



TC03340

Appeal number: SC/3017/2003

INCOME AND CAPITAL GAINS TAX – decision of tribunal in principle – hearing adjourned for parties to determine figures - subsequent allegations by appellant that tribunal misled by HMRC’s witness - whether misleading evidence - jurisdiction - quantification of income and capital gains tax due - whether jurisdiction to consider interest calculation and charge – relevance to calculation of penalties of settlement offer made by appellant -

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JM WILLIAMS (TRUSTEE IN BANKRUPTCY FOR RWG DENNY) Appellant

- and -

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

**TRIBUNAL: JUDGE GUY BRANNAN
GILL HUNTER**

**Written submissions dated 25 and 30 September 2013, together with further
correspondence**

DECISION

Introduction

- 5 1. This decision follows the original decision in principle given by this tribunal in *JM Williams (Trustee for RWG Denny) v HMRC* [2013] UKFTT 309 (TC), dated 14 May 2013. The tribunal adjourned the hearing in order for the parties to agree the precise figures in respect of income tax, capital gains tax, interest and penalties in accordance with the decision of the tribunal. It is not proposed to summarise the original decision of this tribunal – it is a lengthy decision, full of detail – and this
10 decision must be read in conjunction with it.
2. Since that decision a number of things have happened.
3. First, the parties have made various representations relating to the figures to be agreed, but they are still not wholly in agreement.
- 15 4. Secondly, the appellant has accused HMRC's principal witness, the HMRC officer responsible for the enquiry into the appellant's tax affairs, of perjury in a number of respects in the course of giving his evidence at the hearing. The appellant reported the matter to the Metropolitan Police who, after investigating the matter, decided not to mount a prosecution.
- 20 5. Thirdly, the judge at the original hearing, after consulting the Chamber President, felt he must recuse himself for reasons which are not material to this decision.
6. Finally, the Chamber President has appointed a new judge who, together with the tribunal member, Ms Hunter, has reviewed the relevant papers (including the notes made by the tribunal of the original hearing) in reaching this decision.

25 Outstanding issues

7. There are six issues which have been raised in correspondence and documents received by the tribunal since the tribunal's direction of 6 September 2013 which effectively asked the parties to crystallise the points still in dispute. Judge Hellier described the issues in a direction dated 29 November 2013 as follows:
- 30 1) whether HMRC's witness, Mr Petersen, did not tell the truth to the tribunal and whether in any respect material to the tribunal's decision it took account of evidence from Mr Petersen which should have been discounted or treated with greater caution, and, if so, what effect that should have on the
35 decision.
- 2) The final determination of the income tax and capital gains tax for each of the years under appeal.
- 3) The interest charge relating to years under appeal and whether we have jurisdiction to review the interest calculation.

- 4) The extent of any offer made by Mr Denny to settle the appeal, particularly in relation to any penalties charged.
- 5) The amount of any penalties to be charged.
- 6) Whether we have jurisdiction to consider any relief due to Mr Denny in respect of pension contributions made in the year 2005/06.

8. In practice, issues 4) and 5) seem to go together.

9. In addition, in July 2013 (within the 56 day limit) Mr Denny lodged an application for permission to appeal against the tribunal's original decision in principle. In the directions dated 29 November 2013 the tribunal stated that we would not at this stage deal with that application for permission to appeal. Instead, the tribunal suggested that if either Mr Denny or HMRC wished to appeal against the original decision or this decision it would be better to do so after we had concluded on the issues listed above so that a single comprehensive application for permission to appeal could be made. As far as we are aware, HMRC has not appealed the original decision. We should also note that because Mr Denny is representing his trustee in bankruptcy any application for permission to appeal should be made by or be specifically authorised by the trustee.

