



**TC02663**

**Appeal number: TC/2012/10716**

*PENALTY imposed as a result of alleged carelessness in completion of tax return- the appellant had been abroad for ten years and was confused by the return however the appellant took reasonable care in completing the return- appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DAVID JONES**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE SANDY RADFORD  
IAN ABRAMS**

**Sitting in public at Bedford Square, London on 26 February 2013**

**The Appellant in person**

**Mrs G Orimolye, officer of HMRC, for the Respondents**

## DECISION

1. This is an appeal against the penalty of £1,235.70 issued by HMRC on 24 August 2012 in respect of the appellant's incorrect completion of his tax return for tax year 2009/10.

### Background and Facts

2. On 31 January 2011 the appellant submitted his 2010 Tax Return on-line. When he submitted his return he made an incorrect entry on his Tax Return at box 12, Losses used against income of £20,595 under the Capital Gains Summary. The figure for losses of £20,595 was also entered in box 5 losses brought forward and used in the year.

3. The inclusion of this entry resulted in a repayment of tax for the year ending 5 April 2010. The self assessment showed an income tax overpayment of £7,981.45.

4. Subsequently the appellant telephoned the HMRC accounts office on 13 May 2011 to ask why the overpayment had not been repaid and the HMRC officer who took the call arranged for it to be paid together with a supplement of £12.47 on 20 May 2011.

5. Mr Blundell, a tax inspector in Bootle reviewed the return and made a discovery assessment under Section 29(1) of the Taxes Management Act 1970.

6. The inspector asked the appellant to call him and after informing him of some minor errors made which did not affect his tax payable, explained that his claim to set his losses against income was incorrect both because the losses had already been set against capital gains arising in the year but also because the losses did not arise in respect of qualifying shares and so there was no statutory provision for them to be set against income.

7. The consequence of this error was that the appellant's income tax liability was understated by £8,238. The appellant immediately agreed to repay the tax with interest and did so.

8. The inspector decided that the inaccuracies on the return were attributable to carelessness on the appellant's behalf and that a penalty was payable.

9. As the disclosure was prompted the penalty range was 15% to 30%. The inspector allowed the maximum reduction and charged the penalty at 15% of the understated tax liability. A penalty notice imposing a penalty of £1,235.70 was issued to the appellant on 25 April 2012.

10. After receiving the penalty notice the appellant telephoned the inspector on 11 May and stated that he considered the penalty excessive.

## Legislation

11. Paragraph 1 of Schedule 24 of FA 2007 states:

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- (1) A penalty is payable by a person (P) where—
    - (a) P gives HMRC a document of a kind listed in the Table below, and
    - (b) Conditions 1 and 2 are satisfied.
  - (2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to—
    - (a) an understatement of a liability to tax,
    - (b) a false or inflated statement of a loss, or
    - (c) a false or inflated claim to repayment of tax.
  - (3) Condition 2 is that the inaccuracy was careless (within the meaning of paragraph 3) or deliberate on P's part.
  - (4) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

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12. Paragraph 3 of Schedule 24 states:

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- (1) For the purposes of a penalty under paragraph 1, inaccuracy in a document given by P to HMRC is—
    - (a) “careless” if the inaccuracy is due to failure by P to take reasonable care,
    - (b) “deliberate but not concealed” if the inaccuracy is deliberate on P's part but P does not make arrangements to conceal it, and
    - (c) “deliberate and concealed” if the inaccuracy is deliberate on P's part and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure).
  - (2) An inaccuracy in a document given by P to HMRC, which was neither careless nor deliberate on P's part when the document was given, is to be treated as careless if P—
    - (a) discovered the inaccuracy at some later time, and
    - (b) did not take reasonable steps to inform HMRC.

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13. Paragraph 4 of Schedule 24 states

- (1) This paragraph sets out the penalty payable under paragraph 1.
- (2) If the inaccuracy is in category 1, the penalty is—
  - (a) for careless action, 30% of the potential lost revenue,
  - (b) for deliberate but not concealed action, 70% of the potential lost revenue, and
  - (c) for deliberate and concealed action, 100% of the potential lost revenue.

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14. Paragraph 10 of Schedule 24 provides that where a person who would otherwise be liable to a 30% penalty has made a prompted disclosure HMRC shall reduce the 30% to a percentage, not below 15%, which reflects the quality of the disclosure.

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15. Paragraph 11 of the Schedule states:

- (1) If they think it right because of special circumstances, HMRC may reduce a penalty under paragraph 1, 1A or 2.
- 5 (2) In sub-paragraph (1) “special circumstances” does not include—  
(a) ability to pay, or  
(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- 10 (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—  
(a) staying a penalty, and  
(b) agreeing a compromise in relation to proceedings for a penalty.

### **Appellant’s submissions**

16. The appellant submitted that it had been accepted by the HMRC officer that the error made on his electronic return was a genuine mistake. He submitted that in good  
15 faith he had paid back his rebate immediately and with interest.

17. He submitted that he had been abroad for ten years and so this was his first electronic return. He had made the mistake despite taking reasonable care to get it right.

