



TC02467

Appeal number: TC/2012/03800

INCOME TAX – appeal against penalty imposed for carelessness in completing tax return – appellant admitted carelessness in respect of one aspect of his return but asked for penalty to be suspended as he had an otherwise good record and submitted that in respect of the other omission he had not been careless – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RICHARD SUMMERSELL

Appellant

- and -

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

**TRIBUNAL: JUDGE SANDY RADFORD
IAN PERRY**

Sitting in public at Bristol on 18 October 2012

The Appellant in person

Mr J Lloyd, officer of HMRC, for the Respondents

DECISION

5 1. This is an appeal against the penalty of £4,613 imposed in respect of the incorrect tax return completed by the appellant for the tax year 2009/10.

2. The appellant claimed that the whole penalty was not due and that which was due should be suspended.

Background and facts

10 3. The appellant is a patent attorney who was made redundant by AstraZeneca (“the Company”) in 2009. He received a redundancy payment and the conditions for the redundancy were clearly set out in a letter from the Company dated 22 January 2009. The letter included information on the tax which would apply and explained that whilst the first £30,000 was free of income tax, this would not satisfy any additional or higher rate income tax liability that he might have and that any such
15 further tax would be recovered directly from him by HMRC.

4. In an email dated 18 August 2009 the Company confirmed that his employment would cease on 22 August 2009 and that his redundancy payment would be £181,138.25. The Company confirmed in the email that to the extent that the payment was subject to tax the Company would deduct 20% basic rate tax but stated
20 that the appellant should note that this would not satisfy any additional or higher rate tax. The email also informed the appellant that details of the payment should be included in his tax return and if he did not receive a tax return then he should contact his local tax office to inform them of the payment.

25 5. However the appellant omitted the redundancy payment from his tax return and whilst he admitted that this was careless he asked that the penalty in respect of this omission should be suspended.

6. On his tax return the appellant stated that his total income for the year was £62,241 whereas the correct figure was actually £216,012 as he had also omitted to declare the proceeds from the sale of some of the Company shares resulting in further
30 income of £1,617.98 and a refund of £14.52 from the Company’s Partnership Share Scheme.

7. On 11 May 2010 the appellant wrote to HMRC and informed them that he had inadvertently opened two cash ISA accounts in the previous year and sought their advice as to how to correct this.

35 8. On 4 March 2011 HMRC opened an enquiry into the appellant’s tax return and consequently discovered the omissions from his return.

Appellant's submissions

9. The appellant submitted that having received the redundancy letter of January 2009 he had returned a signed copy and did not look at it again until his tax return was investigated by HMRC.

5 10. When he completed his tax return he had used the numbers on his P45 and had not received any payslip which specified the redundancy amount.

11. Whilst he admitted that he had made a mistake the appellant submitted that he had tried to complete his return correctly and as soon as he realised that he had bought two cash ISAs in error he had called HMRC.

10 12. He had however checked case law and he realised that in none of the cases had a missing redundancy payment not been deemed careless.

13. He submitted that the correct procedure would be for HMRC to suspend the penalty and he referred to the decision in *Philip Boughey v HMRC* [2012] UKFTT 398 (TC). In that case the judge decided that the decision by HMRC not to suspend
15 the penalty was flawed and the appellant submitted that the facts in the *Boughey* case were equally applicable to his matter.

14. He submitted that in the case of *Jonathan Cobb v HMRC* [2012] UKFTT 40 (TC) the Tribunal had indicated that a penalty relating to redundancy could in principle be suspended although Mr Cobb had not appealed this point.

20 15. He submitted that although HMRC had stated that they had considered whether there were any special circumstances which would give rise to a special reduction, they had not given any reasons for this decision.

16. He also referred to the *White* case in which it was stated that the failure of
25 HMRC to give reasons as to why there were no special circumstances meant that HMRC's decision was flawed.

17. Insofar as the omission of the share proceeds was concerned he submitted that
30 when previous share sales had been made 40% tax had automatically been deducted. The share sale was made online and the proceeds were paid into his bank account. He submitted that to assume that this was what had happened after he left the Company was therefore not unreasonable. He therefore had not been careless in omitting the proceeds from his tax return.

