



TC03399

Appeal number: TC/2013/06949

Income tax - Schedule 24 Finance Act 2007 – Inaccuracy in tax return – Penalty assessment - Whether careless - yes - Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

FARAZ PIRZADA

Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL S CONNELL
MR JOHN WILSON**

Sitting in public at Alexandra House, Manchester on 7 January 2014

The Appellant did not attend and was not represented

Ms Helen Roberts officer of HM Revenue and Customs for the Respondents

DECISION

The Appeal

1. This is an appeal by Mr Firaz Pirzada (“Mr Pirzada”) against HMRC’s decision
5 to impose a penalty of £192.96 imposed under paragraph 1 of Schedule 24 to the
Finance Act 2007 (“Schedule 24”) in respect of an inaccuracy in his self-assessment
tax return for the year ended 5 April 2012, which resulted in an understatement of the
Appellant’s liability to tax in the amount of £643.00.

2. Mr Pirzada did not attend the hearing. The Tribunal was however satisfied that
10 he had been given notice of the time, date and venue of the appeal hearing and that it
was in the interests of justice to proceed.

Background

3. Mr Pirzada originally submitted his 2011/12 individual Self-Assessment tax
Return in May 2012. On 17 May 2012 the return was unlogged and sent back to Mr
15 Pirzada by HMRC. His self-assessment record showed that he had been self-
employed until 20 September 2011 but no income for the subsequent period had been
declared.

4. HMRC say that what is recorded as ‘version 2’ of Mr Pirzada’s 2011/12 tax
return was received on 18 June 2012 and captured on 20 July 2012. Apart from
20 personal details, the only entry on the return was turnover over £10,500 from Mr
Pirzada's self-employed earnings. The total tax and Class 4 national insurance
contributions was calculated as £899.75.

5. On 21 August 2012 Mr Pirzada telephoned HMRC to say that he had received
tax calculations for the period 2011/12 and had noticed that the figure in respect of
25 profits from his self-employment was incorrect. He said that the figure should have
been £8000, not £10,500. Mr Pirzada was advised to submit amended details of his
earnings.

6. On 28 August 2012 HMRC received a letter from Mr Pirzada including
amended figures of turnover and expenses and a request for HMRC to amend his
30 2011/12 return. The return was amended on 6 September 2012 and recorded as
‘version 3’.

7. The amended figures showed that Mr Pirzada’s 2011/12 self-employed turnover
was £18,500 less expenses of £10,032. Consequently, the revised figure of total tax
and Class 4 NIC was reduced to £310.47.

8. A self-assessment statement was issued on 10 December 2012 showing the
35 amount of the balancing payment for 2011/12 of £310.47 as due on 31 January 2013.

9. Mr Pirzada paid the amount in full on 18 March 2013.

10. On 16 May 2013 a letter was issued to Mr Pirzada advising that a s 9A Enquiry had been opened into his 2011/12 SA tax return, as information HMRC had received from four employers which did not match the information he had given on his tax return. The information provided by the employers showed additional earned income of £3,926 on which, if correct, tax of £643.20 would be payable.

11. A schedule of the information received was provided for Mr Pirzada to compare with his own records and explain the reason for the discrepancy. A fact sheet CCFS1b (General information about checks by Compliance Centres) was included with the letter, together with information on and how to obtain the fact sheets CCFS9 (The Human Rights Act and penalties) and CCFS7a (Penalties for inaccuracies in returns or documents). Mr Pirzada was requested to reply by 15 June 2013.

12. On 21 May 2013 Mr Pirzada telephoned HMRC. He was adamant he had only been self-employed, running four market stalls during the year. He was advised that if he did not agree with the information he would have to provide details in writing, which he confirmed he would do.

13. HMRC say that nothing further was heard from Mr Pirzada and therefore a reminder letter was issued to him on 11 July 2013. The letter said "*Please make sure that you send us the information referred to in our phone conversation by 25 July 2013. If we do not hear from you by then, we will take it to mean that you agree that the figures shown on your return were wrong. We will also amend your return to include the amounts that we think are correct.*" The letter also went on to inform Mr Pirzada about penalties for errors in returns; how they are calculated, the amounts charged and what he could do to help reduce any penalty.

