Neutral Citation: [2022] UKFTT 00213 (TC)

Case Number: TC08536

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2018/07812

Capital Gains Tax – whether loss in 1998 notified in time - penalties

Heard on: 17 March 2022
Judgment date: 07 June 2022

Before

TRIBUNAL JUDGE GREG SINFIELD
TRIBUNAL MEMBER JO NEILL

Between

ALTAN GOKSU

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Quinlan Windle, counsel, instructed by Brebners

For the Respondents: Ms Pallavika Patel, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

Introduction

1. This appeal concerns a closure notice dated 12 December 2017 issued by the Respondents ('HMRC') which amended the 2014-15 tax return made by the Appellant, Mr Altan Goksu, to increase the capital gains tax ('CGT') due on a gain realised by him on the sale of a commercial property. Mr Goksu had reduced the gain for tax purposes by the amount of a loss incurred on the earlier sale of another property in August 1998. HMRC did not contend that Mr Goksu had not made a loss in 1998 but asserted that he could not use it to reduce his subsequent gain because he had not notified HMRC of that loss within the relevant time limit. Since the 1996-97 tax year, capital losses can only be carried forward to be set against future gains if they are notified to HMRC within five years of 31 January in the year following the year of assessment in which the loss arose. Mr Goksu appealed against the closure notice on the ground that his accountant had notified the loss to HMRC within time.

2. HMRC also imposed two penalties for inaccuracies in Mr Goksu's 2014-15 amended tax return relating to the amount of tax due on the gain. HMRC contended that, first, the use of the previous loss was a careless inaccuracy and, secondly, the figures for expenses that were set against the chargeable gain were deliberately inaccurate. Mr Goksu's case was that he took reasonable care when including the loss on the earlier property sale in his amended tax return. He accepted that the expenses figures in his amended tax return were inaccurate but contended that this inaccuracy was neither deliberate nor careless.

3. With the consent of the parties, the form of the hearing was hybrid, ie partly video and partly face to face. Mr Windle, the Appellant and the Appellant's only witness, Mr Hussein Musa, attended the hearing in person. Ms Patel and the Respondents' only witness, HMRC officer Malcolm Weir, attended the hearing by video.

4. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Issues

5. The first issue to be decided was whether Mr Goksu was entitled to claim a capital loss from an earlier tax year when computing the gain for the purposes of his 2014-15 tax return. This turned on whether the capital loss had been notified to HMRC before 31 January 2005 and, secondly, whether that loss had been quantified as required by section 16(2A) Taxation of Chargeable Gains Act 1992 ('TCGA'). In relation to the careless penalty for the use of the capital loss, Ms Patel, who appeared for HMRC, stated in the Statement of Case and in her skeleton argument that if the Tribunal were to find that the capital loss claim had been validly made then the penalty should be reduced to nil. In relation to the penalty for overstating the allowable expenditure in the CGT computation, the issue was whether Mr Goksu had taken reasonable care to ensure the figures in his return were accurate and, if not, whether he had acted either carelessly or deliberately.

6. Having heard the evidence and submissions, we decided that Mr Goksu's appeal against the closure notice amending his 2014-15 tax return and penalty related to the capital loss claim should be allowed. We found that the overstatement of the expenditure was careless rather than deliberate conduct on the part of Mr Goksu and his appeal against that penalty should be allowed in part.

Legislation

7. Section 2 TCGA relevantly provided:

> "(1) … a person shall be chargeable to capital gains tax in respect of chargeable gains accruing to him in a year of assessment …
>
> …
>
> (2) Capital gains tax shall be charged on the total amount of chargeable gains accruing to the person chargeable in the year of assessment … after deducting—
>
> > (a) any allowable losses accruing to that person in that year of assessment …, and
> >
> > (b) so far as they have not been allowed as a deduction from chargeable gains accruing in any previous year of assessment, any allowable losses accruing to that person in any previous year of assessment (not earlier than the year 1965-66)."

8. The effect of section 2(2)(b) TCGA is that accrued allowable losses should be deducted from any gains so far as they have not previously been used.

9. Section 16(2A) TCGA provided:

> "A loss accruing to a person in a year of assessment shall not be an allowable loss for the purposes of this Act unless, in relation to that year, he gives a notice to an officer of the Board quantifying the amount of that loss; and sections 42 and 43 of the [Taxes] Management Act [1970] shall apply in relation to such a notice as if it were a claim for relief.

