



TC05618

Appeal number: TC/2016/00249

INCOME TAX – computation of profits – unexplained income – onus of proof on taxpayer in relation to amounts assessed – “presumption of continuity”- penalties under section 95 Taxes Management Act 1970 and Schedule 24 Finance Act 2007

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LARRY JOHN BARRETO

Appellant

- and -

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

**TRIBUNAL: JUDGE ASHLEY GREENBANK
MRS RAYNA DEAN FCA**

**Sitting in public at Nottingham Justice Centre, Carrington Street, Nottingham
on 23 November 2016.**

The Appellant in person

Mr Philip Osborne, officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This is an appeal by the appellant, Larry John Barreto (“Mr Barreto”), against assessments to income tax raised by the respondents (“HMRC”) for tax years from 2006/07 to 2011/12 pursuant to closure notices and notices of assessment issued on 7 and 8 July 2015 and related penalties under section 95 of the Taxes Management Act 1970 (in respect of the tax years 2006/07 and 2007/08) and Schedule 24 to the Finance Act 2007 (in respect of the tax years 2008/09 to 2011/12) detailed on penalty notices issued on 18 and 21 December 2015.

Application to postpone the hearing

2. Before we heard the appeal, Mr Barreto made an application to the Tribunal to postpone the hearing on the grounds that his representative, Mr Martyn Arthur (“Mr Arthur”), was unable to travel to the hearing because of a long-standing neck injury.

3. Mr Barreto made the following points in support of his application.

(a) Mr Barreto’s former accountant had retired from practice and was no longer able to represent him. He had appointed Mr Arthur on the recommendation of his former accountant.

(b) Mr Arthur, was unable to travel to the hearing because of a long-standing neck injury. Evidence of Mr Arthur’s injury had been provided to the Tribunal.

(c) Mr Barreto was not able to handle the case without the assistance of Mr Arthur. Mr Arthur was prepared to deal with the case and had been through the relevant paperwork.

4. HMRC opposed the application to postpone the hearing. Mr Osborne made the following points.

(a) The appeal had been due to be heard in Nottingham on 3 August 2016. The hearing had been postponed on the application of Mr Barreto in order to permit his new adviser, Mr Arthur, to familiarize himself with the case. There was no good reason for a further postponement.

(b) At the same time, the appellant had applied for the case to be transferred to Cardiff on the grounds that Mr Arthur would be unable to travel to Nottingham for health reasons. The application to change the venue had been refused by the Tribunal in a letter dated 28 July on the grounds that the medical evidence that had been supplied was more than two years old and was not evidence of a current incapacity and that Nottingham was, in any event, the more appropriate venue given the residence of the appellants. The relevant HMRC staff were based in Nottingham. Nottingham remained the most appropriate venue for the hearing.

5. We rejected the application to postpone the hearing. In our view, in all the circumstances, it was consistent with the overriding objective of the Tribunal to deal with cases fairly and justly for the hearing to proceed.

6. We took into account the following matters.

5 (a) The appellant's arguments in favour of a postponement were more apt to apply to an application for a change of venue. If a postponement was granted, Mr Arthur would still not be able to attend a hearing in Nottingham given our understanding of the long-term nature of his injury.

10 (b) We were therefore concerned that the application to postpone was simply being used as a device to permit a further application for a change of venue to be made. Indeed, the appellant confirmed following questions from the Tribunal that, if a postponement was granted, he would be making a further application for any subsequent hearing to take place in Cardiff so that Mr Arthur could attend.

15 (c) The appellant had been informed of the decision of the Tribunal that the hearing would take place in Nottingham in the letter dated 28 July 2016. Following further correspondence, that decision was confirmed in a letter dated 1 September 2016. The case management decision made on 1 September had already been the subject of an appeal. That appeal had
20 been dismissed by the First-tier Tribunal (Judge Kempster) on 21 October 2016. Judge Kempster also refused permission to appeal against that decision. An appeal against that refusal had been dismissed by the Upper Tribunal on 22 November 2016.