14. No response was received from Mr Pirzada and as a result a closure notice under s 28A(1) & (2) TMA1970 was issued on 6 August 2013. The notice advised that his failure to reply to the letter dated 11 July 2013 had implied that he agreed the figures for pay and tax from employment shown on his 2011/12 tax return were incorrect.

15. The 2011/12 figures of pay and tax from employment were amended to the amounts reported by Mr Pirzada's employers as follows:-

Name of Employer	Amount of income	Amount of tax
Bains Ernest Ltd	£1,010	£0.00
Claims Advisory	£2,189	£142.00
Tythebarn Finance Ltd	£268	£0.00
Universal Utilities	£459	£0.00

16. The amendment resulted in additional tax of £643.20 being due and interest of £9.83. Mr Pirzada was advised that interest would continue to accrue on a daily basis until the duty was paid in full.

17. The notice also advised the amount of penalties that would be incurred if the additional tax is not paid within 30 days. As at 2 January 2014, shortly prior to the hearing of this appeal, HMRC say that the additional tax has not been paid and interest accrued is £17.76.

5 18. Mr Pirzada was notified that an inaccuracy penalty under Schedule 24 FA 2007 had been charged. The percentage amount charged was calculated on his behaviour leading to the inaccuracy and whether the disclosure was prompted or unprompted.

Relevant legislation

19. Paragraph 1 of Schedule 24 states in relevant part as follows:

- 10 (1) A penalty is payable by a person (P) where-
- (a) P gives HMRC a document of a kind listed in the Table below, and
 - (b) Conditions 1 and 2 are satisfied.
- 15 (2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to-
- (a) an understatement of a liability to tax,
 - (b) a false or inflated statement of a loss, or
 - (c) a false or inflated claim to repayment of tax.
- 20 (3) Condition 2 is that the inaccuracy was careless (within the meaning of paragraph 3) or deliberate on P's part.
- (4) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

<i>Tax</i>	<i>Document</i>
Income tax or capital gains tax	Return under section 8 of TMA 1970 (personal return).

25 20. Paragraph 3 of Schedule 24 provides for degrees of culpability as follows:

- (1) For the purposes of a penalty under paragraph 1, inaccuracy in a document given by P to HMRC is-
- (a) "careless" if the inaccuracy is due to failure by P to take reasonable care,
 - 30 (b) "deliberate but not concealed" if the inaccuracy is deliberate on P's part but P does not make arrangements to conceal it, and

(c) "deliberate and concealed" if the inaccuracy is deliberate on P's part and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure).

5 (2) An inaccuracy in a document given by P to HMRC, which was neither careless nor deliberate on P's part when the document was given, is to be treated as careless if P--

(a) discovered the inaccuracy at some later time, and

(b) did not take reasonable steps to inform HMRC.

10 21. Paragraph 4 sets out the penalty payable under paragraph 1. Paragraph 4(1)(a) provides that the penalty, for careless action, is 30% of the potential lost revenue. For deliberate but not concealed action, the penalty is 70% of the potential lost revenue, and for deliberate and concealed action, the penalty is 100% of the potential lost revenue.

15 22. Paragraph 5 defines "potential lost revenue" as "the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment".

23. Paragraph 9 provides for reductions in the penalty for disclosure depending on whether it is prompted or unprompted.

20 24. Paragraph 10(1) provides that "Where a person who would otherwise be liable to a 30% penalty has made an unprompted disclosure, HMRC shall reduce the 30% penalty to a percentage (which may be 0%) which reflects the quality of the disclosure". Paragraph 10(2) provides that "Where a person who would otherwise be liable to a 30% penalty has made a prompted disclosure, HMRC shall reduce the 30% penalty to a percentage, not below 15%, which reflects the quality of the disclosure".

25 25. Paragraph 11 further provides that HMRC may reduce the penalty under paragraph 1 "If they think it right because of special circumstances".

30 26. Paragraph 14 also enables HMRC to suspend all or part of a penalty for a careless inaccuracy under paragraph 1, but (under paragraph 14(3)) "only if compliance with a condition of suspension would help P to avoid becoming liable to further penalties under paragraph 1 for careless inaccuracy".

