



TC04457

Appeal number: TC/2010/05689

INCOME TAX – PAYE – appeal against a direction notice requiring the appellant to pay income tax and interest in respect of untaxed remuneration which HMRC alleged he had received as a shadow director – whether Appellant was shadow director and employee - yes - whether Appellant discharged burden of proving that he did not receive payments - no - whether companies wilfully failed to deduct tax from the payments to Appellant and did he know of that failure at the time - yes - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MICHAEL RANGOS

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE GREG SINFIELD
Ms GILL HUNTER**

Sitting in public in London on 26 and 27 August 2014

Michael Rangos in person

Kevin McMahon, officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This is an appeal by Mr Michael Rangos against two directions dated 23 June 2009 made by the Respondents (“HMRC”). The directions required Mr Rangos to pay income tax of £193,468.40 and interest of £22,419.82. HMRC made the directions because they considered that Mr Rangos was a shadow director and employee, of two companies, Ticket Tout Limited (“TT”) and Ticketout Limited (“TO”). HMRC believed that, in that capacity, Mr Rangos had received payments amounting to £525,808 in the tax years 2006/07 and 2007/08 from TT and TO knowing that they had not accounted for tax under the Income Tax (Pay As You Earn) Regulations 2003 (“the PAYE Regulations”).

2. The companies, as their names suggest, were secondary ticket agencies or touts. Mr Rangos said that, through his contacts, he had helped TT and TO to obtain tickets for events but he did not accept that he was a shadow director of the companies and denied that he had received any payments from them.

3. For the reasons set out below, we have decided that Mr Rangos’s appeal is dismissed.

Legislation

4. Regulation 80 of the PAYE Regulations provides that where it appears to HMRC that tax has not been paid by an employer, HMRC may determine any outstanding tax to the best of their judgement and serve notice on the employer. Regulation 81 of the PAYE Regulations provides that where tax determined under regulation 80 is not paid within 30 days of determination, it can be recovered, together with interest, from an employee if either condition A or condition B specified in the regulation is met. In this appeal, HMRC considered that condition A had been satisfied. Condition A is that HMRC are of the opinion that the employee received the relevant payments, in respect of which the determination was made, knowing that the employer had wilfully failed to deduct the amount of tax which should have been deducted from those payments. Regulation 4 of the PAYE Regulations defines relevant payments as payments from which PAYE deductions of tax are made.

5. Where regulation 81 applies and a direction is issued, the employer is relieved of the obligation to deduct tax from the relevant payments while the employee remains liable to pay the tax. Paragraph 6 of regulation 81 provides that an amount of tax payable by the employee as a result of a direction carries interest as if it were unpaid tax due from the employer.

6. Regulation 81A of the PAYE Regulations provides that an employee may appeal against a direction notice made under regulation 81 in relation to condition A on the following grounds:

(1) the employee did not receive the payments knowing that the employer wilfully failed to deduct tax; and/or

(2) the amount is incorrect.

7. On appeal, the FTT may set aside the direction notice or, if it considers that the amount of tax specified in the notice is incorrect, increase or reduce the amount accordingly.

5 Issues

8. HMRC submitted that the issues to be decided in this appeal are:

(1) Was Mr Rangos an employee of TT and TO?

(2) Did Mr Rangos receive payments from TT and TO and, if so, what was the amount of the relevant payments?

10 (3) Did TT and TO wilfully fail to deduct the amount of tax which should have been deducted from those payments?

(4) Did Mr Rangos know that TT and TO had wilfully failed to deduct tax when he received the payments?

15 9. Mr Rangos did not suggest that HMRC had identified the wrong issues or that there were any other issues that we should determine. We accept that these are the relevant issues in this appeal. As is discussed below, Mr Rangos initially disclaimed any reliance on the first issue. Mr Rangos concentrated his submissions, save for some remarks in closing, and cross-examination of HMRC's witnesses on the second issue in respect of which he denied receiving any payments from TT and TO.

20 Burden of proof

10. It has been settled law for almost 90 years that, in an appeal against an assessment for tax, the burden is on the appellant to show that the sums charged to tax by the assessment are excessive (see the comments of Lord Hanworth MR in *T Haythornthwaite & Sons Limited v Kelly (Inspector of Taxes)* (1927) 11 TC 657, at 667). The position was confirmed by Mustill LJ in *Brady (Inspector of Taxes) v Group Lotus Car Companies plc* [1987] STC 635, at 642, as follows:

30 "The starting point is an ordinary appeal before the [Tribunal]. Here, however unacceptable the idea may be to the ordinary member of the public, it has been clear law binding on this court for sixty years that an inspector of taxes has only to raise an assessment to impose on the taxpayer the burden of proving that it is wrong: *Haythornthwaite & Sons Ltd v Kelly (Inspector of Taxes)* (1927) 11 TC 657."

11. The cases cited above are binding on us and we hold that Mr Rangos bears the burden of proving that he was not an employee of TT and TO and did not receive the payments from those companies knowing that they had wilfully failed to deduct tax from the payments.

Evidence

12. HMRC produced two bundles for the hearing. They contained witness statements, documents and authorities. Mr Matthew Stone, Senior Examiner and Deputy Official Receiver in the Insolvency Service, Mr Colin Lee, the HMRC officer
5 who investigated TT and TO and determined what amount Mr Rangos was liable to pay as tax, and Ms Caroline Beale, former director of TT and TO, provided witness statements and gave evidence for HMRC. They were all cross-examined by Mr Rangos. There was also a witness statement from Mr Rangos, who was cross-examined by Mr McMahon. On the basis of the documents and witness evidence,
10 find the facts to be as set out below.

Facts

13. Mr Rangos has worked in the secondary ticket business since 2004. In 2005-06, he was the managing director, and one of two directors, of Get Me Tickets Limited ("GMT"). GMT traded in the secondary ticket market, buying and selling tickets for
15 events, concerts, and sporting fixtures. Ms Beale first met Mr Rangos when she worked part-time for GMT, while she was a student at university, in 2005-06. She mainly dealt with telephone calls at GMT.

14. On 1 February 2006, the Secretary of State for Trade and Industry presented three public interest petitions in respect of GMT, Get Me Tickets Net Limited and Get
20 Me Tickets Com Limited. The latter two companies were dormant companies. On 2 February, the High Court ordered that the Official Receiver be appointed provisional liquidator of GMT until the conclusion of the hearing of the petitions. On 3 February, the Official Receiver, who had been appointed provisional liquidator the day before, commenced misfeasance proceedings by summons against Mr Rangos
25 and his fellow director, Ms Thavaratnam. The action against GMT had been prompted by an investigation of the company and Mr Rangos by a BBC television programme, Watchdog. GMT was subsequently wound up on 18 May 2006.

15. After the Official Receiver closed GMT, Mr Rangos had to continue working in the secondary ticket business because, as he told us, it was the only industry he knew.
30 Mr Rangos's evidence was that he did not wish to be involved in the running of any company as a director because of his experience with GMT. He said that he did not want to attract further bad publicity of the kind generated by his involvement with GMT because he was involved in litigation in relation to that company. Mr Rangos said that from early 2006, he was a self-employed secondary ticket broker.