18. The appellant submitted that he found the tax return form, or perhaps the jargon,  
20 misleading. He had inadvertently entered a figure for capital loss twice; once against a capital gain, but also in duplicate against income. He had now been informed that this was incorrect but asked what income was if not a gain? He submitted that he should not be expected to read through pages of tax guidance notes to figure this out.

19. He submitted that his worksheets were all accurate and that it was only the  
25 process of transferring the data that led to the error.

20. He drew the Tribunal’s attention to the comment made by Mr Agg, the HMRC reviewing officer, who stated that “I can understand how you may have come to enter a figure in box 12 in error particularly if you are not clear about the distinction between income and capital gains”.

30 21. He contended that when he called HMRC it was to ask if there was any issue with his return as it showed that a large repayment was due which to him flagged HMRC’S opportunity to check the return.

22. He had paid some £119,000 in tax which he thought might have been an  
35 overpayment and hence was not surprised when on submission of his return it showed that a repayment was due. He assumed that his employer had overtaxed him due to using the wrong tax code.

23. He submitted that to a layman the tax returns were not easy to complete and he still did not understand foreign dividends.

24. He submitted that he paid more than over 99% of his income tax at source. He submitted that it seemed crazy to him that he would now in the future need to pay for outside assistance to help him provide accurate returns to ensure that he did not run the risk of paying excessive penalty charges.

5 25. He submitted that if he was expected to pay such a high penalty charge for a genuine error, then why could he not claim for the last 5 years of child benefit that he was entitled to but in error neglected to claim. He had not realised that his two daughters were eligible, but had now discovered that they were but retroactive claims had a three month time bar.

10 26. Lastly he submitted that he had always paid his taxes in full and on time. He had constantly read about the tax loopholes that apparently existed for non-domiciles and celebrities. It seemed unfair therefore to him that such high penalties were imposed on the honest taxpayer for genuine mistakes.

### **HMRC's submissions**

15 27. Mrs Orimiloye submitted that the fact that the Appellant's tax return for 2009/10 included an inappropriate claim to loss relief, as a result of which his tax liability was understated by £8,238, was not in dispute.

28. She submitted that the appellant had asserted that the inaccuracy on his tax return was an error made in good faith, and that had been accepted by Mr Blundell.  
20 The question the Tribunal had to consider, therefore, was whether it was a mistake made despite taking reasonable care, or whether it was careless.

29. She submitted that legislation defined "careless" as a failure to take reasonable care. Failure to take reasonable care could be likened to the longstanding concept in general law of "negligence". In the 1856 case of *Blyth v Birmingham Waterworks Co*,  
25 Baron Alderson said:

30 "Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. The defendants might be liable for negligence, if, unintentionally, they omitted to do that which a prudent and reasonable person would have done, or did that which a person taking reasonable care would not have done".

30. She submitted that whilst the appellant did make a couple of errors which had no tax consequences, the only inaccuracy which did have tax consequences was the erroneous entry of a figure in box 12 "Losses used against income (2009-10)". As a  
35 consequence of that error, however, the appellant received a repayment of almost £8,000 which he has admitted came as a surprise to him. She submitted therefore that a prudent and reasonable man, or a person taking reasonable care, on receiving an unexpected income tax repayment, would have contacted HMRC to ask why the repayment had been issued. The appellant did not appear to have done so. In fact, he  
40 did telephone HMRC, not to query how the overpayment had arisen but to ask why it had not yet been paid.

31. She submitted that before submitting his 2010 Tax Return the appellant needed to have satisfied himself that the entries on his return were correct by reading through the information, guidance, Helpsheets and by visiting the HMRC website.

5 32. She submitted that HMRC considered that duplication in an entry by the appellant on his 2010 Tax Return with a large tax consequence was careless.

10 33. She contended that given that the inaccuracy was attributable to careless behaviour, and that the disclosure was prompted because the appellant did not tell HMRC about it until Mr Blundell raised the matter, it followed that the penalty rate was 30%, and that paragraph 10 of the Schedule allowed HMRC to reduce it to not less than 15%.

34. She confirmed that HMRC did consider whether there were any special circumstances which would justify a special reduction as envisaged by paragraph 11 of the Schedule and had concluded that there were not.

15 35. She submitted that it was not appropriate to suspend the penalty because the inaccuracy arose as a result of circumstances which may well not recur, making it impossible to set a condition which would help the appellant avoid incurring a similar penalty in the future.

20 36. She submitted that the appellant's claim for child benefit was not a matter for this appeal. In calculating a penalty the fact that the appellant had always paid his tax in full and on time was not taken into account. Only the tax undercharged as a result of a careless action was used to calculate the penalty. The penalty was calculated in accordance with legislation.

### **Findings**

25 37. We found the appellant to be honest and sincere. We found that he had made a mistake despite taking reasonable care in completing his tax return and had therefore not been careless.

30 38. We found that it was the first tax return he had completed after being abroad for ten years and it was understandable that having paid such a large sum in income tax he considered that his tax code may have been wrong which led to him being due a repayment.

39. We found that on being informed of his mistake he had immediately repaid HMRC.

### **Decision**

40. The appeal is allowed and the penalty is hereby cancelled.

35 41. 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**

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**RELEASE DATE: 18 April 2013**