HMRC's submissions

18. HMRC submitted that 15% was the minimum chargeable in this matter because
35 the key omission was failure to account for the lump sum paid in respect of the appellant's redundancy.

19. HMRC submitted that the extent of this omission was so significant and the evidence from the Company so unequivocal that there was no scope for misinterpretation.
20. HMRC submitted that the appellant should have used the figures shown on his P60 sent to him by his employer at the end of the year and not the P45 which only contained salary payments to the date of leaving.
21. Whilst HMRC accepted that the appellant took reasonable care regarding his ISA purchases, HMRC submitted that this was overshadowed by his careless omission of the lump sum of £182,000.
22. HMRC submitted that as the appellant was aware that he could contact HMRC for advice he should have done so in respect of his lump sum payment.
23. Mr Lloyd submitted that as the penalty related primarily to the failure to declare a redundancy payment, it was not appropriate to suspend the penalty subject to certain conditions. He referred to the case of *Anthony Fane v HMRC* [2011] UKFTT 210 (TC) in which it was stated that the conditions of suspension must contain a practical and measurable condition. He submitted that this case also referred to the Explanatory Notes published with the Finance Bill which elaborated on the fact that suspended penalties were not suitable for one off transactions and were more appropriate for record keeping and accounting system weaknesses.
24. He acknowledged that in the *Cobb* case the judge had concluded that it was possible to suspend penalties where a redundancy payment was the issue but HMRC were at all times guided by the legislation which set out that the suspension period must not exceed two years. HMRC considered that it was not appropriate to set conditions for something that was most unlikely to recur within two years.
25. Mr Lloyd submitted that there was no evidence to show why the appellant's belief that the Company had completely dealt with all the taxation of the lump sum separately and correctly was reasonable. Mr Lloyd submitted that in fact the evidence pointed to the contrary.
26. He submitted that the cumulative effect of each separate piece of evidence was in his opinion sufficient to have drawn the appellant's attention to the need to declare the redundancy payment on his tax return. To have failed to do so was careless at the very least.
27. In considering suspension of the penalty he submitted that HMRC had discretion on whether it should suspend the penalty and what conditions should be set. In the overall context of this penalty it was felt that the decision not to suspend the penalty was not unreasonable given the omission of £180,000 from the appellant's tax return and the fact that £30,000 worth of tax due would have been lost if the return had not been investigated.
28. He submitted that suspending the penalty in these circumstances would in HMRC's view be at odds with the nature and scale of the careless inaccuracy.

Findings

29. The Tribunal found that the substantial amount omitted by the appellant from his tax return made the facts in his matter very different from the *Boughey* case. In the *Boughey* case the appellant claimed for an exemption which he did not realise had already been given through the PAYE system. In this matter the appellant omitted to declare some £180,000 of income on his tax return.
30. We found that at the very least before completing his tax return the appellant should have checked his bank statements for money received during the fiscal year and if in any doubt should have checked with HMRC.
31. We found that if the appellant had checked the various communications from the Company he would have known exactly how to treat the redundancy payment.
32. Although the appellant accepted that there was no point in appealing the penalty in respect of the redundancy payment, he appealed against the penalty in respect of his omission of the income relating to the sale of the Company shares. However we found that this omission too was careless.
33. We found that the appellant failed to enquire about payments received and what tax if any had been paid at source.
34. We accepted that the appellant found the whole redundancy process stressful and wished to forget it as soon as possible but during the hearing the appellant demonstrated his ability to research the various tax issues and we found that this was the diligence he should have applied to the completion of his tax return.
35. We considered the cases dealing with the suspension of penalties to which the appellant referred. We found that they were all First-tier Tax Tribunal cases which are of persuasive value only.
36. We preferred Judge Brannan's decision in the *Anthony Fane* case in which he referred to the Explanatory Notes which stated that suspended penalties were not suitable for one off transactions.
37. We were required to consider whether HMRC's decision to refuse to suspend the penalty was flawed. We found that the decision was not flawed. HMRC followed the guidelines and the careless omission was in respect of a substantial amount of tax for which a penalty was the correct decision.
38. We decided that in this matter a suspended penalty would not have been appropriate for the reasons stated above.

Decision

39. The appeal is dismissed.

40. 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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**SANDY RADFORD
TRIBUNAL JUDGE**

RELEASE DATE: 7 January 2013

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