Neutral Citation: [2023] UKFTT 911 (TC)

Case Number: TC08976

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House, Rosebery Avenue, London

Appeal references: TC/2019/02494
TC/2019/05532

VAT – "best judgment" assessments by HMRC under section 73 Value Added Tax Act 1994 – whether assessments made to the best of HMRC's judgment

Heard on: 13, 14 and 15 June 2023
Judgment date: 27 October 2023

Before

TRIBUNAL JUDGE ASHLEY GREENBANK
SONIA GABLE JP

Between

ALEKSANDER VINNI
trading as HONEY CAKE PATISSERIE AND SANDWICH BAR

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Elena Donaldson, Solicitor

For the Respondents: Amanda Baldwin, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. These appeals relate to assessments to VAT issued by the respondents, the Commissioners for His Majesty's Revenue and Customs ("HMRC"), on the appellant, Mr Aleksander Vinni, under section 73 of the Value Added Tax Act 1994 ("VATA") and related penalties. Mr Vinni says that the assessments were not made "to the best of HMRC's judgment" as required by section 73 VATA and should be set aside.

2. The assessments concern supplies made by Mr Vinni in the course of the operation of patisserie and sandwich bars from two premises: 185 Wandsworth High Street, London (185WHS) and 58 Fairfield Street, London (58FS). Mr Vinni trades under the name "Honey Cake Patisserie and Sandwich Bar".

3. The assessments were made for the return periods 09/14 to 03/18 in the amount of £22,658 and for the return period 03/19 in the amount of £594.02. The related penalties were assessed under Schedule 24 of the Finance Act 2007 in the amount of £3,398.70 in relation to the assessments for the return periods 09/14 to 03/18 and £91.06 in relation to the assessment for the return period 03/19.

4. The penalties relating to the assessments for the return periods 09/14 to 03/18 were issued on the grounds that Mr Vinni submitted documents that contained inaccuracies and those inaccuracies were careless. These penalties were suspended for six months. The conditions were satisfied, and the penalties have been cancelled. Mr Vinni has not been required to pay the penalties.

THE HEARING AND THE EVIDENCE

5. We were provided with two agreed bundles of documents and a bundle of authorities.

The documentary evidence

6. The documents included witness statements served on behalf of Mr Vinni given by the following witnesses:

(1) Mr Vinni, the appellant;

(2) Mrs Irina Vinni, the appellant's wife, who is employed in the business as a manager of the two shops;

(3) Ms Ksenia Kuzmina, who is employed in the business as a sales assistant;

(4) Mr Kenneth Young, a regular customer of Mr Vinni's business;

(5) Mr Pavel Sizov, of Business Atrium Limited, an accountant and adviser to Mr Vinni.

These witnesses all gave evidence and were cross-examined on their statements.

7. The documents also included several other witness statements served on behalf of the appellant:

(1) statements given by Mr Andrius Vacius and Mr Mihai Pidgurechil, customers of Mr Vinni's business;

(2) statements given by Ms Mihaele Fetesku and Ms Natalia Burlac, who were employed in the business as sales assistants.

8. These witnesses did not appear to give evidence. We have treated their statements as hearsay evidence.

9. The documents included a witness statement served on behalf of HMRC given by Ms Michaela Coatsworth, an officer of HMRC, who was responsible for the enquiry into Mr Vinni's VAT returns. Ms Coatsworth gave evidence and was cross-examined on her statement.

10. The documents also included a witness statement served on behalf of HMRC given by Mr Kenneth Clark, a Higher Officer of HMRC, adopting Ms Coatsworth's witness statement and confirming her evidence. Mr Clark did not appear to give evidence. We have also treated his statement as hearsay.

The witness evidence

11. Mr and Mrs Vinni are native Russian speakers and were assisted in their evidence by an interpreter.

12. Subject to the matters below, we found all of the witnesses to be credible.

(1) There were some discrepancies between Mr Vinni's oral evidence and the documentary evidence. In particular, he insisted that all records were complete and accurate whereas, in correspondence with HMRC, he had previously accepted that errors had been made but given the problems of staff retention, there were inevitably some instances of human error.

(2) Ms Coatsworth was quite defensive in her responses. This was natural given the extent to which her evidence was challenged by Ms Donaldson. There were some discrepancies in her account and in her record-keeping, and some mistakes in her computations, which she (and Ms Baldwin) acknowledged.

Written representations

13. In preparing our decision, we alighted upon an issue regarding the penalty assessment, which had not been addressed in argument during the hearing. We gave directions allowing the parties to make written representations on that issue. We have taken into account the written representations made by the parties in preparing this decision notice.

THE FACTS

14. We find the facts as follows.

Background

15. Mr Vinni operates a patisserie and sandwich bar from premises at 185WHS, and 58FS. In addition to the sales to retail customers at the two shops, the business provides sandwiches and other products to a few corporate customers. Mr Vinni referred to these sales as "wholesale sales", but we will refer to them as "corporate sales". Mr Vinni pays VAT under the Point of Sale VAT Retail Scheme (VAT Notice 727/3).

16. There is limited seating at either premises. There are no tables. Customers can sit on bar stools and there is a ledge where customers can place drinks and smaller food purchases. It was Mr and Mrs Vinni's evidence, which we accept, that there have never been more than six chairs at 185WHS and four chairs at 58FS. The seating capacity at 185WHS was increased from three to six in early 2018.

17. It is Mr Vinni and Mrs Vinni's evidence that staff are trained to identify standard-rated sales and zero-rated sales for VAT purposes; that staff ask customers whether they intend to eat-in or take-away food that they have purchased; and that the tills allow for the separate and correct charging of standard-rated sales and zero-rated sales for VAT purposes. For the most part, we accept that evidence, although we note that Mr Vinni accepted in his communications with HMRC that there would inevitably be occasions of human error and difficulties in enforcing the VAT rules where customers asked for food to take-away and then ate their food on the premises. Furthermore, the evidence suggests that before the invigilations to which we

refer below, information was not readily available at the till to assist the sales staff in determining which sales were or were not standard-rated.

18. At the end of each day, the till rolls are checked by Mrs Vinni. Mrs Vinni produces a Z report. She places the Z report in her notebook. She then checks the till rolls for errors. The till rolls contain limited information, but do identify where a product has been standard-rated or zero-rated. Where Mrs Vinni identifies an error, she makes a correction and records the result in her cash book. From Mrs Vinni's intimate knowledge of the prices of products that are sold, she is able to identify some errors, but ultimately the accuracy of the reports is dependent upon the entries made by the operator of the till at the time of sale.

19. The results are checked by Mr Vinni when he prepares information for Mr Sizov. Mr Sizov checks the information again when he prepares the VAT returns.