27. Under paragraph 15, a person may appeal against a decision of HMRC that a penalty is payable (sub paragraph (1)), or as to the amount of a penalty payable, (subparagraph (2)) or a decision not to suspend a penalty payable, (subparagraph (3)) or a decision as to the conditions of suspension (subparagraph (4)).

35 28. Paragraph 17 deals with the powers of the Tribunal in any such appeal.

'17 (1) On an appeal under paragraph 15(1) the appellate tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 15(2) the appellate tribunal may

(a) affirm HMRC's decision, or

40 (b) substitute for HMRC's decision another decision that HMRC had power to make.

(3) If the appellate tribunal substitutes its decision for HMRC's, the appellate tribunal may rely on paragraph 11

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the appellate tribunal thinks that HMRC's decision in respect of the application of paragraph 11 was flawed.

(4) On an appeal under paragraph 15(3)

(a) the appellate tribunal may order HMRC to suspend the penalty only if it thinks that HMRC's decision not to suspend was flawed, and

(b) if the appellate tribunal orders HMRC to suspend the penalty

(i) P may appeal to the appellate tribunal against a provision of the notice of suspension, and

(ii) the appellate tribunal may order HMRC to amend the notice.

(5) On an appeal under paragraph 15(4) the appellate tribunal

(a) may affirm the conditions of suspension, or

(b) may vary the conditions of suspension, but only if the appellate tribunal thinks that HMRC's decision in respect of the conditions was flawed.

(6) In sub-paragraphs (3)(b), (4)(a) and (5)(b) flawed means flawed when considered in the light of the principles applicable in proceedings for judicial review.

(7) Paragraph 14 (see in particular paragraph 14(3)) is subject to the possibility of an order under this paragraph.'

30 The Appellant's case

29. In a letter dated 9 September 2013, Mr Pirzada stated, "*at the time of me becoming self-employed the Self-Assessment helpline had given me incorrect information of what to enter on the assessment form.*"

30. In his notice of appeal received of 9 October 2013, Mr Pirzada expanded on this and explained, "*The incorrect information was that I asked the helpline if I needed to record any employment income on to the self-assessment when I was self-employed. The Helpline said 'no you only you have to record your profits from the tax year 6th April — 5th April (i.e. only self-employment tax).'*"

31. Mr Pirzada said that it was unfair that he had been given incorrect information from the helpline. Had he been given correct advice he would have completed the form correctly.

HMRC's submissions

5 32. A paper version of the 2011/12 short tax return was issued to Mr Pirzada on the 6th April 2012 together with the accompanying SA210 notes "How to fill in your Short Tax Return" :

10 "This guide will help you to fill in your paper Short Tax Return. It is important that you read and understand the first few pages about who can and cannot use this return before you start to fill in the form".

15 33. The first four pages of the guide provides information on who can and cannot use the Short Tax Return, details of the filing deadline and how to fill in the Short Tax Return. One of the first points in the "How to fill in the Short Tax Return" guide states, "collect your tax and business records before you fill in the form". Mr Pirzada should have gathered his records for all his earnings during the year both employed and self-employed. He would have then referred to the corresponding instructions on employment income and self-employment income.

20 34. Page 5 of the guide gives instructions on employment income, specifically that pay from all employments before tax was taken off should be included at box 2.2 and box 2.3 should include the total of tax taken off box 2.2. It also explains that the figures can be found on the relevant forms P60 or P45.

35. Guidance regarding self-employment income is recorded from page 7 of the guide. Full comprehensive instructions on how to complete the form are included in the SA210 guide

25 36. For any further information the telephone number of the SA Helpline is printed on every other page throughout the 29 pages of the SA 210 Short Tax Return guide.

30 37. HMRC say that Mr Pirzada had been provided with sufficient information to enable him to make a complete and accurate return of his income and outgoings for the year ending 5 April 2012. He has failed to take reasonable care. A prudent person taking reasonable care would have read the guidance to ensure they make a complete and correct return.