25 (d) The appellant had had ample opportunity to discuss the preparation of the case with his advisers in advance of the hearing. Following the initial postponement and the decision that the hearing should be in Nottingham, the Tribunal gave notice to the parties on 8 September 2016 of the date, time and venue of the hearing. From that point onwards, it had been incumbent on the parties to prepare for a hearing in Nottingham
30 on 23 November 2016 and, if necessary, to appoint an appropriate representative.

(e) A further application to postpone the hearing had been rejected by the Tribunal (Judge Brooks) on 22 November 2016.

35 (f) The Tribunal had made enquiries as to whether or not it might be possible to undertake a telephone hearing but had been told that it would not be practical.

40 (g) Mr Barreto and Mr Arthur had assumed that a postponement would be granted. On that basis, Mr Arthur had told the witness that the appellant had intended to call, Mr Paul Wakefield, not to attend the hearing. It was not appropriate for Mr Barreto or Mr Arthur to presume that a postponement would be granted. That was particularly the case given that the previous application for a postponement had already been refused by Judge Brooks.

5 (h) Whilst it would have clearly been preferable if the witness had been able to attend, the written evidence before the Tribunal contained details of the evidence which the witness proposed to give. The Tribunal would be able to form a judgment on that evidence on the basis of the submissions of the parties.

(i) There were no new issues being raised before the Tribunal of which Mr Barreto would not have been aware from his correspondence with HMRC and the Tribunal in advance of the hearing.

10 (j) The Tribunal would make appropriate allowances in the procedure to allow Mr Barreto to present his case and to ensure a fair hearing of the issues.

(k) If the hearing were to be postponed, the resolution of the issues before the Tribunal would be delayed and HMRC and the Tribunal would be put to further cost and expense.

15 **The evidence**

7. We were provided with a bundle of documents by HMRC.

8. Mrs Gail Blockley, an officer of HMRC, gave evidence and was cross-examined on her evidence. Mr Barreto and Mrs Barreto also gave evidence and were cross-examined on their evidence.

20 **Facts**

9. Mr Barreto is a self-employed financial adviser.

10. On 17 June 2011, HMRC issued a notice under section 9A of the Taxes Management Act 1970 (“TMA 1970”) to Mr Barreto informing him that it was making enquiries into his self-assessment return for the tax year ended 5 April 2009 (the “tax year 2008/09”). The letter referred to various sources of income (including overseas income) that may have been omitted from the return.

11. The self-assessment return for the tax year 2008/09 showed profits from Mr Barreto’s business of £662.

12. In the course of the enquiry, HMRC raised concerns about record keeping and recording. In particular:

30 (a) Mr Barreto was not keeping adequate business records: invoices were not issued for all the work he had done, the cashbook was written up only once a year and no records were kept of Mr Barreto’s drawings;

35 (b) the business had a low recorded turnover of £8,996, and relatively high expenses to set against that income, resulting in a very low reported profit of £662, despite Mr Barreto’s claim to be travelling to numerous clients across the country;

(c) there were significant unexplained deposits in Mr and Mrs Barreto's bank accounts;

(d) the level of income generated from Mr Barreto's business was insufficient to support his family's lifestyle.

5 13. In the course of the following enquiries, Mr Barreto disclosed certain income and gains which had not been disclosed on his self-assessment return. In particular, Mr Barreto disclosed the proceeds of disposal of a property in Cyprus, interest on various UK and non-UK bank accounts and dividends on certain listed shareholdings. These matters are not in dispute.

10 14. In addition, HMRC's caseworker, Mr Orme, raised enquiries concerning certain unexplained deposits in Mr and Mrs Barreto's bank accounts. Those deposits amounted to slightly less than £52,000 in the tax year 2008/09. The Appendix to this decision sets out details of the deposits that were identified by HMRC.