35 16. Ms Beale said that, after the company was closed down, there was still some residual GMT business being carried out informally from Mr Rangos's flat which involved several of the former employees of GMT. Ms Beale's evidence was that Mr Rangos suggested starting a new company with her as a director and a friend of hers from university, Ashley Woodhouse-Powell, as the company secretary. Mr
40 Woodhouse-Powell had also worked part-time for GMT. The new company was TT and it was incorporated on 13 February 2006. Ms Beale, who had graduated with a degree in mathematics by this time, was a director of TT. She said that Mr Rangos did not want to have his name on the company paperwork due to the problems he had

experienced with GMT. We did not hear live evidence from Mr Woodhouse-Powell but he told the Official Receiver that TT was Mr Rangos's company and that "Mr Rangos was careful not to have his fingerprints on anything to hide the fact that he was running the company." Ms Beale said that TT initially traded from Mr Rangos's flat before moving to new premises.

17. Mr Rangos denied that he had suggested to Ms Beale that she set up a company to deal in tickets. He stated that he was too busy with the GMT litigation to think about another company. He said that Ms Beale came up with the idea of setting up TT. He accepted that Ms Beale and others were in his flat following the closure of GMT. He said that the former employees gathered there because of the way in which GMT had been shut down. Mr Rangos said that he was sitting at a computer dealing with the GMT litigation and Ms Beale was sitting at the other computer in the flat but he had no idea what she was doing.

18. Ms Beale said that Mr Rangos had been in the secondary ticket business for many years and he used his contacts to obtain tickets for events. Ms Beale said that, although she was a director of TT, it was Mr Rangos's business. Ms Beale said that Mr Rangos had the final say in what bills were paid and was the person responsible for hiring and firing staff. Ms Beale said that there were approximately 10 people working at TT. Ms Beale's evidence was that Mr Rangos was never on the books of TT as an employee. She said that Mr Rangos told her and others at TT that if anyone asked, they should tell them that he was a self-employed consultant. Mr Rangos accepted that he had told Ms Beale and others at TT to tell people, if asked, that he was a self-employed consultant but he said that was because he was a self-employed consultant.

19. Ms Beale explained that four bank accounts were used for TT's business, namely:

- (1) TT's Lloyds TSB account;
- (2) TT's HSBC account;
- (3) TO's Barclays account; and
- (4) her own Lloyds TSB account.

Ms Beale said the payments by customers for tickets were deposited into one of the bank accounts every week. No other income was deposited into the accounts.

20. Ms Beale said that, although there may have been some overlap, the TT Lloyds TSB account and the TT HSBC account were not run at the same time. The TO Barclays account was used later. TO was incorporated on 5 January 2007. Ms Beale was also a director of TO. She said that TO was set up after TT lost its banking facilities when Lloyds TSB closed TT's account. She said that, after TT lost its banking facilities, the monies paid by the customers of TT were paid into the TO Barclays account. We accept Ms Beale's evidence that, although they were two separate companies, TT and TO were run as a single business, namely TT, and that all the payments into the four bank accounts were income of the TT business.

21. As a director of TT and TO, Ms Beale was the sole signatory to all the banking documents. She said that Mr Rangos had access to and control of all the accounts either through internet access or debit cards. She told us that she would sign blank cheques and he would complete the details later. She also said she would go to the bank and cash cheques on Mr Rangos's instructions if cash were needed. Ms Beale also had a personal bank account with Lloyds bank that she let Mr Rangos use so that it was effectively his bank account for the use of the business.

22. Ms Beale told us that Mr Rangos owed suppliers for tickets due to the collapse of GMT. When TT was set up, Mr Rangos had to pay off his previous suppliers or his contacts would no longer deal with him and supply tickets. Money received by TT was used to pay GMT's debts. Ms Beale said that Mr Rangos would decide who was paid. Ms Beale said that one of the companies that was owed money by GMT was Ticket Queen. Ticket Queen had let GMT use its card payment facilities and had to pay for the chargebacks by the credit and debit card providers when GMT got into trouble and was closed down.

23. Mr Rangos did not accept that TT was his business. His evidence was that Ms Beale was carrying on the business of TT and he was not involved in running it. Mr Rangos said that, as he knew Ms Beale well, she regularly asked him to obtain tickets for her customers and/or if he knew that some tickets were available then he would offer them to her for customers of TT. Mr Rangos said that Ms Beale could not obtain the tickets directly because his contacts, eg Ticket Queen, would only supply him and would not supply Ms Beale as she had just started in the business. Mr Rangos told us that Ms Beale would ask him to provide, say, 100 tickets for an event and he would call Ticket Queen or another of his contacts and buy the tickets which he would then sell to Ms Beale at a mark up. For example, if he bought tickets at £50 each then he would sell them to TT for £55 each, giving a mark up of 10%. He said that he did not keep records of his transactions with TT but everything was in his head to trace his entitlement to commission. Mr Rangos said that Ms Beale, as TT, was the primary outlet for the sale of tickets that he was able to source. Even though he traded with Ms Beale directly, Mr Rangos was unclear whether each transaction was contracted by her in a personal capacity or by her as director of TT, later TO.

24. Mr Rangos strongly denied that he had access to and control of TT's and TO's bank accounts or that Ms Beale cashed cheques on his instructions. Mr Rangos did not dispute that touts were often paid in cash but denied that they were paid on his instructions. He acknowledged that he could have put Ms Beale in touch with the touts and she might have paid them.

25. Mr Rangos said that sometimes Ms Beale paid him for the tickets and sometimes she would pay the supplier, eg Ticket Queen, directly. He also said that sometimes he was paid by Ms Beale and sometimes by Ticket Queen or other suppliers. Mr Rangos said that the reason that there were no payments to him from bank accounts of TT or TO was that he was paid by way of extra tickets for the events or trade credit for tickets for other events. He said that tickets were often ordered a year in advance and it could be that GMT had ordered tickets from a supplier, eg Ticket Queen, but they were later delivered to TT which paid Ticket Queen. The

customers would have already paid GMT for the tickets at the time that they were ordered but TT did not provide the tickets to the customers of GMT but to TT's own customers. Mr Rangos said that GMT's customers would not receive any tickets but, as all or most of them would have paid by credit card, the customers' credit card providers would bear the loss.

26. Mr Rangos denied that money received by TT was used to pay GMT's debts. We do not accept this evidence and find that money from bank accounts used by TT was used to pay debts relating to GMT (see [45] below).