10. Subsection 2A was introduced by section 113(1) Finance Act 1995 with effect from the tax year 1996-97 for capital gains tax. Section 16(2A) TCGA requires that, to be an allowable loss, the loss must be notified to HMRC as if it were a claim.

11. Section 42 Taxes Management Act 1970 ("TMA") sets out the process for making a claim and, at the relevant time, it provided (in so far as material):

> "(1) Where any provision of the Taxes Acts provides for relief to be given, or any other thing to be done, on the making of a claim, this section shall, unless otherwise provided, have effect in relation to the claim.
>
> (1A) Subject to subsection (3) below, a claim for a relief, an allowance or a repayment of tax shall be for an amount which is quantified at the time when the claim is made.
>
> (2) Subject to subsections (3) and (3A) below, where notice has been given under section 8, 8A, 11 or 12AA of this Act, a claim shall not at any time be made otherwise than by being included in a return under that section if it could, at that or any subsequent time, be made by being so included.
>
> …
>
> (5) The reference in this section to a claim being included in a return include references to a claim being so included by virtue of an amendment of the return; and the reference in subsection (4) above to a claim for payment includes a reference to a claim resulting in payment.
>
> …
>
> (11) Schedule 1A to this Act shall apply as respects any claim or election which—
>
> > (a) is made otherwise than by being included in a return under section 8, 8A, 11 or 12AA of this Act."

12. Section 43 TMA sets out the time limits for making a claim and relevantly provided:

> “(1) Subject to any provision of the Taxes Acts prescribing a longer or shorter period, no claim for relief under the Taxes Acts shall be allowed unless it is made
>
> > (a) in the case of a claim with respect to income tax or capital gains tax, within five years from the 31st January next following the year of assessment to which it relates; …”

13. Section 115(2) TMA provides in so far as material that:

> “Any notice or other document to be given, sent, served or delivered under the Taxes Acts may be served by post.”

14. Section 7 Interpretation Act 1978 provides:

> “Where an Act authorises or requires any document to be served by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

15. The legislation in relation to penalties for inaccuracies in documents provided to HMRC is set out in Schedule 24 to the Finance Act 2007. For the purposes of this appeal, the position may be summarised as follows:

(1) a penalty is payable where a tax return contains an inaccuracy which leads to, an understatement of tax and the inaccuracy was careless or deliberate;

(2) an inaccuracy is careless if the inaccuracy is due to a failure by the taxpayer to take reasonable care;

(3) an inaccuracy is deliberate where a taxpayer provides HMRC with a document knowing that it contains an error and with the intention that HMRC should treat it as accurate; and

(4) the taxpayer is also liable for inaccuracies caused by someone acting on his behalf, eg an accountant, unless the taxpayer satisfies HMRC that they took reasonable care to avoid the inaccuracy.

EVIDENCE AND BURDEN OF PROOF

16. The evidence in this appeal consisted of a documents bundle which contained witness statements produced by Mr Goksu, Mr Musa and HMRC officer Malcolm Weir together with various exhibits produced by them. Both Mr Goksu and Mr Musa gave oral evidence and were cross-examined by Ms Patel. Mr Weir also gave oral evidence at the hearing. He was not asked any questions in chief by Ms Patel so his witness statement stood as his evidence in chief. Mr Weir was cross-examined by Mr Windle, who appeared for Mr Goksu.

17. The standard of proof is the ordinary civil standard, which is the balance of probabilities. Accordingly, Mr Goksu had to show that it was more likely than not that proper notice of his capital loss was given to HMRC by 31 January 2005. In relation to the penalties for alleged inaccuracies in Mr Goksu’s amended 2014-15 tax return, the burden was on HMRC to show that, on the balance of probabilities, Mr Goksu’s tax return contained inaccuracies causing an understatement of tax and that the inaccuracies were brought about carelessly or deliberately.

18. On the basis of the documents provided and the evidence given at the hearing, we find the material facts to be as set out below.

FINDINGS OF FACT

19. In 1982, Mr Goksu purchased a 15-year lease of 72/74 Broadway, Stratford, London E15 ('Broadway'). Mr Goksu bought the freehold of Broadway in 1985.