20. It is no part of HMRC's case that Mr Vinni has suppressed his takings in the relevant periods. The only issue relates to whether or not Mr Vinni has recorded the correct amount of standard-rated sales in his VAT returns. From the evidence that we have seen, there may have some scope for errors in the entries at the till – for example if lists of standard-rated products were not provided at the till as they are now – and for human error. Indeed, in correspondence, Mr Vinni accepted that much. However, there is no evidence to suggest that Mr and Mrs Vinni did not make significant efforts to record and return transactions diligently.

21. As we have mentioned above, the business also supplies sandwiches and other food products to a few corporate customers. These are supplies made to local businesses or staff at local businesses. The orders will typically be placed in the morning for collection before lunchtime on the same day. The sandwiches and other food products, typically fruit, that are supplied to the corporate customers are the same as those that are available to regular customers at the shops, although they will not include hot food and drinks. Mrs Vinni's evidence, which we accept, is that the orders are a mixture of supplies that comprise items that are identified as being for individual members of staff at the businesses concerned or clearly represent an aggregation of individual orders, and platters of food that are not differentiated as being for individuals.

The assessment for the 09/14 to 03/18 periods and related penalties

22. On 20 October 2017, Ms Coatsworth carried out test purchases at the premises of 58FS. Ms Coatsworth says that she undertook the visit after HMRC's systems identified the level of standard-rated sales at the business as being "too low".

23. Ms Coatsworth's handwritten notes record the visit as having been to 185WHS, but in her witness statement and in cross-examination she asserted that the visit was to 58FS and that the note was an error. We accept that evidence. There are, however, other discrepancies and inconsistencies in Ms Coatsworth's evidence – she at different points refers to the visit being in November 2017; and her record of the prices of the purchases that she made does not reconcile with the products that she says that she purchased. These facts are not directly relevant to the issues before us, but they do cause us to question the reliance that we can place on some of her evidence.

24. Ms Coatsworth came to the view that the declared standard-rated sales at the business were likely to be too low. This was on the basis that the historic records showed the proportion of standard-rated sales as being approximately 11%. HMRC would have expected the proportion of standard-rated sales to be in the range of 25% to 35% having regard to the proportion of such sales achieved by similar businesses. She decided that HMRC should carry out an unannounced visit to conduct an invigilation.

25. On 8 March 2018, HMRC carried out an unannounced visit to the business premises at 185WHS. HMRC officers conducted an invigilation for one day. Ms Coatsworth was involved in the invigilation for part of the day. Mr Vinni was not present. However, Mrs Vinni was present and answered questions as best she could although no interpreter was provided. After Mrs Vinni had completed her records for the day, Ms Coatsworth collected the till rolls for the day.

26. Ms Coatsworth's notes of the results of the invigilation showed standard-rated sales were approximately 55% of total sales. This result is not credible. There were significant discrepancies in HMRC's results. For example, Ms Coatsworth's later explanation (in a letter of 3 September 2018) suggests that the figures were derived from 108 transactions, when there were 143. HMRC acknowledges that there were shortcomings in the results of this invigilation. The Z report for 185WHS suggested that standard-rated sales were approximately 25% of total sales. The invigilation did not take into account any corporate sales or sales at 58FS.

27. On 16 April 2018, HMRC wrote to Mr Vinni booking a visit for 4 May 2018.

28. The visit took place on 4 May 2018. It was attended by Ms Coatsworth and Mr Paul Thomson, another HMRC officer. They did not attend with an interpreter. They met Mr and Mrs Vinni at 185WHS. Mr Sizov attended for part of the meeting. The nature of the business and the record keeping procedures were discussed. The discussion included reference to the corporate sales. Ms Coatsworth informed Mr and Mrs Vinni of her results from the invigilation on 8 March 2018. Mr and Mrs Vinni agreed to undertake a self-invigilation exercise.

29. The self-invigilation took place over a period of two weeks between 4 June 2018 and 17 June 2018. In summary, the results for that period as derived from the spreadsheets which formed the basis of Ms Coatsworth's calculations are set out in Appendix 1 to this decision notice. They showed total standard-rated sales at 185WHS of £1,305.53 and zero-rated sales of £2,663.42, and total standard-rates sales of £666.71 at 58FS and zero-rated sales of £1,279.13. These figures are gross (i.e. including VAT on the standard-rated supplies).

30. The self-invigilation results did not take into account any corporate sales. It is Mr Vinni's evidence, which we accept, that sandwiches were supplied for £564.30 to a corporate customer on 12 June 2018, during the period of the self-invigilation. They were treated as zero-rated supplies. The figures also do not include sales on 16 June 2018, which were not included in Ms Coatsworth's spreadsheet. It is Mr Vinni's evidence that standard-rated sales of £73 (including VAT) and zero-rated sales of £98 were made at 185WHS on that day. 58FS was closed on that day. Both shops were closed on 17 June 2018.

31. Ms Coatsworth wrote to Mr Vinni on 26 June 2018. In her letter, she referred to the results from the one-day visit on 8 March 2018 and her conclusion that standard-rated sales were approximately 55% of total sales. She then set out the results of the self-invigilation. She advised Mr Vinni that the self-invigilation showed that 33.58% of the sales of the business were standard-rated, and that, based on that result, she proposed to raise an assessment for unpaid VAT of £24,233 in respect of the previous four years. She requested comments on her findings by 26 July 2018.

32. We have addressed the manner in which Ms Coatsworth calculated these figures later in this decision notice, but, for present purposes, it is sufficient to note that, in our view, there were errors in her method of calculation.

33. On 23 July 2018, Mr Vinni submitted his VAT return for the 06/18 period. The return showed output tax due of £2,247.55 on net sales of £40,268 and a total of £1,149.18 VAT due. The related VAT audit report, which was not sent to HMRC at the time but was submitted later (see [47] below), shows that the aggregate value of standard-rated supplies in the period

(including VAT) was £13,484.15 and the aggregate value of zero-rated supplies was £29,030.79. These figures included an adjustment to reduce the amount of zero-rated sales and increase the amount of standard-rated sales (including VAT) by an amount of £3,564.15.

34. On 24 July 2018, Mr Vinni replied to Ms Coatsworth's letter of 26 June 2018 in a letter sent by email. He raised the following points:

(1) Following the self-invigilation period, Mr Vinni had found "certain errors may have arisen in our VAT accounting procedures". Mr Vinni acknowledged that human error could be a factor: he could only employ staff on national minimum wage and the level of staff turnover was high.

(2) He believed that the self-invigilation period was not representative of sales in the prior four-year period. In the two-week self-invigilation period, there were building works at a nearby site and construction workers would usually prefer hot food for lunch (which was standard-rated), he had noticed there was an increase in standard-rated sales.

