



TC04177

Appeal number: TC/2014/00624

INCOME TAX – Proceeds of Crime Act 2002 – whether qualifying condition met for NCA to carry out general Revenue functions in relation to Appellant – yes – discovery assessments under s 29 TMA 1970 – whether the conditions for such assessments met – yes – whether within time limits – yes – on evidence, no basis on which assessed amounts to be adjusted, other than one to be reduced to nil – with latter exception, assessments confirmed – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TERENCE LYNCH

Appellant

- and -

NATIONAL CRIME AGENCY

Respondent

**TRIBUNAL: JUDGE JOHN CLARK
MR ANTHONY HUGHES**

Sitting in public at 45 Bedford Square, London WC1B 3DN on 3 November 2014

The Appellant in person

Nicola Parslow, Presenting Officer, for the Respondent

DECISION

1. Mr Lynch appeals against assessments made on him by the Respondent (“NCA”) under s 29 of the Taxes Management Act 1970 (“TMA 1970”) for the years 2001-02 to 2008-09 inclusive.

The background facts

2. The evidence consisted of two large lever arched files containing approximately 1,200 pages of documents and a witness statement given by Paul Theodosiou, an officer of HM Revenue and Customs (“HMRC”) on secondment to the Respondent. In addition, Mr Lynch gave oral evidence in cross-examination by Ms Parslow. From the evidence we find the following background facts.

3. On 15 December 2007, the Serious and Organised Crime Agency (“SOCA”), the predecessor to NCA, executed a warrant at Mr Lynch’s home address. SOCA’s grounds were that it suspected that Mr Lynch was in receipt of income through connection with a crime group in North Kent. (We make no findings as to that suspicion.)

4. At Mr Lynch’s home, SOCA found money amounting to £276,920, mainly in two holdalls under Mr Lynch’s bed. They also found a money counting machine.

5. Mr Lynch argued that this money was savings from his former business.

6. SOCA sought forfeiture of the money on the basis that it was from the proceeds of crime. At a hearing held in 2010, an order was made for the forfeiture of the money.

7. Evidence produced for the purposes of that hearing showed that Mr Lynch had been a sole trader running a café business under the trade name the “Meeting House”; the business had ceased on 2 July 2007.

8. A predecessor of Mr Theodosiou at SOCA, Mr Gibson, undertook a review of Mr Lynch’s former café business, and considered that the income declared to HMRC in the relevant returns fitted with what might be expected for that type of business in that location.

9. Mr Gibson also reviewed the bank and credit card records in his possession at that time relating to Mr Lynch, and prepared analyses to identify areas of potential discrepancy and to compute potentially taxable income as yet not returned by Mr Lynch. In Mr Gibson’s opinion, this review showed that there were amounts deposited which appeared to be over and above the income that Mr Lynch would have earned from the café business and so indicated that Mr Lynch was in receipt of a second source of income that had not been returned for tax purposes. It was also clear to Mr Gibson that some financial documentation was missing.

10. On 5 July 2011, Mr Gibson wrote to Mr Lynch to notify him that SOCA was adopting the general functions of HMRC in relation to Mr Lynch's income and/or capital gains tax liabilities and Class 4 National Insurance Contributions in relation to the years from 2001-02 to 2008-09. Mr Gibson referred to SOCA's responsibility for assessing and recovering tax owed for those years, and informed Mr Lynch that interest might be due and that he was potentially liable for penalties.

11. Mr Gibson stated that SOCA had reason to believe that Mr Lynch had not disclosed the full extent of his income from all sources for those years, and invited him to make a full disclosure of all income not returned to HMRC.

12. Mr Gibson explained that he held details of Mr Lynch's personal bank accounts showing deposits for the tax years 2002-03 to 2008-09 inclusive that were not commensurate with Mr Lynch's declared income. Mr Gibson stated that he only held partial details for the tax years 2001-02 and 2008-09, but the indications were that previously undisclosed income arose in those years as well. It was not impossible that Mr Gibson would have to extend his enquiries to earlier years also.

