



Neutral Citation: [2024] UKFTT 00999 (TC)

Case Number: TC09347

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Taylor House, London

Appeal reference: TC/2022/12276

INCOME TAX – anonymisation – discovery assessments – whether assessments valid – deliberate inaccuracies – whether quantum displaced – appeal dismissed

Heard on: 6 June 2024

Judgment date: 01 November 2024

Before

**TRIBUNAL JUDGE JENNIFER LEE
TRIBUNAL MEMBER CAROLINE SMALL**

Between

ISAAC ABOAGYE FREMPONG

and

**THE COMMISSIONERS FOR HIS MAJESTY'S
REVENUE AND CUSTOMS**

Appellant

Respondents

Representation:

For the Appellant: Mr Isaac Aboagye Frempong, in person

For the Respondents: Mr Alexander Barrett, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This is an appeal by the Appellant (Mr Frempong) against four discovery assessments issued by HMRC under s29 Taxes Management Act 1970 (“TMA 1970”) for the tax years 210/11, 2011/12, 2012/13 and 2013/14. The total amount under appeal is £116,070.60.
2. Prior to the hearing, HMRC made an application under Rule 14 of the Tribunal Procedure (FTT) (Tax Chamber) Rules 2009 for an order that the identity and other personal information concerning third parties be anonymised in the Tribunal’s decision. I directed that the application be considered at the outset of the hearing.
3. HMRC contends that the Appellant acted as a paid tax agent for a large number of individuals and that he received payment for his services from those individuals which he has failed to declare as income in his tax returns. The names and other personal information concerning those third parties are in the material before the Tribunal, albeit with certain details redacted. However, the details of certain third parties have not been redacted as they were relevant to the issues that the Tribunal has to determine. Insofar as reference to those third parties are necessary in the Tribunal’s decision, HMRC has applied for their names and personal details to be anonymised to protect their identity.
4. HMRC submits that the anonymisation would be limited only to personal information relating to those third parties, none of whom are directly involved in the appeal, and that there is no apparent public interest in their details being made publicly available. The Appellant confirmed during the hearing that he was not opposed to the application.
5. We have allowed the application for anonymisation. The starting point is that of open justice. However, case law has made it clear that derogations from this principle are available in order to protect the identity and personal information of third parties who have had no direct involvement in this appeal, and who have played no part in the hearing before us. There is no apparent public interest in their details being made available. Any reference to those third parties in our decision will therefore be on an anonymised basis.

BACKGROUND

6. The Appellant arrived in the UK on [xxx]. He completed his university degree in finance and accounting in 2008. He states that he has been working ever since (from around 2009) and in every single employment, he has only ever received PAYE income.
7. On 9 July 2010, the Appellant was set up for self-assessment in response to a claim for repayment of employment expenses. On 30 May 2011, he submitted his self-assessment return for the year 2010/11. On 27 January 2012, HMRC opened an enquiry under S9A TMA 1970 into that tax return.
8. On 12 June 2012, the Appellant submitted his self-assessment return for the year 2011/12. On 28 June 2012, HMRC opened an enquiry under S9A TMA 1970 into that tax return.

