[2015] UKFTT 0575 (TC)

TC04720

Appeal number: TC/2014/01924

MONEY LAUNDERING REGULATIONS 2007 – wholesaler of spirits in bond for cash – high value dealer – whether in breach of the Regulations – held yes – whether maximum penalty of £5,000 imposed appropriate – held no, because maximum penalty imposed on the basis that the breach was deliberate and it was not proved that it was – held that the imposition of a penalty was appropriate and the amount was fixed at £2,500 – appeal allowed in part

FIRST-TIER TRIBUNAL
TAX CHAMBER

S L WINES LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE JOHN WALTERS QC
MR ROLAND PRESHO FCMA

Sitting in public at North Shields on 23 April 2015

Hammad Baig, M&R Tax Advisers Ltd., Northampton, for the Appellant

Andrew Scott, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. The appellant, S L Wines Limited ("SLW") appeals against the decision on review of the Respondents ("HMRC") to impose a penalty on SLW in the amount of £5,000 under Regulation 42 of the Money Laundering Regulations 2007 ("MLR 2007"). The original decision to impose the penalty was communicated to SLW by a letter dated 8 October 2013 from Officer Steven Blair (a Higher Officer of HMRC) and the review letter, upholding Officer Blair's decision was communicated to SLW in a letter dated 13 March 2014 (2013 is stated on the letter, but that must be a slip), signed by Officer David Paton, an Officer in HMRC's Appeals and Reviews Unit.

2. Regulation 42 MLR 2007 (as amended) gives power to HMRC in respect of a high value dealer (SLW has been at all material times a high value dealer) to impose a penalty of such amount as it considers appropriate on a high value dealer who fails to comply with any requirement in any of the following regulations of the MLR 2007: regs. 7(1), 7(2) or (3), 8(1) or (3), 9(2), 10(1), 11(1), 14(1), 15(1) or (2), 16(1), 16(2), 16(3) or (4), 19(1), 19(4), 19(5) or (6), 20(1), 20(4) or (5), 21, 26, 27(4) or 33.

3. For these purposes, "appropriate" means effective, proportionate and dissuasive (reg. 42(1C) MLR 2007).

4. The original decision to impose the penalty included a statement indicating that SLW had breached regulations 7, 8(1), 14(1), 19(1), 20(1) and 20(2) MLR 2007. The review letter indicated that Officer Paton considered that SLW had been in breach of the regulations identified by Officer Blair in the original decision and 'other identified breaches' and that, in summary, SLW had 'failed to establish and maintain appropriate and risk-sensitive policies and procedures in accordance with the requirements of a High Value Dealer'.

5. Regulation 7(1) obliges a 'relevant person' (of which a high value dealer is one category – reg. 3(1)(g)) – to apply customer due diligence measures when he: (a) establishes a business relationship; (b) carries out an occasional transaction; (c) suspects money laundering or terrorist financing; or (d) doubts the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification. Regulation 7(2) obliges (subject to regulation 16(4), which is not relevant in this case) a 'relevant person' to apply customer due diligence measures at other appropriate times to existing customers on a risk-sensitive basis. Regulation 7(3) obliges a 'relevant person' to determine the extent of customer due diligence measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction; and to be able to demonstrate to (in this case, HMRC) that the extent of the measures is appropriate on view of the risks of money laundering and terrorist financing.

6. Regulation 8(1) obliges a 'relevant person' to conduct ongoing monitoring of a business relationship. For these purposes, 'ongoing monitoring' means scrutiny of transactions undertaken in the course of the relationship (including, where necessary,

the source of funds) to ensure that the transactions are consistent with the relevant person's knowledge of the customer, his business and risk profile; and keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date.

7. Regulation 14(1) obliges a 'relevant person' to apply on a risk-sensitive basis enhanced customer due diligence measures and enhanced ongoing monitoring in accordance with paragraphs (2) to (4) of Regulation 14; and in any other situation which, by its nature can present a higher (*sic*) risk of money laundering or terrorist financing. Regulation 14(2) to (4) set out a number of situations where enhanced measures are required. In particular, regulation 14(2) applies where a customer has not been physically present for identification purposes.