27. In relation to the incorporation and operation of TT and TO, we prefer the evidence of Ms Beale to that of Mr Rangos. The undisputed fact that former employees of GMT congregated at Mr Rangos's flat and used computers there corroborates Ms Beale's evidence that the business of GMT continued in some form after the company had been closed. We accept that the business of GMT continued informally for a period after the company had been closed by the Official Receiver. We infer that Mr Rangos ran the business during that period as he had done so before GMT was closed down and because the business was operated from his flat. In relation to TT, Mr Rangos's evidence was that he did not want to be involved in a company but that he needed to keep working as a ticket tout. We consider that it is more likely that he wanted to continue working as he had done, ie through a company with employees, rather than as a secondary ticket broker in a sole trader capacity as that would allow him to devote time to the GMT litigation while also making a living as a ticket tout and making more money through TT than he could as a sole trader. We consider it unlikely that Ms Beale, with limited experience of the secondary ticket business and never having set up a company before, would decide to set up a company to carry on the same business as GMT within days of that company being shut down by the Official Receiver. We do not find it credible that Mr Rangos did not know what Ms Beale was doing when she was sitting in his flat and using his computer. In short, we accept Ms Beale's evidence on this point and find that Mr Rangos suggested setting up TT and that Ms Beale should be a director, with Mr Woodhouse-Powell as company secretary, while his involvement remained hidden.

28. It was not disputed that TT traded in the secondary ticket business in exactly the same way as GMT had done. We accept Ms Beale's evidence that, although they were two separate companies, TT and TO were run as a single business, namely TT, by Mr Rangos. It is clear that all four bank accounts were used to make payments that related to the business of TT and we accept that all the payments into the four bank accounts were income of TT. There was no dispute that the tickets supplied by TT had been obtained by Mr Rangos from his contacts who would not deal directly with Ms Beale or TT. It appears to us that Mr Rangos was an integral part of the business of TT as, without his experience and contacts, TT could not operate. We conclude that Mr Rangos was the driving force behind TT and that it was, in reality, his business. Because we have found that TT was Mr Rangos's business, we consider that Ms Beale's evidence that Mr Rangos had access to and control of the four bank accounts used by TT is more likely to be correct than Mr Rangos's denial. We consider it unlikely that Mr Rangos would not have control of the accounts used to pay his contacts for tickets that he had arranged to purchase on behalf of TT. We also

consider it unlikely that he would not control accounts used to receive payments from TT's customers for those tickets as those payments were the source of his income. That conclusion leads us to find, on the balance of probabilities, that money paid into the bank accounts used by TT was used to pay some of the debts of GMT. Our
5 conclusion is supported by the undisputed fact that £30,000 was paid from TO's Barclays account to Ms Thavaratnam's mother's credit card account (see [36] below). That credit card had been used to settle a debt of GMT. Further, £165,000 was paid from three of the bank accounts in respect of a personal guarantee owed by Mr Rangos to a third party which became due when GMT ceased trading (see [43]
10 below).

29. Mr Stone's evidence was that, where a winding up order is made, the Official Receiver has a duty, under section 132 of the Insolvency Act 1986, to investigate the causes of the failure of the company and, generally, the promotion, formation, business, dealings and affairs of the company before making a report, if any, to the
15 court. Mr Stone said that, when he commenced employment in the Insolvency Service's Public Interest Unit in August 2006, the Official Receiver had already been appointed as liquidator of GMT. GMT's directors at that time were Mr Rangos and Ms Thavaratnam.

30. TT entered into administration on 6 March 2007. Mr Stone said that, in March
20 2007, one of TT's joint administrators informed the Insolvency Service that Mr Rangos had links to TT. On 31 October 2007, TT entered into compulsory liquidation on the petition of the joint administrators and the Official Receiver was appointed as liquidator of TT.

31. Mr Stone interviewed Ms Beale, the sole registered director of TT, on
25 5 December 2007. During the interview, Ms Beale stated that she was solely responsible for the company and its trading, being a registered director, and maintained that Mr Rangos did not have any involvement in the company whatsoever apart from supplying contacts in the trade.

32. Mr Stone interviewed Ms Beale again on 21 February 2008. During that
30 interview, Ms Beale confirmed that Mr Rangos was involved in the running of TT, hiring staff and deciding what tickets to buy and sell. Ms Beale also described how the employees of TT bought and sold tickets from agencies, such as Ticketmaster, as well as on eBay on Mr Rangos's instructions. Ms Beale told us that, between the first and second interviews, she had spoken to her mother, who worked for the Crown
35 Prosecution Service, and her mother had advised her to tell the truth about Mr Rangos's involvement.

33. On 19 March 2008, winding up orders were made against TO and two other
40 companies, MLT Services Limited and London Ticket Shop Szolgaltato Es Kereskedelmi Korlatoit Felelossegu Tarsasag ("KFT"), of which Mr Rangos was a director. TO went into liquidation on 19 March 2008.

34. As part of the Official Receiver's statutory investigation into TT, Mr Stone conducted an analysis of the four bank accounts used by TT and TO based on the following information:

5 (1) On 29 May 2008, TT's former accountant, Mr Howells, sent an email to Mr Stone containing a number of spreadsheets, including three versions of a reconciliation of TT's Lloyds TSB account. The spreadsheets detailed the income and expenditure from the bank account and categorised transactions in columns that had been completed before they were sent to Mr Stone.

10 (2) On 19 June 2008, Mr Howells emailed a spreadsheet containing a draft reconciliation of TT's HSBC bank account to Mr Stone. This spreadsheet detailed the income and expenditure from the bank account and partially categorised transactions in columns that had been completed before they were sent to Mr Stone. Not all the transactions in the account had been categorised on the spreadsheet so, using the available records, Mr Stone completed the spreadsheet using the same categorisation and method as had been used for
15 TT's Lloyds TSB account.

20 (3) Mr Stone also prepared spreadsheets for TO's Barclays account and Ms Beale's Lloyds TSB account. Again, Mr Stone used the available records and the same categorisation and method as had been used for TT's Lloyds TSB account.

35. In an email to Mr Stone dated 16 July 2008, Ms Beale said that she had prepared the original spreadsheets that categorised the payment transactions in TT's Lloyds TSB and HSBC bank accounts, which had been provided to Mr Stone by Mr Howells, on the instruction of Mr Rangos. Ms Beale told Mr Stone that the
25 spreadsheets had been compiled using bank statements, cheque books, invoices and the cash book.

36. In relation to his analysis of the four bank accounts used by TT, Mr Stone's evidence was that, where he could be sure that a payment was a payment to an unconnected business, he categorised it as such. For example, payments shown as
30 made to PC World would be allocated to computers. Mr Stone also accepted that payments to "Ticket Queen" and "Centre Tickets" and "ITE Tickets" were payments to them. Where an item had been categorised by Ms Beale, Mr Stone said that he did not change the categorisation but he did not treat further payments to the same payee in the same way unless he had supporting documentation. Where Mr Stone could not
35 identify a payment in the records, he left it as uncategorised or unknown. Mr Stone said that the fact that Ticketmaster was shown as a payee on the bank statements was not, in his view, enough to establish that the payment was a legitimate business expense of TT. Mr Stone said that he would need to see an invoice from Ticketmaster to TT to support the expense. Mr Stone told us that there were some invoices in the
40 records, eg from Ticket Queen to Mr Rangos and Ms Beale personally, but he could not reconcile them to specific payments from the bank accounts. Mr Stone said that he was aware from emails that Mr Rangos had made a payment of £30,000 from TO's Barclays account to Ms Thavaratnam's mother's credit card account with Barclaycard. Mr Stone's evidence, which was not disputed by Mr Rangos, was that

5 the payment was in settlement of a debt that arose from the trading and subsequent liquidation of GMT. Mr Stone said that he took the view that he could not reasonably categorise any payments from the four bank accounts to credit card providers and secondary ticket agents as payments for the purchase of tickets by TT without evidence.

