



TC04383

Appeal number: TC/2014/02757

INCOME TAX – enquiry into self-assessment – understatement of income – best judgment – presumption of continuity - closure notices and discovery assessments – penalties for carelessness – sections 9A and 95 Taxes Management Act 1970 and Sch 24 Finance Act 2007

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SANDRA FORKES

Appellant

- and -

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

**TRIBUNAL: JUDGE ALEKSANDER
 KAMAL HOSSAIN FCA FCIB**

Sitting in public at Fox Court, London on 25 February 2015

J Forkes for the Appellant

M Chapman, an officer of HM Revenue and Customs, for the Respondents

DECISION

- 5 1. This is an appeal by Mrs Sandra Forkes against closure notices and assessments dated 11 March 2013 in respect of the tax years 2005/6 to 2010/11 inclusive, and penalties in respect of carelessness and negligence. The amounts of tax and penalties are as follows:

Tax Year	Tax	Penalty	Legislation
2005/06	£910.20	£227.00	s29 and s95 TMA 1970
2006/07	£1038.00	£259.00	s29 and s95 TMA 1970
2007/08	£2138.40	£535.00	s29 and s95 TMA 1970
2008/09	£2393.44	£598.00	s28A(1) and (2) TMA 1970
2009/10	£2971.36	£743.00	s97 and Sch 24 FA 2007
2010/11	£2702.20	£675.00	s97 and Sch 24 FA 2007

- 10 2. Mrs Forkes was represented by her husband Mr James Forkes. As Mr Forkes is employed by Mrs Forkes, and keeps the accounts for Brook Farm, he was able to give evidence about the Farm's income and expenditure.

3. HMRC was represented by Mr M Chapman.

- 15 4. Mrs Forkes was originally to have been represented at the hearing by her accountant Robin Wilson. Sadly, Mr Wilson suffered a stroke towards the end of January 2015 and was too ill to be able to appear at the hearing. In addition, Mrs Forkes is not in good health and was unable to attend the hearing (she had been treated the previous day at hospital, and Mr Forkes produced a copy of a letter from the hospital confirming this). Given all these circumstances, at the commencement of the hearing we asked Mr Forkes whether he would prefer to adjourn the hearing, and have the opportunity to instruct a new professional representative, but Mr Forkes asked that the hearing proceed.

- 25 5. In addition to the bundle of documents prepared by HMRC prior to the hearing, Mr Forkes produced further documents at the hearing. Mr Chapman reserved the right to request an adjournment should any of the additional documents raise new issues, but in the end no adjournment was requested by him.

6. We also noted that the notice of appeal was received by the Tribunal on 14 May 2014. This was more than 30 days after issue of the closure notices and assessments (there was no review), and more than 30 days after HMRC's letter of 19 September 2013 responding to further submissions made on behalf of Mrs Forkes, and which set

a deadline of a further 30 days for her to either request a review or notify her appeal. Mr Chapman did not object to the late notification of the appeal, and we gave our consent to the late notification of the appeal to the Tribunal, and extended the time limit for the notification accordingly.

- 5 7. We gave our decision, with brief reasons, orally immediately after the conclusion of the hearing. This decision notice sets out our reasons in full.

Background Facts

8. We find the background facts to be as follows.

10 9. Mrs Forkes owns Brook Farm. It was purchased in 1997 to be a home for Mr and Mrs Forkes. At the time Mr Forkes was engaged full-time in running a construction business. However due to an accident in 2005, he had to close the business and retire. Since Mr Forkes retired from the construction business, he has worked for Mrs Forkes in the Brook Farm business.

15 10. Brook Farm is a small farm, on which there is a fishing lake, stables and some outbuildings. Grass is grown for the production of hay, which is sold. The stables are rented to local horse owners. The outbuildings are rented to third parties. Day passes and season tickets are sold for fishing in the fishing lake.

20 11. Rent for the stables and outbuildings is mostly paid by standing order, direct to Mrs Forkes' business bank account. Records for income from rent from stables were not kept, as these were charged at £25 per week and were easy to calculate. Mr Forkes told us that these were in the main paid monthly by standing order directly into the Brook Farm business bank account. However, unusually, in 2010/11 there were large cash receipts for rent for the reasons we describe below.

