



**TC02114**

**Appeal number: TC/2011/07159  
TC/2012/03092**

***CORPORATION TAX – amendment of tax returns to reflect undeclared income of company – whether deposits into bank account evidence of income not declared – held no – whether assessments excessive – held yes - appeal allowed***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ROMARK JEWELLERS LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE GREG SINFIELD  
HELEN MYERSCOUGH ACA**

**Sitting in public in Cambridge on 3 May 2012**

**Mr Mark Krempel, director of Romark Jewellers Limited, for the Appellant**

**Miss Karen Weare of HM Revenue and Customs for the Respondents**

## DECISION

### Introduction

1. Romark Jewellers Limited ("Romark") carries on a retail jewellery business in Bury St Edmunds, Suffolk. The company was incorporated in September 2002. The sole director and shareholder of Romark is Mr Mark Krempel. As part of an investigation into UK taxpayers who had offshore bank accounts, HM Revenue and Customs ("HMRC") became aware that Mr Krempel had made cash deposits of £114,250 into a savings account with Barclays in Guernsey in 2003 and 2004. The account was a joint account in the names of Mr Krempel and his mother, Mrs Ingrid Petterson. When questioned about this by HMRC, Mr Krempel stated that the deposits were the proceeds of sales of jewellery that his mother had given him to sell so that he could buy a flat in France. Mr Krempel produced a hand written list of items of jewellery with values which amounted to £146,000.
2. HMRC opened an enquiry into Romark's tax return for 2006 by issue of a notice under Paragraph 24 Finance Act 1998 on 1 October 2008 and thereafter further enquiries were commenced into the other tax years. HMRC issued assessments to corporation tax on 9 March 2011 in relation to tax years ended 31 December 2003, 2004, 2005, 2006 and 2007 as follows:

3. Year	Declared profits £	Additional profits £	Additional tax assessed £
2003	53,157	72,000	13680
2004	76,812	72,000	13680
2005	65,852	15,000	2850
2006	75,393	15,000	2850
2007	141,188	15,000	2963.01

HM Revenue and Customs ("HMRC") also imposed a penalty of £10,807 which is the subject of a separate appeal. Romark appeals against the five assessments for additional corporation tax and the penalty.

4. In broad terms, HMRC contended that an admitted failure to include all tax in the return for 2002-2003 and unexplained amounts paid into the offshore bank account by Mr Krempel indicated that there was undeclared income of the business in the amounts in the table above. Mr Krempel contended that the amounts were proceeds of sales of jewellery given to him by his mother to sell on her behalf and that the company had declared all the proceeds of sales by the business in the years under appeal.

### Issues and burden of proof

5. The principal issue for the Tribunal to determine was whether cash deposits paid into the bank account in Guernsey in 2003 and 2004 and other amounts not so banked were, as claimed by Mr Krempel, proceeds of sales of his mother's jewellery

or were profits that Romark had failed to declare on its tax returns for those years. A related issue is whether the assessments of tax on undeclared profits of £15,000 a year for 2005, 2006 and 2007, made by HMRC on the basis that Romark had failed to declare all its profits for prior years, are excessive. There are subsidiary issues that  
5 only arise if we find that there are undeclared profits as alleged by HMRC, namely:

- (1) whether assessments for years ended 31 December 2003, 2004, 2005, and 2007 were properly made as discovery assessments;
- (2) whether assessments for years ended 31 December 2003, 2004 and 2005 were properly made within the extended time limits; and
- 10 (3) whether Romark is liable to a penalty and, if so, whether the amount is correct.

6. The burden is on the appellant to satisfy us that the sums charged to tax by the amendments are excessive - see section 50(6) Taxes Management Act 1970 and *Brady v Group Lotus Car Companies plc* [1987] STC 635 for that proposition. The  
15 question for us therefore is whether we are satisfied on the evidence we have heard and seen that the assessments of additional profits are excessive. We answer that question and make our factual findings on the basis of the balance of probabilities.

### **Facts**

7. We heard oral evidence from Mr Krempel. We also received a witness  
20 statement and heard oral evidence from Mr David King, one of the HMRC officers who conducted the enquiry. In addition, the bundles contained a comprehensive collection of correspondence and other documentation generated by the enquiries which we have taken into account in this decision. On the basis of that evidence we find the facts to be as follows.