10 37. Mr Stone said that, during the Official Receiver's statutory investigation, it was found that large amounts derived from ticket sales by KFT were transferred from its foreign bank account to the bank accounts of its UK employees. One of those employees had told the Official Receiver that the money would be withdrawn in cash and paid to Mr Rangos. Mr Stone took the view that, in the light of the evidence, he could not reasonably categorise payments from the four bank accounts to employees of TT as wages. Mr Stone told us that he had not identified any direct payments from the bank accounts to Mr Rangos for either services or tickets.

15 38. Mr Stone summarised his analysis of the payments to and from the four bank accounts used by TT in a spreadsheet headed "Ticket Tout Limited Income & Expenditure Statement". Mr Stone described it as essentially a summary of the payments for which he had been able to find evidence in the records of the business. The Income and Expenditure Statement showed cash withdrawals totalling £373,853.39 and payments amounting to £1,729,383.22 as "uncategorised or unknown".
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39. Ms Beale agreed with Mr Rangos's suggestion, in cross-examination, that TO mainly bought tickets from the following sources:

- (1) primary agencies such as Ticketmaster, See Tickets, Ticketline etc;
- (2) trade contacts such as Ticket Queen, Centre Tickets and ITE Tickets;
- 25 (3) agents who used their personal credit cards to buy tickets;
- (4) individuals and companies who sold tickets, usually in small quantities, on eBay; and
- (5) ticket touts.

30 40. Ms Beale explained some of the categories that were shown as expenditure on the Income and Expenditure Statement. She said that the £32,717.84 shown under the TT's Lloyds TSB account categorised as "Tickets (purchased directly)" were tickets purchased on TT's company credit card from Ticketmaster and other ticket agencies. The bank statements would show "Ticketmaster" or whichever agency the ticket had been purchased from. She said that the categorisation of certain expenditure as
35 "Ticket Queen" and "Centre Tickets" and "ITE Tickets" were all purchases of tickets from trade contacts and TT would obtain an invoice showing the amounts for those purchases. Ms Beale explained that the agents were employees of TT and their friends who used their personal credit cards to buy tickets on behalf of TO. The agents would produce their credit card statements and be reimbursed. They would be
40 paid a commission of 5% - 10%. The tickets bought on eBay were normally paid for via PayPal from one of the four bank accounts.

41. Ms Beale explained that payments to ticket touts would fall into the category “Tickets – No Invoices” in the Income and Expenditure Statement. Ms Beale explained that TT withdrew large amounts of cash from the bank accounts because ticket touts often required to be paid in cash. If a cheque stub said “Cash (Cliff Richard)” that meant that cash was paid to a tout for a ticket to a Cliff Richard concert. The Income and Expenditure Statement only showed amounts in that category for the TT Lloyds TSB account (£206,256.19) and TT HSBC account (£450,090.98). No amount was shown under the heading “Tickets – No Invoices” in the TO Barclays account and Ms Beale’s Lloyds TSB account. Similarly, the Income and Expenditure Statement showed amounts of expenditure in the categories “Tickets – Invoices”, “Tickets (purchased directly)” and “Agents Credit Cards” for the TT Lloyds TSB account and TT HSBC account but nothing in those categories from the other accounts. Ms Beale accepted, when Mr Rangos put it to her in cross-examination, that it was not correct to show that there had been no expenditure on ticket purchases from the TO Barclays account and her Lloyds TSB account. Mr Stone said that the approach to categorisation of payments from TT’s Lloyds TSB and HSBC account was not the same approach as had been taken in relation to the other two accounts. This was because there were records available to the person who completed the columns for the first two accounts on the Income and Expenditure Statement but he did not have records or invoices in relation to the other accounts.

42. During cross-examination, Ms Beale said that she could read the spreadsheets that had been provided to Mr Stone and determine whether a payment fell into a particular category but she could not say anything about the specific details of particular transactions. Ms Beale was asked to look at the schedules of payments contained on the spreadsheets that supported the summaries on the Income and Expenditure Statement. Mr Rangos took her through a number of payments to named payees. In many cases, Ms Beale was able to identify individual touts as being the payees named on the schedules. During the midday adjournment, Ms Beale reviewed the supporting schedules in order to see if she could match any of the uncategorised payments to categories in the Income and Expenditure Statement. At the end of questioning on this topic, Mr Rangos suggested to Ms Beale that only two names could not be categorised. Those items were a payment of £3,000 to A Baker on 15 December 2006 and a payment of £2,000 to R Garma on 8 December 2006. Mr McMahon said that he was happy to accept that the transactions could potentially be categorised as Ms Beale had indicated in evidence and during the adjournment.

43. Mr Stone said that, during the Official Receiver’s statutory investigation, it was established that some payments had been made from the bank accounts used by TT to Hextalls, a firm of solicitors, in respect of a debt owed by Mr Rangos to Metacharge Limited (“Metacharge”). Metacharge was a merchant service provider for GMT. Mr Rangos, as director of GMT, had provided a personal guarantee to Metacharge. When GMT failed, Metacharge presented a bankruptcy petition against Mr Rangos in the sum of £1 million. Metacharge was represented by Hextalls. A settlement was agreed under which Metacharge agreed that Mr Rangos would pay £400,000. That money was paid as follows:

(1) £65,000 from TT’s HSBC account;

- (2) £50,000 from TO's Barclays account
- (3) £50,000 from Ms Beale's Lloyds TSB account;
- (4) £175,000 was paid by KFT; and
- (5) £60,000 was paid by Mr Rangos's mother.

5 44. The Official Receiver, as liquidator, sought recovery from Hextalls of £225,000 that had been paid to Hextalls by TO and KFT. After negotiations, the Official Receiver agreed to accept and received £200,000 in settlement of the claim. Pro rata, that represented a recovery of £44,444.44 paid by TO and £155,555.55 paid by KFT. Disregarding the amount recovered by the Official Receiver and the amount paid by
10 Mr Rangos's mother, the net payment made to Hextalls from TT, TO, Ms Beale and KFT was £140,000. Of that amount, £19,444.45 was paid by KFT. The balance of £120,555.55 was paid by TT from its own bank account and those of TO and Ms Beale.

15 45. The payments from TT's, TO's and Ms Beale's bank accounts totalled £165,000. Mr Rangos accepted that TT, through the different bank accounts, paid £165,000 to Hextalls on his behalf in respect of a personal guarantee owed by him to Metacharge. Mr Rangos said that Ms Beale made these payments in consideration for tickets that he had bought from Ticket Queen and provided to TT. Mr Rangos accepted that he did not have any evidence to show that the money was paid for
20 tickets supplied to TT. Ms Beale said that she did not know anything about the payments made in relation to Metacharge until she was informed of these by TT's liquidators. She said that the payments must have been made by Mr Rangos. We accept that Ms Beale did not know about the payments to Hextalls until informed by the liquidators. We also accept Ms Beale's evidence (see [21] above) that Mr Rangos
25 had access to and control of all the accounts either through internet access or debit cards. Accordingly, we find that the payments from TT's, TO's and Ms Beale's bank accounts must have been made by Mr Rangos himself in partial satisfaction of his debt to Metacharge.