25 12. Fishing receipts are mostly in cash for day permits. Mrs Forkes keeps a small duplicate book in which she writes up the day tickets. For each day ticket issued, the "original" page is torn out and handed to the customer as a receipt, and the duplicate is retained in the book. Mr Forkes told us that the cash receipts from fishing were used to meet everyday business outgoings.

30 13. Mr Forkes is employed in the Brook Farm business, for which he receives a modest salary (£5800 per annum in 2008/9). He keeps the accounts for Brook Farm. He has an exercise book in which he periodically records the cash takings. No equivalent record of expenses is kept, but Mr Forkes does keep receipts. At the end of each tax year, the books and records maintained by Mr and Mrs Forkes (including the duplicate book, the exercise book and receipts) are given to their accountant, Robin
35 Wilson, who prepares a summary profit and loss account for the business based on these records, and prepares Mrs Forkes tax return.

14. The profit and loss account for Brook Farm for the year ended 5 April 2009 shows a net profit for the year of £30,847. After taking account of investment allowances and other capital allowances, the declared taxable income from the farm

for the year was £15,603. We note that taxable income declared on Mrs Forkes tax return in respect of business income from the farm for 2005/6 was £19,404, for 2006/7 was £19,994 and for 2007/8 was £17,308.

15. On 9 November 2010, Mr Purdham, an inspector of taxes, wrote to Mrs Forkes opening an enquiry into Mrs Forkes self-assessment tax return for 2008/9. On 20 December 2011, Mr Purdham wrote to Mrs Forkes to open an enquiry into her 2009/10 self-assessment tax return, and on 9 August 2012, he wrote to open an enquiry into her 2010/11 self-assessment tax return. The taxable income declared on Mrs Forkes tax return in respect of business income from the farm for 2009/10 was £14,829 and for 2010/11 was £17,114.

16. The correspondence and telephone conversations relating to the enquiries were conducted on behalf of Mrs Forkes, by both Mr Wilson and by Mr Forkes. Although Mrs Forkes had apparently signed two forms 64-8 to authorise HMRC to discuss her tax affairs with Mr Forkes and Mr Wilson, the form relating to Mr Forkes was never properly processed by HMRC, and so the authorisation did not appear on HMRC's internal computer records. This slowed down the enquiry, and it also caused distress to Mr and Mrs Forkes. Although the delay and the distress are regrettable, in the end we find that HMRC received all the information and explanations that Mr and Mrs Forkes wanted to provide, and ultimately were not prejudiced by the difficulties with the form.

17. There was considerable correspondence and a number of telephone calls between Mr Purdham, Mr Forkes and Mr Wilson which extended over the period from the start of the enquiries in November 2010 until closure notices and assessments were raised by HMRC on 11 March 2013. Appeals were lodged against these on 8 April 2013, and the correspondence continued until May 2014, when the appeals were notified to the Tribunal.

18. We do not propose to summarise all of the correspondence here. Suffice it to say that there were a number of lines of enquiry pursued by HMRC which ultimately proved to have entirely legitimate explanations, but which took Mr and Mrs Forkes time (and stress) to address.

19. Mrs Forkes' case was not helped by the fact that information provided by Mr Forkes was in some cases inconsistent, explanations were changed, or information provided by Mr Wilson was contradicted by Mr Forkes (and vice versa).

20. One example related to receipts for fuel described by Mr Purdham as relating to two credit cards with numbers ending in 7855 and 9363 respectively. The response by Mr and Mrs Forkes was that they did not have any credit cards with these numbers. As the expenditure evidenced by these receipts was modest (£334.83), Mr Wilson initially agreed to a suggestion that these expenses be disallowed. However, Mr Forkes told us that he eventually ascertained that these cards were not credit cards, but were debit cards, and the expenditure related to fuel costs. We can see from the bundles that Mr Purdham eventually accepted explanations relating to fuel costs and allowed the expenditure. However we can understand that the experience of dealing

with HMRC's enquiries relating to these matters would have been stressful for Mr and Mrs Forkes.