25 8. In 1982, Mr Krempel's father retired and, together with Mr Krempel's mother, went abroad to live. At that time, they bought Mr Krempel's younger brother a flat in London, worth approximately £500,000 today. Around the same time, Mr Krempel's mother closed all her UK bank accounts and opened some off-shore ones. She arranged that Mr Krempel was a signatory to the accounts as a contingency measure  
30 in case anything should happen to her. Mr Krempel said that he had never used any of his mother's offshore accounts personally (subject to the events discussed below), had never received any bank statements in relation to the accounts or had any knowledge of the details of those accounts.

9. In 2001, Mr Krempel was on holiday in France when he saw that some property  
35 developers were about to release the next stage of a development of apartments. He decided to buy one of the apartments for holidays and because he thought it would be a good investment. He returned to the UK with the intention of borrowing funds in order to buy one of the apartments.

40 10. Mr Krempel said in evidence that, when he told his mother (who was a widow and had returned to live in the UK by this time) of his plans, she offered to help him with the purchase of the flat by giving him some of her jewellery to sell. She had in

mind an equalising gift to put him in the same position as his brother 20 years earlier. She also thought that she could reduce the value of her estate by passing on some of her assets at that time rather than them passing on her death. Mr Krempel said that his mother gave him certain items of jewellery which he valued at an amount  
5 approximately equal to the price of the apartment. The price of the apartment in 2001 in euros was £150,000 (although the subsequent decline of the euro against the pound brought that down by the time of completion) and the value of his mother's jewellery was just over £140,000.

11. Mr Krempel produced a statement in the form of a sworn affidavit by his  
10 mother, Mrs Ingrid Petterson. In it, she confirmed that 43 items of jewellery listed in an attachment to the affidavit were given by her to Mr Krempel to sell on her behalf. She said that she had acquired the jewellery over many years and no longer needed it. The proceeds of the sale amounted to £140,950 which her son was to use to purchase a flat in France. In addition, Mr Krempel produced a number of photographs of his  
15 mother at different stages of her life wearing certain items of jewellery. Mr Krempel accepted that it was not possible to prove that any item of jewellery shown on the photographs corresponded exactly to the items listed in the schedule of jewellery attached his mother statement. He also accepted there was no corroborating evidence of the sale of any specific items of his mother's jewellery which corresponded to that  
20 list. As explained more fully below, we accept Mrs Petterson's evidence.

12. Romark sold jewellery on behalf of third parties. Such sales were called "Appro" sales. Only Mr Krempel dealt with a customer wishing to sell an item as an Appro sale because only Mr Krempel could agree the value. The Appro items and sales were recorded in a file of loose leaf sheets. When the value has been agreed  
25 with the customer, the item would be added to the sheet in the Appro file, given a stock number and a description and then displayed with a label among the other stock. Any member of staff in the shop could sell such items. Such sales were recorded separately and did not form part of Romark's normal sales because the items of jewellery did not become part of Romark's stock when they were sold on behalf of  
30 third parties. When an Appro item was sold, the purchaser would not receive a normal shop receipt from Romark because the sale was made on behalf and as agent of the owner of the item of jewellery. If the purchaser asked for a receipt then he might be given a hand written receipt or insurance valuation but, quite often, people did not ask for such a receipt even when buying quite high value goods. Copies of the  
35 hand receipts were not kept but insurance valuations were generated on the computer so copies are still on the hard drive. Once the Appro item had been sold, Romark would account to the third party for the proceeds less an amount by way of commission. The Appro sales represented only a small part of Romark's business, generally less than one sale per month or about 2% of sales. Mr Krempel admitted  
40 that, at that time, the bookkeeping in relation to on Appro sales was inadequate and the commission had not always been correctly recorded. He said that he had changed the system since that time and now kept better records in relation to such sales. There were four shop staff who handled the sales. Each day they cash up and reconcile till rolls and, once a week, write up the cash books from daily taking sheets from the tills.

13. Mr Krempel said that his mother's jewellery was sold as Appro items which is why he did not have any receipts. The only difference between sales of his mother's jewellery and other Appro items was that he did not account for any commission on the sales on behalf of his mother but sent her all the proceeds. Mr Krempel thought  
5 that he had some insurance valuations for his mother's jewellery, as they were retained in the shop on the computer, but he had not produced such records for the appeal because he had not been asked to do so or realised that he should do so.