30 46. Mr Rangos has not satisfied us that TT paid £165,000 to Hextalls in return for tickets supplied by him. The majority of the payments from the four bank accounts were payments to the ticket agencies, trade contacts, touts and agents who supplied the tickets. Mr Rangos's case was that he sold tickets to TT at the price charged by his contact with a mark-up of 10% which was paid in additional tickets or trade credit. There is no example of Mr Rangos acting as a principal and selling tickets to TT for
35 their full value and no evidence that the payment of £165,000 related to such a transaction. Accordingly, we find that the payments amounting to £165,000 by TT related to a personal debt of Mr Rangos arising from the personal guarantee that he had given to Metacharge in respect of GMT's trading activities. Excluding the amount recovered by Official Receiver in relation to the payments, £120,555.55 was
40 paid for the benefit of Mr Rangos.

47. Mr Lee was a directions caseworker in the HMRC Specialist Investigations London Insolvency and Securities Team investigating companies that had gone into liquidation. Mr Lee explained that HMRC consider whether to make directions under

regulation 81 of the PAYE Regulations where a company has ceased to trade and/or is placed into liquidation leaving an unpaid PAYE liability. HMRC are not able to recover the unpaid tax from the company because it will not have any realisable assets. In those circumstances, HMRC may make directions where they consider that there has been a failure to operate PAYE correctly and pay tax to HMRC.

48. Mr Stone referred the case of TT and TO to HMRC where it was dealt with by Mr Lee. TT had not made any payments of PAYE in 2006 or 2007. Mr Stone provided Mr Lee with a copy of the Income and Expenditure Statement. Mr Lee understood that Mr Stone had described the payments from the four bank accounts to named payees amounting to £1,729,383.22 as uncategorised or unknown because there were no records to show whether the payments related to business or personal expenses. In addition, there were cash withdrawals from the accounts, other than TO's Barclays account, amounting to £373,853.39. Mr Lee tried to obtain further information from Mr Rangos about the payments but without success. Notwithstanding the lack of a response, Mr Lee accepted that some of the payments and withdrawals had been for legitimate business expenditure. He said that, as a concession, HMRC treated 50% of the uncategorised or unknown payments and cash withdrawals as business expenditure. The balance of the uncategorised or unknown payments was treated as having been received by both Ms Beale and Mr Rangos as income. Mr Lee told us that HMRC had made an assumption that there was a potential liability to tax and then sought information from Mr Rangos to determine the actual liability. He stated that HMRC provided the base line and it was up to Mr Rangos to provide records to show that the figures should be adjusted. Mr Lee said that Mr Rangos had not provided any evidence to substantiate the payments and withdrawals.

49. Mr Rangos filed a tax return for 2006-07 that declared an income of £12,000 from his activity as a self-employed ticket broker. In the absence of any company accounts and PAYE returns, HMRC issued assessments under regulation 80 of the PAYE Regulations to the liquidators of TT and TO on 27 January 2009. The assessments were for amounts that HMRC considered the companies had paid to Mr Rangos as untaxed remuneration during 2006/07 and 2007/8. The liquidators did not appeal against these assessments and, accordingly, they became due and payable after 30 days.

50. HMRC wrote to Mr Rangos on 19 February 2009 to warn him that he might be held personally liable for the tax due on the amounts received from TT and TO. Mr Howells, who was acting for Mr Rangos, acknowledged the letter and asked for time to investigate the matter. In the absence of any progress, HMRC sent a letter to Mr Howells on 9 June saying that HMRC was considering making directions that Mr Rangos should pay the tax on the amounts received from TT and TO. On 23 June, HMRC concluded that Mr Rangos was an employee of TT and TO and had received payments amounting to £525,808 (£330,324 for 2006-07 and £195,484 for 2007-08) from both companies without deduction of tax. HMRC considered that Mr Rangos knew that TT and TO had wilfully failed to deduct tax from those payments. Accordingly, HMRC directed that Mr Rangos was liable to pay income tax of £193,468.40 under regulation 81(4) of the PAYE Regulations. On 24 June, HMRC

issued notices of the directions to Mr Rangos. On 8 July, Mr Howells contacted HMRC and stated that Mr Rangos had not been provided with information relating to the alleged payments. HMRC provided copies of the Income and Expenditure Statement produced by Mr Stone.

5 51. Mr Lee said that he made the decision that Mr Rangos had received £525,808 as
income from his employment and was liable to pay tax of £193,468.40 for those years
based on the information provided by Mr Stone, ie the Income and Expenditure
Statement. Mr Lee calculated the amounts received by Mr Rangos as income from
10 his employment by adding the cash withdrawals and all the uncategorised payments,
including those without any supporting company records or invoices, shown on the
Income and Expenditure Statement and then, in the interests of reaching an equitable
conclusion, he allowed a deduction of 50% to allow for possible legitimate business
expenses. Mr Lee then split the balance equally between Mr Rangos and Ms Beale.

15 52. Mr Lee accepted the figures shown on the Income and Expenditure Statement
and did not look at any other information. Mr Lee admitted in cross-examination that
he was not aware how the figures had been compiled. He said that he had looked at
the spreadsheets that supported the Income and Expenditure Statement briefly but did
not analyse them. He also accepted that the Income and Expenditure Statement did
not show any direct payments to Mr Rangos. Mr Lee acknowledged, when Mr
20 Rangos put it to him, that the figure of 50% of the uncategorised or unknown
payments and cash withdrawals that he treated as business expenditure was an
arbitrary figure but said that he allowed that proportion of the payments as legitimate
expenditure as a concession. He said that it was not based on anything, except
perhaps common sense, and it was intended to encourage Mr Rangos to co-operate.
25 Mr Lee did not accept that 5% would have been a reasonable figure for the amount
that was not business expenditure. Mr Lee told us that, when HMRC had received
information from Mr Rangos or Mr Howells, HMRC accepted it at face value and
reduced the tax liability. Mr Lee also said that, having heard the evidence of Ms
Beale about her role, it appeared that she was primarily a front for Mr Rangos and he
30 now considered that a higher tax liability should be placed on Mr Rangos than on Ms
Beale.

35 53. Where a winding up order has been made, the Official Receiver may apply to
the court for a disqualification order, under section 6 of the Company Directors
Disqualification Act 1986, against a director of the insolvent company whose conduct
as a director makes him unfit to be concerned in the management of a company. Mr
Stone told us that he had been involved in the drafting of a disqualification report in
respect of the misconduct of Mr Rangos and Ms Thavaratnam while acting as
directors of GMT. The misconduct was that GMT had failed to keep proper
accounting records or any proper record of the directors' remuneration or loan
40 accounts. On 30 January 2009, the Official Receiver issued disqualification
proceedings in the High Court against Mr Rangos in respect of his misconduct while
acting as a director of TT. In March 2010, Mr Rangos gave a disqualification
undertaking under which he was disqualified for a period of eight years in respect of
conduct while a director of GMT. Ms Thavaratnam was disqualified for a period of
45 eight years from 4 March 2010 by order of the court. In May 2011, Mr Rangos gave a

5 disqualification undertaking under which he was disqualified for a period of 14 years in respect of MLT. At the same time, the Official Receiver discontinued the disqualification proceedings against Mr Rangos in relation to his conduct while acting as a director of TT because he had already given a 14-year disqualification undertaking.