(3) It was not possible to manage fully situations in which customers purchased cold food to take away, but then ate food on the premises.

(4) He had reviewed the calculations of the one-day invigilation on 8 March 2018 and found some errors.

35. On 31 August 2018, Ms Coatsworth issued a notice of assessment to Mr Vinni in the amount of £24,226 covering the VAT periods 06/14 to 03/18. She also informed Mr Vinni that HMRC were considering charging a penalty and that a suspension of penalties would be considered.

36. On 3 September 2018, Ms Coatsworth wrote to Mr Vinni in response to his letter of 24 July 2018.

(1) She acknowledged some of the difficulties described in Mr Vinni's letter, but advised him that it was his obligation to ensure accurate returns.

(2) She believed that the two-week period was representative: the weather was warmer during this period, which might reasonably be expected to reduce the proportion of standard-rated sales; the proportion of standard-rated sales from the day of invigilation on 8 March 2018 was 55%, significantly higher than the 33.58% resulting from the two-week self-invigilation and was before the local building works began

(3) She also noted the return for the 06/18 period showed the proportion of standard-rated sales as 26%, which did not reflect the results of the self-invigilation and was not as high as it should be given the self-invigilation results.

(4) Ms Coatsworth agreed that there were some transposition errors in her results from the one-day invigilation process which, when corrected would reduce the proportion of standard-rated sales from 55% to 54.16%. However, the assessment was based on the 33.58% figure from the two-week invigilation.

37. On 28 September 2018, Mr Vinni wrote again to Ms Coatsworth. He made further points concerning the difficulties of training and retaining staff. He also advised that he broadly agreed the calculations, but he would need to pay roughly £500 a month and this was not representative of sales in quiet periods such as Christmas and summer months.

38. On 15 October 2018, Ms Coatsworth sent an e-mail to Mr Vinni advising him that her decision remained unchanged and offering an independent review.

39. On 17 October 2018, Ms Coatsworth sent an e-mail to Mr Vinni attaching a revised a schedule of assessment. This notice reduced the sum assessed to £22,658 for the periods from 09/14 to 03/18 because the assessment for the 06/14 period was out of time. She advised Mr Vinni that she had calculated a penalty of £3,398 on the grounds that the inaccuracies in Mr Vinni's returns were careless and the disclosure was prompted, but allowing full reduction for assisting HMRC in the enquiry. She proposed to suspend the penalty for six months subject to the following conditions:

> (1) Mr Vinni should display the list of standard-rated items next to both tills and check his staff's understanding of this every month.
>
> (2) If the standard-rates sales in any VAT period fell below 29%, Mr Vinni should carry out a review of the Z reports to establish why this could be.

40. The correspondence continued between the parties, but the details are of little consequence for this appeal. A penalty notice was issued on 28 November 2018 for the period from 1 July 2014 to 31 March 2018 in the amount of £3,398.70 subject to the conditions referred to above and the further condition that Mr Vinni meet all of his notification and filing obligations during the suspension period.

41. Mr Vinni requested a review of Ms Coatsworth's decisions. A review was undertaken. The reviewing officer upheld Ms Coatsworth's decisions in a letter dated 20 March 2019.

42. On 18 April 2019, Mr Vinni appealed to the tribunal.

43. HMRC have confirmed that the conditions for the suspension of the penalty were met and so the penalty was cancelled following the expiry of the period of suspension on 27 May 2019.

The assessment for the 03/19 period and related penalty

44. A VAT error correction notice was submitted by Mr Sizov on behalf of Mr Vinni on 8 April 2019. In that notice, Mr Vinni claimed that there was an error in his 06/18 return and that the VAT due should be reduced by £594.02.

45. On 25 April 2019, Mr Vinni filed his VAT return for the 03/19 period. In that return, he claimed a repayment of £143.94 based on the error correction. The claim was authorized on 25 April 2019. HMRC credited the amount claimed to Mr Vinni's account and set-off the amount against monies owed.

46. On 30 April 2019, Ms Coatsworth wrote to Mr Vinni stating that she was not willing to accept recalculated figures for 06/18 as the return originally submitted was in line with results of the self-invigilation carried out in June 2018. She offered to reconsider this, if the tribunal decided her assessments for the earlier periods, which were already under appeal, were not upheld.

47. Following the refusal of his error correction, Mr Vinni wrote to Ms Coatsworth on 25 May 2019. He requested a review of the decision to refuse his error correction, and supplied a copy of the VAT audit report for the 06/18 period to which we refer at [33] above. His letter explained that the errors in the return for the 06/18 period were due to the adjustments made because he was "forced by Officer Coatsworth to put false figures in to [the] VAT return" against threats of higher assessments being made in the prior periods. He sent a separate email on 26 May 2019 to Ms Coatsworth accusing her of coercing him to make the adjustments in the VAT return for the 06/18 period.

48. On 29 May 2019, Ms Coatsworth issued a notice of assessment under s73 VATA in the amount of £594 for the 03/19 period. The notice of assessment incorrectly stated the return period as 1 January 2018 to 31 March 2019. Ms Coatsworth suggested that Mr Vinni could

appeal to the tribunal so that the matter could be heard with the other appeal. She also asked Mr Vinni to provide evidence to verify the percentages of standard-rate sales on recent returns as they were below 29%.

49. We have seen a statement of account dated 14 June 2019 which, in addition to the amount of the VAT assessments shows a related penalty of £91.06 remaining due. We infer that an assessment was raised for the penalty before that date.

50. HMRC undertook a review of the decision to issue the assessment. The review concluded on 22 July 2019. The review upheld the assessment.

51. On 23 July 2019, HMRC issued an amended notice of assessment for the 03/19 period correcting the dates of the VAT period.

52. On 20 August 2019, Mr Vinni appealed to the tribunal.

THE LAW

53. It will assist our explanation if we set out the relevant legislation and some of the relevant case law at the outset.

The relevant legislation

54. As we have mentioned above, HMRC made the assessments under section 73 VATA. At all material times, section 73(1) VATA was in the following form:

> (1) Where a person has failed to make any returns required under this Act (or under any provision repealed by this Act) or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are incomplete or incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify it to him.

55. It is HMRC's case that the assessments were validly made: it appeared to them that Mr Vinni's returns for the relevant periods were incomplete or incorrect and the assessments were made "to the best of their judgment". Mr Vinni says that the assessments were not made to the best of HMRC's judgment and should be set aside.

