Not surprisingly however, given that the issue had been put to her, Miss Stones appeared to dispute HMRC's conclusion
25 during the course of the hearing. Indeed both parties led evidence as to the nature of the expenditure and made submissions as to whether it satisfied the 'wholly and exclusively' test.

30 26. In the circumstances the evidence before us was far from complete. For example, whilst we had schedules produced by HMRC as to the broad nature of the expenditure we were not provided with copies of the underlying receipts. Nor did we have full explanations as to the circumstances in which the expenditure was incurred. Miss Stones also disputed the manner in which some of the expenditure was categorised and described by HMRC in the schedules.

35 27. Given the nature of Miss Stones' appeal it is not necessary for us to resolve those factual issues in relation to wardrobe costs. If it had been necessary to do so, and subject to the items referred to below, we would have been driven to find in favour of HMRC as to how the expenditure had been categorised and described. The evidence of Mrs Moxon and the schedules produced would have been the best evidence available to us.

40 28. In relation to wardrobe costs, the items purchased appeared to be everyday clothing and cosmetics. We agree with Miss Stones that Mrs Whitley's reliance on the

fact that the articles were purchased from “ordinary high street shops” is not relevant. Miss Stones stated that they were purchased for outside broadcasts and other events where she was in the public eye. She produced a copy of the Presenter Manual for Signal 1 which directs presenters to “Look like a ‘Star’ – be smartly dressed and branded if possible” when doing outside broadcasts. She also gave evidence that they
5 comprised at least in part items of clothing which she would not normally wear. We accept Miss Stones evidence in this regard, but as a matter of law we would have found that this expenditure does not satisfy the “wholly and exclusively” test described above.

10 29. We were not satisfied from the evidence that we heard that the sum of £531 relating to subsistence costs was wholly and exclusively for the purposes of the business. Mrs Moxon produced a schedule of receipts totalling £439.66, which included for example £39.85 described as “The Chester Grosvenor – food & drink” and £28.05 “Fat Cat Café – drinks”. However there was no evidence as to the
15 circumstances in which many of the items were purchased. Mrs Moxon said in evidence that she was not provided with receipts for the balance of £91. We accept her evidence in this regard.

30. Again, as a matter of law, we do not consider that the sum which was vouched, some £439, was incurred wholly and exclusively for the purposes of the business.

20 31. In some small respects it does appear that Miss Stones has not been given a deduction for what is allowable expenditure incurred wholly and exclusively for the purposes of her business.

25 32. Miss Stones had claimed $\frac{1}{4}$ of the costs of her home phone, but from the evidence we have seen HMRC disallowed that expenditure. We are satisfied that the phone costs can be apportioned as to business use and personal use. There only appeared to be evidence of 3 phone bills in 2006/07 but we are prepared to accept that a fourth bill would have been paid. We find that Miss Stones is entitled to relief for expenditure of £109 in this regard.

30 33. Miss Stones gave evidence that a sum of £150 had been spent on a filing cabinet for business use. It does not appear that Mrs Moxon or Mrs Durkin had been made aware that this sum related to a filing cabinet and as such it was disallowed. In the ordinary course a filing cabinet would qualify for capital allowances. We are satisfied that Miss Stones was entitled to relief for this expenditure.

35 34. These items fell within the category of premises costs disallowed so that the expenditure allowed under this heading for 2006/07 should be increased accordingly together with any consequential adjustment for 2007/08 and 2008/09.

40 35. It also appears that Mrs Moxon and Mrs Durkin had disallowed a sum of approximately £130 which they thought related to gifts. We accept Miss Stones’ evidence that she did not claim any sums in relation to gifts and that the sum of £130 did relate to allowable business expenditure.

36. This item fell within the category of other expenses so that the expenditure allowed under this heading for 2006/07 should be increased accordingly together with any consequential adjustment for 2007/08 and 2008/09.

Misdirection

5 37. There are issues generally as to what jurisdiction this Tribunal has in cases where
an appellant seeks to rely on a misdirection given by HMRC where that misdirection
gives rise to a legitimate expectation. Indeed different Tribunals have given different
answers to that question of jurisdiction. See for example the different approaches of
the Tribunal in *St Mary Magdalene College Cambridge v HMRC [2011] UKFTT 680*
10 *(TC)* and *Noor v HMRC [2011] UKFTT 349 (TC)* when considering the decision of
Sales J in *Oxfam v HMRC [2010] STC 686*.