10. We shall now turn to the six issues described above.

20 **Allegations of perjury**

11. Mr Denny made four specific allegations of perjury in respect of Mr Petersen's evidence. These were as follows:

- 1) whether Mr Petersen had deliberately misled the tribunal when in cross-examination he stated that he had a signed and dated witness statement from Mr Denny's ex-wife ("**the witness statement issue**").
- 2) Whether Mr Petersen had deliberately misled the tribunal when cross-examined about the reasons relating to HMRC's refusal to refund tax relief in respect of a pension payments made by Mr Denny in the tax year 2005/06 ("**the pension payment issue**").
- 3) Whether Mr Petersen had deliberately misled the tribunal when Ms Hunter asked him how much tax was at stake with regard to Man Management Limited ("**the tax-at-stake issue**").
- 4) Whether Mr Petersen had deliberately misled the tribunal when responding to a question in cross-examination as to the nature of fresh information which HMRC said they had obtained ("**the Spanish bank account issue**").

12. We should perhaps note that at the original hearing Mr Petersen gave his evidence under oath.

13. We shall now deal with these four allegations in turn.

The witness statement issue

14. Mr Denny alleges that in cross-examination he asked Mr Petersen whether he had a signed and dated witness statement from Mr Denny's ex-wife. Mr Denny says that Mr Petersen confirmed that he did. Mr Denny further refers to the fact that this
5 tribunal had earlier directed that HMRC give Mr Denny access to all papers relevant to his appeal, but this witness statement was not provided. Mr Petersen said that he did not know why the witness statement had not been provided, although an unsigned version of the witness statement was sent to Mr Denny's then advisers.

15. We have considered this allegation with great care. We are not satisfied that Mr
10 Denny has shown that Mr Petersen deliberately misled the tribunal or that, even contrary to this view, if Mr Petersen did mislead the tribunal that it had any material bearing on the tribunal's conclusions.

16. The first point to make is that Mr Denny's questions, as he records them, are not reflected in the same way in the tribunal's notes. These notes indicate that Mr Petersen
15 stated that Mrs Denny had telephoned him and said that she wanted to give a witness statement. Mr Petersen said that Mrs Denny looked at the witness statement, altered it, and subsequently signed it. According to Mr Petersen n later telephone calls to him, however, Mrs Denny claimed that she had received death threats from Mr Denny and had fled to Argentina in fear for her life. When it became apparent that Mrs Denny
20 would not give evidence Mr Petersen consulted HMRC's Human Intelligence Office and, as a result of their advice Mr Petersen did not include Mrs Denny's witness statement in the bundle of papers submitted for the tribunal hearing. A copy, apparently unsigned, was sent to Mr Denny's then adviser, Mr Kinsella. Mr Foxwell, representing HMRC at the hearing, had agreed with Mr Kinsella that Mrs Denny's
25 witness statement would not be produced. We also note that in the correspondence bundle there was a letter dated 21 June 2010 from Mr Alex Byrne of Tax Trouble (representing Mr Denny) to HMRC, in which he refers to receiving Mrs Denny's unsigned and undated witness statement.

17. Our notes also record that in cross-examination Mr Petersen confirmed on two
30 occasions that he had a signed witness statement from Mrs Denny. On the first occasion Mr Petersen, when asked why Mr Denny was unable to find the signed witness statement when they examined HMRC's files, stated that he did not know why the witness statement had been removed from the files. He said that he was not aware of papers having been removed although confirmed that files had been
35 "weeded" and that it was not possible to find the "weeds."

18. Although it is curious that the signed version of the witness statement has apparently disappeared, we do not think that this leads to the conclusion that Mr Petersen was untruthful when he said that he had a signed witness statement. He was plainly stating that Mrs Denny had at one stage signed a witness statement. We saw
40 no reason to doubt his evidence in this respect.

19. More importantly, whether Mrs Denny did or did not sign a witness statement seems to have had no bearing on the conclusions reached by the tribunal. At paragraph 99 of the decision the tribunal records that Mr Petersen had a meeting in

October 2006 with Mrs Denny. Notes of that meeting were taken by a colleague of Mr Petersen (H Baker). These notes record the meeting as having taken place on 17 February 2007 and, in our view, the reference to the meeting having taken place in October 2006 is a mistake. The notes record that Mrs Denny said that she thought the flat, Palm Beach, had been sold for €120,000.