20. In 1989, Mr Goksu bought 140/142 The Grove in Stratford ('The Grove'). Mr Goksu has not retained a record of the amount that he paid for The Grove and his recollection of the purchase price varied at times during the enquiry and the appeal proceedings. In his second witness statement for the appeal, Mr Goksu stated that the actual purchase price was £1,373,794 based on documents showing borrowings of £1,313,794 and his memory of putting around £60,000 of his money towards the purchase. This evidence was not challenged by Ms Patel at the hearing and, accordingly, we find that The Grove was purchased for £1,313,794.

21. The loan for the purchase of The Grove was originally provided by First National Commercial Bank PLC but very shortly after the purchase Mr Goksu replaced that loan with one from Norwich Union.

22. Unfortunately for Mr Goksu, the combination of the high interest rates on the loans and the fall in property values during the recession of the early 1990s proved ruinous. Mr Goksu was not able to fund the loan repayments. Mr Goksu borrowed more money from Barclays Bank PLC which took a second charge over Broadway and The Grove. Mr Goksu's position worsened and he reached an agreement with Norwich Union to sell The Grove.

23. On 27 August 1998, Mr Goksu sold The Grove for £990,000.

24. At the time of the sale of The Grove, Mr Goksu's accountant was Mr Hussein Musa of FTI Accountancy Limited ('FTI'). Mr Goksu had known Mr Musa since the early 1970s. Mr Musa had helped Mr Goksu with all his business affairs and financial problems.

25. Following the sale of The Grove at a loss, Mr Musa told Mr Goksu that he should not worry and that he could claim a capital loss which he could set against the gain on a future sale of Broadway. Mr Musa assured Mr Goksu that he would declare the loss to the Inland Revenue (later HMRC).

26. Mr Musa recalled preparing and submitting Mr Goksu's tax return for the 1998-99 tax year. He could not remember why the loss claim was not included in the return but said that it would almost certainly have been because he did not have all the relevant information at the time that the return was completed. Mr Musa knew he could estimate the loss and amend later but he did not enter an estimated loss on this occasion.

27. Mr Musa said that his normal practice when submitting any amendments within 12 months of submitting the return was to state in a letter that this was an amendment to his client's return and he thought that is what happened in this case. In evidence at the hearing, Mr Musa said that he prepared a capital loss computation in respect of the disposal of The Grove and submitted it to the Inland Revenue in 2000 after the 1998-99 tax return had already been filed. Mr Musa described how he would have given the letter, addressed to the tax office shown on Mr Goksu's tax return, to his secretary to post at the post box. He stated that his secretary was very reliable and he did not recall any instances where letters were not sent although he did remember a handful of occasions (less than one a year over 10 years) when the Inland Revenue or HMRC said they had not received letters from his former firm. Ms Patel probed but did not challenge this part of Mr Musa's evidence and we find that Mr Musa completed a capital loss computation and submitted it, via his secretary, to the Inland Revenue in 2000 as an amendment to Mr Goksu's tax return for 1998-99.

28. Mr Goksu recalled Mr Musa confirming in a telephone call that he had sent the letter notifying the loss to the Inland Revenue although he could not remember whether Mr Musa

had sent him a copy of the letter. Ms Patel did not challenge Mr Goksu's recollection of the telephone call and we accept his evidence on this point.

29. Neither Mr Goksu nor Mr Musa could produce a copy of the letter that Mr Musa had sent to the Inland Revenue. Mr Musa said that the retention of records policy at FTI was to keep records for six years. He also stated that when a client left FTI he would arrange for all records to be returned to the client.

30. FTI went into liquidation on 6 September 2011 although Mr Musa said that it had ceased trading some time earlier. Mr Musa left FTI and formed another accountancy business, KTS. When FTI ceased trading, Mr Goksu decided to move to a new accountant, Harman & Co, where he was represented by Mr Shevki Mehmet.

31. On 13 March 2015, Mr Goksu sold Broadway for £1,380,000.

32. Mr Mehmet prepared Mr Goksu's 2014-15 tax return. Mr Mehmet filed the return on 23 January 2016 and sent a copy to Mr Goksu later. Mr Goksu immediately noticed that the return did not include the loss from the sale of The Grove and that the expenses relating to the sale of Broadway appeared to be overstated. Mr Goksu contacted Mr Mehmet and asked him why he had not included the loss and had overstated the expenses. Mr Goksu said that Mr Mehmet claimed that he did not know about the losses. Mr Goksu's evidence was that he had told Mr Mehmet about the loss on the sale of The Grove.

