



**TC02364**

**Appeal number: TC/2010/00396**

*Income Tax – Discovery Assessment – double counting of Foreign Tax Credits –  
time for making Discovery Assessment – awareness of error in Self Assessment Tax  
Return*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**KENNETH GOBIE**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE W D F COVERDALE  
MR R PRESHO**

**Sitting in public at North Shields on 22<sup>nd</sup> July 2011**

**The Appellant in person**

**Mrs R Oliver, Officer of HMRC, for the Respondents**

## DECISION

1. Mr Gobie appeals two Income Tax Self Assessment Discovery Assessments dated 22.05.2009 under the provisions of S 29 Taxes Management Act 1970 relating to the tax years 2004/05 and 2005/06. The substantial issue before the Tribunal is whether he claimed a Foreign Tax Credit twice in his Self Assessment Tax Return for each of those years and, in particular, whether the Discovery Assessments in the sums of £10731.97 and £19837.18 respectively give rise to a recoverable liability for Income Tax.

2. During the years 2004/05 and 2005/06 Mr Gobie was employed by AMEC in both the UK and in Nigeria. Tax was deducted by his employers from his earnings and separate amounts were paid to HMRC in the UK and to the Nigerian Tax authorities. The tax payments were as follows:

YEAR	TOTAL EARNINGS	UK TAX	NIGERIAN TAX	TOTAL TAX
2004/05	54749	3863.40	10116.85	13980.25
2005/06	100276	12230.42	19837.18	32067.60

3. No Self Assessment Returns were issued to Mr Gobie for the years 2004/05 and 2005/6 but paper Returns were received by HMRC under cover of a letter dated 17.11.2006 from his Accountant. These generated repayments of Income Tax namely:

- 2004/05 £9989.90 on 08.02.2007
- 2005/06 £19835.18 on 16.01.2007.

4. Subsequently the Self Assessment Tax Returns were reviewed by HMRC and it was found that the above details had in fact been entered as:

YEAR	EARNINGS	UK TAX	FOREIGN TAX CREDIT (NIGERIAN TAX)
2004/05	54749	13980.25	10116.85
2005/06	100276	32067.60	19837.18

5. It is therefore now apparent that the total tax had been entered as UK Tax i.e. including the Nigerian tax. There had been double counting. On 26.11.2008 HMRC wrote to Mr Gobie advising that he had, on his Self Assessment Tax Return, claimed the Foreign Tax Credit twice. Mr Gobie's accountant replied and provided copies of the forms P60 provided to Mr Gobie by his employer AMEC. The accountant acknowledged that the Self Assessment Returns were incorrect and that the Foreign

Tax Credit had been claimed twice but maintained that the errors were a consequence of misleading information on the forms P60 provided by the employer.

6. Thereafter, on 22.05.2009, HMRC issued the Discovery Assessments that are the subject of this appeal.

5 7. In his letter of appeal Mr Gobie says that his Self Assessment Tax Return was submitted online and he never requested a tax rebate; he assumed that all facts and figures had been checked; he has not intentionally claimed the tax refund twice; HMRC should be responsible for the mistake.

10 8. On behalf of HMRC Mrs Oliver, the Presenting Officer, has observed that no online Return was ever received by HMRC: it was the paper Returns sent on 17.11.2006 that were processed by HMRC.

9. The Tribunal observes that the (incorrect) figures recited in Paragraph 4 above were, in fact, taken from Mr Gobie's Returns and it was from those Returns that "overpayments" of the sums mentioned in Paragraph 3 originated.

15 10. Section 29 of the Taxes Management Act 1970 deals with the matter of discovery of a loss of tax and defines when an assessment can be made: S29(3) sets out two conditions, either of which must be met before an assessment can be made. It is the second of those conditions that is in issue before the Tribunal today. S29(5) states that:

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(5) The second condition is that at the time when an officer of the Board –

(a) ceased to be entitled to give notice of his intention to enquire into the taxpayer's return ..... in respect of the relevant year of assessment; or

(b) informed the taxpayer that he had completed his enquiries into that return,

25 the officer could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the situation .....