56. Section 83(1)(p) VATA permits an appeal to this tribunal against an assessment made under section 73(1) or the amount of an assessment made under section 73(1). It states, so far as relevant:

> (1) Subject to sections 83G and 84, an appeal shall lie to the tribunal with respect to any of the following matters—
>
> (p) an assessment—
>
> (i) under section 73(1) … in respect of a period for which the appellant has made a return under this Act; or
>
> (ii) … ;
>
> or the amount of such an assessment;
>
> …

The relevant case law

57. We were referred by the parties to various cases on the application of section 73 VATA. These included the following decisions of the High Court and Court of Appeal: *Van Boeckel v Customs & Excise Commissioners* [1981] STC 290 ("*Van Boeckel*"), *Rahman (t/a Khayam Restaurant) v Customs & Excise Commissioners* [1982] STC 826 ("*Rahman No.1*"); *Rahman (t/a Khayam Restaurant) v Customs & Excise Commissioners (No.2)* [2002] EWCA Civ 1881

("*Rahman No.2*"); *Customs & Excise Commissioners v Pegasus Birds Ltd* ("*Pegasus Birds*"). We were also referred to a number of decisions of the VAT & Duties Tribunal and First-tier Tribunal, including *C A McCourtie v Customs & Excise Commissioners* LON/92/191.

58. We have reviewed these cases. The tribunal cases are not binding upon us and, in any event, are, to a large extent, dependent upon their facts. We will state the relevant principles that we take from the case law by reference to the decisions of the High Court and Court of Appeal, which are of course, binding upon us. As far as we can ascertain, there is no material dispute between the parties on the case law principles that should be applied.

59. The principles that we derive from the case law authorities are as follows.

(1) There are two distinct questions which may arise where an assessment purports to be made under section 73(1) VATA: first, whether the assessment has been made under the power conferred under that section, which includes whether or not the assessment was made to the best of HMRC's judgment; and, second, whether the amount of the assessment is the correct amount for which the taxpayer is accountable (*Pegasus Birds* [21] per Carnwath LJ, *Rahman No.2* [5] per Chadwick LJ). These two questions are reflected in the matters that may be the subject of an appeal under section 83(1)(p) VATA.

(2) The test as to whether an assessment is made to the best of HMRC's judgment is classically set out in the judgment of Woolf J in *Van Boeckel* (at p292e –293a), where he said this:

> "…As to this the very use of the word 'judgment' makes it clear that the commissioners are required to exercise their powers in such a way that they make a value judgment on the material which is before them. Clearly they must perform that function honestly and bona fide. It would be a misuse of that power if the commissioners were to decide on a figure which they knew was, or thought was, in excess of the amount which could possibly be payable, and then leave it to the taxpayer to seek, on appeal, to reduce that assessment.
>
> Secondly, clearly there must be some material before the commissioners on which they can base their judgment. If there is no material at all it would be impossible to form a judgment as to what tax is due.
>
> Thirdly, it should be recognised, particularly bearing in mind the primary obligation, to which I have made reference, of the taxpayer to make a return himself, that the commissioners should not be required to do the work of the taxpayer in order to form a conclusion as to the amount of tax which, to the best of their judgment, is due. In the very nature of things frequently the relevant information will be readily available to the taxpayer, but it will be very difficult for the commissioners to obtain that information without carrying out exhaustive investigations. In my view, the use of the words 'best of their judgment' does not envisage the burden being placed on the commissioners of carrying out exhaustive investigations. What the words 'best of their judgment' envisage, in my view, is that the commissioners will fairly consider all material placed before them and, on that material, come to a decision which is reasonable and not arbitrary as to the amount of tax which is due. As long as there is some material on which the commissioners can reasonably act then they are not required to carry out investigations which may or may not result in further material being placed before them.

(3) As to whether an alleged error in an assessment is to be taken as evidence that the assessment was not made to the best of HMRC's judgment, the relevant question is whether the mistake is consistent with "an honest and genuine attempt to make a

reasoned assessment of the VAT payable, or is of such a nature that it compels the conclusion that no officer seeking to exercise best judgment could have made it" (*Rahman No.2* [32] per Chadwick LJ, as approved by Carnwath LJ in *Pegasus Birds* at [21]).

(4) It is implicit in the preconditions for the making of an assessment under section 73(1) and the rights of appeal in section 83(1)(p) that the tribunal has the power either to set aside the assessment or to reduce it to the correct figure on the evidence before it (*Pegasus Birds* [23]).

(5) The tribunal should not automatically treat a "best of their judgment" challenge as an appeal against the assessment as such, rather than against the amount. Even if the process of assessment is found defective in some respect, the question remains whether the defect is so serious or fundamental that justice requires the whole assessment to be set aside, or whether justice can be done simply by correcting the amount to what the tribunal finds to be a fair figure on the evidence before it (*Pegasus Birds* [29]).

THE PARTIES' SUBMISSIONS IN OUTLINE

60. It is HMRC's case that the assessments were validly made: it appeared to them that Mr Vinni's returns for the relevant periods were incomplete or incorrect; and the assessments were made "to the best of their judgment". Mr Vinni says that the assessments were not to made to the best of HMRC's judgment and should be set aside.

61. We will deal with the parties' more detailed submissions in the course of our discussion below. However, we will summarise them briefly at the outset.

62. In summary, Ms Donaldson on behalf of Mr Vinni raises various challenges to the assessments as a result of which, she says, the assessments cannot have been made to HMRC's best judgment and should be set aside.

(1) In relation to the assessment for the 09/14 to 03/18 periods, Ms Donaldson says:

(a) even if we accept that the two-week self-invigilation period is a representative period, there were material errors in HMRC's calculations of the amount of the assessment;

(b) the two-week self-invigilation period was not representative of the previous four years and should not be used to establish the proportion of standard-rated supplies to be applied across the entire prior four year period. She raises various concerns in this respect including: that the period was notable for being a period of very hot weather; that the proportion of standard-rated supplies increased because during that period there was a large construction project at a building site very close to the shops and the construction workers preferred to eat hot food; the methodology did not take into account periods in which the shop was closed for example due to flooding or when equipment could not be used due to either theft or breakdowns;

(c) HMRC's calculations did not take into account the corporate sales undertaken by Mr Vinni's business;

(d) the assessments were not the result of an honest and genuine estimate of the amount of the VAT due but were arbitrary. Ms Donaldson levelled various accusations at the conduct of Ms Coatsworth which she says showed that Ms Coatsworth acted capriciously in raising the assessments.

(2) In relation to the assessment for the 03/19 period, Ms Donaldson says that it was not in HMRC's best judgment. It was clear that Mr Vinni had made adjustments to the

return for the 06/18 period under pressure from Ms Coatsworth to ensure a result that fell within a range that she expected. The error correction was valid and should be reflected in the return for the 03/19 period.

63. HMRC resist all of these points with the exception of some issues relating to the calculation of the liabilities due, to which we shall return.

