



TC02544

Appeal number: TC/2012/04868

*VAT – failure to register – civil evasion penalty – Section 60 VATA –
apportionment of penalty to director – appeal allowed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

GLENDA CANDY

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE K KHAN

Sitting in public in London on 14 November 2012

Mr Gary Suttle, Accountant, for the Appellant

**Mr Martin Priest, Higher Officer for HM Revenue and Customs, for the
Respondents**

DECISION

Appeal

1. This is an Appeal against an assessment by Her Majesty's Revenue & Customs ("The Commissioners") which was imposed under Section 61 of the Value Added Taxes Act 1994 ("VATA 1994").
2. The Commissioners had imposed a penalty under Section 60 VATA 1994 on a company, Seen 2B Clean Ltd ("The Company"), run by the Appellant and her husband. The Company has not correctly accounted for tax and did not register for VAT when its turnover had crossed the registration threshold. The Commissioners considered this to be dishonest and sought to apportion the whole of the penalty to the company's controlling director, the Appellant.
3. The notification of the assessment was dated 15 December 2011. The original penalty was £30,429 which was reduced by 10% to £27,386. The Appellant by a letter dated 12 January 2012 requested a review of the Decision. The review was undertaken on 5 March 2012 and upheld the assessment on the Appellant.

Background

4. The Company was registered under No 05846060 with a trading address at 24 Mill Lane, Wareham, Dorset, and BH24 RB. It was incorporated on 14 June 2006 and commenced trading on 1 August 2006. Its principle trading activity was commercial and domestic cleaning.
5. The authorised share capital of the Company was a hundred ordinary shares of £1 each. The issued share capital is £2; one share each to Glenda Candy and Brett Candy. The Company Secretary was Glenda Candy, who made all important decisions regarding the business.
6. The Company's auditors are G Suttle & Co Ltd.
7. The Company went into voluntary liquidation in July 2011, with HMRC as the main creditor.
8. Business was conducted from the home of the directors. Staff were on occasional contracts. The rate for cleaning was between £10-£15 per hour. The business turnover was heavily reliant on a few large contracts.

VAT History

9. The Company registered for VAT with an effective date of 3 November 2008.
10. In March 2011, during an inspection by HMRC, it was found that the Company should have been registered for VAT at an earlier date since its turnover exceeded the registration threshold. The accounts showed turnover for the period 14 June 2006 to

30 June 2007 (financial year end) to be £93,133; for the period 1 July 2007 to 30 July 2008 was £132,385 and for the period 1 July 2008 to 20 June 2009 was £160,568.

11. Mr Suttle, the Accountant to the Appellant, advised that the date of registration should have been 1 June 2007. This was only apparent when he prepared the accounts in March 2008.

12. It was not anticipated by the directors that the Company would have to be VAT registered in 2007 since major contracts were lost. It was thought that the turnover would fall. In fact, it increased. The effective VAT registration date was 3 November 2008.

13. Mr Suttle acting as the Auditor prepared the accounts on the basis of figures received at year end. There was a local bookkeeper who kept the books during the year. .

Relevant Correspondence

14. The completed VAT registration form was dated 1 December 2008 with the expectation that the turnover would exceed £130,000 in the 12 months from November 2008. On 23 March 2011 at a meeting of the officers of the HMRC, the Appellant and their advisors agreed that the VAT registration should have taken place around June 2007.

15. On 16 June 2011 Mr Peter Le Morvan, the officer in charge of this investigation, wrote to the Appellant stating;

“As we discussed, the date of incorporation of the business was 14 June 2006, yet the effect date of VAT Registration was 3 November 2008. When I queried this, it appears that the business should have registered for VAT from a considerably earlier date. This was confirmed during our recent meeting on 14 June. During this meeting, Mr Suttle stated that he had written to you at an earlier date (March 2008) suggesting that you register for VAT. I believe this was after he completed annual accounts for your first year of trading and around the time that you lost three large contracts and turnover was anticipated to reduce significantly. Could you please provide me with any correspondence between Mr Suttle and yourself relating to these matters?..... could you also send me copies of any paperwork relating to the lost contracts.....”

16. The letter, which was very detailed, asked for an explanation why registration for VAT had not taken place and enclosed a spreadsheet listing all income for the period 1 June 2006 to 30 March 2007. The figures were taken from the Appellant’s sales ledger and invoices. The letter indicated that an assessment would be raised for VAT due.