15 15. At least initially, Mr Barreto maintained that a substantial proportion of these deposits, £37,347.53, represented dividends from a shareholding which he or his wife held in a company called Floorbury Limited. On further enquiry, it transpired that Mr and Mrs Barreto held a 40% shareholding in the company and, from the accounts of Floorbury Limited, that dividends paid by the company in the period in question could only account for £16,800 of the deposits. This amount was accepted by the parties as
20 attributable to dividends from Floorbury Limited, although it has not been attributed to specific deposits.

16. On further enquiry, HMRC accepted that two of the deposits previously identified as dividends from Floorbury Limited represented transfers from Mrs Barreto's accounts. (HMRC's figures attribute £3,199 to these deposits. As we
25 explain below, at [51], we believe that there is an error in HMRC's figures and the figure for the transfer from Mrs Barreto's accounts should be £3,249.)

17. Of the other deposits, HMRC later accepted that a total of £5,373.39 represented repayments to Mr Barreto of loans made to Mr Barreto's daughter that he had made to her in order to meet expenses such as university fees.

30 18. Mr Barreto put forward several explanations for the deposits which remained after deducting the amounts agreed by HMRC. On HMRC's figures these deposits amounted in total to £26,570. A more accurate figure is £26,521.38, but the HMRC figure reflected a rounding down of certain deposits and the £50 discrepancy to which we refer at [16] above and which we discuss at [51] below.

35 19. The various explanations advanced by Mr Barreto included: that some of the deposits represented repayments made by Mr Paul Wakefield of a personal loan that had been made to Mr Wakefield by Mr Barreto some ten years previously; that £2,960 of the deposits were cash deposits representing repayment of certain unused travellers cheques following returns from holidays; and that some of the amounts represented
40 sums paid by clients to Mr Barreto on account of disbursements, which Mr Barreto

held on behalf of his clients before making the relevant payment. We discuss each of these explanations at [30] to [46] below.

20. None of these explanations proved satisfactory to HMRC.

5 21. On 7 July 2015, HMRC issued an assessment in the amount of £9,673.21 in respect of the tax year 2008/09. The amount was calculated on an assumption that the profits from Mr Barreto's business should have been increased by an amount of £29,570 being the £26,570 of deposits which are referred to at [18] above plus an estimated amount of £3,000 for cash receipts which were not deposited in bank accounts.

10 22. On 7 July and 8 July 2015, HMRC also raised assessments for the tax years 2006/07, 2007/08, 2009/10, 2010/11 and 2011/12. The amounts of these assessments (together with the assessment for the tax year 2008/2009) are set out in the table below. In each case, HMRC increased the taxable profits of Mr Barreto's business by reference to the amount of the estimated figure used in the assessment for the tax year
15 2008/2009, but adjusting that figure for any increase or decrease by reference to the retail prices index ("RPI").

Date	Tax year	Amount
7 July 2015	2006/07	£6,853.35
7 July 2015	2007/08	£8,461.20
7 July 2015	2008/09	£9,673.21
8 July 2015	2009/10	£7,164.96
8 July 2015	2010/11	£7,629.15
8 July 2015	2011/12	£7,412.23

20 23. In December 2015, HMRC issued penalty notices for Mr Barreto for each of the relevant tax years. The penalties for the tax years 2006/07 and 2007/08 were charged under section 95 TMA 1970. The penalties for the tax years 2008/09, 2009/10, 2010/11 and 2011/12 were charged under Schedule 24 to the Finance Act 2007. Details of the penalties charged are set out in the table below.

Date	Tax year	Amount
21 December 2015	2006/07	£2,057.00
21 December 2015	2007/08	£2,538.00
18 December 2015	2008/09	£1,866.27
18 December 2015	2009/10	£1,397.16
18 December 2015	2010/11	£1,487.68
18 December 2015	2011/12	£1,288.37

24. Mr Barreto appealed to the Tribunal.

Issues before the Tribunal

25. The majority of the assessments raised on Mr Barreto are discovery assessments made under section 29 TMA 1970. Mr Barreto has not raised any issue concerning the ability of HMRC to raise discovery assessments in relation to the tax years in question.