THE ASSESSMENT FOR THE 09/14 TO 03/18 PERIODS

64. We will deal with each of Ms Donaldson's challenges in turn.

Errors in the calculation of the amount assessed

65. Appendix 1 to this decision notice sets out the results of the self-invigilation period from which Ms Coatsworth derived the proportion of standard-rated supplies (33.58%) which she then applied to the earlier periods for the purposes of calculating the amount assessed. Appendix 2 to this decision notice sets out the result of Ms Coatsworth's calculation of the amount of the assessment in respect of the earlier periods.

66. Ms Donaldson says that these calculations contained arithmetical errors. For the reasons that we have set out below, we agree.

67. As regards the calculation of the proportion of the standard-rated sales during the self-invigilation period, it is Ms Coatsworth's evidence that this figure was calculated in the following way. Ms Coatsworth calculated the proportion of standard-rated sales for each shop by reference to the figures in the table in Appendix 1. This produced a proportion of standard-rated supplies for 185WHS of 32.89% and a proportion of standard-rated supplies for 58FS of 34.26%. She took an average of those two figures in order to determine the proportion of standard-rated supplies made by the business as a whole, which she found to be 33.58%.

68. Ms Coatsworth then used that percentage to calculate the amount of underpaid tax in the earlier periods. Ms Baldwin set out the method of calculation in her skeleton argument by reference to the results of the 09/17 period (see Appendix 2) as follows:

Gross sales	£43,491.85	
Revised SR sales	= £43,491.85 x 33.58% =	£14,604.56
Revised output tax due	= £14,604.56 x 1/6 =	£2,434.09
Less output tax declared		(£863.85)
Assessment		£1,570.24

69. In our view, there are two errors in the manner in which Ms Coatsworth calculated the proportion of standard-rated supplies during the self-invigilation period at the first stage of this calculation.

(1) First, Ms Coatsworth used the gross figures (i.e. including VAT) for the value for standard-rated supplies. Given the manner in which that percentage needs to be applied in the calculation of the amount of underpaid VAT at the second stage of the calculation, Ms Coatsworth should have used the net figure (excluding VAT).

(2) Second, it was incorrect to calculate a proportion of standard-rated supplies for each shop and then determine an average of those two figures to produce a proportion for the business as a whole. The takings of the two shops are different and so the

proportion should have been determined by aggregating the supplies of both shops and determining the proportion of standard-rated supplies made by the business as a whole. Ms Baldwin accepted that this was an error.

70. The effect of these arithmetical errors was to increase the proportion of standard-rated supplies. If Ms Coatsworth had performed the calculation correctly the relevant percentage would have been 29.42%[1]. This figure is calculated using the starting figures that Ms Coatsworth used. It does not take into account the effect of the corporate sales, to which we will refer later in this decision notice, nor the sales on 16 June 2018, which were not included in Ms Coatsworth's spreadsheet.

71. There are also errors in Ms Coatsworth's application of that proportion to the earlier periods in order to determine the amount of underpaid VAT at the second stage of the calculation. As Ms Donaldson correctly identified, and as Ms Baldwin acknowledged at the hearing, Ms Coatsworth's calculation involved the use of gross figures (including VAT) for the value of standard-rated supplies. The effect was to charge VAT on VAT. That error led Ms Coatsworth to a further error, this time to the taxpayer's advantage, by grossing down the value of the total supplies to obtain the VAT due by reference to the standard rate when the figure of total supplies was a combination of standard-rated and zero-rated supplies.

72. In our view, the calculation should have been performed in the following way (once again using the 09/17 results by way of example):

Gross sales	£43,391.85	
Output tax declared	£863.85	
Net sales	£42,628.00	
Estimated SR sales (net)	= £42,628.00 x 29.42% =	£12,541.16
VAT on estimated SR sales	= £12,541.16 x 20% =	£2,508.23
Less output tax declared		£863.85
Estimated assessment		£1,644.38

As can be seen, the effect is that the assessment raised by Ms Coatsworth underestimated the liability for this period. Once again, this assumes that the basis of her calculation was correct (as to which we turn below).

The self-invigilation period was not representative

73. Ms Donaldson also says that, for various reasons, the chosen self-invigilation period was not representative of the conduct of Mr Vinni's business over the previous four years; the proportion of standard-rated supplies derived from the results of that period cannot be safely applied to the supplies made in previous periods to produce a sensible estimate of the output tax due.

74. She raises the following concerns:

[1] This figure is calculated as follows. Net SR sales = 1,972.64 x 100/120 = £1,643.53. Total net sales = 3,942.55 + 1,643.53 = £5,586.08. Proportion of SR sales = 1,643.53/5,586.08 x 100 = 29.42%

(1) the self-invigilation period fell during a period of very hot weather;

(2) the self-invigilation period coincided with a busy period of construction on a nearby building site, which distorted the results of the self-invigilation period as many construction workers who visited the shops preferred hot food;

(3) the methodology does not take into account:

(a) periods in which sales are lower (for example, at Christmas and in the middle of summer),

(b) periods in which business was restricted because of flooding at the property or because stocks were depleted because of thefts;

(c) periods where equipment was faulty (and so, for example, could not be used to heat food or to keep drinks cool); or

(d) periods during which the premises were differently configured and where the number of seats was lower;

(4) the self-invigilation period occurred during a period of high demand because of the closure of some competitor businesses in the area (although other businesses have subsequently opened increasing the competition for customers).

Ms Donaldson says that all these factors could affect the proportion of standard-rated sales. Ms Coatsworth took no account of these factors even when they were raised with her.

75. Ms Donaldson produced a wealth of evidence which purported to show links between the weather and the proportion of standard-rated sales. We did not find this evidence conclusive of any particular trend. Our instinct, and that of HMRC, was that a period of very hot weather would have differing results on standard-rated sales: one might, for example, expect that it would cause a reduction in the sales of hot food; but equally that it might also cause an increase in the sales of other standard-rated items such as bottled drinks. We could not, in any event, discern any significant trends from the evidence before us.

76. As regards the presence of the building site close to the premises, we do not have sufficient evidence before us to draw any firm conclusions. We can understand that HMRC was in much the same position.

77. As regards the other aspects of Ms Coatsworth's methodology, we make the following points.

(1) It seems to us that some of the issues that Ms Donaldson raises are more likely to affect the overall level of sales rather than the proportion of standard-rated and zero-rated supplies. Without any further evidence, we would place in this category periods of lower levels of trade because of the time of year (such as Christmas or the middle of the summer) or because of increased competition in the area or during which the shop had to close because of flooding. In our view, the application of a proportion of standard-rated supplies to earlier periods is more likely to provide an appropriate basis of estimation in such cases.