21. We give another example of changing explanations later in our decision.

22. We also note that although Mr Purdham asked Mrs Forkes to provide her prime
5 accounting records, she did not send either the duplicate book or the exercise book to HMRC (although these had been sent to Mr Wilson). In addition, the fact that Mr and Mrs Forkes did not keep proper accounts in respect of the farm (for example by using one of the basic accounting software packages designed for small businesses) has not helped them.

10 23. As part of the enquiry, Mr Purdham asked Mrs Forkes to prepare a schedule of personal income and expenditure, and also a statement of assets, liabilities and business interests. The schedule of personal income and expenditure is a table with a list of typical items of personal income and expenditure in the first column. The next
15 four columns are headed "weekly", "monthly", "quarterly" and "annually". There is also a column for notes (and on the expenditure schedule a column labelled "paid" which was not used). Against most of the items, amounts have been entered into one or other of the columns. The total annual personal expenditure for the year shown on the schedule was £28,824. The income shown from the farm on the schedule was £15,603. When Mr Forkes' salary of £5800 is added, the total income in the year was
20 £21,403. Thus, according to the schedules, personal expenditure exceeded income by about £8000.

24. Mr Forkes, in his submissions to us, explained this discrepancy because the schedule was prepared by Mrs Forkes, who did not take sufficient care in its
25 preparation. In particular, she omitted to include various income items – the sale of an old car, compensation received for a damaged gate, reimbursement of expenditure on a share of a football season ticket and a claim on dog insurance – totalling £13,566.

25. We do not accept that Mrs Forkes did not take care when preparing these schedules. The blank schedules were sent by HMRC to Mrs Forkes' accountant – Mr
30 Wilson of Robin Wilson & Co – and returned under cover of a letter from the accountant. So Mrs Forkes would have had professional advice on the completion of the schedule and the statement, and their importance would have been explained to her. It is clear on their face that amounts have been included against virtually every line item. Clearly, thought had been given to each of these amounts. But we recognise that there were some omissions from the schedule, and we address these
35 points below.

26. HMRC's enquiry eventually concentrated on a limited number of issues.

27. One issue related to the wages paid to Mr Forkes by Mrs Forkes. In the profit
and loss statement, the wages paid to Mr Forkes is stated as being £5800. However in
40 correspondence between Mr Wilson and Mr Purdham, it was stated that the correct figure was £5300. The discrepancy arose because in November 2008, the business's bank account went overdrawn by £178.65. In order to bring the account back to a

positive balance, Mr Forkes paid £500 into the account from his personal funds. For reasons which were not satisfactorily explained to us, this was treated as rent received by the business in the profit and loss account. However in the correspondence between Mr Wilson and Mr Purdham, the £500 receipt was treated as a reduction in Mr Forkes wages – but without a corresponding reduction in the business’s rental income.

28. Another issue related to the purchase of a mechanical digger. Oliver Groundworks had been engaged by Mrs Forkes to do some work on Brook Farm. The business belonged to Matthew Oliver, the son of a very long standing friend of Mr Forkes. Mr Oliver had decided to emigrate to Australia, and wanted to sell his mechanical digger. Mr Forkes offered to buy the digger (and various accessories) on behalf of the Brook Farm business for £13,000. In his evidence, Mr Forkes stated that he agreed with Mr Oliver to pay the purchase price in instalments of £2500 in each of March, May, July and August/September 2008 and a final instalment of £3000 in December 2008. In the bundle of evidence is a receipt for the purchase price signed by Matthew Oliver saying “Received in full the sum of £13000.00 for the purchase of yanmar excavator and associated equipment”. The receipt is dated 8 August 2008.