20. In paragraph 100 the tribunal referred to a partially obscured copy of a document in English which Mr Petersen said had been given to him by Mr Denny. This was exhibited to Mr Petersen's witness statement and referred to the price of €201,666. It was on the basis of these two items of evidence that the tribunal reached the conclusion that the sale price was probably £120,000, which was then the equivalent of €201,000 and that Mrs Denny's transposition of euros for sterling was not unlikely (see paragraphs 104 and 105).

21. It is clear to us that the witness statement of Mrs Denny, signed or unsigned, did not play a part in the tribunal reaching this conclusion. The conclusion was instead based on the meeting notes and the partially obscured document not on any version of the witness statement.

22. Accordingly, we have concluded on the witness statement issue that we are not satisfied that Mr Petersen deliberately misled the tribunal nor, indeed, that he misled the tribunal at all. Secondly, we are satisfied that Mrs Denny's witness statement (and whether it was signed or unsigned) played no role in the tribunal's conclusion in relation to Palm Beach.

The pension payment issue

23. Mr Denny says that he asked Mr Petersen, in cross-examination, why Mr Petersen had refused to pay a tax refund in respect of a pension payment made in the tax year 2005/06, notwithstanding a number of letters and requests by his accountants. He records Mr Petersen's reply as:

"You were claiming at the time that you didn't have a lot of money and yet you invested money in your pension fund and I have never been given an explanation as to where those monies came from."

24. Mr Denny says that he challenged Mr Petersen on this point, saying:

"Mr Petersen, that is incorrect and you know it."

25. Mr Denny reports Mr Petersen's reply as:

"I have never been told where those monies came from."

26. According to our notes, Mr Petersen's replies in cross-examination were to the effect that he had refused to authorise the refund of tax resulting from the pension payment because he did not have enough information about the source of the payment. Although he had received a letter from Mr Denny's accountants stating that the source of the payment had been from a re-mortgaging of Mr Denny's property, Mr Petersen stated that he had not seen evidence of such a re-mortgaging. We note that a

letter from Mr Petersen dated 5 February 2009, included in Mr Denny's bundle, suggested that Mr Petersen was still waiting for a satisfactory reply on this point. We have concluded that there is no evidence that Mr Petersen misled the tribunal. Whilst Mr Denny's accountants had told him that the source of the pension payment had been the re-mortgaging of a property, Mr Petersen had not seen evidence of this re-mortgaging. Against the background of a lengthy enquiry where the information provided by Mr Denny was somewhat incomplete and piecemeal – judging from the tribunal's decision – Mr Petersen cannot be said to have been behaving unreasonably in asking for this evidence before authorising the repayment.

10 *The tax-at-stake issue*

27. Mr Denny says that Ms Hunter asked Mr Petersen about the amount of tax at stake in relation to Man Management Limited and Mrs Denny. Originally, assessments had been made against Man Management Limited and Mrs Denny but these had eventually been withdrawn by HMRC.

15 28. Mr Denny says that Mr Petersen replied: "£1.5 – 2 million." In fact, Ms Hunter's notes record the answer as being £1 – 1.5 million (the point is not recorded in Judge Hellier's notes).

20 29. Mr Denny alleges that Mr Petersen knew that this was untrue. Having been the officer in charge of the enquiry throughout the period of investigation, Mr Denny says that Mr Petersen knew that the money at stake was in the region of £100,000 to £200,000. He also says that Man Management Limited's accounts for the 11 years in question disclosed an aggregate turnover of £2 million.

25 30. Mr Denny further alleges that when he challenged Mr Petersen on this point the following day, Mr Foxwell intervened and stated that the amount indicated by Mr Petersen may have included an estimate of penalties and interest. Ms Hunter's notes confirm this but do not indicate whether these comments came from Mr Foxwell or Mr Petersen.

30 31. Our impression, reviewing Ms Hunter's notes, is that Mr Petersen's response was incorrect, although it was given from the witness box without notes. Nonetheless, the tribunal's notes indicate that Mr Denny challenged Mr Petersen, referring to the turnover of Man Management Limited and to the lower amounts referred to in HMRC's Statement of Case. It seems to us that Mr Denny fully dealt with this likely over-estimate at the time. Accordingly, there was no likelihood that the tribunal was misled by any inaccuracy and, in any event, we do not think it was relevant to the matters under appeal. Furthermore, although Mr Petersen's response was inaccurate it is Ms Hunter's impression that it was not deliberately so. We are, therefore, not satisfied that Mr Petersen deliberately misled the tribunal on this third issue and we do not consider that it played a material part in the tribunal's conclusions.