13. Mr Gibson attached spreadsheets summarising the amounts of unexplained deposits and payments made by Mr Lynch that Mr Gibson believed to be taxable; if Mr Lynch did not consider that the amounts assessed were all chargeable, Mr Gibson asked him to provide explanations of their sources, together with supporting documentation.

14. Mr Gibson also asked Mr Lynch to complete a Statement of Assets and Liabilities, and enclosed formal notices of assessment for the tax years 2001-02 to 2008-09 together with details of the basis of calculation of each assessment. He referred to interest and penalties, and to the question of costs before the tribunal in the event that SOCA considered that Mr Lynch had behaved unreasonably in either bringing or conducting his appeal.

15. The amounts of the assessments were:

	Additional income	Tax and National Insurance
2001-02	£50,000	£20,000.00
2002-03	£103,500	£40,027.60
2003-04	£78,000	£30,416.14
2004-05	£86,750	£33,587.76
2005-06	£65,350	£26,793.50
2006-07	£46,350	£15,594.03
2007-08	£146,900	£57,475.60
2008-09	£50,000	£13,541.60

16. Mr Gibson entered into correspondence and discussion with Mr Lynch. This involved raising questions and asking for copy bank or credit card statements that had not been seen by SOCA at that point. Mr Gibson and Mr Lynch met on four occasions. These face to face meetings were held on Wednesday 2 August 2011,

Thursday 2 February 2012, Wednesday 15 February 2012 and Friday 24 August 2012. In the course of these meetings Mr Lynch provided written documentation, as well as written authorities for Mr Gibson to approach the banks concerned to obtain these missing statements. Mr Gibson used this information to fill in the gaps in the information that he held. In order to assist Mr Lynch during the course of the enquiry, Mr Gibson accepted appeals and full postponement of the tax and national insurance arising from the assessments made.

17. On 7 March 2013 Ms S Henry took over the case briefly from Mr Gibson, who had left the NCA. Ms Henry continued Mr Gibson's line of enquiry for the brief period for which she covered the case.

18. Having familiarised himself with Mr Lynch's case, Mr Theodosiou wrote to Mr Lynch on 5 August 2013 to tell him that he was now dealing with matters relating to Mr Lynch. Mr Theodosiou also wrote to Mr Lynch's former accountant.

19. At that stage, Mr Theodosiou had various concerns; we consider these at a later point. In a letter dated 28 August 2013, the accountant responded to Mr Theodosiou to inform him that the information requested did not exist and therefore could not be supplied. The accounting firm explained that at no time had it kept the books and records relating to Mr Lynch's business; its role had been to prepare the VAT returns, the year-end accounts and file Mr Lynch's self-assessment returns. All this work had been based on schedules detailing daily takings and expenditure prepared by Mr Lynch's book-keeper; any supporting information provided had been returned to Mr Lynch on an on-going basis. The firm also indicated that it had not been asked to act on Mr Lynch's behalf [ie in relation to the SOCA enquiry], and that it would not accept such an appointment. Mr Lynch had requested that the firm should look at the schedules prepared by SOCA and write to SOCA with any comments; the firm had done so on 29 March 2013.

20. Following a telephone call from Mr Lynch, a meeting was arranged for Friday 13 September 2013. Mr Theodosiou had various matters in mind for consideration at the meeting. However, after some discussion Mr Lynch informed Mr Theodosiou that he was no longer prepared to co-operate with SOCA in any way.

21. Mr Theodosiou subsequently reviewed again the information available to SOCA. In order to ensure that his understanding was correct, he met with Mr Gibson, the previous caseworker, to discuss with him his methodology and conclusions reached in the case.

22. Mr Theodosiou also reviewed and re-evaluated the master version of the personal bank account analyses and made adjustments to them to take into account information provided by Mr Lynch's former accountant relating to payments in respect of VAT made from Mr Lynch's personal bank accounts.