10 54. In July 2010, Mr Rangos appealed to the First-tier Tribunal (“FTT”) against the directions that are the subject of this appeal. The appeal was heard by the FTT (Judge S Radford and Mr H Adams) in December 2011. In a decision released on 19 March 2012, the FTT allowed Mr Rangos’s appeal in part. The FTT relied on a calculation
15 produced by Mr Howells at the hearing, which showed that the true amount of uncategoryed or unknown payments from the four bank accounts was £1.088 million rather than the £1.729 million shown on the Income and Expenditure Statement. The FTT split the unidentified amounts equally between Mr Rangos and Ms Beale. The FTT also decided that the sum of £165,000 reclaimed by the Insolvency Service from
20 Hextalls should be deducted from the amount treated as received by Mr Rangos. In fact, as we have found at [44] above, the Official Receiver only recovered £44,444.44 that had been paid from TO’s Barclays account from Hextalls. The FTT did not apply the reduction of 50%, which had been allowed by HMRC as representing possible legitimate business expenses but applied instead a 10% reduction on the assumption that Mr Howells’s figures were “fairly accurate”. Accordingly, the FTT decided that Mr Rangos had been a shadow director and that he was liable to pay tax on £324,600.

25 55. Mr Rangos applied to the FTT for permission to appeal to the UT. The FTT refused permission to appeal but the Upper Tribunal granted permission on the basis that it was not clear why the FTT had decided that 10% was the appropriate figure for legitimate business expenditure. With the consent of the parties, the Upper Tribunal directed that the decision of the FTT would be set aside and the case remitted to the FTT for a fresh hearing by a differently constituted tribunal.

Was Mr Rangos an employee of TT and TO?

30 56. In relation to whether he was an employee of TT and/or TO, Mr Rangos did not seek to argue that he was not a shadow director and employee. At the hearing of the remitted appeal, Mr Rangos said that, while he did not accept that he was a shadow director and thus an employee of either company, he did not intend to waste the tribunal’s time in arguing that point but preferred to concentrate on the issue of
35 whether he had received any payments. Mr McMahon submitted that the evidence, especially that of Ms Beale, showed that Mr Rangos was a shadow director and employee of TT and TO.

40 57. As we have set out above at [27] and [28], we have concluded that Mr Rangos was the driving force behind TT. He decided to set up TT after the collapse of GMT, he was integral to the business, controlled its bank accounts and decided how it would operate. Apart from his own testimony, which we have not accepted, Mr Rangos produced no evidence to show that he was not a shadow director and employee of TT and TO. Accordingly, we find that Mr Rangos was a shadow director and employee of TT and TO.

Did Mr Rangos receive payments from TT and TO?

58. We have found it extremely difficult to reach a decision on this issue. Before us, the parties' positions were widely divergent. HMRC's position was that Mr Rangos was liable to tax on 25% of all uncategorised or unknown payments and cash withdrawals. Mr Rangos maintained that he had not received any payments from TT or TO, all the disputed amounts were business expenditure of the companies and he had no liability to tax other than in relation to £12,000 income from ticket broking declared on his tax return for 2006-07. In our view, the evidence produced supported neither party's contentions and the correct liability to tax is somewhere between the two extremes.

59. Mr McMahon submitted that it was reasonable to charge Mr Rangos to tax on the amount of money taken out of TT for which there was no explanation because he was a person in control of the company and the four bank accounts that it used. He submitted that there was no evidence in TT's records to show that the uncategorised or unknown payments and cash withdrawals related to expenses incurred for the purposes of the business. Based on the figures in the Income and Expenditure Statement and supporting papers provided by Mr Stone, HMRC determined that Mr Rangos had received and was liable to pay tax on 25% of the uncategorised or unknown payments and cash withdrawals from the four bank accounts used by TT. HMRC arrived at this amount after allowing 50% of the unidentified payments and cash withdrawals as legitimate expenses and then splitting the balance equally between Mr Rangos and Ms Beale. As Mr Lee stated in his witness statement, the amounts of the determinations were estimated. In his oral evidence, he admitted that the amount allowed as business expenditure was an arbitrary figure. It follows, in our view, that the amount assessed as income of Mr Rangos liable to tax was also an arbitrary figure.

60. Regulation 80(2) of the PAYE Regulations provides that "HMRC may determine the amount of ... tax to the best of their judgment, and serve notice of their determination on the employer". That determination forms the basis of the regulation 81 direction. The meaning of the phrase 'to the best of their judgement' was considered in the case of *Van Boeckel v Customs and Excise* [1981] STC 290. The case was an appeal to the High Court relating to VAT but is not restricted to that tax. Woolf J, as he was then, set out how a tax authority should approach a best judgement decision. In summary, the principles in *Van Boeckel* are that:

- (1) HMRC should not be required to do the work of the taxpayer
- (2) HMRC must perform their function honestly and above-board
- (3) HMRC should fairly consider all the material before them and on that material, come to a decision which is reasonable and not arbitrary, and
- (4) there must be some material before HMRC on which they can base their judgement.

61. Best judgement was considered by the Court of Appeal in *Pegasus Birds v Customs and Excise* [2004] EWCA Civ 1015, [2004] STC 1509. This was another

VAT case but, again, the position in direct tax is essentially the same. In that case, Carnwath LJ, as he was then, said at [10]:

5 “It should be noted that the shorthand ‘best judgment’, as used in some of the cases, may be misleading, if it is taken to imply a higher standard than usual. The statutory words ‘to the best of their judgment’ are used in a context where the taxpayers’ records may be incomplete, so that a fully informed assessment is unlikely to be possible. Thus the word ‘best’, rather than implying a higher than normal standard, is a recognition that the result may necessarily involve an element of guesswork. It means simply ‘to the best of (their) judgment on the information available’ (Argosy Co v IRC [1971] 1 WLR 514, 517 per Lord Donovan)”.

10 62. At [38], Carnwath LJ made four points by way of guidance to tribunals when faced with best of judgment issues, the first of which is particularly relevant in this case and was as follows:

15 “The Tribunal should remember that its primary task is to find the correct amount of tax, so far as possible on the material properly available to it, the burden resting on the taxpayer. In all but very exceptional cases, that should be the focus of the hearing, and the Tribunal should not allow it to be diverted into an attack on the Commissioners’ exercise of judgment at the time of the assessment.”