29. There are a number of difficulties with Mr Forkes’ account of the digger purchase. First, how did Mrs Forkes pay for the digger? The purchase payments are not reflected in the bank or credit card statements of Mr and Mrs Forkes, and HMRC submit that the cash resources and income of Brook Farm would not have been sufficient to pay for the digger. The explanation, given by Mr Forkes to the Tribunal at the hearing, was that the digger was paid in instalments, and the payments were made from the cash received by the Brook Farm business in respect of Kakadu, which is described below. But we do not find Mr Forkes’ explanation convincing. We note that this is the third explanation given by Mr and Mrs Forkes for the funding of the purchase. When Mr Purdham first raised the question during the enquiry, Mrs Forkes’ response was that the digger was purchased out of proceeds from an offset mortgage account, subsequently it was stated that the digger was purchased out of cash sales, and finally it was stated that the digger was purchased in instalments in cash. This series of different explanations undermines the credibility of Mr Forkes’ evidence. An instalment purchase is also inconsistent with the receipt, which states that payment in full was made by 8 August. We asked Mr Forkes to explain the discrepancy between the date on the receipt and the dates of the instalment payments. He told us that Mr Oliver emigrated to Australia in August, and therefore had to issue the receipt for the full purchase price before his departure. The outstanding instalments were paid to Mr Oliver’s father after Mr Oliver left. We find Mr Forkes’ explanation that Mr Oliver had to issue the receipt before he emigrated as unconvincing. The fact that Mr Oliver was emigrating before all the instalments were paid would not be a reason to provide a receipt recording that payment in full had been made by 8 August.

30. The final issue related to the rental of one of the outbuildings to Kakadu. Mr Forkes renovated one of the farm’s outbuildings, and advertised it on the internet as a warehouse for rent. Kakadu was owned by an Australian company and sold furniture through a retail outlet located in Camden Market in London. They rented the

warehouse for £1600 per month. Rents were initially paid by direct transfer to Brook Farm's bank account. On 10 February 2008 there was a very large fire at Camden Market, and the market and the immediately surrounding area was closed for several days while the fire was brought under control. In his evidence, Mr Forkes told us that
5 the Kakadu outlet was burnt, and the market was shut for redevelopment for several months. Judge Aleksander lives not far from Camden Market, and passes it on most days when travelling to work. He pointed out at the hearing that the address of the Kakadu unit as shown in the bundle was in the "stables" area of the market, whereas the fire was in the "canal" area of the market on the other side of Chalk Farm Road. It
10 would not have been the case that the Kakadu unit would have been burnt. However Judge Aleksander was aware that part of the stables market was redeveloped at about that time, and it may have been the case that the Kakadu unit was affected by the redevelopment.

31. In any event, Mr Forkes stated that Kakadu had got behind with their rental
15 payments. On 26 March 2008 a transfer of £800 was made to the Brook Farm bank account, and on 28 April 2008 a transfer of £500 was made. In addition, cash payments (which were not banked) were made when Kakadu personnel visited the Farm to collect stock or manage deliveries. On 11 August 2008, Mr Forkes received a letter from Warren, a director of Kakadu. The letter included several post-dated
20 cheques which brought the rent on the barn up-to-date. Warren stated that he had his wife had decided to separate, and that he was accompanying his family back to Australia – but that he would return to the UK in September to resume his business. In fact he never returned. The Kakadu business closed in late 2008.

32. There was a stock of furniture left in the warehouse. Mr Forkes arranged for the
25 furniture to be sold by his nephew and a friend, and the £5700 cash raised from the sale was set against the arrears of rent owed by Kakadu. The furniture sold, and the cash realised was recorded in the duplicate book used for the fishing day tickets. A final rental payment was made by Kakadu direct to Brook Farm's bank account in October 2008, which cleared the arrears of rent owed. In the correspondence in the
30 course of the enquiry, Mr Wilson did not challenge Mr Purdham's statement that the cash received from Kakadu and the furniture sales had not been recognised in the Brook Farm profit and loss account. However on reviewing Mr Forkes' exercise book and the working papers of Robin Wilson & Co, we are satisfied (and find) that the £5700 had been recognised in the profit and loss account, and had been taken into
35 account in computing the profits of the business.

33. Other matters of dispute in the enquiry related to the level of personal
expenditure incurred by Mr and Mrs Forkes, and the extent to which this could have
been met from the declared income from Brook Farm, and other financial resources
available to Mr and Mrs Forkes (such as their offset mortgage bank account). Mr
40 Purdham also drew attention to discrepancies between the expenditure shown on the schedule of personal income and expenditure prepared by Mrs Forkes. We note that the figures and explanations given by or on behalf of Mrs Forkes changed during the course of the enquiry.