23. Using the amended figures for each of the years from 2001-02 to 2008-09, Mr Theodosiou prepared revised tax computations based on the originals issued by Mr Gibson. It was clear from Mr Theodosiou's review that no adjustment had been made

for any unbanked cash. As he could not quantify the amount of cash, he decided not to add an element for cash to his revised figures. An exception to this was for the year 2005-06, when there was an apparent deficit in the money available to Mr Lynch. Mr Theodosiou took the view that the deficit would have needed to be covered and that the most likely means was by way of unbanked cash available to Mr Lynch.

24. Mr Theodosiou wrote two letters to Mr Lynch on 19 November 2013. The first referred to the points which Mr Theodosiou considered to be the current issues outstanding. In summary, these were:

- (1) Unexplained personal bank deposits;
- 10 (2) Statement of assets and liabilities;
- (3) Certificate of full disclosure (this would be expected after negotiations towards a mutually agreed settlement);
- (4) Information concerning deposit of a sum of £80,000 repaid to Mr Lynch by Mrs Hamilton in September 2007;
- 15 (5) Certificates of bank accounts and also credit card accounts operated.

25. The second of Mr Theodosiou's letters dated 19 November 2013 set out details of his proposals to conclude the enquiry. The revised assessments were:

	Additional income	Tax and National Insurance
2001-02	£33,838	£13,535.20
2002-03	£66,176	£25,097.80
2003-04	£39,490	£14,811.54
2004-05	£37,116	£13,237.82
2005-06	£ nil	£ nil
2006-07	£20,368	£6,110.70
2007-08	£101,758	£35,271.28
2008-09	£23,070	£4,817.80

26. Mr Theodosiou concluded that incorrect returns had been made for the years 2001-02 to 2008-09 inclusive, as Mr Lynch had failed to declare the income that he had received. Mr Theodosiou considered this to be deliberate behaviour on the part of Mr Lynch.

27. Mr Theodosiou also set out the total liability as he saw it, including interest. He also informed Mr Lynch of the options open to him as a result of the letter. In addition, Mr Theodosiou explained that the functions of SOCA had been assumed by NCA.

28. On 21 November 2013, Mr Lynch contacted him and asked what he should do. Mr Theodosiou explained Mr Lynch's options, and Mr Lynch made it clear that he wished to refer the appeal to the Tribunals Service ("HMCTS").

29. Subsequently, having heard nothing from Mr Lynch or HMCTS, Mr Theodosiou contacted HMCTS and established that no appeal had been received. On 17 January 2014, he issued a letter formally settling the appeals under s 54(1) TMA 1970.

5 30. This prompted telephone contact from Mr Lynch, and subsequently Mr Theodosiou received a notice from HMCTS dated 13 February 2014 confirming receipt of Mr Lynch’s Notice of Appeal dated 28 January 2014.

The law

10 31. The relevant legislation concerning the functions of NCA in relation to tax matters is in the Proceeds of Crime Act 2002 (“POCA 2002”) as amended by the Crime and Courts Act 2013:

“317 The National Crime Agency's general Revenue functions

(1) For the purposes of this section the qualifying condition is that the National Crime Agency has reasonable grounds to suspect that—

15 (a) 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), or

20 (b) . . .

(2) If the qualifying condition is satisfied the National Crime Agency may serve on the Commissioners of Inland Revenue (the Board) a notice which—

25 (a) specifies the person or the company (as the case may be) and the period, and

(b) states that the National Crime Agency intends to carry out, in relation to the person or the company (as the case may be) and in respect of the period, such of the general Revenue functions as are specified in the notice.

30 (3) Service of a notice under subsection (2) vests in the National Crime Agency, in relation to the person or the company (as the case may be) and in respect of the period, such of the general Revenue functions as are specified in the notice; but this is subject to section 318.

35 . . . ”

“319 Source of income

(1) For the purpose of the exercise by the National Crime Agency of any function vested in it by virtue of this Part it is immaterial that the National Crime Agency cannot identify a source for any income.

40 (2) An assessment made by the National Crime Agency under section 29 of the Taxes Management Act 1970 (assessment where loss of tax discovered) in respect of income charged to tax under Chapter 8 of Part

5 of the Income Tax (Trading and Other Income) Act 2005 must not be reduced or quashed only because it does not specify (to any extent) the source of the income.