26. The issues before the Tribunal are:

- (a) in relation to the tax year 2008/09, whether and, if so to what extent, the assessment is excessive in that it treats the cash deposits in Mr Barreto and Mrs Barreto's accounts as income of Mr Barreto's business;
- (b) in relation to the other tax years, whether the assessments raised are excessive;
- (c) the level of penalties applicable in each case.

The tax year 2008/09

27. As we have described above, as part of HMRC's enquiry, HMRC identified various deposits in the accounts of Mr and Mrs Barreto for which explanations have been sought on the assumption that those deposits might otherwise represent income from Mr Barreto's business. The deposits amount in total to £51,943.77.

28. In the course of its enquiries, HMRC accepted that the £16,800 of this sum represented dividends from Floorbury Limited, that £3,199 represented payments from Mrs Barreto's account, and that deposits amounting to £5,373.39 represented repayments of various amounts from Mr Barreto's daughter. The questions before the Tribunal therefore related to the balance, being an amount of £26,571.38. HMRC's estimated assessment also included a sum of £3,000 as an estimate of cash amounts received by Mr Barreto from his business but not reflected in his bank statements.

29. The burden of proof falls on the appellant.

The loan to Mr Wakefield

30. Mr Barreto says that he made a personal loan to Mr Paul Wakefield and that a substantial proportion of the deposits in the accounts represent repayments of the loan.

31. Mr Barreto refers to a letter from Mr Wakefield in which Mr Wakefield confirmed that Mr Barreto made a loan to him in the amount of approximately £40,000 on which Mr Barreto did not charge him any interest.

32. Mr Wakefield attached to his letter a copy of a schedule prepared by HMRC in the course of its enquiries on which HMRC identified the deposits in Mr Barreto and Mrs Barreto's accounts with which it was concerned. On that schedule, Mr Wakefield has marked those deposits which he says are repayments of the loan made by Mr Barreto to him. The payments identified by Mr Wakefield are noted in the Appendix to this decision. The deposits identified by Mr Wakefield amount in total to £21,443.01.

33. Mr Barreto says that:

(a) Mr Wakefield worked for a firm of mortgage advisers called “Custom Made Mortgages Limited”, with whom Mr Barreto used to place business for a commission.

5 (b) In 2006, Mr Wakefield set up his own business, called Cavalry Financial Services Limited.

(c) Mr Barreto made a loan of an amount in excess of £40,000 to Mr Wakefield in order to assist him with the set-up of his business.

10 (d) There is no documentation in relation to the loan. It was an informal loan made to a friend. Mr Barreto did not charge any interest on it. Mr Wakefield paid back monies as and when he could.

(e) Mr Wakefield’s business ran into difficulty. Mr Wakefield was made bankrupt in June 2009 owing approximately £15,000 to £18,000 to Mr Barreto.

15 (f) Mr Wakefield has been unable to provide bank statements or other documents because of his bankruptcy.

34. HMRC say that Mr Barreto’s explanation of the loan repayments is unsatisfactory and the amounts referred to in Mr Barreto and Mrs Barreto’s accounts should be regarded as business income.

20 (a) HMRC has received no evidence, such as bank statements, showing a transfer of funds to Mr Wakefield.

(b) The accounts of Mr Barreto and Mr Wakefield regarding the terms of the loan are not consistent. Mr Barreto initially said that he had lent approximately £26,000 to Mr Wakefield. Mr Wakefield’s letter says that
25 the loan was more than £40,000.

(c) There is no documentation to record the terms of the loan. It is not credible that Mr Barreto would make such a substantial loan without setting out the terms in writing.