17. On 11 July 2011, Officer Le Morvan again wrote to the Appellant requesting information on the VAT registration, he had had no response to his letter of 16 June. He therefore proceeded to raise an assessment for under declared VAT.

18. On 30 August 2011 Officer Le Morvan again wrote to the Appellant. He said that he believed that the under declaration of VAT occurred as a result of dishonest conduct. He provided a copy of Public Notice 160.

19. On 12 October 2011, Officer Le Morvan wrote to the Appellant requesting a meeting to discuss the VAT affairs of the Company. He telephoned the Appellant on 8 November 2011 to confirm their attendance. The Officer received no communication from the Appellant.

20. On 15 December 2011, a Civil Evasion Penalty Notice of Assessment was issued.

21. On 12 January 2012 a review was requested. The review dated 5 March 2012 upheld the decision of the Officers.

Relevant Authorities and Legislation

22. Section 60 VATA 1994 provides:

(1) In any case where –

(a) For the purpose of evading VAT, a person does any act or omit to take any action; and

(b) The conduct involves dishonesty (whether or not it is such as to give rise to criminal liability),

He shall be liable subject to sub section (6) below, to a penalty equal to the amount of VAT evaded or, as the case may be, sought to be evaded, by his conduct.

23. Section 61 VATA 1994 enables the Commissioners to allocate the Section 60 penalty imposed on a company to a director or managing officer of that company where the conduct giving rise to the penalty is, in whole or in part, attributable to the dishonesty of the director or managing officer.

24. Section 61 (5) VATA 1994 gives a right to appeal against the assessment.

25. Section 70 VATA 1994 allows for the mitigation of penalties.

26. The following cases were referred to

(1) *Han and another v HMRC* STC [2001] 1188

(2) *Ackbar and others v HMRC* [2000] STC 237

(3) *McNicholas Construction Company Ltd v HMRC* [2000] STC 553

(4) *Stevenson v HMRC* [1996] STC 1096

(5) *Prebble C & Prebble H v HMRC* Tribunal VTD 19331

(6) *Gandhi Tandoori Restaurant v HMRC* Tribunal VTD 3303

Evidence

27. The Tribunal received two bundles of documents; one containing correspondence and related enclosures and other a List of Authorities and Legislation. There were two witnesses, Mr Peter Le Morvan, Higher Officer at HMRC and Glenda Candy, the Appellant, who both gave oral evidence.

Finding of Facts

28. The Company's main business is domestic and industrial cleaning. The Appellant and her husband are directors of the Company. The Appellant makes all important decisions for the Company.

29. The Company was registered for VAT in November 2008.

30. The directors acted on the advice of their accountant Mr G Suttle and sought advice on VAT registration.

31. The Appellant first knew that the Company should be registered for VAT in March 2008 when informed by her Accountant.

32. The Company was put into voluntary liquidation on the advice of the Accountant.

33. The Appellant's main focus was the development of the business through new clients.

34. The compliance record of the Company was poor and not well organised.

Submissions of the Appellant

35. Mr Suttle stated that the Appellant was not dishonest and did not make any dishonest statements. He explained that she did not collect any VAT and once registered had been compliant with all VAT requirements for filing and payment.

36. The Appellant's Statement of Case stated;

“The company Seen To Be Clean Ltd was formed on 14 June 2006 and prior this Mr & Mrs Candy (the directors) had been in a partnership and accounts revealed turnover far below the VAT limit. Therefore neither director had any knowledge of VAT ...

The first accounts were produced in March 2008 and it is apparent that the turnover had gone up and exceeded the VAT limit. This was a dramatic climb in turnover with prior no knowledge of such an occurrence taking place, the directors had not sought advice as they were unaware of the VAT registration limits.

The letter (3) informed them of the matter and the need to register.

In March 2008 I met with Mr & Mrs Candy and discussed the dramatic increase in turnover, which they attributed to winning office cleaning contracts and that they had now been lost. It therefore appeared that the turnover would fall back to the levels of previous years and that under VAT laws such a short term event would enable them not to register.

The business is somewhat reliant on summer trade as the business cleans holiday cottages during the summer months.

During the summer it became apparent that the turnover would not go down but in fact go up, the loss of contracts being replaced with others”

37. The Statement of Case says there was no dishonest intend and states;

“This is not the case, like many small businesses relying on the directors working environment, Mr & Mrs Candy worked the summer months, whilst also trying to look after children on the summer holidays. It was not until the summer was finished that they had time to account for the full turnover and discover the implications, as soon as they did, they registered.