...”

5 **Arguments for NCA**

32. As the burden of proof in respect of certain matters fell on NCA, and as Mr Lynch agreed that it would be more convenient for NCA to open its case first, Ms Parslow agreed with our proposal that the hearing should be conducted in this way.

10 33. Ms Parslow made an application to admit in evidence copies of spreadsheets prepared by Mr Gibson to summarise the amounts of unexplained deposits and payments made by Mr Lynch that Mr Gibson believed to be assessable. These had been enclosures to his letter to Mr Lynch dated 5 July 2011. Although Mr Lynch raised the question of what he described as the failure by SOCA to examine a substantial number of documents held in his solicitor’s office (a matter to which we return later in this decision), we decided that it would be in the interests of justice for
15 these copies to be admitted in evidence.

34. Ms Parslow submitted that the qualifying condition under s 317 of the Proceeds of Crime Act 2002 (“POCA 2002”) was met and that it was permitted for NCA to adopt the powers of HMRC for the relevant years of assessment. NCA considered that
20 it had discovered a loss of tax.

35. The qualifying condition did not require criminal conduct to be proved; it was sufficient that NCA had a reasonable suspicion. Ms Parslow referred to the case of *Khan v Assets Recovery Agency* [2006] STC (SCD) 154.

25 36. Ms Parslow emphasised that no adjustment had been made in the assessments to account for the cash found under Mr Lynch’s bed, amounting to just under £277,000, which had been seized and forfeited.

37. She indicated that NCA was no longer pursuing an assessment in respect of 2007-08, and requested that this assessment should be determined at nil.

30 38. The assessments had been made under s 29 TMA 1970. Ms Parslow referred to the time limits under ss 34 and 36 TMA 1970. The latter applied where a loss of tax had been brought about carelessly or deliberately; if the behaviour was careless, the time limit was six years, whereas if the loss of tax had been brought about deliberately, the time limit was 20 years. NCA’s case was that Mr Lynch had deliberately brought about the loss of tax, and that therefore the assessments had been
35 validly made.

39. If the Tribunal accepted this submission, the question then became whether Mr Lynch was overcharged by the assessments. In NCA’s submission, the assessments had been made to the officer’s best judgment; Mr Theodosiou had revised the assessments downwards, but they had still been made to the officer’s best judgment,
40 and NCA submitted that they were reasonable.

40. It appeared that NCA had not seen all the accounts into which money had been deposited. (We consider this below.) NCA considered it unfortunate that Mr Lynch had withdrawn his co-operation when he met Mr Theodosiou in 2013.

5 41. Ms Parslow made submissions on the facts; we consider these below. NCA argued that Mr Lynch had not discharged the burden of proof to satisfy the Tribunal that the income included in the assessments should not have been subject to tax. Ms Parslow referred to the “presumption of continuity” in the case of *Jonas v Bamford* (1973) 51 TC 1, [1973] 519, and also to the approval by Goff LJ in the case of *Nicholson v Morris* (1977) 51 TC 95 of comments of Walton J in the High Court
10 below as to the taxpayer’s knowledge.

Mr Lynch’s arguments

42. Mr Lynch explained that he could not add to the arguments put for him in correspondence. He referred to various questions of fact, which we address below in the context of the arguments put by NCA.

15 Discussion and conclusions

43. Before considering the issues of fact, we first need to consider the basis for NCA’s involvement, and the making of the assessments.

The questions of law

20 44. The first question is whether the qualifying condition in s 317(1)(a) POCA 2002 was satisfied. Did NCA have reasonable grounds to suspect that income arising to Mr Lynch was chargeable to income tax and arose wholly or partly and directly or indirectly as a result of his or another person’s criminal conduct? To answer that question, as well as the questions referred to in the following paragraphs, it is necessary to look at the factual background. We deal separately with this below in the
25 general context of the factual evidence.

