



TC05425

Appeal number: TC/2016/01340

*INCOME TAX – Schedule 24 Finance Act 2007 – inaccuracy in Tax Return
– penalty assessment – whether error in income tax return was careless –
whether the penalty assessment has been raised correctly – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Mr Daniel Coitino

Appellant

- and -

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

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 26 August 2016 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 25 February 2016 and HMRC's Statement of Case dated 16 June 2016.

DECISION

Introduction

5 1. This is an appeal by Mr Daniel Coitino (hereinafter referred to as the
“Appellant”) who appeals against the decision of the Respondents (“HMRC”) dated
26 October 2015 who issued a Penalty Assessment under the provisions of Schedule
24 to the Finance Act 2007, calculated with reference to the additional tax assessed
10 behaviour in submitting an inaccurate Return for that year. The Penalty assessed is
£748.62

The Facts

15 2. On 14 August 2015 HMRC opened an enquiry by virtue of the discovery
provisions under Section 29 Taxes Management Act (“TMA”) 1970. The Notice
stated that information held by HMRC indicated that the amount of pay and tax did
not match the amount entered on the Appellant’s Tax Return. The information
showed that the Appellant received pay of £26,847 with £3,874 tax being deducted.
The Appellant’s Tax Return for 2011 to 2012 reported pay of £26,000 and tax
20 deducted of £6,200.00. The Appellant was asked by HMRC for an explanation for the
discrepancy.

3. This was done first by letter on 14 August 2015 and again by letter on 24
September 2015. There was no response to either letter.

25 4. HMRC wrote to the Appellant on 26 October 2015 to confirm that they had now
completed their checks for the 2011-2012 Tax Return. An assessment was issued
under the provisions of Section 29 TMA 1970 for additional tax of £2,495.40. The
letter stated that HMRC intended to charge a Penalty under Schedule 24 Finance Act
2007.

30 5. As the Appellant had not replied to the various letters or provided an
explanation, HMRC considered the behaviour to be careless. The Appellant had
failed to take reasonable care when checking his pay and tax details before entering
information on his Tax Return. The minimum penalty percentage is 15% and the
maximum penalty percentage is 30%.

35 6. HMRC considered that since the Appellant had failed to reply to their letters
they could not give the penalty reduction for “telling, helping and giving”. Therefore
the maximum penalty of 30% would be charged which resulted in a penalty of
£748.20.

40 7. HMRC considered that the penalty could not be suspended as no suitable
conditions could be set which would help the Appellant avoid making errors in the
future. Additionally, HMRC did not consider that there were any special
circumstances which would lead to a further reduction of the penalty.

8. The Appellant appealed on 25 February 2016.

The Law

9. Paragraph 1 of Schedule 24 FA2007 states in relevant part as follows:

- 5 (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.
- (2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to –
- 10 (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.
- (3) Condition 2 is that the inaccuracy was careless (within the meaning of paragraph 3) or deliberate on P’s part.
- 15 (4) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

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 –
- 20 (a) “careless” if the inaccuracy is due to failure by P to take reasonable care,
- (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, submitting false evidence in support of an inaccurate figure).
- 25 (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.
- 30

5 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.

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”.

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

10 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”.

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

20 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”.

25 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)).

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

30 “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

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

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(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 reductions as HMRC to a different starting point), or

5 (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

10 (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

15 (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.

20 (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."

HMRC's Compliance Handbook ("Manual") provides guidance on its powers of suspension of penalties as follows:

25 CH 8310 – CH 83160 explain when a penalty may be suspended.

CH 83130:

'In certain circumstances it will not be possible to set suspension conditions to avoid future penalties. This may be because of the nature of the tax that the

penalties related to, or because of the capacity in which the person has incurred the penalties.’

CH 83150:

5 ‘Penalties will not be suspended where the circumstances mean that the inaccuracy is a one off. For instance an inaccuracy in an Inheritance Tax account for a deceased person...However, certain types of settlement may have a continuing requirement to make returns. This means that it may be possible to set suspension conditions.’

CH 83160:

10 ‘Penalties for inaccuracies that are not likely to recur, whether because of the nature of the tax or the nature of the understatement, are generally not suitable for suspension because it is not usually possible to set conditions that will avoid careless inaccuracies in the future, or during a period of suspension.’

15 Reference was made to the case: *David Collis v HMRC [2011] UKFTT 588(TC)*

10. The Appellant’s grounds of appeal are set out in his appeal to the Tribunal dated 25 February 2016. They are as follows:

20 11. He is in full time employment where his employer sorts his tax and he does not file his own tax return. The Appellant has dealt with HMRC regarding Late Filing Penalties in previous years and assumed that matters were now resolved. When he started to receive similar penalty letters he did not give them much attention as he assumed they were in connection with the previous issues. When he realised this was not the case he contacted HMRC immediately.