9. In July 2014, HMRC commenced a criminal investigation in respect of the Appellant. As a result, the enquiries under S9A were put on hold. On 14 August 2014, the Appellant was interviewed under caution. He was represented by a solicitor at this interview and provided a pre-prepared statement, which was read by his solicitor. The Appellant then answered “no comment” to all questions.
10. In his pre-prepared statement, the Appellant said the following:
 - (a) He denied the allegations that he was a tax agent;
 - (b) He stated he had assisted a number of friends and family to use his computer to complete their tax returns, because they did not own a computer;
 - (c) He admitted that he assisted these people in completing the relevant forms to claim mileage expenses based on what they told him;
 - (d) He stated he believed the claims were legitimate;
 - (e) He stated he did not deliberately assist anyone to give false information to HMRC and he did not charge any fee for his assistance; and
 - (f) He did not act dishonestly and believed the information that he provided was correct.
11. On 7 May 2015, the Appellant was interviewed for a second time, again under caution. He answered “no comment” to all questions.
12. We have had sight of the Appellant’s pre-prepared statement, and the transcripts of both interviews, which are in the documents bundle.
13. On 2 August 2016, it appears that the S9A enquiries into the Appellant’s tax returns for 2010/11 and 2011/12 were concluded with the issue of a closure notice under S28A TMA 1970. In addition, however, a discovery assessment, in accordance with S29 TMA 1970, was issued for the year 2009/10.
14. There were adjustments for 2009/10 and 2011/12 to disallow claims to employment expenses. There was an adjustment for 2010/11 to bring into tax income received from an employer that had not been subjected to PAYE.
15. HMRC states that the Appellant had been advised that the issue of the assessment and the closure of the civil enquiries were done without prejudice to any other HMRC investigations, particularly the ongoing criminal investigation. The criminal investigation was, however, later discontinued in 2020. HMRC’s position is that whilst the criminal investigation concluded that the Appellant had personally benefited from making repayment claims on behalf of others, as a result of the Covid-19 pandemic, which placed significant pressures on the UK court system, there was no realistic prospect of the investigation being progressed to a prosecution in the foreseeable future.
16. Evidence gathered during the investigation was passed to HMRC’s civil enquiry officers. In around December 2021, HMRC began to actively consider whether civil action was appropriate in relation to the evidence which had been gathered.
17. As part of this further investigation, Officer Thomas Moore of HMRC identified numerous payments into the Appellant’s bank accounts, which were unexplained. These are detailed below:

Tax Year	Named Customers	Unexplained amounts	Total Amounts received
2010/11	£2,417	£0	£2,417
2011/12	£41,653	£48,208	£89,861
2012/13	£95,632	£42,405	£138,037
2013/14	£27,921	£26,338	£74,259
TOTAL	£187,623	£116,951	£304,574

18. On 20 May 2022, Officer Moore made arrangements for assessments to be issued in the amounts detailed in the table above.
19. On 30 and 31 May 2022, Officer Moore authorised the issue of discovery assessments for the payments totalling £304,574.78, which HMRC asserted was income that the Appellant had not declared in his self-assessment tax returns.
20. On 30 June 2022, the Appellant’s agent, Certified Accountants Ltd, appealed against the discovery assessments. The appeal letter stated that the Appellant disagreed with all the assessments as:

“...he did not earn any other income than Employment Income for the tax years in question. He therefore disputes the ‘Other Income’ figures you included in your assessments calculations for those four tax years. Moreover, you provided no proofs or details of the source of those ‘other incomes’ in your assessment letter. If you believe you are right, the client would like to request for details and proofs of those incomes as he stresses that he did not earn those ‘other incomes’ and knows nothing about them.”
21. On 11 July 2022, HMRC wrote a ‘View of the Matter’ letter to the Appellant which stated that their view remained unchanged as the Appellant had not provided details of what the deposits in his bank accounts related to. The Appellant was offered a review before another officer and informed that he would have the opportunity to provide any further information or reasons in support of his case. The Appellant did not take up the option of this review.
22. On 10 August 2022, the Appellant appealed to the Tribunal. His notice of appeal raises the following grounds of appeal:
 - (a) He had a POS machine for card acceptance which he had not used but for which he was still under contract. He gave the machine to his church. Every single payment that came from the machine/ PDQ terminal was repaid to the church, all of which were reflected in his bank statements. Examples of these were the transactions on 13 February 2013, 10 December 2013 and 11 December 2013;

- (b) Occasionally, the Appellant sought financial assistance from family and friends. These payments were not business related but purely kind gestures. Some of the payments were transfers from his own accounts, for example, 23 December 2011, 22 December 2011 and 23 December 2011. Other examples included 28 November 2012, 3 February 2012 and 10 February 2012.
 - (c) The Appellant did not own any other business and his only work was with Payzone UK Ltd, which was PAYE employment.
23. The Appellant also submitted a number of bank statements, with others said to follow. He stated that he had requested all his bank statements for the tax year ending 2011, 2012, 2013 and 2014, but due to the passage of time, the statements were being received in batches. He had submitted the ones he had in his possession and would be submitting further statements as soon as they were received.