33. We did not have any evidence from Mr Mehmet and the only evidence provided by Mr Goksu to support his statement that he had told Mr Mehmet about the loss were emails that post-dated the submission of the return in January 2016. The emails were dated 19 December 2016 and 3 January 2017. Around that time, Mr Goksu instructed Mr Mehmet to file an amended tax return to include a deduction for the loss from the sale of The Grove and to correct the expenses of the sale of Broadway claimed in the original return.

34. Mr Mehmet submitted an amended 2014-15 tax return on 31 January 2017. The amended tax return deducted the loss from the sale of The Grove, which Mr Mehmet had calculated as £549,235, from the gain on Broadway and also deducted expenses of £610,717. Mr Mehmet sent Mr Goksu a copy of the submitted amended return by email on 3 February 2017. Mr Goksu and Mr Mehmet fell out over the fact that Mr Mehmet had again submitted a tax return to HMRC without seeking Mr Goksu's prior approval and Mr Goksu subsequently left Harman & Co and instructed another accountant. At around the same time, Mr Goksu sought the help of Mr Musa at KTS.

35. On 25 May 2017, Mr Weir opened an enquiry into Mr Goksu's 2014-15 tax return.

36. On 23 June 2017, Mr Weir wrote to Mr Goksu to inform him that he had opened an in-time enquiry into the amended 2014-15 tax return under section 9A TMA. The reason for this was because Mr Weir did not think that there was an allowable loss to set against the gain on the sale of Broadway.

37. On 27 June 2017, Mr Weir and Mr Goksu spoke on the telephone. Mr Weir's contemporaneous note stated that:

> "He insisted that CG losses could be carried forward indefinitely. He had spoken with HMRC about this and it had been confirmed. I explained that an allowable loss could be carried forward indefinitely, but first it had to be claimed. I said that there were time limits for making a claim. TP insisted that his accountant had told him that the claim could only be made when the loss was utilised. I said that his accountant was wrong."

38. Mr Weir knew that before 1996-97 capital losses could only be claimed when they were used. Mr Weir considered that it was odd that Mr Goksu was aware of what the law said before 1996-97 and took the view that he must have been told this by an adviser which was why he had not made the claim. This was challenged by Mr Windle in cross-examination. Mr Windle suggested that Mr Goksu needed a lot of assistance with tax and was liable to misunderstand complex tax issues and Mr Weir agreed with that. However, Mr Weir did not agree that Mr Goksu might have meant "use" when he said "claim" and stood by what was recorded in his note as said during the call. Mr Weir said that he had concluded that Mr Goksu had been told this by his accountant and remembered it 17 years later during the telephone call.

39. Having seen Mr Goksu in the witness box and heard him answering questions, we accept that he is someone who would need a lot of assistance with tax matters and has only a partial understanding of complex tax issues. We consider that his lack of detailed knowledge of tax law and accounting make it unlikely that he was using the words "claim" and "utilised" in any technical sense. Further, we consider that it is even less likely that Mr Goksu would have remembered and been able to repeat in the call with Mr Weir an explanation of the rules relating to carry forward losses that had been given to him by his accountant 17 years earlier. In short, we are not satisfied that the conversation between Mr Weir and Mr Goksu supports Mr Weir's belief that Mr Goksu, through Mr Musa, did not claim a loss in relation to The Grove in 1999 or 2000 because he was waiting until the loss could be utilised.

40. On 9 August 2017, Mr Musa sent Mr Mehmet an email in which Mr Musa confirmed that he had submitted the CGT computation on the sale of The Grove to the Inland Revenue. Mr Musa's email enclosed a handwritten computation which the email described as "extracts from my old files". The handwritten calculation uses a purchase price of £1,466,000, the correct rate of Stamp Duty in 1989 (1%) and the correct sale price of £990,000. It showed a net loss of £506,055. Mr Musa stated that he now recognised that the figures which he had used for the purchase price on the handwritten computation incorrectly included the subsequent re-mortgage with Norwich Union.

41. On 11 August 2017, Mr Musa sent another email to Mr Mehmet which said:

> "Although we do not hold records over 6 years, as far as I remember I did prepare his CGT in respect of his property at 140/142 The Grove London E15."