45. The second question is whether the conditions for “discovery” assessments under s 29 TMA 1970 were met. As Mr Lynch submitted returns for all the years covered by NCA’s assessments, s 29(3) TMA 1970 provides that he is not to be assessed under s 29(1) unless either of the conditions in s 29(4) and s 29(5) is
30 fulfilled. The first of these conditions is that income which should have been assessed to tax has not been assessed because that situation has been brought about carelessly or deliberately by the taxpayer or someone acting for him. The second condition is that at the point when the enquiry period in respect of a particular tax return has expired (or notice of completion of an enquiry has been given), the relevant HMRC
35 officer could not reasonably have been expected to be aware of the insufficiency of the assessment to tax.

46. The third question arises because of the legislation concerning time limits for the making of assessments. Under s 34 TMA 1970, the ordinary time limit for an assessment is four years from the end of the tax year to which it relates. However, this

is subject to any other provisions in the Taxes Acts allowing a longer period in any particular class of case. Under s 36 TMA 1970, the time limit in a case where loss of tax is brought about carelessly by a person is six years; however, s 36(1)(a) provides that where the loss of tax has been brought about deliberately, the time limit is 20 years.

47. The burden of proof in respect of all these questions falls on NCA.

48. If the assessments are shown to have been validly made, it is for Mr Lynch to show that they are not correct. This is because s 50(6) TMA 1970 provides:

“(6) 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.”

49. As Ms Parslow indicated, the question of what is required to prove that an assessment is excessive was referred to in *Nicholson v Morris* at 119 by Goff LJ, expressly approving the comments of Walton J:

“The learned Judge in his judgment said this:

“Section 50(6) of the Taxes Management Act says: ‘If, on an appeal, it appears to the majority of the Commissioners present at the hearing, by examination of the appellant on oath or affirmation, or by other lawful evidence, that the appellant is overcharged by any assessment, the assessment shall be reduced accordingly, but otherwise every such assessment shall stand good.’ So, once again, the situation here is that the onus was on the taxpayer, and the taxpayer, Mr. Nicholson, offered no evidence whatsoever.”

Then again the learned Judge said:

“Even supposing that I were myself to think that the amounts were wrong - and, as I have freely conceded, and as Mr. Davenport has freely conceded, they probably are wrong - what on earth could I or anybody else at this stage, in the total absence of evidence, substitute for them? The answer is that it is a complete and utter impossibility; and that is why, of course, the Taxes Management Act throws upon the taxpayer the onus of showing that the assessments are wrong. It is the taxpayer who knows and the taxpayer who is in a position (or, if not in a position, who certainly should be in a position), to provide the right answer, and chapter and verse for the right answer.”

I think that is entirely correct, and the Appellant has only himself to blame.”

50. Thus, if we are satisfied that the assessments were validly made, then subject to any question whether on the evidence they appear to us on any basis to be unreasonable, it is for Mr Lynch to show that they are excessive and to provide evidence showing why they should be reduced.

5 *The questions of fact*

(a) Qualifying condition under s 317(1)(a) POCA 2002

51. Following the seizure of cash at Mr Lynch's home by SOCA in 2007, that cash subsequently being forfeited as a result of a hearing in 2010, SOCA carried out a review of Mr Lynch's financial affairs. (At that hearing, SOCA had argued that if the
10 seized cash had been derived from the business, the drawings for the preceding eight years would have had to be saved in their entirety to amass that amount of cash.) The review was carried out on the basis that the seized and subsequently forfeited cash was ignored.

52. As a result of his review, Mr Gibson was satisfied that the receipts from the café
15 business were commensurate with those that could be expected from such a business in that area. However, amounts deposited by Mr Lynch appeared to Mr Gibson to be over and above Mr Lynch's income from the café business; as indicated in Mr Gibson's letter to Mr Lynch dated 5 July 2011, the bank deposits in question were "unexplained", and credit card payments had been made which did not come from his
20 bank accounts, so were assumed to have been paid from cash or from an unknown source.