14. We were shown a handwritten list of 43 items of jewellery from the Appro folder. The lists had separate columns showing a number, description, retail price,  
10 whether sold (all were marked as sold), whether paid for (only some were marked as paid) and the name (shown as "Ingrid", Mrs Petterson's name, against each item). The paid column referred to when Romark accounted for the proceeds of sale to the owner of the Appro item. Mr Krempel had started to tick paid when he put money into his mother's bank account but then stopped because he realised there was no correlation  
15 between the sales of jewellery and the payments into the bank account. There was no clear correlation between the cash deposits and the sales of his mother's jewellery but that was because large items or expensive items of jewellery would be paid for in separate payments such as a deposit followed by instalments. Further, Mr Krempel was not paying money into his mother's bank account contemporaneously with the  
20 sales of the jewellery.

15. Mr Krempel sold the jewellery through his shop over the next two years and paid the amounts raised into the joint account in Guernsey. Mr Krempel paid all the cash proceeds from the sales of jewellery directly into his mother's account by depositing them at Barclays Bank in Bury St Edmunds. Mr Krempel did not always  
25 pay the cash from the sales of his mother's jewellery straight into his mother's bank account. He would not do so if he did not have sufficient cash in the business to enable him to do so. In such cases, he would defer payment until there was enough cash in the business. Any amounts that were paid by cheque or credit or debit cards were paid into Romark's bank account in the same way payments for purchases of  
30 Romark's stock but, at a later date, Mr Krempel would pay an equivalent amount in cash into his mother's account through the bank in Bury St Edmunds. Mr Krempel said that he did not transfer money electronically from the business account to his mother's account because, at the time, he didn't have the facility to transfer the funds electronically from the business's bank account to his mother's account in Guernsey.  
35 The amounts received for the sales of his mother's jewellery were not shown in the records of Romark because Mr Krempel considered that he was selling his mother's jewellery on her behalf.

16. Mr Krempel exchanged contracts to buy the apartment off-plan in 2001. Completion was supposed to take place in autumn 2003 but it was delayed and  
40 eventually took place in January 2005. Mr Krempel paid a deposit of 2 % or 3% on the exchange of contracts. On 28 February 2002, Mr Krempel opened a euro account with the same bank in Guernsey where his mother had her bank accounts. The joint bank account was a sterling account. The purpose of the euro account was to facilitate a euro forward contract and make the stage payments in euros to the

developer. There were five stage payments in February, May, July, October and December 2004.

17. Mr Krempel said that he paid the proceeds from the sales of his mother's jewellery into his mother's bank account and not into the separate euro bank account in his own name because, at the time, his euro account did not exist. In fact, all but the first two payments into his mother's account were made after the euro account had been opened. There was no correlation between deposits into Mrs Petterson's account and the transfers to Mr Krempel's euro account. At the end, some £30,000 more was transferred than deposited.

18. Mr Krempel was first contacted by HMRC in October 2008 when he was questioned about the offshore accounts. HMRC had received evidence that Mr Krempel held an offshore bank account jointly with his mother. At a meeting on 4 November 2008, Mr Krempel told HMRC that he was a signatory to an account with his mother, but said he had no idea that the account was in joint names and that there were no other bank accounts. Mr Krempel's evidence was that, at first, he had no idea what HMRC were talking about because his euro account had been closed since January 2006. He said that it occurred to him that HMRC were talking about his mother's bank account (he thought that there was only one account at that time). He felt intimidated by HMRC's questioning and did not feel able to talk about his mother's financial arrangements without talking to her first. Mr Krempel admitted that he was evasive in the face of questioning. Mr Krempel said that, with hindsight, his behaviour at that first interview was a mistake as it was made HMRC more suspicious. After the meeting, Mr Krempel disclosed that there were other accounts held jointly in his and his mother's name. HMRC accepted that the other accounts related to Mrs Petterson's foreign income.