(2) For those periods where there are factors which could affect the proportion of standard-rated sales – such as periods where there was a lack of equipment to keep drinks cool or to heat hot food, or periods before the provision of additional seating at 185WHS – it may be appropriate to make some adjustment to deal with such issues. However, from the evidence before us it is difficult to determine the precise effect of each of these factors.

Corporate sales

78. Ms Donaldson says that HMRC's estimate of the proportion of standard-rated supplies ignores the effect of the corporate sales made by the business. Ms Donaldson, Mr Vinni and Mrs Vinni describe these sales as "wholesale sales". They are not wholesale sales in the true sense. As we have described, they typically involve supplies to local businesses or employees of local businesses of sandwiches and other products, such as fruit, for lunches.

79. Ms Donaldson says that these supplies are zero-rated. The failure of Ms Coatsworth to take into account these supplies in her calculation undermines the validity of her results. The proportion of standard-rated supplies is correspondingly too high.

80. Ms Baldwin says that the supplies are not wholesale supplies. At least a proportion of the supplies are supplies made in the course of catering. Such supplies should be standard-rated. There was no sound basis on which to determine the portion of the corporate sales that should be regarded as standard-rated or zero-rated. The safest approach was to treat the proportion as being the same as that for the retail sales.

81. Ms Baldwin also says that Ms Coatsworth was not aware of the corporate sales at the time of the assessment. It was not possible for her to take them into account when she made the assessment. On this point, we disagree. HMRC's note of the meeting on 4 May 2018 shows that Ms Coatsworth was aware of the corporate sales at the time at which she made the assessment.

82. As regards the correct treatment of those supplies, the supply of food "in the course of catering" is excluded from zero-rating under Group 1 Schedule 8, VATA. Note 3 to Schedule 8 provides:

> (3) A supply of anything in the course of catering includes—
>
> (a) any supply of it for consumption on the premises on which it is supplied; and
>
> (b) any supply of hot food for consumption off those premises.

Note 3 does not represent an exclusive definition of "catering" for the purpose of Schedule 8 and, accordingly, other items may fall within it.

83. We take the view that the supplies described by Mrs Vinni were not "supplies in the course of catering" for the purposes of Group 1 Schedule 8 VATA. That would seem to us to be particularly the case in relation to those supplies which are merely an aggregation of the orders of individual staff at local businesses, irrespective of whether the individuals are identified to Mr or Mrs Vinni. But we would also take the same view of the provision of sandwich and fruit platters for group lunches. This seems to us to be the case given that there is no material additional level of service involved in these supplies. The mere arrangement of sandwiches and fruit on a platter for collection does not seem to us capable of elevating the supply from one of "food" to a supply of a "catering" service.

84. On that basis, we would expect that the normal rules would apply to these supplies. These supplies did not include hot food so the bulk of these supplies would be zero-rated as supplies of food within Group 1 Schedule 8 VATA. It is possible that some items would be standard-rated because they are specifically excluded from Group 1 Schedule 8, such as bottled drinks. However, from the evidence that we have heard, we would not expect such items to be material in terms of the overall value of supplies.

85. If we treat the entire amount of the corporate supplies as zero-rated, the effect on the estimate of the proportion of standard-rated supplies in the self-invigilation period is to reduce

the figure to 26.72%[2]. Once again this assumes that the basis for the calculation (the figures in Appendix 1) is correct.

86. The effect on the calculation that we performed for the 09/17 period at [72] above is as follows:

Gross sales	£43,391.85	
Output tax declared	£863.85	
Net sales	£42,628.00	
Estimated SR sales (net)	= £42,628.00 x 26.72% =	£11,390.20
VAT on estimated SR sales	= £11,390.20 x 20% =	£2,278.04
Less output tax declared		£863.85
Estimated assessment		£1,414.19

The effect of this adjustment is that Ms Coatsworth's assessment would be an over-assessment.

Ms Coatsworth's approach

87. At the hearing and in her skeleton argument, Ms Donaldson criticised Ms Coatsworth's approach and the motives for her approach to the assessment. The suggestion, and at times direct allegation, was that Ms Coatsworth had acted dishonestly and capriciously in raising the assessment.

88. Ms Donaldson pointed to the following matters:

(1) the errors in Ms Coatsworth's notes regarding the initial visit and in the records of the 8 March 2018 invigilation;

(2) Ms Coatsworth's denial that she collected the till rolls after the 8 March 2018 invigilation (which prevented Mr Vinni from verifying the results of that invigilation);

(3) Ms Coatsworth's failure to provide an interpreter at the invigilation or at meetings with Mr and Mrs Vinni notwithstanding that she knew that their English was limited;

(4) Ms Coatsworth's regular references to the results of the 8 March 2023 invigilation in implicit support of the estimated assessment following the self-invigilation notwithstanding the shortcomings in the manner of the 8 March 2023 invigilation and its results;

(5) the arithmetical errors in the calculation of the estimated assessment;

(6) the failure of Ms Coatsworth to take into account the other factors raised by Mr and Mrs Vinni such as the corporate sales, the effect of the weather, the period during which the business could not be open or during which equipment was broken or not available.

89. There were clearly some shortcomings in the approach of HMRC and Ms Coatsworth in the course of this assessment. However, we take the view that the accusations of fraud and dishonesty on the part of Ms Coatsworth were exaggerated and misplaced. She may have been

[2] This figure is calculated as follows. Net SR sales = 1,972.24 x 100/120 = £1,643.53. Total net sales = 3,942.55 + 1,643.53 + 564.30 = £6,150.38. Proportion of SR sales = 1,643.53/6,150.38 x 100 = 26.72%

over-zealous and overly defensive of her approach, but, in our view, it is not appropriate to label her conduct as dishonest in any way.

(1) There were reasonable grounds for Ms Coatsworth to undertake an initial visit. HMRC have accepted some of the failings and discrepancies in the 8 March 2023 invigilation. In any event, and as Ms Coatsworth pointed out in her evidence, HMRC did not rely on the results of the 8 March 2023 invigilation in making the estimated assessment because she did not consider the one-day invigilation as sufficiently representative.

(2) We do say, however, that, having accepted that the results of the 8 March 2023 invigilation were not reliable, it was inappropriate for Ms Coatsworth to continue to refer to them in support of the estimated assessment that she ultimately made. The impression given was that Mr Vinni should regard himself as fortunate that the assessment was in the terms that it was as the facts might justify a higher amount, which was not the case.

(3) There were arithmetical errors in Ms Coatsworth's calculation of the amounts due under the assessment. However, as we have seen, while some of those errors favoured HMRC others favoured the taxpayer. We cannot find in them any basis for a finding that Ms Coatsworth acted dishonestly in reaching her assessment.