42. Before the appointment of the new accountant, Mr Goksu submitted further figures to Mr Weir by email on 6 September 2017. Mr Goksu believed at the time that Mr Mehmet had not included certain costs in relation to fire damage relating to Broadway. Before us, Mr Goksu accepted that he was mistaken in this. In his email to Mr Weir, Mr Goksu also claimed revised losses of £643,000 but he could not recall how that figure had been calculated.

43. On 12 December 2017, Mr Weir closed the enquiry into Mr Goksu's 2014-15 tax return and amended his return to reduce the quantum of expenses and to remove the brought forward loss from the sale of the Grove.

44. On 15 December 2017, Mr Goksu appealed against the amendments made by Mr Weir in the closure notice.

45. On 17 December 2017, Mr Goksu provided an invoice dated 27 February 2015 from estate agents for commission in relation to the sale of Broadway totalling £33,120 including VAT.

46. On 21 December 2017, HMRC issued a notice of penalty assessment to Mr Goksu which included penalties for the tax year 2014-15.

47. On 2 January 2018, Mr Goksu appealed against the penalties.

48. On 17 January 2018, Mr Weir and Mr Goksu again spoke on the telephone. Mr Weir's contemporaneous note stated that Mr Goksu said that it was ridiculous to expect him to have retained records for 30 years. Mr Goksu also said that his accountant was responsible for filling in the tax return and he was not to blame if it was wrong. Mr Goksu told Mr Weir that he did not look at the return. That was consistent with Mr Goksu's evidence to us that his accountant, Mr Mehmet, had submitted the original 2014-15 tax return and the amended 2014-15 tax return without showing them first to Mr Goksu. Ms Patel did not challenge Mr Goksu on this point and we accept his evidence.

49. On 8 February 2018, there was a meeting between Mr Weir and Mr Goksu and his accountant. At the meeting, Mr Goksu produced the handwritten note showing calculations of losses to the value of £506,055 and told Mr Weir that his former accountant (Mr Musa) had found it on the file. Mr Weir noted that the computation was not dated and it was hard to know when it had been written. Mr Goksu also provided print outs of emails between himself and Mr Musa stating that the loss had been claimed.

50. During this meeting, Mr Goksu also produced a handwritten receipt dated 18 March 2015 for a cash payment to the estate agents of commission of £27,600 (ie £33,120 less VAT) in connection with the sale of Broadway. In his evidence, Mr Goksu said that he had mistakenly provided the invoice to Mr Weir on 17 December 2017 and to his accountant. Mr Goksu said that this was a genuine mistake on both occasions as he had thought that the amount shown on the invoice was what he had paid and he did not intend to deceive anyone. We accept Mr Goksu's explanation. It seems to us that the fact that he produced the receipt at the meeting is consistent with him seeking to correct an honest mistake and is inconsistent with an attempt to deceive.

51. On 14 March 2018, Mr Goksu's new accountant provided further figures to Mr Weir to revise the expenses claimed for Broadway and to re-instate the losses of £549,235 in respect of The Grove.

52. On 22 December 2018, Mr Musa sent a letter to HMRC in which he stated "Currently the client [Mr Goksu] is trying his utmost to go back and try to find documents in relation to purchase and sale of his properties." Ms Patel submitted that this showed that Mr Goksu did not have any documents to support his claim in December 2018. We do not accept that the letter shows anything other than Mr Goksu was trying to find documents in December 2018. He may or may not have had them at that time but he would not know without looking. What the letter does seem to us to show is that Mr Goksu was not an exemplary keeper of documents.

DISCUSSION

53. In order to be entitled to deduct the capital loss on The Grove when computing the gain on Broadway, Mr Goksu must have notified the loss to the Inland Revenue before 31 January 2005 and the amount of the loss must have been quantified in the notification. We agree with Mr Windle that it is sufficient for Mr Goksu to prove that the loss was quantified in the notification and it is not necessary for him to prove the precise amount that was stated in that notification. We also accept Mr Windle's submission that if Mr Goksu cannot prove the precise amount but can show that the quantification would have been no less than a specific amount then he is entitled to treat that amount as an allowable loss. Mr Goksu must prove on the balance of probabilities that a quantified loss was notified and the amount or minimum amount of that quantified loss. Accordingly, the issues in relation to the capital loss claim are

(1) Did Mr Goksu notify the loss on The Grove to the Inland Revenue before 31 January 2005?

(2) If so, was the loss was quantified in the notification?