8. Regulation 19(1) obliges a 'relevant person' to keep specified records for at least the five-year period specified in regulation 19(3).

9. Regulation 20(1) obliges a 'relevant person' to establish and maintain appropriate and risk-sensitive policies and procedures relating to (a) customer due diligence measures and ongoing monitoring; (b) reporting; (c) record-keeping; (d) internal control; (e) risk assessment and management; and (f) the monitoring and management of compliance with, and the internal communication of, such policies and procedures, in order to prevent activities related to money laundering and terrorist financing. Regulation 20(2) sets out a number of policies and procedures which are included in the policies and procedures referred to in regulation 20(1).

The evidence

10. The following witnesses gave oral evidence at the hearing of the appeal: Mr Satnam Singh Sangha (a director of, and shareholder in, SLW), Mr Mehmood Mohammed (a qualified Chartered Certified Accountant, and a director of Ariston Ltd., an accountancy practice counting Mr Sangha among its clients), Officer Blair and Officer Linda Dunsmore, who accompanied Officer Blair on his visit to SLW on 24 April 2013. Each of these witnesses also provided a Witness Statement. We received a Witness Statement also from Mr Jaspal Dosanjh, an employed independent management consultant, who stated that he had prepared a money laundering policy for SLW but could not say when he gave the document containing the policy to Mr Sangha, noting that he did not make a charge for it. Mr Dosanjh was not called to give oral evidence, and his statement was accepted by HMRC.

11. Besides the witness evidence, we had before us a bundle of documents. From the evidence as a whole we find facts as follows. Where there was a conflict of evidence, we describe it and state our conclusion.

12. SLW commenced trading on 1 April 2011 and was registered for VAT. Its main business was the wholesale of alcohol in duty suspension from the UK to elsewhere in the EU. SLW ceased (or interrupted) trading in October 2013. SLW was registered under the MLR 2007 as a high value dealer on 20 August 2012. This was because it accepted cash from its customers.

13. Mr Sangha, besides being a director of and shareholder in SLW, is also a director of and shareholder in another company, Lucky Drinks 4 U Ltd. ("LD4U"), which is apparently run as Mr Sangha's brother's business – the brother also being a shareholder. LD4U trades from the same address as SLW (an address in Sunderland) and was incorporated on 2 October 2007 and approved by HMRC under the Warehousekeepers and Owners of Warehoused Goods Regulations ("WOWGR") as a registered owner of duty suspended goods with effect from 13 March 2009. LD4U's main business activity is the wholesale of duty suspended alcohol within the UK. LD4U was also, until July 2014, registered under the MLR as a high value dealer, since it, like SLW, accepted cash from its customers. However LD4U changed its policy at that time, deciding not to accept cash from customers.

14. HMRC revoked the registration under WOWGR of LD4U on 20 March 2014 but the registration was reinstated following a review, on 2 June 2014. Ariston Ltd, and its director, Mr Mehmood Mohammed, dealt with the affairs of LD4U and advised on a policy of compliance with the MLR, to satisfy HMRC. Mr Mohammed drew Mr Sangha's attention to HMRC's Public Notice MLR8 'Anti-money laundering guidance for high value dealers' ("the Guidance"). That guidance is 'relevant guidance approved by HM Treasury for the purposes of regulations 42(3) and 42(4) MLR 2007.

15. Mr Mehmood Mohammed also gave to Mr Sangha blank forms marked 'SWAT UK Money Laundering Procedures Manual A1 to A8'. 'SWAT' stands for 'Strengths Weaknesses and Threats'. The forms start off with A1, a questionnaire under the heading 'Money laundering compliance review' and include other forms which would be useful in establishing effective procedures for compliance with the MLR 2007. These forms have no official status, but they are designed to assist in compliance with the MLR 2007.