53. The notice from NCA to HMRC under s 317(2) POCA 2002 was dated 21 June 2011. That notice was not included in the evidence; the only evidence relating to the notice was HMRC's letter of acknowledgment of notice, the latter being dated 21
25 June 2011. We therefore have no evidence of the contents of the notice.

54. However, it is clear that by May 2011, SOCA was aware that the seized cash had been forfeited and that, after leaving out of account that seized cash, there appeared to be unexplained income in Mr Lynch's hands, namely the amounts represented by bank deposits and credit card payments. The seizure of the cash was
30 pursuant to other powers under POCA 2002; the decision that it was to be forfeited showed that it was regarded as intended for use in unlawful conduct.

55. Although SOCA did not specifically state in correspondence that it had reasonable grounds to suspect that Mr Lynch was in receipt of income arising or accruing as a result of his or another person's criminal conduct, Mr Theodosiou stated
35 in oral evidence that Mr Lynch was believed by SOCA (and subsequently NCA) to be involved with an organised crime group in North Kent, with money being laundered.

56. We emphasise that it is not for us to make any finding as to Mr Lynch's involvement. Nor is it relevant that Mr Lynch, as he stated to us in strong terms, does not have any criminal convictions. What we are required to do is to examine whether

SOCA, and thereafter NCA had a reasonable suspicion as to his receipt of income arising from some person's criminal conduct.

57. As we explained to Mr Lynch, these Tribunals can only act within the statutory authority given by the legislation covering our jurisdiction. Any questions as to the
5 conduct of SOCA or NCA in carrying out investigations into his affairs are matters outside the scope of this Tribunal's jurisdiction. In the same way, it is not open to us to enter into a detailed examination of the process by which SOCA and NCA reached their view that they had reasonable grounds for suspicion. All that we can do is examine whether, viewed objectively, they did have reasonable grounds. Although Mr
10 Lynch referred repeatedly at the hearing to what he saw as the failure of SOCA to examine documents at his solicitor's office which he said would have provided SOCA with relevant information, we are unable to take this into account in applying the statutory test as to reasonable grounds for suspicion.

58. In our view, there was a question to be answered; given that cash had been
15 seized from his home and subsequently forfeited, and that apart from that money, Mr Lynch appeared to have unexplained income, did these circumstances amount to reasonable grounds to suspect the matters set out in s 317(1)(a) POCA 2002?

59. We think that they did, and so we are satisfied that SOCA (and later NCA) did
20 have reasonable grounds for such suspicion. We therefore find that the condition in s 317(1)(a) POCA 2002 was, and continues to be, met.

(b) Conditions for "discovery" assessments under s 29 TMA 1970

60. In the course of the investigation by SOCA, carried out initially by Mr Gibson, it became apparent that there were unexplained deposits and credit card payments from unidentified sources, and that these appeared to be income not previously
25 declared by Mr Lynch in his tax returns. We consider that this amounted to a "discovery", in terms of s 29(1) TMA 1970.

61. The next question is whether the "insufficiency of tax" situation was brought about carelessly or deliberately by Mr Lynch. We consider below whether his conduct was deliberate rather than careless, but the absence of any reflection in his tax returns
30 of the income represented by the unexplained deposits appears to us on the face of the matter to be at the very minimum careless, whether or not it can be described as deliberate. It is sufficient for the purposes of s 29(4) TMA 1970 that the situation was brought about carelessly, so one condition referred to in s 29(3) TMA 1970 is fulfilled.

35 62. Under the latter sub-section, it is only necessary for one of the two conditions to be fulfilled. For completeness, we consider whether the second condition, in s 29(5) TMA 1970, is also fulfilled. We are satisfied that the relevant HMRC officer or officers would not have been aware at the end of the enquiry period relating to any of the years covered by the assessments that Mr Lynch had unexplained income which
40 ought to have been assessed to tax but had not been so assessed.

63. As a result, we find that the second condition mentioned in s 29(3) TMA 1970 is also fulfilled. This means that the discovery assessments were validly made, subject to the other conditions relating to time limits. We consider below whether on the facts the assessments were made in time.