HMRC state the letter of the law, but failed to take into account the pressure of running a small business and the timescales involved, especially on a seasonal business”.

38. The Accountant submitted that under Section 61(1) (b) VATA there must be dishonesty. The conduct of the Appellant was not dishonest as they did not benefit.

39. The Appellant accepts that VAT thresholds were exceeded and registration should have taken place at an earlier date.

40. It is submitted that the Appellant, on professional advice, did not make any contact with HMRC once the Company was put into voluntary liquidation. The decision to put the Company into liquidation was on the advice of Mr Suttle, Accountant.

41. It is accepted that Mrs Candy was the controlling director, who dealt with all Company matters including the VAT forms, customers, invoices, staff, new clients and National Insurance and PAYE compliance.

Respondents submissions

42. In spite of being informed by both her accountant and the Commissioners that the VAT threshold registration limit had been exceeded in 2007, the Appellant did nothing to register. This is borne out by a letter from Mr Suttle who stated that the Appellant had sought advice “as soon as it appeared that the limit was being approached” and therefore she was aware of the threshold limit and chose not to do anything.

43. The Appellant stated that there was a potential downturn in her business in 2007 but this is unsupported by evidence. In fact, the turnover increased in the relevant period.
44. In March 2008, the Commissioners wrote to the Appellant to inform them that their VAT registration limit had been exceeded by some 18 months. This was the second time the Appellant had been written to and therefore knew the registration limits had been exceeded. No action was taken.
45. On completion of the VAT form on 3 November 2008, the Appellant stated that there was an expectation that she would need to be registered given the turnover of the Company. This was a dishonest act in that she already knew that she needed to be registered.
46. The Appellant was the controlling director for the purposes of the Section 61 VATA 1994. She made all the important decisions on behalf of the company.
47. It is not correct to say the director had not sought advice on the VAT thresholds. It was clear when the accounts were prepared in 2008 that advice had been sought. This was confirmed in a letter from the Appellant's accountant dated 12 January 2012.
48. The Appellant has provided an excuse for non registration. She said that she was busy working, as a cleaner and administrator of the company, raising children with inadequate childcare and a growing and developing the business. These are not reasonable excuses. The lack of childcare cannot excuse 21 months of delay.
49. The Appellant was not prepared to meet or negotiate with HMRC. She did not approach the Commissioners. The fact that there is a new entity running the business which has a good compliance record is not a relevant or mitigating factor for a civil evasion penalty.
50. There is no evidence that the Appellant lost their main clients or expected to lose those clients in the 2007/2008 period. There is no evidence that the turnover decreased in 2007-2008. In fact, the turnover increased above the VAT registration threshold.
51. The Accountant, Mr Suttle, informed the Appellant that they should have registered for VAT in March 2008.
52. After the Company went into liquidation, the Appellant and her husband formed a partnership which carried out the same contract cleaning business. The partnership had the same business email address as the Company. The partnership was registered for VAT in July 2011.
53. Mrs Candy was the controlling Director of the Company and made all important decisions relating to the Company's affairs.

54. The penalty imposed on the Appellant could have been reduced if she had cooperated more fully with the HMRC.

55. The Respondents accept that there is no clear evidence that the Appellant knew that the Company had exceeded the VAT registration limit before March 2008 although the registration threshold had been exceeded before that time.

Witnesses

Mrs Glenda Candy

56. The witness made the following points;

- (1) The Company relied on the advice of Mr Gary Suttle on accounting and taxation matters.
- (2) She expected a downturn in turnover in 2007-2008.
- (3) The business turnover was variable and reliant on summer cleaning for cottages and holiday homes.
- (4) The Accountant informed her to register for VAT in March 2008.
- (5) She made no contact with HMRC on the advice of her accountant.

Mr Peter Le Morvan, Officer, HMRC

57. The witness made the following points;

- (1) He made several approaches to the Appellant to obtain information.
- (2) He confirmed all the facts and assertions in the correspondence between Jun 2011 and November 2011.

Discussion

58. Let us start by outlining the legal position.

59. Section 60 (7) of VATA 1994 provides that the burden of proof of liability to a Section 60 (1) civil evasion penalty, lies upon the Commissioners.