30 (d) HMRC has made various attempts to meet Mr Wakefield to verify his account. Mr Wakefield has pulled out of the meetings. HMRC have requested bank statements from Mr Wakefield to verify the payments. The bank statements have not been provided.

35 (e) It is unlikely that Mr Wakefield had sufficient funds to make the repayments that he has claimed to make in the tax year 2008/09. Mr Wakefield was made bankrupt in June 2009. His last tax return was made for the tax year 2006/07. His reported income in that year was approximately £15,000. He did not make a return for the tax year 2007/08 or the tax year 2008/09. HMRC has remitted his tax liabilities for those periods on account of his bankruptcy.

40 35. On balance, we do not accept Mr Barreto’s explanation regarding the loan to Mr Wakefield. Other than Mr Barreto’s comments that Mr Wakefield was a friend, we

have seen no evidence of any reason why Mr Barreto would have loaned such sums to Mr Wakefield with few or no strings attached and with no documentation.

5 36. We have seen no documentary evidence of any advance being made by Mr Barreto. We have also seen no evidence of the terms of the loan. We find that to an extent surprising given that the amount was reasonably substantial in the context of Mr Barreto's other assets. In response to our questions, Mr Barreto was not clear about the details of the loan including its principal amount and terms of repayment.

10 37. We also note the inconsistencies between Mr Barreto's recollection and the evidence given by Mr Wakefield in his letter. Furthermore, we note that some of the repayments identified by Mr Wakefield in the schedule attached to his letter are the payments which Mr Barreto has claimed, and which HMRC has accepted, are payments from his wife's account.

15 38. For these reasons, we do not accept that Mr Barreto has been able to demonstrate that the deposits which have been identified as loan repayments are not his business income.

Travellers cheques

20 39. There are two deposits made to a Nationwide Flex Account listed in the Appendix which Mr Barreto says relate to cashing in travellers cheques: the first is a deposit made on 21 July 2008 in the amount of £1,460; and the second is a deposit made on 21 October 2008 in the amount of £1,500.

40. Mr and Mrs Barreto both gave evidence that these amounts were possibly derived from cashing in unused travellers cheques following holidays in the US and Egypt. It had not been possible to trace any bank statement showing funds being withdrawn to purchase the original travellers cheques.

25 41. HMRC noted that in response to enquiries Mr and Mrs Barreto could only say that the deposits might "possibly" relate to unused travellers cheques and were not able to produce any evidence of their purchase.

42. Once again, in our view, Mr Barreto has not demonstrated that these amounts were not business income.

30 *Disbursements*

35 43. There are various payments set out in the Appendix which Mr Barreto claims represent amounts received from clients which are to be paid onto third parties. Mr Barreto says that, for the most part, these amounts arise in bankruptcy cases. They are fixed fees charged as part of the bankruptcy process which would be required to be paid on behalf of any client going through the bankruptcy process.

44. Mr Barreto identified five payments of £500 which he claimed fell into this category together with one payment of £492.85 and one payment of £370.

45. Mr Osborne for HMRC questioned Mr Barreto about these payments. He pointed out that Mr Barreto had said that, as an unregulated adviser, he was not authorized to hold funds on behalf of clients. Mr Barreto explained that these payments were disbursements and simply went straight in and straight out of his accounts.

5 46. We have not seen any documentary evidence to support Mr Barreto's explanation
for these receipts. In addition, we have not seen any evidence, such as bank
statements, showing any matching payments made from Mr Barreto's accounts. On
that basis, although Mr Barreto's explanation of these receipts seemed to us to be
plausible, Mr Barreto has not demonstrated that these amounts were not business
10 income.

Other receipts

15 47. There were various other deposits which have been brought into question by the
HMRC. At various times, Mr Barreto has given explanations for each of these
payments, but no material evidence was provided to the Tribunal in respect of any of
them.

48. On that basis, we find that Mr Barreto has not demonstrated that these items
should not be regarded as part of his business income for the tax year 2008/09.