5 64. We should point out that our decision as to the validity of the discovery assessments does not automatically mean that Mr Lynch is liable to the tax assessed. If he can show to our satisfaction that any of the assessments is excessive or incorrect, the liability under that assessment may be reduced or even eliminated.

(c) Were the assessments made within the relevant time limits?

10 65. For NCA, Ms Parslow submitted that Mr Lynch's conduct in relation to all the relevant years had been deliberate rather than careless. As all the assessments made by SOCA were dated 5 July 2011, the assessments for all the years up to and including 2005-06 were made more than six years after the end of the respective years of assessment. As a result of the time limits set out in s 36 TMA 1970 (see above) it is
15 therefore necessary for NCA to prove that Mr Lynch's conduct in respect of these years was deliberate. For the assessments relating to 2006-07 onwards, NCA must show either that Mr Lynch's conduct was deliberate, or that his conduct was careless.

66. Ms Parslow argued that Mr Lynch had omitted a source of income from his returns, and that under ss 34 and 36 TMA 1970 this gave SOCA and NCA authority
20 to make the assessments.

67. Mr Lynch argued that he had dealt with matters by providing all the relevant information to his accountant. He had relied on his book-keeper and the accountant, and had provided the till rolls and all the accounts to the accountant. He referred to the papers which had been available at his solicitor's office. He questioned whether
25 the figures used by SOCA and NCA had been "plucked out of the air". He could not see how he was liable when he had paid all his taxes.

68. We accept that Mr Lynch provided his accountant with the information relevant to his business. However, that is not a sufficient answer. For SOCA, Mr Gibson had expressed the view that the level of business income received by Mr Lynch from the
30 café business was commensurate with what might be expected from similar businesses in that area. Thus (subject to the question raised below as to Mr Lynch's practice of "mixing" funds between personal and business accounts) the assessments did not (and do not) relate to the café business; the tax which Mr Lynch paid was the tax due in respect of that business income, so cannot be regarded as having anything
35 to do with tax on the "unexplained income".

69. The question which we have to address is whether Mr Lynch deliberately withheld from HMRC and SOCA information concerning the "unexplained income" covered by the assessments. Although we have not seen copies of the self assessment forms signed by Mr Lynch for the years under appeal, such forms require the taxpayer
40 to declare that the information which he has given on the form is correct and complete to the best of his knowledge and belief. Those forms require the taxpayer to give

information relating to all types of income. In signing his return forms, even though these had been completed on his behalf by his accountant, Mr Lynch was stating that he had no income other than that included in the return; it is clear from the subsequent investigations carried out by SOCA that there was something in addition to Mr Lynch's declared income.

70. We find that Mr Lynch's behaviour in leaving out any information concerning this other income was deliberate; he did not provide his accountant with any information about it, with the result that it was not included in any of his returns. If he had provided his accountant with the details, it would have been possible for the accountant to advise him whether and to what extent that income was taxable. By withholding the further information and merely providing the accountant with details of the business income, Mr Lynch was not merely being careless; he was concealing information relevant to his tax returns.

71. We are therefore satisfied that the assessments were issued within the time limit, namely the twenty years specified in s 36(1A) TMA 1970.

(d) Should the assessments stand, or be varied?

72. The amounts originally assessed following Mr Gibson's investigations were reviewed by Mr Theodosiou. As a result, the amounts of the assessments were revised downwards. In addition, Ms Parslow has confirmed that NCA is no longer pursuing liability in respect of the assessment for 2007-08, which is now to be determined at £nil.

73. The question for us is whether, for all the other years, the assessments should stand as revised by Mr Theodosiou, or should be reduced. This turns on whether Mr Lynch can satisfy the burden of proof to convince us on the balance of probabilities that any or all of those assessments should be reduced.

74. Mr Lynch did not have anyone to represent him at the hearing. His accountant had provided limited help in relation to the enquiries by SOCA, but made it clear that the firm had not been asked to act for Mr Lynch and would not have accepted the appointment if he had so asked. Thus Mr Lynch was at something of a disadvantage.