20 63. HMRC relied on the evidence of Mr Stone, principally the Income and Expenditure Statement, in determining how much was paid by TT to Mr Rangos. We do not accept that 25% of the uncategorised or unknown payments is the proper basis for calculating the amount of the payments made from the bank accounts used by TT and received by Mr Rangos because the percentage was a purely arbitrary figure and the evidence did not show that the uncategorised or unknown payments had been paid to, or for the benefit of, Mr Rangos. Mr Lee relied entirely on the Income and Expenditure Statement produced by Mr Stone. Mr Stone’s analysis of the bank accounts was not directed to determining whether any payments had been made to Mr Rangos but whether TT had incurred the expenditure for the purposes of its business. Mr Stone’s evidence did not show that any payments had been made to Mr Rangos from the bank accounts as he had not found any such payments. Further, if Mr Lee had analysed the documents supporting Mr Stone’s figures then it would have been obvious that Mr Stone had marked some expenditure as uncategorised or unknown not because the payee could not be identified but because, in absence of records or other evidence, he could not be certain that TT had incurred the expenditure for the purposes of its business. That was clear from the fact that Mr Stone had accepted Ms Beale’s categorisation of the expenditure in the TT Lloyds TSB account and TT HSBC account but had showed the value of ticket purchases in the other two accounts as nil apart from some entries for Ticket Queen, Centre Tickets and ITE. Even if there was no evidence to show that the payments were legitimate business expenditure (and we make no finding about that), the names of the payees shown in the bank statements were evidence that the payments had not been made to Mr Rangos. This was confirmed by Ms Beale in evidence before us when she was able to identify all the payees save two (a result so statistically insignificant in the context that we

disregard it) in the spreadsheets that were the basis of the Income and Expenditure Statement produced by Mr Stone. Ms Beale also described how payments shown on bank accounts as made to credit card accounts were made to reimburse employees and others for purchasing tickets as undisclosed agents for TT. We accept Ms Beale's
5 evidence and find that the payments shown as uncategorised or unknown in the Income and Expenditure Statement were not payments to Mr Rangos.

64. That finding does not conclude the appeal as there remains the matter of the cash withdrawals, the payments to Hextalls in relation to Metacharge and the payment to Ms Thavaratnam's mother Barclaycard account.

10 65. Applying Carnwath LJ's guidance in *Pegasus Birds*, we focus on determining the correct amount of tax payable by Mr Rangos on the evidence before us. In doing so, we disregard the arbitrary amount of 25% of the uncategorised or unknown payments and cash withdrawals used by HMRC.

15 66. We should mention two other points that we have disregarded. Before the first FTT, Mr Howells produced a rough calculation of the amount chargeable to tax that included some but not all of the cash withdrawals. As the calculation was not adopted by Mr Rangos, we have ignored it. Mr Stone said that an employee of KFT had told the Official Receiver that money would be withdrawn in cash and paid to Mr Rangos. That evidence was double hearsay and Mr Rangos was not able to cross-examine the
20 employee so we have disregarded it as well.

67. We also mention, as a preliminary point, that we agree with Mr Lee's view that Ms Beale was primarily a front for Mr Rangos and that a higher tax liability should be placed on Mr Rangos than on Ms Beale. The Income and Expenditure Statement produced by Mr Stone showed that there were payments of wages from the TT Lloyds
25 TSB account and the TT HSBC account. Ms Beale's evidence, which we accept, was that she was paid a fixed hourly rate and we assume that payments to her were included in the figure for wages in the Income and Expenditure Statement. There was no evidence from HMRC or Mr Rangos that Ms Beale received any payments other than her wages. It seems to us that there are no grounds for regarding any of the
30 unexplained cash withdrawals as having been paid to Ms Beale and we find that she did not receive any of the unexplained cash withdrawals identified by Mr Stone.

68. The only direct evidence that cash was withdrawn from the bank accounts for Mr Rangos is that of Ms Beale. She said that she would go to the bank and cash
35 cheques on Mr Rangos's instructions if cash were needed. We accept Ms Beale's evidence but it does not show that amounts were paid to Mr Rangos as the cash might have been required to pay a contact from whom Mr Rangos had sourced tickets for TT. Ms Beale's evidence was that payments to ticket touts were often in cash and they were included in the category "Tickets – No Invoices" in the Income and Expenditure Statement. Mr Rangos accepted that touts often required paying in cash.

40 69. We accept that the touts who provided tickets to TT were often paid in cash (although Ms Beale identified a number of payees who were touts and were paid by bank transfer). The recipients of the cash withdrawals were unidentified and no

records were produced in relation to them. Mr Rangos was also operating as a tout in providing TT with tickets from his contacts. Mr Rangos said in evidence that he would charge TT a mark-up of 10% for the use of his contacts to source tickets. Mr Rangos also said in evidence that sometimes Ms Beale paid him for the tickets. When
5 asked why there were no payments from TT to him by bank transfer, Mr Rangos said that he was paid by way of extra tickets for the events or trade credit for tickets for other events. He also said that sometimes he was paid by Ticket Queen or other suppliers.

70. We do not accept that Mr Rangos was paid with tickets for other events or trade
10 credit. We were not shown any evidence that indicated that Mr Rangos was remunerated in kind. If that were the case then we would expect some records to have been kept by TT and Mr Rangos to show how commission had been calculated and paid in the form of other tickets or credit to be used towards them later. The evidence
15 of Ms Beale and Mr Rangos showed that other touts required to be paid in cash or by bank transfer. There was no evidence that any other tout had ever been paid in extra tickets or by being given credit. There was also no evidence that Mr Rangos had ever received commission from his contacts, eg Ticket Queen, to sell the tickets and it does not seem to us that such an arrangement would reflect the practice in the secondary ticket market described by Mr Rangos and Ms Beale.

71. Mr McMahon submitted that because Mr Rangos had said in evidence that he
20 was paid commission by TT but no payments to him appeared in the bank statements, it was reasonable to assume that Mr Rangos had hidden such payments. Mr Rangos did not accept that any amounts had been paid to him. Mr Rangos did not produce any evidence of his income or expenditure, such as bank and credit card statements,
25 apart from his self-assessment tax return for 2006-07 which, for reasons explained below, we do not accept as credible. There were no accounts or records of sales and purchases for TT and, notwithstanding the fact that he acknowledged income of £12,000 in his tax return for 2006-07, the bank statements for the accounts used by TT did not identify any payments to Mr Rangos.

72. We have analysed the figures shown on the Income and Expenditure Statement
30 and the supporting spreadsheets, including the categorisations carried out by Ms Beale during the hearing (see [42] above). It appears to us that, perhaps unsurprisingly in the time she had, Ms Beale missed a few figures that could be categorised as items of expenditure. On our analysis of the figures, the cost of tickets purchased by TT was
35 £2,301,773 and the cash withdrawals amounted to £404,978. Using those amounts instead of the figures shown for tickets and cash in the Income and Expenditure Statement and adding them to all the other items of expenditure, apart from the amounts shown as remaining balances, produces a total expenditure of £4,005,562 for the relevant period. Mr Stone calculated the total income of TT as £4,926,333.90 and
40 that figure was not challenged. Accordingly, deducting the expenditure of £4,005,562 from the income of £4,926,333.90, we find that TT made a gross profit of £920,771.90 during the period.

