

## INTRODUCTION TO EXAMPLE

How so very often do we see the VAT inspector arrive at a business, make an unfounded assumption about something, and then create a situation where the taxpayer is “trapped” in a situation of trying to disprove what has been alleged?

The solution to any type of “one hit” assault is the subject of this example. The important thing to know is that, whenever we negotiate a civil settlement with HMRC, we are negotiating a civil contract, with a burden of proof in law of the balance of probabilities.

If you would like to talk through a case of this nature please get in touch.

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**Appellant**

**And**

**HER MAJESTY’S REVENUE & CUSTOMS (HMRC)**

**Respondent**

XXXXXXXXXXXXXXXXXXXX

## STATEMENT OF CASE BY THE APPELLANT

### DATA

#### Background

In situations where HMRC is reviewing historically declared income it is both common and appropriate for it to undertake an exercise involving a series of tests designed, on the balance of probabilities, to verify the income declared, or to suggest an alternative figure.

By their very nature each of these tests in isolation can provide nothing more than an estimated and indicative outcome.

#### HMRC’s Business Sales Exercise Indicator

##### 1. The Business Sales Exercise

This Business Sales Exercise was the **only** test used by HMRC in arriving at the alleged under declaration of sales. The test produces a rough estimation of possible trading results.

HMRC’s final “conclusion” in relation to this exercise was based on an analysis of a period in respect of which it **was known by HMRC** that the results would be artificially distorted upwards.

There was no realistic methodology whereby the deviation from the norm consequent on the foregoing could be established. HMRC therefore undertook a secondary estimation exercise, in relation to the data from the first exercise, to “compensate” for the unknown quantity.

2. The figure thus finally proposed by HMRC is a secondary roughly estimated figure, derived from a previously roughly estimated figure, relating to just 7% of the trading period it allegedly is representative of.

### **Financial Indicators**

3. Tips (HMRC Doc 30)  
Tips have been declared for the 3 years ended 5<sup>th</sup> April 2008.
4. Cash Account Balances (HMRC Doc 30)  
The cash accounts are balanced, with appropriate opening and closing balances for the 3 years ended 5<sup>th</sup> April 2008.
5. Cash Expenditure (HMRC Doc 30)  
Cash expenditure, including xxxxxxxxxx cash drawings are fully balanced in the accountant’s cash accounts for the 3 years ended 5<sup>th</sup> April 2008.
6. Bankings (HMRC Doc 30)  
There are no unidentified bankings for the 3 years ended 5<sup>th</sup> April 2008.
7. Other Financial Matters (Doc A1)  
Mr & Mrs xxxxxxxxxxxxxxxxxxxx moved, and downsized and their home, on 21 August 2008.

The completion statement and associated documents demonstrate that there have not been any unidentified cash inputs in relation either to the mortgage payments or in relation to the capital cost of the transaction

### **Personal Indicators**

8. Cash Drawings  
The drawings are consistent and commensurate with the level of drawings that experience suggests to be appropriate for a business of this nature.  
y/e 05.04.06, Cash Drawings £xxxxxxxxxx  
y/e 05.04.07, Cash Drawings £xxxxxxxxxx  
y/e 05.04.08, Cash Drawings £xxxxxxxxxx
9. Overall Family Drawings Level  
The overall family drawings are consistent, and adequate to sustain the lifestyle of this couple (see 10 below). Mr xxxxxxxxxxxxxxxxxxxx also is self employed and the figures for his drawings relate to his separate business profits.

#### **y/e 05.04.06,**

Mrs xxxxxxxx’s cash drawings	£xxxxxxxxxx
Mr xxxxxxxx’s cash drawings	£xxxxxxxxxx



- e. Both the underlying methodology, and the proposed result, have been consistently and vehemently contested by, the accountancy company contemporaneously involved in the calculative interaction with HMRC before we became involved.

**For completeness we note that HMRC was made aware of the additional information contained in the financial indicators at 4 – 7, yet failed to take it into account in coming to its conclusion.**

#### **SUBMISSION 1**

13. We respectfully suggest, on the basis of a – e of the argument at (1) alone, that the argument adduced by HMRC in this respect is discredited, and unsustainable, on the balance of probabilities. HMRC's decision to register the applicant for VAT in respect of the period 1 February 2006 – 30 April 2008 was not correct and that decision should not be upheld.

#### **ARGUMENT 2**

14. In referring to the Indicators at 3 – 10 we have indicated many of the tests that HMRC might apply, in a case of this nature, to establish a likely situation. Not only was all of this information available to HMRC but some of it, the indicators at 3 – 6 for example had actually been supplied. Although challenged, HMRC chose not to take the information into account in its consideration of the case.
15. The Financial Indicators at 3 – 7 offer absolutely no suggestion, let alone evidence of financial impropriety of any sort. The contrary, even the tips received have been declared, and the overall suggestion is one of an honest and truthfully recording of business activities.
16. The Personal Indicators at 8 - 11 are totally indicative that the appellant and her husband have been able to, and indeed have lived within the availability of income declared. There is absolutely nothing to suggest that there has been any form of impropriety.

#### **SUBMISSION 2**

17. We previously suggested that the argument adduced by HMRC was discredited by virtue of argument 1 alone. We now further respectfully suggest that taking into account also the additional facts at argument 2 we have demonstrated significantly on the balance of probabilities that the argument adduced by HMRC is discredited and unsustainable. HMRC's decision to register the applicant for VAT in respect of the period 1 February 2006 – 30 April 2008 was not correct and the decision should not be upheld.

**XXXXXXXXXXXXXXXXXXXX**

**Appellant**

**And**

**COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS (HMRC)**

**Respondent**

**XXXXXXXXXX**

**LIST OF DOCUMENTS FOR THE APPELLANT**

The documents in the Appellant's possession custody and power relating to the appeal and which it is intended to produce at the hearing are as follows.

- A1;           Copies of financial data relating to property issues
- A2;           Documents relating to motor vehicles