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HMRC’s Submissions

30 12. HMRC contend that the Appellant filled an inaccurate Return for the year 2011-2012. As such a penalty may be charged by virtue of Schedule 24 Finance Act 2007. The penalty is calculated on the basis of careless behaviour which means a failure to take reasonable care. HMRC say that the Appellant was careless in completing the Return and offered no explanation of why he entered the figures which were inaccurate.

13. HMRC say that the disclosure was “prompted” and the penalty of 30% with no reductions would be made in the circumstances. The maximum penalty of 30% was therefore the appropriate penalty.

14. HMRC further say that there was no case for the suspension of the penalties.

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Conclusion

15. The Tribunal should first consider whether inaccuracy was careless on the part of the Appellant. The Appellant accepts that a mistake was made but not all mistakes will amount to carelessness. It depends on the context of the mistake and any
10 extenuating factors.

16. The Tribunal would look to see if the Appellant has been prudent and reasonable in dealing with his tax affairs. In the case of HMRC the case of *David Collis [2011] UKFTT 588* at paragraph 28, Judge Berner stated;

17. “That penalty applies if the inaccuracy in the relevant document is due to
15 a failure on the part of the Taxpayer (or other person giving the document) to take reasonable care. We consider that the standard by which this falls to be judged is that of a prudent and reasonable Taxpayer in the position of the Taxpayer in question’ ”.

18. The Taxpayer would have received from his employer a form P60 at year end.
20 This would have given the correct amount of pay and tax should be entered on the Tax Return for the year ending 5 April 2012. The Appellant has offered no explanations as to why he entered pay of £26,000.00 and tax deducted of £6,200.00 when the actual amount was £26, 847.48 and £3,873.60 respectively. It should have been clear to the Appellant from a simple reading of the Return and the P60 that he
25 should have provided accurate information of pay received and the tax which had been deducted. This is also made clear in the Notes issued by HMRC dealing with “How to fill in your Tax Return” which is designed to assist Taxpayers in the completion of the Return.

19. This is a simple mistake and a matter of entering figures in the Return which
30 were provided by the employer. There can be no simpler task than the simple transcribing of figures from one document to another. The Appellant has plainly failed to do that and the Tribunal is satisfied that this is carelessness on the part of the Appellant in that he failed to take reasonable care in completing the Return.

20. The next matter to be considered is the penalty. The Appellant has not raised
35 any specific arguments in relation to the quantum. The Tribunal has considered whether the penalty has been calculated in the way which is consistent with Schedule 24. The Tribunal is satisfied that the penalty charged at 30% is correct. In a case where the Taxpayer has been “prompted” to make disclosure and where the Taxpayer has not assisted HMRC by “telling, helping and giving” the maximum penalty can be
40 imposed. The failure of the Appellant to answer letters from HMRC in a timely

manner showed indifference in engaging with HMRC and cannot be condoned. If the Appellant had taken reasonable care he would have contacted HMRC to clarify the position but there is no evidence to show that he did so.

21. The penalty of £748.62 (30% of 2,495.40) is proportionate in the circumstances.

5 22. The Tribunal has no jurisdiction to make any further reduction in the amount of
the penalty save where there are special circumstances. HMRC considered whether
there are special circumstances and concluded that there are none. If the Tribunal
considers that such a conclusion was flawed, that it failed to take into account any
10 relevant factors or took into account irrelevant factors and therefore was wrong in law
or unreasonable then we would have jurisdiction to reduce the penalty ourselves. The
Tribunal is satisfied there are no special circumstances in the present case, or that
HMRC's decision on special circumstances was flawed in any way. HMRC also
15 considered whether to suspend the penalty and concluded that there were no grounds
for doing so. From previous tribunal decisions, one of the purposes of the Penalty
provisions is to educate traders who have acted carelessly to help prevent repetition.
The Appellant is no longer within the Self Assessment Tax System therefore
suspension would not be appropriate. Generally, the conditions for suspension must
20 be more than an obligation to avoid making further Returns making careless
inaccuracies. The Tribunal is satisfied with the decision of HMRC there were no
conditions which would help the Appellant avoid future Penalties therefore no reason
to suspend the Penalty was a correct decision.

23. In all the circumstances and for the reasons given above the Tribunal affirms the Penalty and the amount of the Penalty and dismisses the appeal.

24. This document contains full findings of fact and reasons for the decision. Any
25 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)"
30 which accompanies and forms part of this decision notice.

DR K KHAN
TRIBUNAL JUDGE

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