DECISION

23. We have considered the documentary evidence to which we were referred. We have also considered and reflected carefully upon the oral evidence we have heard from the Appellant, Officer Thomas Moore (Agent Standards Lead in the Agent Compliance Team at HMRC) and Officer Philip Knowles (Higher Officer of HMRC Fraud Investigation Services).
24. HMRC bears the initial burden of proof to show that they have made a relevant discovery and that the conditions set out at sections 29 and 36(1A) TMA 1970 have been met. The burden then shifts to the Appellant to displace the amounts assessed (in other words, to show that he has been overcharged).
25. All findings of fact have been made on the civil standard of proof (on the balance of probabilities). That means that they were reached on the basis that they are more likely to be true than not. The following is not intended to address every point of evidence or resolve every contention made by the parties. We have made the findings necessary to resolve the appeal before us. Where findings have not been made, or have been made in less detail than the evidence presented, that reflects the extent to which those areas were relevant to the issues and the conclusions reached.
26. We have found that the inaccuracy was brought about deliberately. The assessments were therefore made within the relevant time limits.

VALIDITY OF ASSESSMENTS

27. Section 29(1) TMA 1970 provides that HMRC can raise an assessment of tax where an officer of the board has discovered that there has been an insufficiency in tax paid.
28. In *Jerome Anderson v HMRC* [UKUT] 0159 (TC), the Upper Tribunal set out a two-stage test for the requirements of section 29(1) to be met. A subjective test was set out at paragraph 28:

“Having reviewed the authorities, we consider that it is helpful to elaborate the test as to the required subjective element for a discovery assessment as follows:

“The officer must believe that the information available to him points in the direction of there being an insufficiency of tax.”

That formulation, in our judgment, acknowledges both that the discovery must be something more than suspicion of an insufficiency of tax and that it need not go so far as a conclusion that an insufficiency of tax is more probable than not.”

28. An objective test was set out at paragraph 30:

“The officer’s decision to make a discovery assessment is an administrative decision. We consider that the objective controls on the decision making of the officer should be expressed by reference to public law concepts. Accordingly, as regards the requirement for the action to be “reasonable”, this should be expressed as a requirement that the officer’s belief is one which a reasonable officer could form. It is not for a tribunal hearing an appeal in relation to a discovery assessment to form its own belief on the information available to the officer and then to conclude, if it forms a different belief, that the officer’s belief was not reasonable.”

29. There are therefore two questions to be asked. Firstly, did the officer believe that there was an insufficiency? Secondly, was that belief one which a reasonable officer could form?

30. Officer Moore’s evidence was that he became involved in February 2022 when he was tasked to review the matter. Having reviewed the vast volume of information gathered, including the Appellant’s bank statements, Officer Moore concluded that the Appellant was acting as a de facto tax agent for numerous third parties. Officer Moore’s evidence was that the payments made into the Appellant’s bank accounts were in respect of tax related activities on behalf of others, which formed the majority of the lodgements into his accounts. There was also evidence that the Appellant had contacted HMRC on behalf of a significant number of individuals.

31. Officer Moore also had regard to other information which had been gathered by Fraud Investigation Service (“FIS”) namely, an account analysis spreadsheet and witness statements obtained by FIS from third parties who had stated at interview that the Appellant was acting as their tax agent. Officer Moore’s evidence was that a significant proportion of the payments into the Appellant’s bank accounts matched up with the names of those witnesses. Having reviewed the bank statements, Officer Moore also found a significant number of transactions into the Appellant’s bank accounts with references or comments such as “Tax Rebate”, “Tax Refund”, “HMRC SA”, “HMRC Money”, “Commission” and “Taxation”, and various combinations of these words. Officer Moore also had sight of the transcripts of the Appellant’s interviews under caution and his pre-prepared statement.

32. Based on the information available to him, and the absence of any explanation by the Appellant of the significant payments into his accounts which appeared to be related to tax related activities, Officer Moore concluded that the Appellant had received income which he had not declared, and as such, the tax assessments for those years had become insufficient.