60. The burden of proof in respect of all other matters, including mitigation, lies with the trader.

61. The standard of proof required in civil cases is proof on the balance of probabilities. In cases where dishonesty is alleged, such as civil evasion cases, the evidence must be compelling. The allegation is more serious and when assessing the probabilities the Court will have in mind that the more serious the allegation the less likely the event occurred and therefore the stronger the evidence should be before the Court would conclude that the balance of probabilities standard has been reached. This is sometimes referred to as a “high degree of probability” and this was identified in the case of *Gandhi Tandoori Restaurant*. where it was stated:

“.... we can see no reason why the standard (balance of probabilities) should not apply in cases such as this, because the issue of dishonesty by the taxpayer arises and because the consequences of the finding of dishonesty gave rise to potentially serious penalties, we consider that we should not be satisfied with anything less than a high degree of probability”.

62. The Tribunal would therefore look at the quality and weight of the evidence.

63. Next the Tribunal will turn to the meaning of the word dishonesty. In *Gandhi Tandoori Restaurant* the court made the following observation;

“It seems to us clear that in such a context, were a person has, ex hypothesi, done, or omitted to do, something with the intention of evading tax, then by adding that the conduct must involve dishonesty before the penalty is to attach, Parliament must have intended to add a further element in addition to the mental element of intending to evade tax. We think that element can only be that when he did, or omitted to do, the act with the intention of evading tax, he knew that according to the ordinary standards of reasonable and honest people that what he was doing would be regarded as dishonest”.

64. Dishonesty does involve attributing some intention to deceive to the Appellant.

65. In *Ghosh* [1982] 1 QB 1053, the Court of Appeal identified a two step approach for showing dishonesty. They stated;

“In determining whether the prosecution has proved that the defendant was acting dishonestly, a jury must first of all decide whether according to the ordinary standards of reasonable and honest people what was done was dishonest If it was dishonest by those standards then the jury must consider whether the defendant himself must have realised that what he was doing was by those standards dishonest. In most cases, where the actions are obviously dishonest by ordinary standards, there will be no doubt about it. It will be obvious that the defendant himself knew that he was acting dishonestly. It is dishonest for a defendant to act in a way which he knows ordinary people consider being dishonest, even if he asserts or genuinely believes that he is morally justified in acting as he did.”

66. There is therefore a two stage test, first, an objective assessment of dishonesty and then a subjective check to see if the individual knew he was dishonest. A dishonest state of mind is a requirement. It is therefore important to establish the traders' knowledge and understanding of their actions and its implications.

67. Let us look at the evidence. Officer Le Morvan who conducted the investigation said that the matter was first allocated as an employee compliance issue and as part of a cross tax investigation. After uplifting records from the Company, it transpired that they should have registered for VAT in 2007. They registered in November 2008. He visited the Appellant again and had discussions with their Accountant Mr Suttle. He requested information from the Appellant. This included correspondence between Mr Suttle and the Appellant, where he suggested that the

Appellant be registered for VAT around March 2008 together with paperwork relating to the loss of the large three contracts. He did not get a reply nor did he get a reply from the Accountant regarding the various calculations which he prepared and provided. Sometime later, without an explanation being provided, the Company was put into voluntary liquidation and a new company formed to run the business. Mr Le Morvan saw this as an act of dishonesty both in setting up a new business and in liquidating the previous company in order to avoid the payment of tax.

68. It is not disputed that Mrs Candy is the controlling Director of the Company. Her husband, Mr Brett Candy was involved in sourcing cleaning materials for the Company rather than dealing with the day to day management. Mr Le Morvan therefore wanted to meet and speak to Mrs Candy. He made several attempts to do so but these were all unsuccessful. He gave oral evidence that he was never presented with a proper and convincing story backed up by evidence to show why the Company had not registered for VAT at the time it exceeded the VAT threshold. He felt that the parties knew that registration was required and received advice, from their Accountant in March 2008, that they should be registered. They disregarded the advice of the Accountant. The Company's year-end accounts were prepared in March 2008 and at that time the Appellant knew that they should be registered for VAT. They registered some months later. They were not knowledgeable about VAT, their records were not computerised and they thought that they were below the limit and there was no need to register before being informed to do so in March 2008.

69. In her sworn oral evidence Mrs Candy said that she ran a family business which involved a substantial amount of physical cleaning work by herself and her staff. While she agrees that she should have been registered at an earlier date, she claims that this was only apparent at a later date. Her business was seasonable and variable and she had a young family. She had not charged VAT to any of her customers. There was no intention on her behalf to be dishonest. All the records were kept by the bookkeeper and she relied on her advisors to inform her when she should have been registered for VAT.