Estimated cash receipts

20 49. In its calculations, HMRC included an amount of £3,000 in the estimated business
income of Mr Barreto. This amount was intended to represent an estimate of cash
receipts which were not credited to Mr Barreto's bank accounts.

25 50. HMRC identified some evidence of Mr Barreto not having deposited funds from
his business in his bank accounts. Mr Barreto did not provide any evidence to rebut
the assertions made by HMRC. On that basis, we find that the inclusion of the sum
£3,000 by way of estimated additional business income was a reasonable estimate
given the lack of further information from Mr Barreto.

Transfers from Mrs Barreto

30 51. As we noted above, two of the payments identified as repayments of the loan by
Mr Wakefield have been accepted by HMRC as being transfers from Mrs Barreto's
account. Those two payments are amounts of £2,231 and £1,116 transferred to Mr
Barreto's account on 28 August 2008 and 21 October 2008 respectively. In its
calculations of the estimated business income of Mr Barreto for the tax year 2008/09,
HMRC has taken out of account two amounts one of £2,231 and one of £1,066. We
believe that the latter figure should be £1,116 and that this should be corrected by
35 reducing the estimated business income by £50.

Receipts from 2007/08

52. There are two receipts identified by HMRC as part of its enquiries which were received by Mr Barreto in the tax year 2007/08: the first is a receipt of £1,066.67, which was received on 1 April 2008; the second is a receipt of £500, which was received on 2 April 2008. These receipts are identified in the Appendix.

53. These are receipts earned in the tax year 2007/08 and should not be included in Mr Barreto's business income for the tax year 2008/09.

54. On that basis, we have reduced the estimated business income of Mr Barreto for the tax year 2008/09 by £1,566.67.

10 *Summary of conclusions*

55. In our view, the assessment for the tax year 2008/09 should be reduced to reflect business income of Mr Barreto in an amount of £28,616.71. This amount is calculated by the amount of business income declared in Mr Barreto's self-assessment return (£662), an amount in respect of the unexplained deposits of £24,954.71 (being £26,571.38 less the adjustments for the payments received in 2007/08 (£1,566.67) that we have described at [54] above and the error in the calculation of transfers (£50) that we have described at [51] above), and the amount of £3,000 for estimated cash receipts.

The other tax years

20 *HMRC's arguments*

56. HMRC has raised discovery assessments for each of the other tax years (2006/07, 2007/08, 2009/10, 2010/11 and 2011/12). The assessments have been raised on the basis of estimates of Mr Barreto's business income in those years.

57. HMRC has raised those assessments on the assumption that the level of income from Mr Barreto's business activities in those years is likely to be similar to that in the tax year 2008/09 in the absence of any evidence of a material change in circumstances and given that similar deficiencies arise in relation to record keeping and reporting of income. HMRC have not received any information from the appellant in relation to those years to dispel that assumption.

58. HMRC has produced its estimate of Mr Barreto's income in those years by taking the estimated business income for the tax year 2008/09, which, on HMRC's calculations was £30,232 (being the sum of the unexplained deposits of £29,570 and the income declared on Mr Barreto's self-assessment return of £662). It has then calculated the income for other years by adjusting the income for the base year by reference to any change in the RPI over the period.

59. In doing so, HMRC has relied on the presumption of continuity (see the decision of Walton J in *Jonas v. Bamford* [1973] STC 519).

60. On that basis HMRC calculates the adjusted profits for the relevant years as being those set out in the table below. The assessments that have been raised take account of capital allowances and give credit for any profits declared on the self-assessment return for the relevant tax year.