16. In 2011, at Mr Sangha's request, Mr Mohammed agreed also to act for SLW.

17. On 31 March 2013, Mr Sangha completed the SWAT form 'Money laundering compliance review' which had been provided to him by Mr Mohammed. On that form, Mr Sangha answers "yes" to various questions asking whether there was in operation customer due diligence measures, ongoing monitoring, record keeping and other anti-money laundering procedures.

18. On 11 April 2013, HMRC wrote to SLW indicating that a visit was proposed to ensure that SLW was complying with the requirements of the MLR 2007. Following email correspondence between Officer Blair and Mr Sangha, it was arranged that the visit would take place on 24 April 2013. On that date, Officer Blair and Officer Dunsmore attended SLW's business premises.

19. There was in our papers a copy of a handwritten note of the meeting which had been made by Officer Blair. There were two versions of the last (summary) page of the note. Those versions were the same except for the wording of the concluding sentence. One version of this was: "I closed the meeting, thanking Mr Sangha for his time. I advised him that I would review case for consideration." The other version

had the same wording, but with the following words added "– warning letter or penalty". Officer Blair's evidence was that he had redacted the words "- warning letter or penalty" from the version of the notes originally sent to Mr Sangha's advisers because whether to send a warning letter or a penalty had not been discussed at the meeting, and he had added those words to his note for the purpose of 'the internal risk process'.

20. There was also with our papers a copy of an 8-page type-written Premises Visit Report, which states on its face that it was completed by Officer Blair on 10 May 2013. Officer Blair's evidence was that he used the handwritten notes (which he said had been taken at the meeting with Mr Sangha) in compiling the Visit Report.

21. Mr Sangha complained about Officer Blair's attitude at the meeting, describing it as aggressive. He said that he did not see Officer Blair taking notes during the meeting. He also complained that Officer Blair was dismissive of the due diligence documents which he had prepared, and had not inspected them all.

22. Officer Dunsmore's evidence was that Officer Blair examined all the documentation provided by Mr Sangha and did not decline to examine any such documentation. Officer Blair's evidence was to the same effect.

23. Before 24 April 2013 (the date of the visit by Officers Blair and Dunsmore), SLW had completed 8 transactions of wholesale of alcohol in bond. These transactions were with only 2 customers, Intercontinental Drinks and Food Limited, of Sofia, Bulgaria, ("Intercontinental") and Jacobs Holdings BV of Rotterdam, The Netherlands ("Jacobs"). At the interview on 24 April (according to Officer Blair's handwritten notes) Mr Sangha told him that 8 high value dealer transactions had been concluded, that the consideration received by SLW had been 100% in cash and had amounted to approximately £137,000 (this appears to have been an underestimate, the true figure being £144,944.80 – the total of the invoice prices detailed below). Officer Blair noted the correct figure in his typed up Premises Visit Report.

24. In the course of the hearing a bundle of documents, including invoices and confirmations of cash receipts issued by SLW, were handed up. It is not clear to us why they were not in the bundle of documents prepared for the hearing.

25. We have examined these documents. They show that there were effectively two transactions, one in November 2012 and one in February 2013.

26. The transaction in November 2012 was with Jacobs. Invoices numbered 1 and 2 were made out to Jacobs and dated 17 November 2012. Each invoice was for 1,664 Glens [Vodka] 70 cl at a unit price of £10, total invoice price £16,640. A cash deposit of £10,000 was received by SLW from Jacobs on 18 October 2012, and the balance of the price due on invoices 1 and 2 (cash payments totalling £23,280) was received by SLW from Jacobs on 17 November 2012.