(3) If so, what was the amount or minimum amount so quantified?

54. In relation to the penalties for alleged inaccuracies in Mr Goksu's amended 2014-15 tax return, the burden is on HMRC to show that, on the balance of probabilities, Mr Goksu's tax return contained inaccuracies causing an understatement of tax and that the inaccuracies were brought about carelessly or deliberately.

55. The first alleged error was the inclusion of the loss on The Grove to reduce the gain on Broadway. Mr Weir considered that using a loss that was not an allowable loss was a careless inaccuracy. Mr Weir allowed reductions for telling, helping and for giving access to information and documents which produced a penalty rate of 18.75%. If we hold that Mr Goksu was not entitled to deduct the capital loss on The Grove when computing the gain on Broadway then we must consider whether he failed to take reasonable care in relation to the inclusion of the loss in his return. Ms Patel stated in the Statement of Case and in her skeleton argument that if the Tribunal finds in favour of Mr Goksu on the capital loss claim issue, the penalty charge in respect of this issue should be reduced to nil.

56. The second error was the inclusion in the amended tax return of allowable expenditure of £610,717 (it had been £980,000 in the original return). When that amount was challenged by Mr Weir, Mr Goksu provided a figure of £755,250 which he subsequently reduced to £550,335. Mr Weir and Mr Goksu eventually agreed that the deductible expenditure was £505,526. Mr Weir regarded this as a deliberate inaccuracy. Mr Weir considered that Mr Goksu was willing to claim amounts as expenditure which he knew could not be correct. As evidence of this attitude, Mr Weir relied on the inclusion of an amount of £33,120 estate agents' commission as allowable expenditure when Mr Goksu knew that he had only paid £27,600. After giving reductions for telling, helping and for giving access to information and documents, Mr Weir calculated a penalty rate of 52.5% for the deliberate inaccuracy. We must decide whether Mr Goksu's conduct in relation to the expenditure was deliberate.

57. We have found that Mr Musa, acting on behalf of Mr Goksu, notified HMRC of the loss in relation to The Grove in 2000 but we cannot be satisfied that the quantified amount of the loss was £549,235 claimed in Mr Goksu's 2014-15 tax return. The handwritten note produced by Mr Musa supports a loss of £506,055. Mr Windle submitted that if, as we accept, it was not created in 2017 then the most plausible time for the computation to have been created is when the claim was notified in 2000. The point on the timing of the creation of the computation is probably correct but that does not establish its accuracy. It is clear that the document submitted to the Inland Revenue in 2000 as the claim was not the handwritten (and barely legible) document shown to us. Further the amounts in the handwritten computation were not fully supported by evidence such as receipts and statements. It is for that reason that Mr Goksu's current advisers calculated the minimum amount of the loss for the purposes of the appeal. That calculation produced a figure of £412,126 which was not challenged by Ms Patel. We conclude that Mr Goksu was entitled to deduct a loss of £412,126 on The Grove from the gain on Broadway.

58. As we have found in favour of Mr Goksu on the capital loss claim issue, albeit that the amount of the claim has been reduced, the penalty charge in respect of the inclusion of the loss on The Grove should be reduced to zero as Ms Patel accepted.

59. In relation to the overstatement of the expenditure on the sale of Broadway, we have found that Mr Goksu did not provide the invoice dated 27 February 2015 for commission of £33,120 from the estate agents to his accountant and Mr Weir in December 2017 knowing it to be false. The fact that Mr Goksu voluntarily provided HMRC with the receipt for the lower actual payment of £27,600 two months later shows that, as we have also found, he was not an exemplary record keeper but we consider that he was straightforward and sought to correct a

mistake. On the basis of that example relied on by Mr Weir to show deliberate conduct and having taken account of all the evidence, we are satisfied that the overstatement of the expenditure was careless rather than deliberate conduct on the part of Mr Goksu. Accordingly, we find that the penalty should be £6,627.03 (based on a penalty rate of 22.5% after the 50% reduction granted by Mr Weir).

DISPOSITION

60. For the reasons set out above, Mr Goksu's appeal against a closure notice amending his 2014-15 tax return and the related penalty for careless inaccuracy is allowed and the penalty in relation to the overstatement of expenses in the return is confirmed in the amount of £6,627.03.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

61. 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.

JUDGE GREG SINFIELD
CHAMBER PRESIDENT

Release Date: 11 JULY 2022