70. When she realised that her turnover had exceeded the registration threshold she sought advice from her accountant. She accepts that she did not attend meetings with the Commissioners once the Company was in voluntary liquidation. This on the advice from her advisors. The first advice she took regarding VAT was in March 2008 from Mr Suttle when the accounts were being prepared. The accounts showed that she should have been registered for VAT since her turnover exceeded the threshold figure. She also made the point that Mr Suttle was employed as the Accountant/Auditor for the Company but the bookkeeping was done by Emma Martin who was not an employee of Mr Suttle. The Commissioners reviewed in detail the turnover figures from the "monthly money in and money out" spreadsheets which were given to them. These business records showed that the monthly turnover in the period 1 July 2006 to 30 June 2007, 1 July 2007 to 30 June 2008 and 1 July 2008 to 30 June 2009 were as follows:

Month	Turnover	Output tax (11%)
April 2007	13,516.85	1,486.85
May 2007	11,209.60	1,233.05
June 2007	9,678.50	1,064.63
July 2007	8,793.25	967.25
August 2007	11,914.01	1,301.54
September 2007	10,333.96	1,136.73
October 2007	11,675.88	1,284.34
November 2007	9,339.10	1,027.30
December 2007	6,087.25	669.59
January 2008	11,420.93	1,256.30
February 2008	11,974.30	1,317.17
March 2008	12,448.13	1,369.29
April 2008	12,495.68	1,484.52
May 2008	14,741.03	1,621.51
June 2008	13,362.80	1,609.60
July 2008	15,908.29	1,749.91
August 2008	16,359.75	1,799.57
September 2008	14,632.80	1,609.60
October 2008	15,912.61	1,750.38
Total	232,804.84	25,608.45

71. The above figures were based on information provided by Mr Suttle to the Commissioners. There can be no dispute that these figures are accurate and reflected the turnover of the Company and clearly showed that registration should have taken place at a much earlier date around April 2007. However this letter was written on 16 June 2011 and there is nothing to indicate that the Appellant knew of these figures until March 2008 when informed by her accountant. The assessment itself was retrospective in that it looked back at the figures. The Respondents say that the Appellant must have sought advice in 2007 regarding the VAT threshold limit. There is no evidence that this is the case. There is evidence and it is accepted by the Appellant that they should have been registered in March 2008 when the accounts prepared by the accountant showed that they had exceeded the limit. The Appellant stated that there was a potential downturn in the business and major contracts would have been lost. This is stated in a letter by Mr Suttle on 12 January 2012 to the Commissioners. There is no evidence presented at the Tribunal of the loss of these

contracts. The Tribunal therefore treats that submission by the Appellant with some caution.

72. The Appellant stated that her family and work obligations and her lack of knowledge of VAT accounting rules prevented her from registering at the correct time. The question for the Tribunal is whether this can provide an excuse for late registration of over one year and a half. The answer to that would be no. These cannot excuse such an inordinate delay in the registration for VAT. The registration took place in November 2008 which was itself some seven months after being informed by her own advisor that she should have been registered for VAT.

73. The Appellant does not dispute that the Company is liable for a penalty or indeed that the legislative provisions allow such a penalty to be attributed to the Appellant under Section 61 of the VATA 1994. The question for the Tribunal however is whether the Appellant acted in a dishonest manner.

74. The Respondents state that in liquidating the company and setting up a parallel company to run the business was an act of dishonesty. It may well be treated in some cases as evidence of a dishonest nature. The Appellant gave oral evidence that she was advised on this action by her Accountant Mr Suttle. This seems an unfortunate way to proceed in the circumstances and does send the wrong message. The better message would have been to ask the Appellant to approach HMRC and give a full explanation of the reasons why the registration was late, negotiate a settlement and a time to pay arrangement and ask for the mitigating provisions to be considered in her favour. In the circumstances the Tribunal does not believe that the Appellant acted dishonestly with regard to this matter since, as a person with limited knowledge of VAT law and practice, she relied on advice from her accountant and took that advice and acted upon it. In the circumstances, this cannot be considered dishonesty and certainly not where a high degree of probity is required.