27. The transaction in February 2013 was with Intercontinental. There is a copy of an email dated 25 February 2013 from Magdalini Tsirakidouo, Managing Director of Intercontinental (to whom we refer below as "MT") sent to SLW asking: "What for

goods you are sell – Can you send me please". Invoices numbered 3 to 8 inclusive were made out to Intercontinental and dated 27 February 2013. Invoices 3 and 4 were each for 1,664 Glens [Vodka] 70 cl at a unit price of £10, total invoice price (for each invoice) £16,640. Invoices numbered 5 and 6 were each for 1,144 Glens [Vodka] litres at a unit price of £12.40, total invoice price (for each invoice) £14,185.60. Invoices numbered 7 and 8 were each for 1,092 Glens Vodka [*sic*] "20CL" at a unit price of £22.90, total invoice price (for each invoice) £25,006.80. The price due on invoices 3 to 8 inclusive (total: £111,664.80) was paid in cash on 4 March 2013 (as to £72,472.40, covering invoices 3,4,5 and 7) and on 16 March 2013 (as to the balance of £39,192.40, covering invoices 6 and 8), and we have seen "Confirmation of Payment" documents covering all 6 payments.

28. We have also seen a copy of an email apparently sent by Intercontinental (MT) to SLW dated 26 February 2013 and asking for the loads to be separately invoice as we have described above. MT in the email referred to the consignments subsequently invoiced on invoices numbered 7 and 8 as "Glens 1092 20cl". We consider that this must be an error and that 2 litre bottles were sold, but it is interesting that the error in MT's email is repeated in the invoices issued by SLW.

29. The only ledger or other record of transactions carried out by SLW appears to have been a small notebook which contained details referring to transactions, figures and dates, written in pencil. These details appeared to include all the transactions in issue, but we were not provided with any other documents (accounts, bank statements, etc.) in relation to the financial records of SLW. We agree with Officer Blair's comment that the record contained in the notebook did not amount to auditable records showing an audit trail to enable the flows of money to be traced.

30. There were in the bundle of documents prepared for the hearing two forms "A3b" from the SWAT UK Money Laundering Procedures Manual entitled "Identification form – company". These had apparently been filled out by Mr Sangha (whose signature was on the forms), one form in relation to Jacobs, and the other in relation to Intercontinental. The form in relation to Jacobs is dated 16 October 2012 (2 days before the cash deposit of £10,000 noted above was apparently received) and the form in relation to Intercontinental is dated 26 February 2013. These forms are not mentioned in Officer Blair's handwritten notes of interview, or in the typed up Premises Visit Report. Mr Sangha asserts that Officer Blair brushed aside these documents and refused to look at them.

31. From these forms it is apparent that for customer due diligence purposes Mr Sangha obtained the VAT registration numbers of Jacobs and Intercontinental and the addresses of their registered offices/business addresses.

32. From these forms it is also apparent (and was Mr Sangha's evidence) that he had met personally the person acting on behalf of Intercontinental in its dealings with SLW – that is, MT – "in Germany & England" and that he had known the person acting on behalf of Jacobs in its dealing with SLW – Mr Mohammed Mhazar ("MM"), a resident of the UK – for "15 years approx.". This information is at variance with the handwritten notes and Premises Visit Report prepared by Officer

Blair, which refers to Mr Sangha having met his customers "down South" – i.e. in the South of England.

33. On SLW's instructions, M&R Tax Advisers Limited ("M&R") wrote to HMRC for Officer Blair's attention on 12 August 2013 requesting reconsideration of Officer Blair's decision to issue a penalty. M&R informed Officer Blair that Mr Sangha had met MT in Cologne and sent copies of the documents related to his journey (see: below). M&R also informed Officer Blair that Mr Sangha had known MM "for some 10 to 15 years since they grew up together in the same neighbourhood of Yorkshire" and that they had met at SLW's offices "on a number of occasions when payment was made". Officer Blair acknowledged this letter in his letter to M&R dated 18 September 2013. In that letter Officer Blair stated that Mr Sangha had not mentioned the visit to Germany, nor the 10 to15 years' acquaintance with MM, during the visit on 24 April 2013.

