



**TC04080**

**Appeal number: TC/2014/03697**

*Self-assessment return – omission of material information – whether ‘careless’  
– penalties – FA 2007 Schedule 24 – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**CHRISTOPHER RAYBURN**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE MALACHY CORNWELL-KELLY  
MS REBECCA NEWNS**

**Sitting in public at 45 Bedford Square, London, on 6 October 2014**

**The taxpayer in person**

**Mr Anjum Khawar of HMRC for the Crown**

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## DECISION

1 This appeal concerns a penalty awarded against the taxpayer of £943.50 on 3  
5 April 2014 in respect of an omission in his self-assessment return for 2011-12.  
Mr Rayburn has accepted that this penalty was partly justified and has paid  
£266.22 of it, but appeals in respect of the balance that the omission was not  
'careless' within the meaning of paragraph 3 of Schedule 24 to the Finance Act  
2007.

10 2 The figures are not in dispute. The omission from Mr Rayburn's 2011-12  
return consisted of the value of stock vested in him by his employer, the UK  
subsidiary of the US corporation Halliburton, in that tax year worth £90,686.61  
but reported as £48,906.22, the understatement of income being therefore  
15 £41,780.39. Because of the omission, the tax difference between 2011-12 and  
2012-13, which Mr Rayburn thought it was due in, was (by reason of changing  
tax rates) £6,289.10. The penalty was calculated as 15% of that amount, the  
omission being classed as 'careless' and revealed by a prompted disclosure.

20 3 The background to the situation was that Mr Rayburn's remuneration from  
Halliburton included tranches of the company's shares which were regularly  
vested in him. The reporting of this in Mr Rayburn's payslips lagged a little  
behind the actual time of vesting. Mr Rayburn was made redundant from his  
employment on 16 December 2011 and, in view of the complexity of his tax  
25 affairs, he entrusted the preparation of his next return to a firm of chartered  
accountants, to whom he gave all the papers he believed relevant.

4 Included among these, was the payslip Mr Rayburn received from Halliburton  
for January 2012 which showed the value of the final tranche of shares vested in  
30 him at the lower figure of £48,906.22. This figure in the January payslip was an  
error on Halliburton's part, and it was corrected in the February 2012 payslip to  
the right figure, namely £90,686.61. We accept that, as he claimed was the case,  
Mr Rayburn did not receive the February payslip. It was, accordingly, not passed  
to his accountant when the latter was instructed in September or October 2012 to  
35 prepare the self-assessment return for 2011-12.

5 Mr Rayburn accepted that he was, however, aware that there remained a  
payment which he had not seen as coming within 2011-12, but thought was  
within 2012-13. It was not immediately clear how Mr Rayburn reached this  
40 conclusion, and there was some suggestion that a payment into his account in  
May 2012 of £2,395.75, which he did not query, was relevant; on further  
examination of this at the hearing, it was agreed that the May payment was about  
something unconnected, and had no bearing on the issue under appeal. We are  
left therefore without a convincing explanation of why Mr Rayburn thought that  
45 the further share value disclosed in the February payslip, which he had not seen,  
was to be reported for 2012-13.

6 In March 2012, Mr Rayburn said that he had tried to sell some of his  
Halliburton shares before the end of the tax year, but for technical reasons –  
50 which he could not recall – he had not been able to do so. Asked whether he had  
checked that the share value shown in his January payslip corresponded to the  
real value of the shares that he knew he was entitled to receive, Mr Rayburn  
replied that he had not, even though their value was publicly quoted.

*The Legislation*

7 The Finance Act 2007, Schedule 24 provides, as relevant:-

5 *Error in taxpayer's document*

1(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.

10 (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.

15 (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.

3(1) For the purposes of a penalty under paragraph 1, inaccuracy in a document given by P to HMRC is—

20 (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

25 (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—

30 (a) discovered the inaccuracy at some later time, and

(b) did not take reasonable steps to inform HMRC.

4(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,

35 (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.

4C The penalty payable under paragraph 2 is 30% of the potential lost revenue

40 10(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a “standard percentage”) has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

(2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it—

45 (a) in the case of a prompted disclosure, in column 2 of the Table, and

(b) in the case of an unprompted disclosure, in column 3 of the Table.

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	15%	0%
45%	22.5%	0%
60%	30%	0%
70%	35%	20%
105%	52.5%	30%
140%	70%	40%
100%	50%	30%
150%	75%	45%
200%	100%	60%.] <sup>1</sup>

15(1) A person may appeal against a decision of HMRC that a penalty is payable by the person.

(2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by the person.

5 (3) A person may appeal against a decision of HMRC not to suspend a penalty payable by the person.

(4) A person may appeal against a decision of HMRC setting conditions of suspension of a penalty payable by the person.

10 17(1) On an appeal under paragraph 15(1) the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 15(2) the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

15 (5A) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 16(1)).

#### *Submissions and conclusions*

20 8 Mr Rayburn emphasized that the error was made in good faith, on an honest misunderstanding of his rather complicated affairs, and that he fully intended the missing value to be reported in the following tax year, 2012-13. The fact that he had not received his February 2012 payslip from Halliburton had meant that Mr Rayburn’s accountant had not been able to pick up the error when all the papers for 2011-12 had been passed to him. Moreover, Halliburton regularly deducted 41% of the value of shares vesting in order to take account of the standard higher rate of income tax, which appeared to lessen the urgency of the situation.

30 9 For the Revenue, Mr Khawar submitted that Mr Rayburn had been less than attentive to his affairs and should have checked the position. Although the value of the vested shares did not flow through to Mr Rayburn’s bank account in the form of cash where he must have noticed it, it was still incumbent upon him to check all the

facts fed to his accountant. The penalty had been calculated at its lowest in the circumstances, and it was accepted that there was no question of fraud or dishonesty.

5 10 We are not able to escape the conclusion that in the circumstances Mr Rayburn was less than careful. In December 2011, he had been made redundant – a discouraging experience for anyone – but one which would be likely to sharpen a person’s concern to see that his income was not below his expectation. But, however that may be, applying the objective test required by paragraph 3 of Schedule 24, and disregarding any special circumstances, we consider that any taxpayer  
10 receiving bonus shares would be astute to ensure that the value of those delivered was in line with what it ought to be; in this case it was only 54% of the value that would have been expected.

15 11 Since the payslips showed the gross value of the shares, checking that they were of at least approximately the right value would not have been difficult. Moreover, the exercise of seeking to sell some of the shares in March 2012 must have given Mr Rayburn a further opportunity to check up on the figures he had been presented with in the payslips that he had had. Overall, although Mr Rayburn understandably desired to transfer the burden of achieving accuracy in his self-assessment return to  
20 his accountant, the responsibility remained with him to ensure that the accountant had reliable information to work from. We conclude that Mr Rayburn did not take reasonable care in doing this and that the appeal must fail.

*Further appeal rights*

25 12 This document contains the full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply in writing 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 the tribunal no later than 56 days after this decision is sent to that  
30 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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**MALACHY CORNWELL-KELLY  
TRIBUNAL JUDGE**

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**RELEASE DATE: 20 October 2014**