34. In his letter of 7 February 2012, Mr Purdham noted that the mechanical digger was purchased in August 2008 for £13000 in cash. But at the time, according to the accounting records of Brook Farm and the explanations given, there would have been only £5170 cash available – and there is therefore a shortfall of £7,830. This shortfall is only four months into the financial year, and if this represented the level of undeclared income, there would be £23,000 of undeclared income across the whole year. Mr Purdham compared this amount with the personal income and expenditure incurred by Mr and Mrs Forkes in the year. He adjusted the expenditure shown in the schedule of personal income and expenditure to take account of personal savings, car loan payments, tax and holiday expenses which had not been recognised in the schedule. These adjustments showed total personal expenditure in the year of over £40,000. This was reduced by the declared taxable income of £15,603 and the £5300 wages received by Mr Forkes. The shortfall in respect of personal expenditure over income was £19097 – which was of the same rough order of magnitude as the Mr Purdham’s calculation of undeclared income. Mr Purdham stated that he believed that the taxable income for Mrs Forkes should be increased by £23,000 for 2008/9, resulting in taxable income of £38,603.

35. In subsequent correspondence, Mr Purdham’s calculation was refined, as further explanations were given by Mr Forkes and Mr Wilson. On 3 May 2012, Mr Purdham wrote to Mr Wilson with a revised profit for 2008/9 of £26,789, and on 27 September 2012 this figure was further revised to £24,151.

36. In the light of the adjustment, Mr Purdham considered whether the tax returns made by Mrs Forkes for other years would have been accurate. Although Mr Forkes and Mr Wilson had stated that 2008/9 was a “one off” year (because of the digger purchase and the Kakadu arrangements), Mr Purdham disagreed, noting that the declared profits of Brook Farm were relatively static. He therefore scaled the 2008/9 profits backwards and forwards using the retail price index. The resulting figures for assessable income were as follows:

	2005/6	£22,438
30	2006/7	£23,454
	2007/8	£24,436
	2008/9	£24,151
	2009/10	£25,441
	2010/11	£26,765

37. In addition, Mr Purdham considered that penalties should be payable for the submission of incorrect tax returns. For 2005/6 to 2007/8, penalties arise under section 95 Taxes Management Act 1970. This legislation was then replaced by section 97 and schedule 24, Finance Act 2007, which applies to 2008/9, 2009/10 and 2010/11.

38. For 2008/9, 2009/10 and 2010/1, Mr Purdham considered that the disclosure of inaccuracies was careless, and was also “prompted” as it arose from his enquiry and the questions he raised. The maximum penalty for careless prompted is 30% of the potential lost revenue. Mr Purdham mitigated this to 24.75% to take account of the level of co-operation provided in the enquiry.

39. For 2005/6 to 2007/8, the maximum penalty chargeable for submission of a negligently completed tax return is 100% of the potential lost revenue. Mr Purdham mitigated this to 25% to reflect the seriousness of the default, the disclosures made and the co-operation in the enquiry.

5 40. Closure notices, tax assessments, penalty assessments and penalty notices reflecting these conclusions were eventually issued on 11 March 2013.

HMRC's case

10 41. HMRC's case was that there was a discrepancy between the personal expenditure of Mr and Mrs Forkes, and their declared income and other financial resources available to them. This discrepancy had never been satisfactorily explained by them, and the logical conclusion was that this difference represented undeclared income from the Brook Farm business. Mr Chapman submitted that the mechanical digger had been bought and paid in full in August 2008, at a time when the declared cash balances were insufficient to meet its cost. HMRC calculated the cash shortfall, and extrapolated this figure to determine the undeclared income of the farm business for 2008/9

42. Mr Chapman noted that the business did not keep adequate accounting records, and that explanations given to Mr Purdham were inconsistent and changed during the course of his enquiry.

20 43. According to the schedule of personal income and expenditure prepared by Mrs Forkes, Mr and Mrs Forkes spent £28,874 in 2008/9. This compared with declared taxable business income of £15,603 and Mr Forkes' wages of £5800, totalling £21,403 – a discrepancy of £8000. In addition, the schedule did not take account of savings, car loan repayments, tax on farm income and some holiday expenditure.