15 38. The position of HMRC throughout the appeal process has been to deny any such
misdirection. Both parties have led evidence as to whether or not there was any
misdirection. In closing submissions Mrs Whitley confirmed that if the Tribunal were
to find that HMRC had misled Miss Stones, and that she had relied on wrong
information, then it would not seek to resile from the information it had provided to
Miss Stones. In the particular circumstances of this case we consider that is an
entirely proper approach by HMRC. It is therefore not necessary for us to express any
view as to the jurisdiction of the Tribunal in cases of misdirection. We do however
20 make findings of fact on the question of misdirection so that Mrs Whitley's approach
can be put into effect by the parties.

The Appellant's Case on Misdirection

25 39. Miss Stones' evidence was that she became a self-employed radio presenter in
2001. In 2003 she came to complete her first self-assessment tax return and sought
advice from a specialist team at HMRC which dealt with people new to self-
employment. As a result she met with and was visited by Mr Childs. From the
evidence we have heard it seems that Mr Childs met Miss Stones on 3 occasions.
Initially there was a brief meeting at the radio station. Thereafter Mr Childs made two
visits to Miss Stones' home, one in 2003 and one in 2004. It is during the course of
30 these visits that Miss Stones states she was advised as to what expenditure she could
claim and that she followed that advice in completing her self-assessment returns for
2003, 2004 and subsequent years.

35 40. The principal factual issue between the parties prior to the hearing was as to the
nature and extent of the advice given by Mr Childs in his meetings with Miss Stones.
Following the oral evidence it appeared that there was really very little between the
various witnesses as to what happened at the meetings.

40 41. Mr Childs stated that in 2003 he worked in a business support team of HMRC
and his role involved giving presentations to newly self-employed taxpayers and also
visits to their premises to help with record keeping and filling in forms.
Understandably he did not claim to have a clear recollection of the advice given. His
evidence was that he would have advised Miss Stones to keep all receipts, to

summarise them and to retain a diary so that at the end of the year she would be able to easily extract the figures for her return. We accept that evidence.

42. Miss Stones' oral evidence was directed towards what Mr Childs had told her in relation to the 3 categories of expenditure referred to above. In addition, Miss Stones' father gave evidence that he had been present at the meetings with Mr Childs and confirmed Miss Stones' account of those meetings. He had more experience of dealing with such matters than his daughter and had specifically asked Mr Childs to explain everything to her.

43. In relation to premises Miss Stones stated that she was told to add all the premises costs up and to divide by 4, thus claiming $\frac{1}{4}$ of the costs because there were 4 rooms in her home excluding the bathroom. Mr Childs' evidence was to the same effect and we find that this is indeed what Miss Stones was told. Whilst Mrs Moxon sought to use a less favourable formula, the original approach was re-instated by Mrs Durkin on review.

44. In relation to wardrobe costs Miss Stones stated that she had discussed this with Mr Childs and that their discussion was in relation to her role as a performer. That encompassed outside broadcasts, promotional appearances and visits to local schools and charities. Miss Stones states that she was told that she could claim relief for wardrobe costs associated with such appearances.

45. Mr Childs thought he would have advised her that wardrobe costs when she was actually on air at the radio station would not be allowable. If she was on stage or in public presenting then he would have advised her that the expenditure might have been allowable if it involved, for example, a special garment. He clarified that by saying that when she was appearing "in the spotlight" or at an outdoor event, at that time if he had been asked whether the cost of appropriate clothing and make-up was allowable he would probably have said yes. He regarded Miss Stones as "Louise Stones the public personality" and at that time would not have considered it unreasonable for her to claim for wardrobe costs.

46. We find that Mr Childs did give advice to Miss Stones in these terms. In particular he advised that the wardrobe costs would be allowable in circumstances where she was appearing in public.

47. In relation to subsistence, Miss Stones' evidence was that she was told by Mr Childs that she could claim the cost of a meal if she was more than 5 miles from her business base. She regarded her business base as her home, and indeed HMRC have allowed the costs of travel between her home and the radio station on that basis. Her recollection was that Mr Childs had said it was "reasonable costs" which could be claimed and she took this to mean up to about £10.