75. We have therefore examined the evidence to see whether there are any arguments to support Mr Lynch's general argument that the assessments are not appropriate given that in his view he has already paid the tax due for all the years in question.

76. At the hearing, we asked whether cash payments made into the accounts referred to by NCA might have been derived from Mr Lynch's business income. Mr Lynch explained that he made some payments in respect of his business out of his private account. Monies coming in could be from any account. We note that in a letter to Ms Henry of SOCA dated 29 March 2013, Mr Lynch's accountant referred to the way in which Mr Lynch moved funds around various accounts, both business and personal. The accountant believed that much of the money listed by Mr Gibson under

the heading “Cash and Cheques only” might be business receipts, might be inclusive of VAT, and might have been use for business purposes such as the payment of rent or of VAT and might be duplications of such payments.

5 77. We are conscious of the possibility that there might have been some “double counting” in the process of arriving at assessable amounts. However, the existence of a possibility does not amount to proof that the relevant event occurred. Without evidence, we are unable to justify any adjustment to the assessments to deal with double counting. (We note that following the accountant’s letter dated 29 March 10 2013, Mr Theodosiou did make adjustments to the amounts assessed in order to take account of Mr Lynch’s use of money from his personal bank accounts to make payments of business expenses; in our view, this gave some recognition to the possibility of double counting.)

15 78. The difficulty with cash payments into a bank account or credit card account is that they are difficult to identify; without more, there is no audit trail to establish their source. This is illustrated in a different way by Mr Theodosiou’s evidence. Ms Parslow asked him why he had not added into the assessments any amounts for cash received and not banked. Mr Theodosiou explained that this would have been a very difficult figure to quantify; he felt that he should avoid putting in an arbitrary figure, as it was not right for him to give a figure plucked out of the air.

20 79. Ms Parslow asked him whether it was his view that Mr Lynch banked all the cash that he received. Mr Theodosiou suspected that this was unlikely, but unfortunately he could not quantify the figure.

80. For similar reasons, we are unable to suggest any justifiable basis on which to reduce assessments to take account of double counting.

25 81. The position in relation to the assessments is that SOCA, and subsequently NCA, have reviewed very substantial amounts of financial information and concluded that for the relevant years Mr Lynch was in receipt of income over and above that which he had previously declared to HMRC in his self assessment returns. Section 30 319 POCA 2002 (see above) confirms that it is not necessary for NCA to identify the source of income when carrying out its revenue functions. It is therefore sufficient for NCA to identify and assess unexplained income, assuming compliance with the other provisions which we have considered above. Once NCA has done so, it is for the taxpayer to prove that the assessments are excessive.

35 82. It is not necessary for us to review in detail in this decision the voluminous amounts of financial information considered by NCA and included in the evidence. Nor do we now need to consider the question of the absence of details of an account into which a payment was made of £80,000 from a Halifax account owned by Mrs Margaret Hamilton; the assessment for that year is not being pursued, and NCA has arrived at its revised view in relation to the amounts of the assessments for the other 40 years.

83. We have considered whether there are any grounds on which it could be argued that the basis on which SOCA and NCA made the assessments was unreasonable. We are satisfied that the method of calculation of the unexplained income was appropriate in the circumstances; although we did question whether there might have been double counting of any cash as a result of movement between different accounts, we have found that there is insufficient evidence to justify any adjustment of the assessments on those grounds. As a result, it is only if Mr Lynch can show reason to reduce the assessments that any adjustments can be made.

84. We are not satisfied that Mr Lynch has provided proof of any grounds to justify reduction of any of the assessments. In the absence of such proof, all the assessments other than that for 2007-08 must stand in the amounts set out at paragraph [25] above. We determine the assessment for 2007-08 at £nil.

85. As the other assessments are confirmed in the revised amounts assessed by NCA, Mr Lynch's appeal must be dismissed.

Right to apply for permission to appeal

86. 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 CLARK
TRIBUNAL JUDGE**

RELEASE DATE: 9 December 2014