25 44. Mr Chapman submitted that 2008/9 was not an exceptional year. Profits returned by Mrs Forkes for other years were of a similar order of magnitude. Applying the assumption of continuity (see *Rosette Franks v Dick* (1955) 36 TC 100), Mr Purdham was entitled to issue closure notices or assessments for the other years (adjusted in line with inflation).

30 45. Mr Chapman submitted that the requirements of Finance Act 2007 and Taxes Management Act 1970 for penalties had been met, and that the level of penalties was in accordance with the legislation.

35 46. Mr Chapman noted that the burden of proof was on the appellant to displace the assessments and closure notices, and submitted that this had not been discharged. He submitted that as regards penalties, HMRC had discharged the burden of proof which was on them.

Mrs Forkes' case

47. Mrs Forkes' case was that there had been no understatement of income by her, and that the amount declared in her tax return was correct. Mr Forkes submitted that the questions raised by HMRC in the course of their enquiries had been satisfactorily answered.

48. In particular, the discrepancy between the cash available in August 2008 to purchase the mechanical digger, and the total purchase price was explained by the fact that the price was paid in instalments, and that additional cash became available to Brook Farm as a result of the sale of the Kakadu furniture. Mr Forkes also explained that the cash realised from the sale was included in the Brook Farm profit and loss account.

49. Mr Forkes also submitted that further cash was available to him and his wife, in particular the proceeds of sale of an old car, compensation received for a gate damaged by a lorry, an insurance claim in respect of their dog, and reimbursement received for the purchase of a second football season ticket. In addition, at the relevant time, Mr and Mrs Forkes' daughter, Lisa, was living with them, and would have been making a financial contribution towards household expenditure buying food and contributing to pet costs. On 29 October 2012, Mr Wilson wrote to HMRC setting out a revised schedule of personal expenditure. The total household expenditure is shown as £32,981, and the analysis of income shows that a large part of Mr and Mrs Forkes' living costs was financed out of borrowings.

50. Mr Forkes also submitted that 2008/9 was a one off year, because of the purchase of the digger and the Kakadu arrangements. It was therefore not appropriate to assess Mrs Forkes to tax for other years.

Conclusions - Income

51. We are satisfied that Mrs Forkes did not declare all of her income in her 2008/9 tax return. For the reasons we have given, we find Mr Forkes' explanation of the financing of the purchase of the mechanical digger implausible. We find that by 8 August 2008, the mechanical digger had been paid for in full (as stated on the receipt), and that at that time there was insufficient "declared" cash to meet the purchase price in full.

52. We also find that the level of declared income was insufficient to meet household expenditure. We note the items mentioned by Mr Forkes in his submissions (see paragraph 46), but these were all addressed in Mr Purdham's letter of 3 May 2012, when he revised down his determination of the profits of the business to £26,789. As regards the updated analysis of expenditure and income provided by Mr Wilson in his letter of 29 October 2012, the annual expenditure shown was very close to the amount of expenditure used by Mr Purdham in his letter of 3 May 2012 (£32,318) where he agreed to reduce his determination of the profits. Although the 29 October 2012 letter gave an analysis of income paid into Mr and Mrs Forkes' personal bank account, it does not explain the cash shortfall.

53. We note that the explanations given by Mr and Mrs Forkes kept changing, and this undermines the credibility of their evidence and the submissions made on behalf of Mrs Forkes..

54. We are not persuaded that Mr and Mrs Forkes' daughter, Lisa, would have made any material contribution towards household expenditure. In particular we note that Mr Wilson's letter of 29 October 2012 (which set out a revised analysis of household expenditure and income) does not show any contribution being made by Lisa to the household finances.

55. There are however two matters where we were satisfied by Mr Forkes' explanations.

56. The first relates to the £500 paid by Mr Forkes into the Brook Farm bank account to clear the overdraft. This was treated in the profit and loss account as rental income. It should have been treated as capital introduced into the business. We are also satisfied that the £5700 raised from the sale of Kakadu furniture was included in the declared rental income – notwithstanding the fact that Mr Wilson told HMRC otherwise.