The Spanish bank account issue

32. The fourth allegation related to the date on which Mr Petersen had become aware of Mr Denny's Spanish bank account. HMRC had indicated in correspondence with Mr Denny's Member of Parliament dated 29 November 2010 that it had "fresh evidence" and that this was why the enquiry into Mr Denny's affairs had taken so long.

33. Mr Denny says that he asked Mr Petersen in cross-examination what this fresh information was. He alleges that Mr Petersen replied: "There is a Spanish bank account that you had not declared earlier." Mr Denny challenged Mr Petersen on this and Mr Petersen, according to Mr Denny, replied: "It was not until 2009 that we uncovered a bank account with the Bank of Bilbao."

34. . According to the tribunal's notes we understood that Mr Petersen was made aware by Mr Denny of bank accounts in Spain in 2001 in a letter and 2003 on a statement of assets and liabilities, but then Mrs Denny told him about what he believed to be another account in his meeting with her in February 2007. Mr Petersen believed that Mr Denny had kept that account from him and that Mr Denny only acknowledged that he had that account when Mr Petersen found out. Mr Denny's explanation was that he took over the account when Mrs Denny became resident in Ibiza. There was some question as to whether one of the Spanish accounts had been opened by the transfer in of pesetas from another account but neither Mr Petersen nor Mr Denny seemed clear about which account that might have been. Mr Petersen's final objection was that he had never been able to obtain statements for the Spanish accounts for the period of the enquiry, either from Mr Denny or by writing to the banks himself. So, Mr Petersen acknowledged that he had known about a Spanish account in 2003 or 2005 (2003 in our papers) but did not know whether it was the only one and had not seen any statements. Moreover, when challenged by Mr Denny about his statement that he had first found out about that account in 2009, Mr Petersen corrected himself and said that he found out about the account in 2007. We are satisfied that Mr Petersen corrected his mistake in his evidence and that Mr Denny fully dealt with this point in cross-examination. We are not satisfied that Mr Petersen's mistake constituted a deliberate attempt to mislead the tribunal. In any event it is clear that Mr Petersen believed that the Spanish accounts disclosed by Mr Denny in 2001 and 2003 were not Mr Denny's only Spanish accounts. It was this allegedly "missing" account that Mr Petersen believed he had discovered in 2007. Furthermore, we do not consider that the tribunal's conclusions were in any way influenced by this mistake.

Conclusions in relation to perjury allegations

35. For the reasons given above, we do not consider that Mr Petersen deliberately misled the tribunal. Furthermore, we do not consider that the tribunal's conclusions were affected by any alleged inaccuracy in Mr Petersen's evidence.

36. If we had come to the conclusion that a key witness had deliberately misled the tribunal on certain issues we would have had to consider whether this affected the

reliability of that witness's evidence as a whole. In this case, however, the point does not arise.

5 37. We should add that we have also considered whether we have jurisdiction to hear Mr Denny's allegations of perjury. In our view, on the basis that the original decision
10 of the tribunal was not one which disposed of all or part of the proceedings, it would not be possible for the tribunal to set aside its decision under Rule 38 of the tribunal's Rules. Strictly, because Mr Denny has submitted an application for permission to appeal (albeit one which is at the tribunal's suggestion held in abeyance until this decision has been promulgated) it may be possible for us to review our decision under
15 Rule 41 if we were satisfied that there was an error of law in the decision. Whether a decision reached by the tribunal on the basis of deliberately misleading evidence would be regarded as a decision based on an error of law raises a difficult issue which, at this stage, it is not necessary for us to address in the light of the conclusions we have reached in relation to Mr Petersen's evidence.