34. Copies of documents showing customer due diligence were handed up during the hearing. Again, it is not clear to us why these documents were not in the bundle of documents prepared for the hearing. They show the results of a company search on Jacobs (although there is no indication when the search was carried out), certain documents pertaining to the tax affairs of Jacobs (in Dutch). They also show a verification of the validity of Intercontinental's VAT number obtained from the European Commission (VIES) – this last document was also in the bundle prepared for the hearing – and a document in German from the Oberbürgermeister of the town of Hagen apparently verifying that MT is resident or registered in that town. The document is dated 30 March 2012 but there is no indication of the identity of the person to whom it was issued.

35. In the bundle of documents prepared for the hearing is a credit card statement from NatWest relating to a MasterCard held by Mr Sangha. From that statement it is apparent that he flew to Germany in January 2013, staying at a hotel in Cologne. A copy of a Lufthansa document (also in the bundle prepared for the hearing) confirms this.

36. The identity document obtained by Mr Sangha for MM was a UK passport. However the copy in the bundle of documents prepared for the hearing is poor. There is no clarity at all in the photograph and most of the information is illegible. It appears that it was a copy obtained by fax or some other electronic means.

37. The identity document obtained by Mr Sangha for MT was a form of Greek identity document. The photograph was clearer than the passport photograph of MM, but the information accompanying it, besides being written in Greek, was virtually illegible.

38. Mr Sangha checked that both Intercontinental and Jacobs had an account with Gaston Schul, a bonded warehouse in Belgium. SWL had an account with Seabrook Warehousing Limited ("Seabrook"), a bonded warehouse at Rainham, Essex. It appears from invoices provided during the hearing that the goods sold by SLW to Jacobs and Intercontinental were in fact bought from Seabrook to order (on a 'back-

to-back basis') and shipped at SLW's expense to Gaston Schul. SLW was able to obtain Glens Vodka at something like a 15% discount to the price it charged Jacobs and International, but that profit was reduced by the costs of shipping. Officer Blair's handwritten notes record that Mr Sangha had told him that he had made a profit of £3,726 out of the business with £137,000 turnover, which he said SLW had carried out.

39. Mr Sangha told Officer Blair that he did not advertise SLW's business. Officer Blair asked Mr Sangha why his customers could not deal with Seabrook direct and obtain a cheaper supply but his typed up Premises Visit Report states that Mr Sangha was unable to give a commercial reason for his business and why customers come through him.

Our Decision

40. Under regulation 44 of the MLR 2007, this Tribunal on an appeal has power to quash or vary any decision of HMRC, including the power to reduce any penalty to such amount (including nil) as we think proper; and to substitute our own decision for any decision quashed on appeal. This is thus a full appeal, rather than an appeal on which our power is merely to consider the reasonableness of HMRC's actions.

41. On our consideration of the evidence, we agree with the view expressed by Officer Blair that the commerciality of SLW's business is doubtful. We think it strange that a Bulgarian company with a German resident representative should approach SLW on 25 February 2013 asking "What for goods you are sell – Can you send me please" with the result that SLW sold goods – Glens Vodka – to that company (Intercontinental) to the value of £111,664.80, in cash, two days later. We bear in mind that Mr Sangha had journeyed to Cologne in January 2013 and we accept that he met MT on that occasion, but we have had no explanation of how he was introduced to MT prior to that meeting beyond a statement that they met in the London area. We also bear in mind evidence received from Mr Sangha (which we accept) that cash payments are common in the business of wholesale of alcohol in bond and that he checked that Intercontinental had an account with Gaston Schul and that he checked the validity of Intercontinental's stated VAT number, but we have had no explanation as to why Intercontinental would buy from SLW at a premium, when they could go direct to Seabrooks to buy at a significantly lower price. Also, no explanation was given, or, more to the point, sought, as to why MT specifically requested that Intercontinental's order should be split into 6 different invoices.