(4) As regards the other factors which Ms Donaldson says Ms Coatsworth ignored in reaching her assessment, several of those items were unlikely to have a material effect on the estimate for the reasons that we have discussed above; for others, there was not sufficient evidence to support a change. The one material issue was the potential effect of the corporate sales. As we have found, Ms Coatsworth was aware of the corporate sales and, in our view, should have looked into them further. However, the fact that she failed to do so does not justify a finding of any form of dishonesty on her part. She simply (and incorrectly) dismissed them as irrelevant.

Best judgment

90. In our discussion above, we have, as required by the case law authorities, focussed largely on issues concerning the amount of the assessment. In appeals such as this, it is within the powers of this tribunal to amend the amount of the assessment or, in appropriate circumstances, to set aside an assessment. Before we return to the question of the amount of the assessment, we will deal with the question of whether we should set aside the assessment in this case.

91. We have identified various errors in the amount of the assessment. However, from a review of the case law above, if we were to set aside the assessment completely, we must come to the view that the errors in the assessment were not consistent with "an honest and genuine attempt to make a reasoned assessment" of the VAT payable (per Chadwick LJ in *Rahman (No. 2)* [32]). That is a high bar and will only be met in extremely rare cases (Carnwath J in *Rahman (No. 1)* p330). It is not sufficient that the tribunal finds errors in the assessment.

92. In this case, for the reasons that we have given, in our view, that bar has not been reached. Ms Coatsworth undoubtedly made errors in her assessment, but those errors are not inconsistent with an attempt to reach an honest and genuine estimate on the basis of the evidence that was before her at the time. Ms Coatsworth did ensure that she had material evidence on which to base her assessment (the results of the self-invigilation process). Although there were errors in her calculation, her estimate was not arbitrary.

93. We acknowledge that Ms Coatsworth made errors in her calculation of the VAT due, but her errors were not exclusively adverse to the taxpayer. She also failed to take into account the corporate sales in the determination of the proportion of standard-rated sales over the self-

invigilation period. However, there is no evidence that she did so with the view to increasing the amount of VAT due. Many of the other factors that have been raised would not have affected the proportion of standard-rated sales and there was inconclusive evidence of the other issues.

94. For the reasons that we have given, we will not set aside the assessment.

The amount of the assessment

95. If we return to the amount of the assessment, on the evidence before us, we are satisfied that adjustments should be made to the amount assessed to correct the arithmetical errors that we have identified and to adjust the amount assessed for the corporate sales. In our view, the calculation for each period between 09/14 and 03/18 should be recomputed in the manner that we have described at [86] above. In that computation, the proportion of standard-rated sales applied to the prior periods should be 26.72% being the proportion of standard-rated sales during the self-invigilation period if the corporate sales had been taken into account.

96. We will reduce the amount of the assessment to an amount calculated in accordance with the instructions that we have given above. We will direct the parties to calculate the amounts on that basis. If they cannot agree on the amount of the revised assessment, the parties can reapply to this tribunal.

THE ASSESSMENT FOR THE 03/19 PERIOD AND THE RELATED PENALTY

97. We turn now to the assessment for the 03/19 period. We can deal with this matter relatively briefly.

98. As we have mentioned above, Mr Vinni made an adjustment in his 06/18 return to increase the amount of his standard-rated supplies by £3,564.15 (including VAT) or £2,970.13 (excluding VAT). He made a corresponding adjustment to reduce the amount of his zero-rated supplies. These adjustments increased his VAT liability by £594.02. Mr Sizov submitted an error correction notice on behalf of Mr Vinni to correct the error by reversing these adjustments.

99. Ms Coatsworth refused the error correction on the grounds that there was no additional evidence to justify it and the return was in line with the results of the self-invigilation period. She raised an assessment for the 03/19 period to reverse the amount of the error correction.

100. It is not correct that there was no evidence. Mr Sizov had submitted a copy of the VAT report for the 06/18 period which showed the adjustment which Mr Vinni had made. Ms Coatsworth did not engage with his submissions.

101. Ms Donaldson says that Mr Vinni was coerced into including the adjustments in his 06/18 return so that the return would show standard-rated supplies in a proportion that was dictated by Ms Coatsworth. Mr Vinni made similar allegations that Ms Coatsworth had forced him to make the adjustment so that the proportion of his standard-rated supplies in the period would be within the range that she had suggested. Ms Coatsworth strongly denies that she made any such suggestion. We accept Ms Coatsworth's evidence that this is not something that she actually said.

102. We have no reason to doubt the veracity of either witness. We can envisage that, given his relative lack of fluency in English, and the failure of HMRC to provide an interpreter, Mr Vinni may well have misunderstood Ms Coatsworth's instructions. Furthermore, given the level of scrutiny under which Mr Vinni would have felt at the time, we can understand that he would have felt under pressure to ensure that his return for the 06/18 period – which did, of course, contain the self-invigilation period – produced a result which Ms Coatsworth was likely to find acceptable.

103. The fact remains, however, that Mr Vinni made the adjustment which he later sought to correct. The adjustment is plain on the face of the VAT report for the period. There was no good reason for Ms Coatsworth to ignore it. That decision strikes us as arbitrary and not in HMRC's best judgment. In the event, when we focus, as we are required to do, on the amount of the assessment, all the evidence points to it being incorrect. The error correction should have been allowed. There was no reason to believe that Mr Vinni's VAT report did not accurately reflect supplies that he had made in the period.

104. For these reasons, we will set aside the assessment for the 03/19 period. We have seen and heard little or no evidence in relation to the penalty for that period, but, in any event, it follows that that penalty should also be set aside.

THE PENALTY ASSESSMENT FOR THE 09/14 TO 03/18 PERIODS

105. We turn now to the penalty assessment in respect of the 09/14 to 03/18 periods. Ms Coatsworth issued a penalty assessment for these periods in the amount of £3,398.70 on the grounds that Mr Vinni had provided HMRC with returns which contained inaccuracies and that those inaccuracies were "careless" due to failure on Mr Vinni's part to take reasonable care (paragraphs 1 and 3 Schedule 24 FA 2007).

106. The amount of the penalty was calculated on the basis that the disclosure of the inaccuracies was "prompted", but allowing the maximum reduction for assisting HMRC in their enquiries. HMRC took the view that there were no special circumstances (within paragraph 11 Schedule 24 FA 2007) to justify any further reduction in the penalty.

107. The penalty was suspended for 6 months subject to the conditions to which we have referred above. The conditions were met, and the penalty was cancelled. There is no penalty due. Notwithstanding that no penalty is payable, Mr Vinni has pursued his appeal against the penalty.