Tax year	Adjusted profits
2006/07	£29,360
2007/08	£30,589
2008/09	£30,232
2009/10	£31,847
2010/11	£33,505
2011/12	£34,633

5

Discussion

61. If an officer of HMRC has discovered for any year of assessment any income which ought to have been assessed to income tax but which has not been assessed then the officer may make an assessment in the amount, or further amount, which
10 ought in his or her opinion to be charged (section 29 TMA 1970). In reaching his or her judgment on the amount of tax that ought to be charged, it is sufficient that the officer comes to his or her conclusion from the examination that he or she makes and the information which he or she receives. Once that assessment has been made, the onus falls on the taxpayer to discharge the assessment.

15 62. In making its assessments, HMRC has relied on the “presumption of continuity”. This is a reference to the dicta of Walton J in *Jonas v. Bamford* [1973] STC 519 at 540 where he said:

20 “...so far as the discovery point is concerned, once the inspector comes to the conclusion that, on the facts which he has discovered, the taxpayer has additional income beyond that which he has so far declared to the inspector, then the usual presumption of continuity will apply. The situation will be presumed to go on until there is some change in the situation, the onus of proof of which is clearly on the taxpayer.”

25 63. The presumption of continuity is merely a presumption. It can be rebutted. As the First-tier Tribunal said in *Dr I Syed v. HMRC* [2011] UKFTT 315 (TC) at [38]:

“In our view, this quotation [from *Jonas v. Bamford*] expresses no legal principle. It seems to us that it would be quite wrong as a matter of law to say that because X happened in Year A it must be assumed that it happened in the prior year. An officer is not bound by law and in the absence of some change to make or to be treated as making

5 a discovery in relation to last year merely because he makes one for this year. This Tribunal is not bound to conclude that what happened this year will happen next year. It seems to us that Walton J is instead expressing a common sense view of what the evidence will show. In practice, it will generally be reasonable and sensible to conclude that if there was a pattern of behaviour this year then the same behaviour will have been followed last year. Sometimes, however, that will not be a proper inference: there will be occasions when the behaviour related to a one-off situation, perhaps a particular disposal, or particular expenses; in those circumstances continuity is unlikely to be present.”

10 64. In this case, no other evidence has been produced to displace the presumption. In the absence of further information, which has been requested by HMRC, in our view, it was reasonable for HMRC to make the assessments on the basis that they were made. Once that had been done, the onus was on the taxpayer to show that the assessments were excessive by introducing further evidence. Mr Barreto has not done
15 so.

20 65. On that basis, after taking into account the adjustments which we have made to the amount of business income in the assessment for the tax year 2008/09, the resulting business income in the other tax years would be in the amounts set out in the table below. (The table includes the figure for the 2008/09 tax year for completeness.)

Tax year	Adjusted profits
2006/07	£27,790
2007/08	£28,594
2008/09	£28,616
2009/10	£30,144
2010/11	£31,714
2011/12	£32,810

Penalties

25 66. HMRC raised penalties in relation to the tax year 2006/07 and 2007/08 under section 95 TMA 1970 on the basis that Mr Barreto had negligently delivered an incorrect return. Under section 95(1) TMA 1970, the penalty should not exceed the amount of the difference between the amount of tax payable for the relevant year of assessment and the amount payable if the return had been correct.

67. HMRC reduced the maximum penalty to allow for the partial disclosure of information made by Mr Barreto in the course of the enquiry, the degree of

cooperation given by Mr Barreto and the level of seriousness of the issues involved. After having taken such issues into account, it raised a penalty at the rate of 30% of the difference between the tax charged and the tax calculated on the basis of the information in the self-assessment return.

5 68. For the tax years 2008/09, 2009/10, 2010/11 and 2011/12, HMRC raised penalties under schedule 24 to the Finance Act 2007 for the submission of an inaccurate return. The penalties were calculated on the basis that the inaccuracies were “careless” and that any disclosure made by Mr Barreto was “prompted” within the meaning of Schedule 24. On that basis, the penalty charged under Schedule 24 should be between
10 15% and 30% of the “potential lost revenue”.