73. We have found that Mr Rangos was a shadow director and employee of TT, that he had access to and control of the four bank accounts used by TT and that he, rather

than Ms Beale, made payments from three of the accounts to Hextalls. The Income and Expenditure Statement and the spreadsheets supporting it did not show any direct payments to Mr Rangos. Given our findings as to his involvement in TT and TO and the profitability of the business, we do not accept that Mr Rangos, who told us that he needed to earn a living following the closure of GMT, did not obtain any income from it. We have accepted the evidence of Ms Beale that the payments shown as uncategoryed or unknown in the Income and Expenditure Statement were not payments to Mr Rangos. The evidence relating to the bank accounts did not show any significant amounts of retained cash. That leads us to conclude that Mr Rangos's income from the business was included in the cash withdrawals of £404,978, which were derived from the profit made on the sales of tickets. While some of the cash may have been used to pay touts for tickets and other expenses of the business, Mr Rangos did not provide any evidence, apart from his own general assertions, to show that any cash withdrawals were paid to touts or that they were not received by him.

74. There are two other amounts that were paid from TT's and TO's bank accounts for the benefit of Mr Rangos. The first is the payment of £165,000 by TT from various bank accounts to Hextalls. Mr McMahon said that the payments to Hextalls had nothing to do with TT but related to personal debts owed by Mr Rangos to Metacharge. Mr Rangos accepted this but argued that the payment of £165,000 was in return for tickets that he supplied to TT. We have not accepted Mr Rangos's version of events. We have found that TT paid £165,000 to discharge, in part, a debt of Mr Rangos arising from the personal guarantee that he had given to Metacharge in respect of GMT's trading activities. Part of the payment was subsequently recovered by the Official Receiver and so should not be regarded as income of Mr Rangos. Excluding the amount recovered by the Official Receiver, TT paid £120,555.55 for the benefit of Mr Rangos and that amount should be included in his income for the period.

75. The second amount is the payment of £30,000 from TO's Barclays account to Ms Thavaratnam's mother's credit card account with Barclaycard. Mr Stone's evidence, which was not disputed by Mr Rangos, was that the payment was in settlement of a debt that arose from the trading and subsequent liquidation of GMT. Like the payments to Hextalls, the payment of £30,000 by TT had nothing to do with TT but related to personal debts owed by Mr Rangos from his involvement with GMT and should be included in his income for the period.

76. In conclusion, we hold that the following amounts were paid to, or for the benefit of, Mr Rangos and should be regarded as his income for the purposes of tax:

- (1) cash withdrawals of up to £404,978;
- (2) payments to Hextalls of £120,555.55; and
- (3) a payment to Ms Thavaratnam's mother's credit card account with Barclaycard of £30,000.

Those amounts indicate that Mr Rangos received payments from TT and TO during the relevant period of up to £555,533.

77. As Mr Rangos's case was that he did not receive any payments from TT, he naturally did not address us on the amount of the payments that were received by him other than to deny that he had received any payments. We accept that some of the cash withdrawals were probably used to pay other touts but, in the absence of any credible evidence to the contrary, we infer that a substantial proportion of the withdrawals of cash from the bank accounts represented payments to Mr Rangos of amounts derived from the profits made by TT on the sales of tickets. The difficulties that we have experienced in analysing the figures and then trying to determine the amount received by Mr Rangos go some way to explaining the delay in producing this decision. It has not been possible for us to determine the exact amount of the cash payments received by Mr Rangos on the evidence available to us. Our conclusion is, therefore, that Mr Rangos has failed to discharge the burden of proof that is on him to disprove that he received payments amounting to £525,808 from TT and TO in the tax years 2006/07 and 2007/08.

15 **Did TTL and TL wilfully fail to deduct tax from the payments to Mr Rangos and did he know of that failure at the time?**

78. We can deal with the third and fourth issues together. Mr McMahon referred us to the judgment of Nolan J (as he then was) in *The Queen v CIR ex parte Cook and Keys* [1987] CO 1357 and 8/85. In that case, a company went into liquidation and failed to account for tax on the director's remuneration. The Inland Revenue sought to recover the tax from the directors personally on the basis that they knew that the company had wilfully failed to deduct tax that should have been deducted from the payments. The issue in the case was whether the directors had wilfully procured the payments to them without deduction of tax by the company. Having reviewed the authorities on the meaning of the word 'wilful', Nolan J concluded that:

“I take it that if there is evidence of culpability or blameworthiness or wrong, deliberately or intentionally carried out, then the word 'wilful' can properly be applied to it.”

79. Nolan J concluded that the Inland Revenue were entitled to form the opinion that there had been a deliberate and wilful failure to deduct tax on the ground that the payments were under the direct control of the directors and no explanation had been given for the failure to deduct tax.

80. We have found that Mr Rangos was a shadow director of TT and TO and that he had control of the bank accounts used by those companies. It follows that Mr Rangos would have been aware that TT and TO had made payments to him. There was no dispute that TT and TO did not deduct tax under the PAYE regulations and pay it to HMRC or submit any annual employer's PAYE returns. As he had control of the bank accounts, Mr Rangos would have known that TT and TO had not paid HMRC the tax that should have been deducted from the payments that he received. Further, as a shadow director, Mr Rangos was in a position to decide whether or not TT and TO deducted tax. Accordingly, we conclude that, at the direction of Mr Rangos, TT and TO deliberately, that is to say wilfully, failed to deduct tax from the payments to him and that he knew that the companies had not deducted tax from the payments when he received them.

81. In closing, Mr Rangos, relying on the passage from *Cook and Keys* cited above, submitted that, in the first decision, the FTT had found, at [132], that he had acted as a shadow director “albeit perhaps inadvertently”. Mr Rangos submitted that inadvertence was not enough to establish that he had wilfully procured the payment of remuneration without deduction of tax. We agree that wilfulness is not to be equated with inadvertence but we do not consider that this submission assists Mr Rangos in this case. The earlier decision has been set aside and we are free to and do make our own findings of fact based on the evidence that we have seen and heard. We have had the advantage of hearing the evidence of Ms Beale in person. We have found, on the basis of that testimony and other evidence described above, that Mr Rangos sought to control TT and TO while not being publicly identified as a director. It follows that his actions were not inadvertent but deliberate. As is clear from [132] of the first decision, the FTT in that case did not have the benefit of the evidence of Ms Beale and so our conclusion is not inconsistent with their tentative finding on this point.

15 **Conclusion**

82. We have found that Mr Rangos:

- (1) was a shadow director and employee of TT and TO;
- (2) has not discharged the burden of proving that he, or others on his behalf, did not receive payments from TT and TO amounting to £525,808 in the tax years 2006/07 and 2007/08; and
- (3) knew that TT and TO had wilfully failed to deduct tax from the payments when he received them.

83. Accordingly, we confirm the directions that Mr Rangos is liable to pay income tax of £193,468.40, together with interest, in respect of the tax years 2006/07 and 2007/08.

Decision

84. Mr Rangos’s appeal is dismissed.

Right to apply for permission to appeal

85. 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.

**GREG SINFIELD
TRIBUNAL JUDGE**

RELEASE DATE: 1 June 2015