19. Mr Krempel was asked to provide bank statements in relation to the joint account with his mother. Mr Krempel provided all the bank statements, save two. Those two missing statements showed cash deposits in excess of £114,000 into the account from a bank in Bury St Edmunds over a two-year period. At a meeting on 18 September 2009, Mr Krempel denied that there had been any transfers to his accounts despite the bank statements showing M Krempel as the reference. HMRC were also aware of other deposits in cash amounting to approximately £30,000 at two bank branches in London. HMRC accepted that Mrs Petterson lived in London at the relevant time and did not challenge that the deposits had been made by her. The first mention of the euro account by Mr Krempel to HMRC was at a meeting on 1 October 2009.

20. At a visit to the shop on 28 July 2010, HMRC spoke to two members of staff who confirmed the treatment of the Appro sales. The staff knew that items of jewellery had been sold for Mr Krempel's mother and that the tickets for such jewellery carried an H number although only one of the members of staff had actually sold any of those items (but the other member had not been working in the shop at that period). ). In addition, during the visit, Mr Krempel had invited HMRC to look through the records and, apart from the poor Appro record keeping, no other anomalies were found.

21. In February 2011, Mr Krempel wrote to HMRC, rejecting the figures for additional profits and making an offer to pay £10,000 to bring the matter to a conclusion. Mr Krempel said at the hearing that he made the offer not because he believed that he owed an amount of tax but because the matter had been dragging on for some time by then and he had reached a stage where he was willing to pay that amount just to get HMRC out of his hair.

22. HMRC concluded that there were concerns over the record-keeping by Romark and over the amounts of cash that had been banked by Mr Krempel. They considered that there were a number of anomalies in the explanations that had been offered and that Mr Krempel had only been forthcoming in providing information when confronted with evidence obtained elsewhere. In March 2011, HMRC issued the assessments that are the subject of the appeal.

### **Discussion**

23. The calculation of the assessments for 2003 and 2004 was based on £140,000 derived from the list of jewellery items. HMRC's view was that Mr Krempel had been a jeweller for a long-time and there had been certain off record transactions ie items purchased but not going through business records. When Mr Krempel visited France in 2001 and decided to buy the apartment, he thought it would be a good time to cash in the off record items. HMRC contended that the £140,000 was from the sale of items accumulated over the years. They contended that there was no corresponding attributable cost since that, in itself, would have derived from undisclosed profits of previous years.

24. It is understandable that HMRC should find Mr Krempel's behaviour suspicious: he paid large amounts of cash into an offshore bank account over a period of two years; at the time he operated a retail jewellery business where large amounts of cash were received; the cash came from sales of jewellery through the business premises; and, by his own admission, he was evasive and uncooperative when first questioned by HMRC. It is however recognised that Mr Krempel actually invited HMRC to review all the records at a subsequent visit.

25. The outcome of this appeal turns on whether the Tribunal accepts Mr Krempel's evidence that the amounts assessed were the proceeds of sales of jewellery belonging to his mother. We bear in mind that the burden of proof is on Romark. Having heard the evidence, however, we are satisfied on the balance of probabilities that the amounts assessed were the proceeds of sales of jewellery given to Mr Krempel by his mother. We reach this view for the following reasons.

26. Although Mrs Petterson did not give live evidence to the Tribunal and was not available for cross-examination, we accept her evidence. The affidavit of Mrs Petterson and supporting evidence in the form of a list of jewellery and photographs leave us in no doubt that Mrs Petterson was the owner of a substantial quantity of valuable jewellery. Two members of Romark's staff confirmed to HMRC that there had been sales of Mrs Petterson's jewellery through the shop. As Mr King acknowledged, it would be surprising if, having taken large amounts of cash out of the

business with a view to not including them in the takings, Mr Krempel then paid them into a bank account via a UK bank so that they could easily be traced. We find as a fact that Mrs Petterson gave the items of jewellery listed in her statement to Mr Krempel to sell so that he could buy an apartment in France. We also find that those items were sold over the next two or so years and were the source of the amounts paid into the joint account in Guernsey and ultimately used to buy the apartment in France.

27. In view of our findings in relation to the assessments for 2003 and 2004, it follows that there was no evidence to support the estimated assessments for 2005 to 2007. The penalty assessment also falls away.

10 **Decision**

28. We find that Romark did not understate its profits on its tax returns for the tax years in question. We find that the assessments to tax are excessive and there is no liability to a penalty. Accordingly, the appeal is allowed.

29. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**GREG SINFIELD**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 4 JULY 2012**

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