35 38. HMRC argue that Mr Pirzada did not take reasonable steps to ascertain what his obligations were, and consequently was careless. In fact Mr Pirzada initially submitted an incomplete 2011/12 return in May 2012 and then submitted an amendment in July and a further amendment in August 2012. However, both version 2 and version 3 were incomplete.

39. Mr Pirzada has claimed that he was given incorrect information from the self-assessment helpline but has not clarified the date of the telephone conversation he is actually referring to. He commenced his latest period of self-employment in October

2010. The only telephone conversation recorded on Mr Pirzada's self-assessment record that has any relevance to his 2011/12 tax return is that of 21 August 2012, in which he specifically advised that he was not self-employed any more but he was a market trader at that time and then left because the market had declined. He did not at any time refer to or imply that he had received any employed earnings during 2011/12, and as such the operator made no comment regarding employed earnings or employment sections of the tax return. HMRC do not therefore accept that Mr Pirzada was given incorrect information by the Self-Assessment Helpline.

40. After receiving the opening enquiry letter issued on 16 May 2013 which included a schedule of the employment details reported to HMRC, Mr Pirzada telephoned HMRC on 21 May 2013 and was adamant that he had only been self-employed during that year, running four market stalls. He did not mention any telephone conversation with the SA Helpline at that time. The telephone call on the 21 May 2013 is the only response HMRC received from Pirzada throughout the enquiry period from 16 May 2013 - 6 August 2013. Nothing further was heard from Mr Pirzada until his appeal, dated 9 September 2013 was received.

41. On closure of the enquiry it was established that Mr Pirzada's behaviour had been careless and therefore a penalty was chargeable. Mr Pirzada had omitted pay and tax details from four separate employments from his 2011 - 12 return and, being aware of the tax consequence, was careless in omitting the pay and tax from his return.

42. The amount of the penalty is calculated as a percentage of the potential lost revenue. The maximum percentage for a prompted careless error is 30%. However, the maximum percentage may be reduced depending on the quality of the disclosure.

43. A person makes a disclosure by telling HMRC about it, giving HMRC reasonable help in quantifying the amount of the inaccuracy or under-assessment and allowing HMRC to access records for the purpose of ensuring that the inaccuracy or under-assessment is fully corrected. Mr Pirzada did not respond to HMRC's enquiries other than the telephone conversation on 21 May 2013 when he denied that he had been employed, he did not tell HMRC of the inaccuracy, help to quantify the amount under-assessed or give access to records. Therefore the maximum percentage could not be mitigated for the quality of disclosure and the maximum penalty for careless behaviour of 30% was applied as per the following penalty calculation

Additional tax due as a result of the check £643.20

The range of minimum and maximum penalty for carless behaviour with a prompted disclosure is 15% - 30% less quality of disclosure (0%)

44. Penalty percentage to be charged 30% - 0% = 30%

Penalty chargeable £643.20 x 30% = £192.96

45. If Mr Pirzada had immediately admitted he had made a mistake as soon as he had received the letter of 16 May 2013, and advised he had omitted the employment

details in error and helped HMRC in quantifying the amounts, then the penalty percentage charged would have been mitigated to the minimum amount of 15%. As it was, he initially denied being employed during the period and did not mention the telephone conversation with the SA helpline until his appeal in September 2013.

5 Conclusion

44. The issues for the Tribunal to decide are whether the Appellant was careless in the completion of his returns, and if so whether the penalty imposed is correct.

46. Mr Pirzada would have known that the tax assessed on submission of his returns was incorrect. He failed to take reasonable care in submission of his returns and was
10 careless. We do not accept that he was given misleading information by HMRC's helpline.

48. The penalty has been assessed as 30% of the underpaid tax which is within the penalty range for careless behaviour and is the minimum percentage figure that can be assessed as a penalty after allowing for reductions for quality of disclosure. The
15 penalty has been assessed entirely in line with the legislation, which ensures that the amount of a penalty is proportionate to the inaccuracy. In the Tribunal's view, there are no special circumstances which would justify a reduction in the penalty.

49. 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
20 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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**MICHAEL S CONNELL
TRIBUNAL JUDGE**

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RELEASE DATE: 10 March 2014