69. HMRC allowed a 70% reduction from the maximum penalty for the quality of disclosure made by Mr Barreto in the course of the enquiry. The resulting penalty was charged at 19.5% of the potential lost revenue.

15 70. We do not disagree with HMRC’s method of calculation of the penalties for the relevant tax years. The penalties will need to be adjusted to reflect the decisions that we have reached in relation to the level of business income for Mr Barreto for the relevant tax years.

Decision

71. We allow the appeal in part.

20 72. The assessments should be reduced to reflect the level of business income set out in the table at [65] above. The penalties for the relevant tax years should be recalculated to reflect those levels of business income but on the basis that HMRC adopted.

25 73. We assume that our decision on these issues will enable the parties to agree between them any balance due from Mr Barreto to HMRC or vice versa. In the event of any further disagreement, the parties can reapply to the Tribunal.

Rights to appeal

30 74. 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.

**ASHLEY GREENBANK
TRIBUNAL JUDGE**

5

RELEASE DATE: 24 January 2017

APPENDIX

Deposits questioned by HMRC

Date of receipt	Amount (£)	Notes
<i>Initially claimed as dividends from Floorbury Limited</i>		
01/04/2008	1066.67	Received in 2007/08 tax year
02/04/2008	500.00	Received in 2007/08 tax year
08/04/2008	1232.63	Identified as loan repayment by Mr Wakefield (PW)
17/04/2008	2666.66	Identified as loan repayment by PW
18/04/2008	500.00	
01/05/2008	1066.67	
08/05/2008	2053.85	Identified as loan repayment by PW
02/06/2008	1066.67	
09/06/2008	2031.77	Identified as loan repayment by PW
01/07/2008	1066.67	
08/07/2008	2812.10	Identified as loan repayment by PW
01/08/2008	1066.67	
28/08/2008	2133.00	Identified as loan repayment by PW Accepted by HMRC as transfer from Mrs Barreto
01/09/2008	1066.67	
10/09/2008	252.69	
18/09/2008	4050.00	Identified as loan repayment by PW
01/10/2008	1066.67	
21/10/2008	1116.00	Identified as loan repayment by PW. Accepted by HMRC as transfer from Mrs Barreto
03/11/2008	1066.67	
01/12/2008	1066.67	
02/01/2009	1066.67	
08/01/2009	1851.79	
13/01/2009	1147.00	Identified as loan repayment by PW
02/02/2009	1066.67	
06/02/2009	1100.00	Identified as loan repayment by PW
02/03/2009	1066.67	
30/03/2009	1100.00	Identified as loan repayment by PW
<i>Claimed as disbursements</i>		
14/04/2008	500.00	
28/05/2008	500.00	
04/06/2008	500.00	
23/06/2008	500.00	

Date of receipt	Amount (£)	Notes
02/02/2009	492.85	
23/02/2009	370.00	
06/03/2009	500.00	
<i>Claimed as deposits of travellers' cheques</i>		
21/07/08	1460.00	
21/10/08	1500.00	
<i>Claimed as repayments from daughter</i>		
22/04/2008	757.00	Explanation accepted by HMRC
25/09/2008	1547.00	Explanation accepted by HMRC
06/10/2008	594.55	Explanation accepted by HMRC
05/11/2008	902.65	Explanation accepted by HMRC
06/01/2009	1050.00	Explanation accepted by HMRC
13/03/2009	522.19	Explanation accepted by HMRC
<i>Other receipts</i>		
15/09/2008	500.00	Receipt from T Parsons. Claimed as for house decoration by Mrs Barreto.
13/02/2009	900.00	Claimed as for house decoration by Mrs Barreto.
27/02/2009	500.00	Receipt from D L Goodman referred to as "fees". Claimed as inheritance from former client.
31/12/2008	500.00	Receipt from Mrs C Khan. Claimed as a refund of a food order
19/12/2008	500.00	Receipt from J & G Farrell. Claimed as proceeds of sale of washing machine.
Total	51943.77	