15 38. We should also add that many of the allegations relate to evidence given by Mr Petersen at the hearing which was challenged by Mr Denny at the time. This is not a case like, for example, *Brady v Group Lotus Cars Limited* [1987] STC 633 where new evidence emerged after the decision of the General Commissioners (but while that decision was under appeal) which indicated that witness evidence given at the hearing
20 might have been perjured and the decision of the General Commissioners procured by that false evidence. In this appeal it was for Mr Denny to challenge Mr Petersen's evidence in cross-examination, when Mr Petersen would have had the opportunity to explain or correct his evidence or to defend himself, and not after the event. If we had concluded that any of the allegations made against Mr Petersen merited further
25 investigation we would have directed that the hearing be resumed and that these allegations be put to Mr Petersen – fairness would demand no less.

Final determination of the income tax and capital gains tax for each of the years under appeal

30 39. HMRC produced a schedule of figures at a meeting with Mr Denny on 5 June 2013 ("the Schedule"). The Schedule was the subject of the written submissions made by the parties.

Benefits in kind not declared

35 40. In relation to a possible dispute concerning benefits in kind which were not declared, the tribunal directed at paragraph 231 of its decision that Mr Denny deliver evidence to the tribunal within 14 days of the release of its decision. No such evidence has been delivered and in his written submissions of 30 September 2013 Mr Denny has agreed HMRC's figures. Accordingly, the figures in respect of these benefits stand as part of HMRC's assessments as per the Schedule.

Foxcote Court

41. Mr Denny has agreed HMRC's figures showing taxable income of £40,000 for the tax year 1992 – 1993 and £23,000 for the tax year 1993 – 1994.

5 42. Mr Denny has, however, stated that he repaid £162,096.98 to Man Management Limited. The conclusion of the tribunal [at 61] was that only £90,000 was treated by the company as re-imburement of the Uplift Value. Mr Denny has argued that the tribunal failed to take account of the fact that after the sale of Foxcote Court in 2001 when monies were repaid he no longer had a requirement to draw monies from his
10 Director's Account as he no longer had a mortgage and also had a credit balance on his bank account.

43. On this point we see no reason to disturb the conclusion of the tribunal. In our view the £90,000 allocation was one which it was entitled to reach on the facts and which we consider, even taking account of the points made by Mr Denny, was
15 correct.

44. Mr Denny also asked if some allowance to be made for the fact that Man Management Limited paid no rent for the offices, the equestrian buildings and the use of 32 acres of land for some nine years. According to our notes, however, Mr Denny told the tribunal that the rent-free usage was already factored into the £162,096.98
20 repayment to Man Management Limited. Accordingly we conclude that the amounts shown in the Schedule in this respect should stand.

Palm Beach

45. The deduction of the share-dealing loss against the capital gain from the Spanish property is suggested at paragraph 126 of the decision, but there is a reference to
25 "Issue (5) below". Paragraph 197 (sub-paragraph (b)) under the heading "Share Purchases" mentions three amounts totalling £41,734 as being amounts which bank statements and receipts from Barclays indicate were spent on the share purchases.

46. In his letter of 25 September, Mr Foxwell says that HMRC's estimate of Mr Denny's share-dealing loss was approximately £34,000 because there was a credit
30 balance of £4000 - £5000 standing to the credit of Mr Denny's share dealing account. Mr Foxwell, however, gave no details or evidence in respect of this credit balance. Mr Denny says that the share-dealing loss as notified to the tribunal was £50,000.

47. On the evidence before us, therefore, we conclude that the capital gains tax loss from Mr Denny's share dealing amounted to £41,734.

35 *Boat Benefit*

48. Mr Denny did not dispute the benefit of £15,529 for the year 1999 – 2000, £24,794 for the year 2000 – 2001, £26,647 for the year 2001 – 2002 and £25,941 for the year 2000 – 2003. These figures resulted in an additional tax as shown in the

Schedule which, again, Mr Denny did not dispute. The net taxable income for those years was £32,232, £34,192, £31,216 and £28,950 respectively.

Section 160 Loan Benefit

5 49. Mr Denny agreed HMRC's calculations in the Schedule. This reduced taxable income of £3,059 for the tax year 2002 – 2003 resulting in net taxable income of £28,950.