108. Under paragraph 15 Schedule 24 FA 2007, a person may appeal against a decision of HMRC that a penalty is payable (paragraph 15(1)) or against a decision of HMRC as to the amount of the penalty (paragraph 15(2)). A person may also appeal against a decision of HMRC setting conditions of suspension of a penalty payable by that person (paragraph 15(4)).

109. On an appeal against a decision of HMRC that a penalty is payable, the tribunal may affirm or cancel the penalty (paragraph 17(1)). On an appeal against a decision of HMRC as to the amount of the penalty, the tribunal may affirm HMRC's decision or substitute for HMRC's decision any decision that HMRC had power to make (paragraph 17(2)). On an appeal against a decision of HMRC setting conditions of suspension of a penalty, the tribunal may affirm the conditions of suspension, or may vary the conditions of suspension, but only if the tribunal thinks that HMRC's decision in respect of the conditions was "flawed" (paragraph 17(5)). For this purpose "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review (paragraph 17(6)).

110. Mr Vinni has appealed against the penalties under paragraph 15(1), paragraph 15(2) and paragraph 15(4). However, given that the penalty of which Mr Vinni complains has been cancelled, it seems to us that there is no remedy that this tribunal can grant Mr Vinni even if his case is made out. The tribunal cannot cancel a penalty that has already been cancelled. It cannot affirm a penalty or the amount of a penalty that has been cancelled. It cannot substitute a new penalty for a penalty that has been cancelled (and so does not exist). Furthermore, it makes little sense for the tribunal to affirm or vary the conditions for suspension of a penalty that has already been cancelled. The effect is to render the appeal against the penalty futile.

111. In the present circumstances, we have come to the view that we have no option but to strike out Mr Vinni's appeal against the penalty assessment for the 09/14 to 03/18 periods on

the grounds that the tribunal does not have jurisdiction in relation to it (Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009). Paragraph 16 Schedule 24 Finance Act 2007 requires an appeal under paragraph 15 to be treated in the same way as an appeal against an assessment to the tax concerned. In the present case, that is an assessment under section 73 VATA. The tribunal has jurisdiction in relation to appeals against an assessment under section 73 VATA by virtue of section 83(1)(p) VATA. However, where a penalty has been cancelled, it seems to us that we must treat the assessment of the penalty as if it had not been made and accordingly there is no decision against which this tribunal can hear an appeal.

DISPOSITION

112. For the reasons that we have given, we allow Mr Vinni's appeal in part:

(1) we direct that the assessment for the 09/14 to 03/18 periods should be recomputed in accordance with the directions that we have made in this decision notice;

(2) we set aside the assessment for the 03/19 period;

(3) we also set aside the penalty for the 03/19 period;

(4) we strike out Mr Vinni's appeal against the penalty notice for the 09/14 to 03/18 periods.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

113. 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

Release date: 27th OCTOBER 2023

APPENDIX 1

The results of the self-invigilation period[3]

	185 WHS		58FS		Totals	
Date	**ZR**	**SR**	**ZR**	**SR**	**ZR**	**SR**
04/06/2018	£229.70	£140.18	£119.20	£71.35	£348.90	£211.53
05/06/2018	£183.19	£169.18	£130.48	£70.95	£313.67	£240.13
06/06/2018	£270.52	£103.30	£163.43	£106.23	£433.95	£209.53
07/06/2018	£269.27	£125.66	£130.40	£66.80	£399.67	£192.46
08/06/2018	£298.46	£119.75	£111.68	£69.43	£410.14	£189.18
09/06/2018	£148.96	£72.06	CLOSED	CLOSED	£148.96	£72.06
11/06/2018	£289.63	£96.25	£89.19	£51.85	£378.82	£148.10
12/06/2018	£252.29	£108.50	£127.75	£73.10	£380.04	£181.60
13/06/2018	£275.29	£125.00	£127.00	£45.00	£402.29	£170.00
14/06/2018	£256.56	£143.35	£144.00	£50.00	£400.56	£193.35
15/06/2018	£189.55	£102.30	£136.00	£62.00	£325.55	£164.50
Total	£2,663.42	£1,305.53	£1,279.13	£666.71	£3,942.55	£1,972.24

[3] These figures are taken from the spreadsheets used by Ms Coatsworth as the basis for her calculations. The values for standard-rated supplies are the gross figures (including VAT).

APPENDIX 2

HMRC's calculations of output tax underpaid[4]

Period	**06.14**	**09.14**	**12.14**	**03.15**
Gross Sales	£47,143.94	£46,044.34	£43,691.00	£44,368.32
O/T declared	£1,069.94	£1,072.34	£1,176.00	£1,112.32
Revised S/R sales	£15,830.94	£15,461.69	£14,671.44	£14,898.88
Revised O/T Due	£2,638.49	£2,576.95	£2,445.24	£2,483.15
Difference	£1,568.55	£1,504.61	£1,269.24	£1,370.83

Period	**06.15**	**09.15**	**12.15**	**03.16**
Gross Sales	£48,433.44	£52,293.00	£49,138.00	£43,046.00
O/T declared	£875.44	£1,205.00	£1,317.00	£1,217.00
Revised S/R sales	£16,263.95	£17,559.99	£16,500.54	£14,454.85
Revised O/T Due	£2,710.66	£2,926.66	£2,750.09	£2,409.14
Difference	£1,835.22	£1,721.66	£1,433.09	£1,192.14

Period	**06.16**	**09.16**	**12.16**	**03.17**
Gross Sales	£47,329.32	£50,120.70	£48,130.75	£38,858.05
O/T declared	£1,162.32	£821.70	£878.75	£824.05
Revised S/R sales	£15,893.19	£16,830.53	£16,162.31	£13,048.53
Revised O/T Due	£2,648.86	£2,805.09	£2,693.72	£2,174.76
Difference	£1,486.54	£1,983.39	£1,814.97	£1,350.71

Period	**06.17**	**09.17**	**12.17**	**03.18**
Gross Sales	£44,204.32	£43,491.85	£42,096.66	£40,056.14
O/T declared	£922.32	£863.85	£1,138.66	£878.14
Revised S/R sales	£14,843.81	£14,604.56	£14,136.06	£13,450.85

[4] These figures are taken from HMRC's spreadsheets in the hearing bundle which formed the basis for the initial assessment under s73 VATA. The assessment was later amended to remove the supplies in the period 06/14 from the assessment.

Revised O/T Due	£2,473.97	£2,434.09	£2,356.01	£2,241.81
Difference	£1,551.65	£1,570.24	£1,217.35	£1,363.67

	Totals
Gross Sales	£728,445.83
O/T declared	£16,534.83
Revised S/R sales	£244,612.11
Revised O/T Due	£40,768.68
Difference	£24,233.85