33. We accept Officer Moore’s evidence. We find him to be a credible and reliable witness. In light of his evidence, and the other material we have read, we consider that Officer Moore has the unequivocal view that there has been an insufficiency of tax paid within the relevant tax years (the subjective test); and that his belief as to the insufficiency of tax was a reasonable conclusion which an officer could form (the objective test). We

are satisfied that HMRC have met the burden of proof with regard to the requirement that a discovery had been made, in order for an assessment to be raised.

34. We now turn to consider section 29(3), which prevents an assessment being raised where a return has been submitted in response to a notice to file under section 8 TMA 1970, unless one of the conditions set out at section 29(4) or (5) has been met.
35. Section 29(4) sets out that the inaccuracy must have been brought about either “carelessly” or “deliberately” by the taxpayer or a person acting on their behalf.
36. Whether an inaccuracy was deliberate or not is that taken in *Jason Andrew v HMRC* [2016] UKFTT 295 (TC), in which a deliberate error resulting in a penalty was held to be appropriate in cases where the inaccuracy was made knowingly, or without belief in its truth, or recklessly.
37. In *Auxilium Project Management v HMRC* [2016] UKFTT 0249 (TC) the Tribunal, noting that the legislation did not further define the word “deliberate”, took the view that “a deliberate inaccuracy occurs when a taxpayer knowingly provides HMRC with a document that contains an error with the intention that HMRC should rely upon it as an accurate document”. The Tribunal emphasised this was a subjective test and that the question was not whether a reasonable taxpayer might have made the same error or even whether the taxpayer failed to take all reasonable steps to ensure that the return was accurate, “it is a question of knowledge and intention of the particular taxpayer at the time.” The Tribunal in *Salim Miah v HMRC* [2016] UKFTT 644 (TC) put the meaning in a similar way “something was “deliberate” if it had been “thought about”.
38. The Supreme Court in *R & C Commrs v Tooth* [2021] UKSC 17 has more recently considered the meaning of ‘deliberate’ in relation to whether there was a deliberate inaccuracy in a document. The following passage from the judgment is pertinent (§47):

“It may be convenient to encapsulate this conclusion by stating that, for there to be a deliberate inaccuracy in a document within the meaning of section 118(7) there will have to be demonstrated an intention to mislead the Revenue on the part of the taxpayer as to the truth of the relevant statement or, perhaps, (although it need not be decided on this appeal) recklessness as to whether it would do so.”

39. We have carefully considered the Appellant’s written and oral evidence. We have also carefully considered the written and oral evidence of Officer Moore and Officer Knowles. The totality of the evidence leads us to conclude that the Appellant has acted deliberately, for these reasons:
 - (a) We accept HMRC’s contention that when the Appellant submitted his tax returns for each of the relevant tax years, he would have been aware that he had significant deposits within his bank accounts from numerous third parties, which were related to him having assisted those third parties with their tax affairs. The deposits in the bank accounts were in excess of £300,000, far in excess of the Appellant’s PAYE income. These are not trivial amounts and we find it highly unlikely that the Appellant would not have been aware of those amounts.
 - (b) The Appellant accepted in evidence that he received sums of money from numerous third parties for his assistance with their tax affairs, albeit he described the payments as “thank you” gestures and not income. We do not accept that

these were ad-hoc gratuitous payments given to the Appellant for occasional assistance provided to family and friends. We also do not accept the Appellant's contention that he returned all the payments. There is simply no evidence in support of that contention.