42. A similar point can be made in relation to the transaction with Jacobs. We accept Mr Sangha's evidence that he had known MM for a long time, that he obtained a copy of his passport and that he checked that Jacobs had an account with Gaston Schul, but it has not been explained to us why the order from MM's Dutch company (Jacobs) was split into 2 invoices, nor why Jacobs bought – again Glens Vodka – from SLW, rather than going direct to Seabrooks, or some other bonded warehouse.

43. We regard the factors we have mentioned as being sufficient to put a reasonable person in the position of SLW on enquiry as to the dangers of money laundering so as to require enhanced customer due diligence measures and enhanced monitoring to be

applied, in accordance with regulation 14(1) MLR 2007, to the higher risk of money laundering or terrorist financing inherent in the transactions undertaken by SLW with Jacobs and Intercontinental.

44. We turn to the question of whether SLW has complied with the applicable regulations of the MLR 2007.

45. SLW was obliged, by regulations 7, 8 and 14 of the MLR 2009 to apply 'enhanced customer due diligence measures and enhanced ongoing monitoring' to its dealings with Jacobs and Intercontinental.

46. We are satisfied that Mr Sangha identified MM as the individual controlling Jacobs and MT as the individual controlling Intercontinental. However we consider that he did not take any or any satisfactory measures to identify the beneficial owner involved in those entities (reg. 5(b) MLR 2007), which may or may not have been MM and MT respectively. The most serious criticism on this aspect of the case is SLW's failure to 'obtain information on the purpose and intended nature of the business relationship[s], for example, on the source of funds and purpose of the transactions' (see: paragraph 7.2 of the Guidance).

47. While it may have been clear that the purpose of the transactions was the sale and purchase of spirits in bond, the source of the cash consideration received by SLW was not satisfactorily investigated, nor was the *bona fides* of the purchases, as far as the purchasers, Jacobs and Intercontinental, were concerned. We regard these as serious shortcomings in enhanced customer due diligence and enhanced ongoing monitoring. SLW has failed in its obligations in this regard.

48. SLW was also obliged by regulation 19(1) of the MLR 2007 to keep specified records for at least a five year period. The records are: a copy of, or the references to, the evidence of the customer's identity and the supporting records (consisting of original documents or copies) in respect of the business relationships with Jacobs and Intercontinental. The records kept, should, as Officer Blair contended, have provided HMRC with an adequate audit trail in relation to the transactions entered into by SLW.

49. The purpose of this obligation, as explained in paragraph 11.1 of the Guidance, is to enable a business (SLW) to demonstrate its compliance with the MLR 2007. The records kept may, also as explained in that paragraph, be crucial in any subsequent investigation by SOCA, the police or HMRC. They will enable the business (SLW) to produce a sound defence against any suspicion of involvement in money laundering or terrorist financing, or charges of failure to comply with the regulations.

50. For these reasons, the records need to be of high and legible quality. The evidence of the identity of MM and MT retained by SLW was clearly not of sufficient quality (paragraph 11.6 of the Guidance refers to acceptable paper copies being 'good photocopies of original documents'). The records also need to be complete and sufficient to provide the necessary audit trail – they were not, at any rate without much additional work being required to make the necessary reconciliations. In

particular, we did not see sufficient documentary evidence (for example bank statement evidence) to show how SLW dealt with the cash it received from its customers. We find therefore that SLW has failed to comply with regulation 19(1) of the MLR 2007.

51. SLW was also obliged by regulation 20 of the MLR 2007 to establish and, importantly, maintain, appropriate and risk-sensitive policies and procedures relating to all relevant matters – see: paragraph 9 above.

52. We accept that SLW had taken steps to establish procedures by instructing Ariston Ltd. and Mr Dosanjh to advise and prepare policies, and that the SWAT forms provided by Mr Mohammed (of Ariston Ltd) were used. However, we consider that SLW failed to establish adequate policies and procedures and failed to maintain even the inadequate procedures which it had taken steps to put in place. In particular SLW had, it appears to us, no real policies or procedures to scrutinise its transactions, assessing the money laundering risks inherent in them, particularly as it is doubtful that they had, as we have concluded above, any real legitimate economic purpose.