Undeclared Income

10 50. Mr Denny agreed the figures in the Schedule. This resulted in additional taxable income of for every year under appeal from 1992 – 1993 to 2002 – 2003 was £4,500 with the exception of 1998 – 1999 where the income was £4,700.

Section 740 Benefit

51. It was agreed that no taxable income arose under this heading.

Penalties

15 52. Mr Denny asks that the penalties determined in the tribunal's earlier decision of 14 May 2013 be further reduced to take account of the fact that he made a settlement offer of £60,000 in 2003. Mr Denny draws attention to the fact that his total additional tax liability under HMRC's latest figures (ignoring interest and penalties) is approximately £63,700.

20 53. The settlement offer was made in a letter 11 June 2003 from Mr Denny's advisers Accountax. This settlement offer was rejected by HMRC in letters dated 13 June 2003 and 2 March 2005. The first HMRC letter made it clear that HMRC regarded the letter as made in settlement of Mr Denny's liabilities as well as those of Man Management Limited. A letter from Accountax dated 16 June 2003 indicated that the offer was made in respect of Mr and Mrs Denny's liabilities since Mr Denny was prepared to
25 allow Man Management Limited to go insolvent. In the second letter Mr Petersen said that he would be prepared to make recommendations to the board of HMRC to settle the enquiry if Mr Denny was prepared to offer:

- (a) £60,000 to cover his personal liability up to 5 April 2003 and,
- 30 (b) £221,600 to cover Man Management Limited's liability up to 31 March 2003.

54. Mr Denny says that Man Management Limited was wound up in 2003, and that therefore any offer plainly related only to his personal liability. HMRC point out that Man Management Limited was wound up in 2004 (and a schedule of the company's
35 turnover for the relevant years includes a turnover of £72,000 for 2004, apparently supporting HMRC's understanding). Moreover, HMRC argue that the £60,000 offered

in 2003 would have included interest and penalties and that, at that time, HMRC was still pursuing assessments against Man Management Limited.

55. Our conclusion is that HMRC's view of the settlement offer is correct. First, it was intended to cover both interest and penalties and, secondly, was offered at a time when the liability of the company was still being pursued.

56. We see no good reason why the conclusions in respect of penalties set out in the decision of 14 May 2013 should be disturbed.

Interest

57. We have no jurisdiction to alter amounts in respect of interest. Interest flows from a calculation mandated by statute determined by reference to the amount of unpaid tax due in respect of a particular year. We conclude that the interest calculations contained in the Schedule should stand.

Pension Payments

58. In respect of the pension payments made in the year 2005/2006, Mr Petersen asked for evidence that the payments were funded, as claimed by Mr Denny, from the proceeds of a mortgage loan. Apparently, that evidence has not been forthcoming. Nonetheless, evidence has been provided by Mr Denny that the pension provider has received the payments in respect of which the claim for relief relates.

59. The tax year 2005 – 2006 is not one of the years under appeal. We therefore have no jurisdiction to consider the matter. Nonetheless, we hope that if the matters in respect of the years under appeal are concluded as set out in this decision, the parties will rapidly resolve this matter.

Decision

60. We do not agree with Mr Denny's allegations that Mr Petersen gave perjured evidence at the first hearing and are satisfied that the issues complained of were not material to the tribunal's decision.

61. The amounts of income and tax due are either set out or to be calculated in accordance with the above decision.

62. The decision in respect of penalties contained in the decision of 14 May 2013 remains undisturbed.

63. We have no jurisdiction to entertain an appeal in respect of interest – is simply follows the statutory formula.

64. Similarly, we have no jurisdiction to consider the issue in relation pension payments.

65. We set out below the rights of appeal of the parties. Strictly, Mr Denny is representing his trustee in bankruptcy. Any appeal to the Upper Tribunal may have substantive and costs implications for the trustee in bankruptcy. We therefore direct that any application for permission to appeal may only be made by or with the authority of Mr Denny's trustee in bankruptcy.

66. 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.

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**GUY BRANNAN
TRIBUNAL JUDGE**

RELEASE DATE: 10 February 2014

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