11. Section 29(6) defines 'information made available' as (paraphrased):

30 (a) Contained in the taxpayer's return or accounts, statements or documents accompanying it;

(b) Contained in any claim by the taxpayer;

(c) Contained in documents, accounts or particulars produced by the taxpayer during an enquiry;

35 (d) Information the existence of which could reasonably be expected to be inferred from information falling within paragraphs (a) to (c) above or is notified in writing by the taxpayer to an officer ....

12. Mr Gobie's Returns were submitted by letter dated 17.11.2006; the window of enquiry for HMRC for both years therefore closed on 17.11.2007.

13. It is apparent that the trigger for HMRC being alerted to the overpayment was the receipt of the Employer's PAYE Returns by way of forms P14 in respect of Mr Gobie. These were submitted by the Employer on a date after 17.11.2007. It was not until 26.11.2008 that HMRC wrote to Mr Gobie about his 2004/05 and 2005/06 Self Assessment Tax Returns and thereafter there was further correspondence about the apparent double claim in respect of Nigerian tax and this led eventually to the Discovery Assessments the subject of this appeal.

14. The Tribunal acknowledges that a significant factor leading to the incorrect completion of Mr Gobie's Self assessment Returns, and the inappropriate reference to "overpayments", was the unclear and possibly misleading P60 forms supplied by his employer. These contained manuscript alterations indicating smaller (but correct) amounts of UK tax deducted from earnings but Mr Gobie's accountant used the original (incorrect) figures in completing his Return. The accountant has acknowledged, by letter dated 26.03 2009, that in consequence "the tax returns were not correct". Mr Gobie has clearly relied upon his accountant in the matter of completing the returns and the Tribunal takes this opportunity of confirming that there has been no dishonesty on his part.

15. P60 forms are evidently not routinely sent by employers to HMRC. The employer sends P14 forms to HMRC but these only contain reference to UK tax, not overseas tax. Mrs Oliver, the Presenting Officer, has produced a bundle of those P14 forms to the Tribunal and they do indeed refer only to UK tax, not Nigerian tax. She explains that HMRC does not routinely scrutinise P14 forms and will only do so if there is reason to question a tax return; the forms are submitted by the employer as part of PAYE Returns.

16. The Tribunal concludes that at the time when HMRC's window of enquiry closed (17.11.2007) it had relied entirely upon information supplied by Mr Gobie and his accountant in his Self Assessment Tax Return and had no knowledge of the error made in completing that Return. HMRC could not reasonably have been expected, from information provided in writing by Mr Gobie or otherwise, to be aware of the loss of tax.

17. Mr Gobie or his accountant could have checked the figures on the P60 forms themselves and indeed, because the P60s could be considered misleading, it would have been prudent to do so in the light of the manuscript alterations, the amounts that had been detailed as Nigerian tax credits and the calculated overpayments. Confirmation could have been sought from AMEC as to actual UK tax and foreign tax.

18. The Discovery Assessment for the year 2004/05 in the sum of £10731.97 includes £1812.00 in respect of "additional income". Mr Gobie's appeal relates to the entire Discovery Assessment but there have been no submissions or argument today about the tax on that additional income. Since it does not appear to be in dispute the

Tribunal concludes that it has properly been included in the Discovery Assessment for the year 2004/05.

5 19. While Mr Gobie placed the blame for this situation on his accountant and his employers this did not affect the correctness of the decision of HMRC to recover the overpayment.

10 20. Therefore the Discovery Assessments were properly made. They include the correct amounts of income and tax deducted in the UK and Nigeria. They reflect the correct liabilities and were correctly made under S29 Taxes Management Act 1970. The amounts of the Assessments are recoverable from Mr Gobie. This appeal is dismissed.

15 21. 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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**W D F COVERDALE  
TRIBUNAL JUDGE**

**RELEASE DATE: 23 October 2012**

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