- (c) We find that the Appellant was operating a sophisticated and large operation as a tax agent or tax adviser to numerous individuals, and that he was providing his services for a fee or commission. In this regard, we have had regard to Officer Knowles' evidence. We find him to be a credible and reliable witness. We accept Officer Knowles' evidence that review of materials seized from the Appellant's premises in 2013 contained records and information relating to more than 300 entities, mostly individual taxpayers, and that large volumes of HMRC correspondence and P60s were found, together with more than 150 individual SA online user identity numbers, almost all with associated passwords. Examination of the computers identified significant volumes of traffic between the devices and HMRC online services. The web logs obtained show that the seized devices were used to register at least 85 individual users for self-assessment online services, to access the accounts for at least 105 individual users, and to submit at least 161 income tax returns or claims for repayment of income tax for various taxpayers. Text messages to/from numerous individuals in 2014 have also been retrieved from mobile devices belonging to the Appellant. The messages related to HMRC, correspondence from HMRC, requests to the Appellant for advice with tax, queries regarding tax penalties, requests for help with encountered with HMRC, and warning letters from HMRC. It is clear from those messages that those individuals believed that the Appellant was acting on their behalf in dealings with HMRC.
- (d) We consider the spreadsheet obtained from one of the computers seized from the Appellant's premises to be particularly compelling. The spreadsheet lists the names of some 86 individuals, next to a column headed "client", and another column headed "commission". The figures in "client" amounted to £205,137.55. The figures in "commission" amounted to £118,736.25. The spreadsheet also includes notes indicating which entries were "done" and which were "in progress". HMRC has pointed out that at least one of the payments from an individual named as a "client" on that spreadsheet, a payment of £2,305 from a Mr X, tallies with one of the entries from Mr X into the Appellant's bank account on 23 December 2011. The Appellant did not deny that. When cross-examined about the spreadsheet, the Appellant initially denied knowledge of the document and said he did not recognise it. When the Tribunal raised that the name "Frempong" was on that document, the Appellant appeared to then recognise the document, and stated that matters had become overwhelming as more and more people were coming to him for assistance, and that the spreadsheet had been prepared by his wife. When asked why the schedule had a column headed "commission", the Appellant stated that he did not know as his wife had prepared it. The suggestion that it was in fact the Appellant's wife who had prepared that schedule was raised by the Appellant for the first time at the hearing, during the course of his oral evidence. We find the Appellant's explanation of this document unconvincing. We reject his explanation and accept HMRC's contention that the spreadsheet is likely to be a list of the Appellant's clients or prospective clients, with the commissions charged to each.

- (e) We also consider the invoice obtained from one of the computers seized from the Appellant's premises to be particularly compelling. That invoice refers to a Mr Y, referred to as "client", and a contractual agreement with that client to act as his tax adviser to work on tax returns for 2007/08, 2008/09, 2009/10 and 2010/11. The invoice refers to a "fee" calculated as a percentage of the total amount of tax said to be worked on and claimed for the client. The invoice requests that payment be made into a particular account held in the name of the Appellant and his wife, and was said to be made out on behalf of a company with the names of the Appellant and his wife stated underneath. When asked about this invoice, the Appellant initially stated that he could not confirm whether it was an invoice found on his computer, as his computer was not there for him to check. When it was put to him that his bank account was on that invoice, the Appellant denied that was the case. When he was taken to the account number and sort code, the Appellant maintained that that was not his bank account. When the Tribunal raised that his address was on the statements for one of his bank accounts which corresponded with the details on the invoice, the Appellant accepted it was his account after all, but that it was now closed. When asked why he had initially denied that the details on the invoice was for his account, the Appellant stated that he had misunderstood the initial question, and what he meant was that it was not an account that he still had now. He then stated that he remembered Mr Y in particular, because Mr Y had asked for a favour and had asked for that document to be prepared for Mr Y's own purposes. The Appellant then stated that it was Mr Y who prepared the invoice. We find the Appellant's explanation of this document unconvincing. We reject his explanation and accept HMRC's contention that this was an invoice to one of the Appellant's clients, and that he was acting as that client's tax adviser and charging a fee.
- (f) No explanations were offered by the Appellant to HMRC as to the provenance of these deposits until the Appellant's notice of appeal dated 10 August 2022, when two explanations were proffered (that the payments were from the POS machine lent to his church and/or financial assistance from his family and friends). If these were genuine explanations, we find it highly unlikely that they would not have been raised at an earlier stage. It is of note that none of these explanations were raised in the Appellant's appeal to HMRC on 30 June 2022. The letter written on his behalf by Certified Accountants Ltd simply states that he did not earn additional income and "knows nothing about them".
- (g) We find the explanations in the notice of appeal unconvincing. They do not stand up to scrutiny and the Appellant has not been able to provide any evidence to corroborate his explanations. This appeal was made on 10 August 2022. The Appellant has had the documents bundle containing HMRC's evidence since August 2023 (and the two officer's witness statements since July 2023). He has had ample time to prepare for this hearing and to provide evidence in support of his appeal. However, no evidence has been provided from anyone at the church to corroborate the Appellant's explanation as to the POS machine payments. He was also unable to identify in the bank statements or by way of other evidence the repayments he said he'd made to the church for the payments said to have been made to him via the POS machine. Whilst he did point out a number of payments to several individuals, those were for very modest payments and no evidence has been provided to confirm that those individuals were indeed representatives of that church. The Appellant has also not provided any evidence from those family