48. Mr Childs evidence was that in 2004 he operated what was known as "the 5's rule". Namely the cost of subsistence was allowable if the taxpayer was more than 5 miles from their normal place of work for more than 5 hours and up to £5. The

position was analogous to employees in the civil service. We accept Mr Childs evidence that he gave advice to Miss Stones in these terms.

49. Until the day of the hearing Miss Stones relied only upon her meetings with Mr Childs as the source of her information as to what expenditure was allowable. She
5 also relied upon a handwritten document which she said in correspondence had been completed by Mr Childs during the course of one of those visits. It is headed “*Tax Return Figures Sept 2005*” and Miss Stones clearly thought that she had met with Mr Childs in the autumn of 2005. However shortly before the hearing she saw for the first time Mr Childs’ witness statement in which he stated that none of the handwriting on
10 the document was his.

50. On the morning of the hearing Miss Stones produced for the first time a letter from Mr Shaun Gloyne dated 20 September 2005. Mr Gloyne was a business adviser with HMRC. The letter refers to a meeting he had with Miss Stones the previous day and continues:

15 *“We discussed the completion of your Self-Assessment return, the need to breakdown your expenses into the appropriate categories ...”*

51. Miss Stones gave evidence to the effect that she had explained to Mr Gloyne what Mr Childs had told her in the previous years and that he had confirmed what she had been told by Mr Childs. We accept that evidence.

20 52. At the start of the hearing we invited HMRC to consider whether they wished to call Mr Gloyne to give evidence as to his meeting with Miss Stones. Mrs Whitley indicated that she would like to hear the evidence before taking that decision. We regarded that as unsatisfactory as Miss Stones had already outlined the circumstances in which the meeting with Mr Gloyne had taken place and it would mean hearing
25 Miss Stones evidence as to the meeting in the absence of Mr Gloyne with the appeal going part heard possibly for some months before hearing Mr Gloyne’s evidence. We also took into account Miss Stones’ ill health, and the further stress and trauma she would experience if the matter went part heard. In the circumstances Mrs Whitley decided to proceed with the appeal in the absence of Mr Gloyne. In the light of Mr
30 Childs evidence described above we do not think that HMRC were at all prejudiced by this approach.

53. Most of the figures on the handwritten document are in the handwriting of Miss Stones. All the figures relate to the calculation of tax and national insurance for the 2004/05 tax year once the net profit figure had been ascertained. However it is notable
35 that Mr Gloyne wrote down the figure of £13,806 as being Miss Stones’ net profit for the year. Miss Stones evidence was that Mr Gloyne had calculated that figure for her during the course of the meeting. He had done so by identifying and categorising all her expenditure and that he looked at all her receipts for that year. We have not heard evidence from Mr Gloyne. We accept Miss Stones’ evidence that this was how the net
40 profit figure was calculated for tax year 2004/05.

54. The figures which Miss Stones later put on her 2004/05 return included the net profit of £13,806. She also identified on that return the expenditure taken into account in calculating the profit figure. That included figures of £234 (premises), £4,542 (other expenses) and £2,400 (travel and subsistence).

5 55. We acknowledge Mrs Whitley's point that the premises figure was much less
than that claimed for the years in question in this appeal. She invited an inference that
Miss Stones could not have been following the advice of Mr Childs and Mr Gloyne
when she claimed a much larger figure in 2006/07. Miss Stones stated that she must
have made a mistake and we accept her evidence. In any event, there is no issue about
10 what Miss Stones was told about premises costs.

56. It is notable that the expenditure under the other headings is of a level comparable
to that which Miss Stones claimed in 2006/07. We accept Miss Stones' evidence that
she prepared her return for 2004/05 on the basis of Mr Childs' advice and that this
advice was confirmed by Mr Gloyne when he visited Miss Stones in September 2005.

15 57. We also accept Miss Stones' evidence that her return for 2006/07 was prepared
by her on the basis of the advice she had been given by Mr Childs and Mr Gloyne as
set out above. She stated, and we accept, that she planned her personal finances on the
basis of the tax calculated in accordance with that advice. Having said that, the tax
treatment did not affect her decision whether to incur the expenditure in issue.