57. Taking everything into account, we consider that the amount of Mrs Forkes' taxable profits for 2008/9 should be amended to be £17,500.

58. We are satisfied that 2008/9 was not an unusual year. The profits of that year do not look very different from the profits declared both in earlier and in later years. We find that understatement of the profits of Brook Farm would have occurred in prior years, and would have continued in the later years. We find that the principle of continuity applies, and that corresponding adjustments (taking account of inflation) should be made to the other years that are subject to this appeal.

25 **Conclusion - Penalties**

59. In the case of a penalty under section 95 Taxes Management Act 1970 the burden of proof is on HMRC to show that the incorrect returns were made "fraudulently or negligently". From the evidence before us, we are satisfied that Mrs Forkes negligently delivered incorrect tax returns for each of the years 2005/06, 2006/07 and 2007/08, and that HMRC satisfied the burden of proof. We need to consider whether the abatement of 75% made by HMRC is appropriate. In our view this abatement is fair and reasonable, and we do not propose to vary it.

60. For the years 2008/09 to 2010/11 penalties for both income tax are levied under Schedule 24, Finance Act 2007. This provides for a penalty rates for delivering inaccurate returns at

- (a) up to 30% of the potential lost revenue if the inaccuracy is careless
- (b) up to 70% of the potential lost revenue if the inaccuracy is deliberate

(c) up to 100% of the potential lost revenue if the inaccuracy is deliberate and the person attempts to conceal it

61. HMRC have discretion to reduce these penalties depending upon whether the taxpayer disclosed the inaccuracy, whether the disclosure was prompted or unprompted, and for the “quality” of that disclosure.

62. In this case HMRC levied penalties on the basis that the inaccuracy in the 2008/09 return was careless, but that Mrs Forkes gave prompted disclosure of the inaccuracy. The reduction given in this case reduced the penalty to 24.75%.

63. We are satisfied that HMRC have discharged the burden of proof that the inaccuracy in Mrs Forkes’ tax return was careless. We consider that the amount of the abatement in these circumstances is appropriate, and we do not propose to interfere with HMRC’s decision to levy penalties at 24.75%.

Decision

64. For the reasons we have given above, we adjust the amount of taxable profits for 2008/9 to £17,500. There will need to be consequential adjustments to the RPI calculations for the other years under appeal.

65. We confirm that penalties should be levied at 25% for 2005/06, 2006/07 and 2007/08, and at 24.75% for 2009/9, 2009/10 and 2010/11 (in each case after taking account of the adjustments referred to above).

66. We leave it to the parties to agree the revised amounts of profits, tax and penalties for each of the years under appeal. If for any reason they are unable to reach agreement on the amounts, we give leave to the parties to apply to the Tribunal (acting by a single judge) to determine the amounts payable.

Post-script

67. We must mention that a few days after the Tribunal hearing, Mr Forkes wrote to the Tribunal office by e-mail asking for our decision to be reviewed. In particular he noted that Mrs Forkes’ accountant had a stroke on 19 January and was unable to represent her at the appeal. He also stated that he had had a breakdown in the late afternoon of the hearing, and was unable to remember much detail afterwards. The e-mail included further detailed submissions.

68. As regards Mr Wilson’s stroke, this was a point raised by the Tribunal itself at the opening of the hearing, and we offered to adjourn the hearing to allow Mrs Forkes to seek alternative professional representation. Mr Forkes expressly declined our offer, and stated that he wanted to press ahead with the hearing. As regards Mr Forkes’ demeanour, we would state that he conducted himself extremely well, and was at all times able to present his arguments coherently and answer questions. There was only one point at which he became a little emotional, and at that point the Tribunal adjourned to allow Mr Forkes to regain his composure. We would also note that Mr

Forkes was accompanied at the hearing by his friend Mr Taylor, who provided Mr Forkes will practical assistance in managing documents and with moral support.

5 69. The Tribunal made its decision immediately after the hearing, and communicated it orally to the parties at the time. It is not now open to either party to ask the Tribunal to take account of further submissions or revise its decision.

10 70. 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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**NICHOLAS ALEKSANDER
TRIBUNAL JUDGE**

RELEASE DATE: 30 April 2015

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