53. For these reasons we conclude that SLW has not complied with the regulations identified in Officer Blair's original decision, namely, regulations 7, 8(1), 14(1), 19(1), 20(1) and 20(2) MLR 2007.

54. We turn to consider the decision appealed against, being the decision to impose a penalty of £5,000. We consider there is some force in Mr Sangha's criticism of Officer Blair's conduct of the interview on 24 April 2013 – particularly having regard to his failure to mention the filled in SWAT identification forms in relation to both Jacobs and Intercontinental in his notes and subsequent typed-up Premises Visit Report. Contrary to the contents of his own Witness Statement, Officer Blair did not examine and take account of all the documentary evidence presented to him. He admitted under cross-examination that it was 'possible that he could have missed information about Mr Sangha knowing [MM]'. He also admitted that he 'may well have been successful in reconciling [the transactions recorded in Mr Sangha's notebook with the bank statements available] if he had made more of an effort'. This of course begs the question as to whether he should be required to make 'more of an effort'. We consider that the obligation to keep records which was on SLW was to keep such records as would enable any necessary reconciliations to be made easily.

55. Officer Blair's view was that Mr Sangha's non-compliance with the MLR 2007 was deliberate and that although he recognised that Mr Sangha had showed a willingness to comply with the MLR 2007, he doubted 'whether this will actually be the case' – see the typed up Premises Visit Report. He therefore imposed the maximum penalty calculated by 'using a MLR calculator, in accordance with HMRC guidance, taking into account the turnover and gross profit of the business disclosed by Mr Sangha at the visit (see: Officer Blair's Witness Statement, paragraph 23). He maintained that the penalty was appropriate in the sense of being effective, proportionate and dissuasive.

56. From the form of Penalty Calculator in the bundle prepared for the hearing, it appears that HMRC guidance is that where a gross profit is less than £50,000 (as in this case, SLW's gross profit being declared as £3,726) the maximum penalty is £5,000. The papers explain that no mitigation has been allowed because SLW's failure to comply was considered to be deliberate, and SLW have not mitigated the risk of money laundering in accordance with the regulations and this has led to the money received being potentially exposed to money laundering.

57. On the other hand, we note from an excerpt from the applicable HMRC Manual (MLR1PP410 – Penalties guidance: types of assistance we can give to businesses) that "where there is a genuine misunderstanding it may be better to initially adopt an enabling approach to improve compliance rather than to issue an immediate penalty". Mr Baig, for SLW, suggested that if there were issues of non-compliance, a warning letter ought to have been issued, stressing that the interview on 24 April 2013 was the first visit to SLW to check compliance with the MLR 2007, and credit should be given to SLW for seeking the services of Ariston Ltd and Mr Dosanjh.

58. We find that HMRC have not proved that the non-compliance with the MLR 2007 was deliberate on SLW's part. However, we also find that SLW had shown no proper appreciation of the importance and rationale of the MLR 2007 – the need to deter, detect and disrupt money laundering and terrorist financing (see: Guidance, paragraph 1.1). It seems to us that the transactions entered into with Jacobs and Intercontinental disclosed high risks of money laundering against which no effective precautions were taken by SLW, or even really contemplated. The forms filled in and records kept by SLW were inadequate to demonstrate a serious attempt to combat money laundering.

59. For these reasons we conclude that the imposition of a penalty is justified, but, because we have found that deliberate failure to comply with the MLR 2007 on SLW's part has not been proved by HMRC, we consider that the appropriate penalty, in terms of regulation 42(1) MLR 2007 is one half of £5,000, that is, £2,500 and we adjust the penalty chargeable accordingly.

60. The appeal is therefore allowed in part.

61. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JOHN WALTERS QC
TRIBUNAL JUDGE

RELEASE DATE: 24 NOVEMBER 2015