or friends said to have provided him with financial assistance, or to identify those payments in the bank statements.

(h) The Appellant has a university degree in finance and accountancy. He has been completing self-assessment returns. We accept HMRC's case that the Appellant would have been aware when filing his tax returns that he needed to include the payments from the many individuals who were depositing monies into his account by way of a fee or commission. He chose not to include those payments in his tax returns, with the intention to mislead HMRC as to the truth of those returns.

40. We find that the inaccuracies in the tax returns for the years in question were brought about deliberately by the Appellant. The condition in section 29(4) is met.

41. Section 36(1A) TMA 1970 sets the time limit for making a discovery assessment as no later than 20 years following the end of the tax year to which it relates where the inaccuracy was brought about deliberately. We have found that the inaccuracies were brought about deliberately. The assessments were therefore made within the time limits.

QUANTUM OF ASSESSMENTS

42. Having concluded that the assessments were validly raised, the burden of proof is therefore on the Appellant to displace the amounts assessed.

43. We have considered the evidence of Officer Moore and the figures set out in paragraph 8 of his statement. We have also considered the evidence of Officer Knowles and the schedules exhibited to his statement which sets out the deposits into bank accounts controlled by the Appellant and his wife, which HMRC believes are receipts by the Appellant of undeclared income. Those payments amount to £304,574 and were received between 9/August 2010 and 12 May 2014. The schedules have been compiled from the bank statements obtained by HMRC as a result of production orders under the Police and Criminal Evidence Act 1984 and the Proceeds of Crime Act 2002.

44. Of the £304,574, there were payments amounting to £187,624.47 from 12 July 2011 to 17 September 2013, which HMRC have been able to link to named taxpayers believed to have been clients of the Appellant through HMRC records and material seized from the Appellant's premises. There is a breakdown of those payments (£187,624.47) with the names of each associated taxpayer. The payment references include "tax back", "tax refund", "tax rebate", "HMRC/ commission", "commission" and "client payment". There is a payment with the reference "invoice payment" from Mr Y (the individual named in the invoice discussed above).

45. Of the £304,574, there were also payments amounting to £116,952.31 which HMRC states are unexplained. Those payments were from 12 July 2011 to 12 May 2014.

46. We accept the computations produced by Officer Knowles and Officer Moore, save for the four payments at the end of the schedule of unexplained payments, said to have been received on 7 April 2014 (2 payments), 2 May 2014 (1 payment) and 12 May 2014 (1 payment) amounting to £2,110. Those payments fall outside the tax year 2013/14. We would therefore exclude those payments from the assessment.

47. The burden of proof is on the Appellant to displace the amounts assessed by HMRC. His argument is that the amounts assessed are in reality payments from the POS machine lent to his church which he has repaid and/or financial assistance from family and friends. For the reasons stated at paragraph 39, we reject those explanations. The Appellant also suggested during the hearing that some of the amounts assessed were bank transfers between his accounts. Officer Moore confirmed that HMRC did not include within their calculations any amounts transferred between the Appellant's bank accounts. The Appellant has not identified any transactions which contradicts this.

CONCLUSION

46. The quantum of the assessment for the tax year 2013/14 should be amended to exclude the four payments amounting to £2,110. The assessment for the tax year 2013/14 as amended is upheld. The assessments for the tax year 2010/11, 2011/12 and 2012/13 are also upheld.
47. For the reasons set out above, the appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

48. 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.

**JENNIFER LEE
TRIBUNAL JUDGE**

Release date: 01st NOVEMBER 2024