75. Let us look in particular at the question of dishonesty as it relates to the Appellant.

76. The Tribunal believes that the Appellant had a casual approach in dealing with record keeping. This caused both an enquiry into her employee matters and her VAT matters. Her focus was on developing and growing the cleaning business which as very demanding on her and her young family. Although her husband worked with her there were some 14 employees, all of whom were part time and who had verbal contracts which had to be managed. Additionally, the Appellant had to seek new clients and develop the business, which itself is an onerous obligation. There was clearly a failure to register for VAT but the Tribunal does not believe that this was a deliberate failure. It is clear that in dealing with taxation matters, the Company had several outstanding issues and administratively, there was not the level of competence and compliance that one would expect with a well run business. There were potential tax issues and class A NIC arising from the use of a company car and van. There were issues around whether the workers were self employed or were employees and there was the question of the VAT registration. There were additional issues relating to workers being paid by invoice on a self employed based and sums paid to the

directors as personal expenses. The picture which emerges is a company which administratively was not competently run and was liable to make mistakes in its record keeping and compliance.

77. Additionally, there were concerns by the Appellant about contracts. This impacted on the turnover. Given the business was seasonable and the larger turnover arose in the summer, there would have been concerns throughout the year if the turnover had dropped. These matters must have created additional tension for the Appellant who admitted in oral evidence that her main concern was the development of new business. It is possible to see how the running of the business in these circumstances could have been an onerous task. The Tribunal must find dishonesty in order to bring the penalty within the statutory provisions. The first step is to look to see whether by the standards of a reasonable and honest person whether the act of not registering and the fact that the Appellant did not register in March 2008, when told to do so by her accountant, constitutes an act of dishonesty. The Tribunal does not think that there is dishonesty. The Appellant did not deliberately and intentionally try not register for VAT but rather would falls into the category of a person who had a casual approach to compliance. A casual attitude is not the same as a reckless or dishonest approach. The Appellant naively thought her turnover was below the threshold until told otherwise in 2008. A reasonable person would not think that Mrs Candy was trying to avoid charging her customers VAT. If one looks at the relevant VAT provisions, it is clear that Parliament intended there to be a mental element of intending to evade tax. Therefore one has to look not only at the fact that the person did not register for VAT but whether there was an additional intention of evading the paying of tax and that they knew that this was dishonest. In other words, there is a mental element of dishonesty which must be showed or inferred from the conduct and behaviour of the party involved. It is correct that the failure to register amounts to an act of omission but that does not, on its own, constitute dishonesty.

78. The Tribunal can therefore find no clear evidence that the Appellant intended to evade tax either by the standards of a reasonable person or a subjective intention on the part of Mrs Candy herself. Her registration when advised to do so by her accountant does not support the inference of dishonesty.

79. In his evidence Mr Suttle stated that the Appellant had not taken advice from him regarding VAT in 2007. He stated that the first she took advice on this matter was in March 2008 which coincides with the time when the accounts had been prepared. The Tribunal will therefore accept this evidence to show that the Appellant had not taken on board her responsibilities regarding VAT and it had not occurred to her that she needed to be registered for VAT at a much earlier time. The one curious decision is the decision to put the company into voluntary liquidation and not to approach the Revenue or respond to any of their questions. This was action undertaken after advice had been received from her advisors. This is a most curious way to proceed and is not advisable. However this cannot be taken as an act of dishonesty since she was acting on the advice those who were knowledgeable and familiar with the compliance laws and rules. Dishonesty is a serious matter and it would require the Respondent's cogent evidence that the Appellant acted in a dishonest manner. The level of evidence required has not been provided and to that

extent the Respondent's have not discharged the burden which has been placed upon them.

80. The Tribunal therefore concludes that the Appeal should be allowed. The Respondent's have not discharged the heavy burden placed upon them by the law to show dishonesty. It is correct that the Appellant took a very casual approach to VAT registration and failed to register at the appropriate time. The business was run in a manner which showed that there was some administrative incompetence and mistakes in dealing with tax matters. The advice received by the Appellant with regard to the liquidation of the Company sends the wrong message and is not a proper way to proceed in these circumstances. The proper way to proceed would have been to engage with the Respondents. However, taking all these factors into account, the Tribunal does not find dishonesty on the part of the Appellant.

81. Dishonesty would require both objective and subjective dishonesty and the high probability that the actions of the Appellant were intended to evade the payment of tax. This is not the case. The Appellant's present record of compliance is exemplary, though this is not a factor which was considered by the Tribunal in making its final decision. On balance the evidence presented by the Commissioners does not convince us that there has been dishonesty and the Tribunal has concluded that the Appellant did not act in a dishonest manner in omitting to register and continuing to trade while unregistered.

82. The Appeal is therefore allowed and the penalty imposed on the Appellant is set aside.

83. 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.

**DR K KHAN
TRIBUNAL JUDGE**

RELEASE DATE: 13 February 2013