20 58. Mrs Whitley drew our attention to the Notes on self-employment accompanying
the 2006/07 tax return. In relation to 'other expenses' those notes state in terms that
"ordinary everyday clothing even if bought specially for business use" is
disallowable. However, even if Miss Stones had read that note we find that she was
entitled to take the view that it referred to a general rule, and that the more specific
25 advice she had received from 2 HMRC officers remained good.

59. Miss Stones came to make her 2007/08 self-assessment return on 29 October
2008. She completed it on the same basis as the 2006/07 return continuing to rely on
the advice given to her by Mr Childs in 2003 and 2004, and by Mr Gloyne in 2005.
However, by this stage Mrs Moxon's enquiry was well under way. Miss Stones was
30 aware that Mrs Moxon was arguing that the wardrobe costs and subsistence expenses
were not allowable for tax purposes.

60. At that stage, Miss Stones was not entitled simply to disregard what Mrs Moxon
was telling her in relation to the wardrobe costs and subsistence expenses. On any
view therefore, either pursuant to Mrs Whitley's concession or on the basis of any
35 jurisdiction this Tribunal might have in a case of misdirection, Miss Stones cannot say
that it is unfair for HMRC to resile from the previous advice. Indeed, it would be
unfair on taxpayers generally if Miss Stones were able to insist on entitlement to relief
where none would otherwise be available in the absence of clear unambiguous advice
to the contrary. By October 2008 Miss Stones did not have clear and unambiguous
40 advice because Mrs Moxon was telling her that the expenditure in question was not
allowable.

Conclusions

61. We now consider the significance of our findings in the context of Miss Stones' appeal against the amendments to her returns for periods 2006/07, 2007/08 and 2008/09.

5 62. In relation to 2006/07, we have found that Miss Stones was entitled to additional allowable expenditure of £389. We are not aware of how these items have been treated in the amendments for 2007/08 and 2008/09. If the parties cannot agree then either party can make an application to this Tribunal and we will resolve the issue. Any such application should be made within 35 days from the date this decision is released. We would hope however that it is capable of agreement.

15 63. We have also found that Miss Stones prepared her return for 2006/07 on the basis of advice given to her by Mr Childs and Mr Gloyne. Notwithstanding that advice, Miss Stones was aware that expenditure had to be evidenced by receipts or otherwise. In the absence of receipts or other evidence as to the premises costs, HMRC were entitled to disallow the premises costs of £703, save to the extent that that figure includes any or all of the £389 referred to above. HMRC were also entitled to disallow the £91 of subsistence costs which we have found were not vouched.

20 64. In relation to wardrobe costs and the balance of subsistence costs, we have found that Miss Stones prepared her return on the basis of advice given by HMRC. For the reasons given above, this amounted to a misdirection upon which Miss Stones was entitled to rely in preparing her 2006/07 return and she did in fact rely upon it. In the light of Mrs Whitley's submission we would expect HMRC to amend the review decision to allow Miss Stones' claim under these headings for 2006/07. If the parties are unable to reach agreement as to the appropriate adjustment for any reason then either party can make an application to this Tribunal and we will resolve the issue. Any such application should be made within 35 days from the date this decision is released. We would hope however that it is capable of agreement.

30 65. In those circumstances, but subject to any adjustment arising from the £389 referred to above, we confirm Mrs Durkin's amendments to the self-assessment returns for 2007/08 and 2008/09.

35 66. Miss Stones clearly has a strongly held view that throughout the process of the enquiry she has been treated as though she was dishonest. She also feels that HMRC has, in her words tried to "*bamboozle her*" with references to legal cases and has not properly handled the enquiry in accordance with the HMRC Charter. We were also made aware that Miss Stones does have significant health issues. She takes the view that HMRC's conduct of the enquiry has been detrimental to her health. We can see that a tax enquiry can, of its nature, have the potential to adversely affect the health of a taxpayer. We have no general jurisdiction in relation to such matters, and in any event we make no criticism of HMRC in their conduct of the present enquiry. Mrs Moxon has done the best she could on the information provided to her. The adjustments we have made to the self-assessments do not reflect any criticism of Mrs Moxon or Mrs Durkin.

67. 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.

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TRIBUNAL JUDGE
RELEASE DATE: 8 February 2012

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