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**TC04451**

**Appeal number: TC/2015/00190**

10 *VAT – penalty for inaccuracies on VAT return, whether inaccuracies were a result of careless behaviour –yes. Whether rules for mitigation of penalty applied properly – yes.*

15 **FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**GDECO LIMITED.**

**Appellant**

**- and -**

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

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**TRIBUNAL:    PRESIDING MEMBER  
                  PETER R. SHEPPARD FCIS FCIB CTA  
                  AIIT**

25 **The Tribunal determined the appeal on 27 May 2015 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 2 January 2015, and HMRC’s Hearing Submission (Statement of Case) with attachments received by the Tribunal on 23 February 2015. The Tribunal wrote to the Appellant on 2 March 2015 indicating that if they wished to reply to HMRC’s Hearing Submission they should do so within 30 days. No**  
30 **reply was received by the Tribunal.**

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## DECISION

### 1. Introduction

This considers an appeal against a penalty of £1,267.44 levied by HMRC for the submission of an inaccurate VAT Return for the period ended 30 April 2014.

### 2. Statutory Framework

Finance Act 2007 Schedule 24 covers penalties for inaccurate returns

VAT Act 1994 Schedule 8 Group 5 item 2(a) covers the zero rating of the construction of new dwellings.

### 3. Facts.

The appellant is in the business of new housing development in the Cudworth, Barnsley area. Its director Robert Wicks is the sole director who has responsibility for invoicing, record keeping and VAT return submission. On 15 July 2014 an officer of HMRC visited the appellant for the purpose of checking the appellant's VAT return for the period ended 30 April 2014 which showed a repayment due to the appellant in the sum of £6,746.08. The result of that visit was that the officer had concerns over two matters.

Firstly a claim for £1,699 being the input tax on the purchase on hire purchase of a photo booth. The finance documents showed the monthly instalments due are £381.66. On enquiry the officer was informed that the photo booth was for the director's son who operated a wedding photography business. The son was unable to get the hire purchase agreement in his own right. The son's wedding photography business is not VAT registered. The officer was advised that it was intended that the photo booth be leased to the son for £381 per month. It was ultimately the aim to sell the photo booth to the son. Despite the purchase being made in April 2014 no monthly lease rentals had been invoiced to the son by September 2014.

The officer therefore considered that the purchase was not in the furtherance of the appellant's business and disallowed the input tax.

Secondly the claiming of input tax of £4,560 on an invoice issued to the appellant by Oakstone Homes Ltd. for "building works completed". This invoice was in respect of the construction of a new home and should have been zero-rated for VAT purposes.

The VAT return for Oakstone Homes Ltd. which one would expect to include the incorrect output tax on the invoice issued to Gdeco Ltd was due by 7 July 2014 but at the time of the visit had not been received by HMRC.

The sole director of Oakstone Homes Limited is also Robert Wicks who also has responsibility for invoicing, record keeping and VAT return submission for that company.

As the supply was correctly zero-rated and in the absence of a return from Oakstone Homes Ltd. HMRC disallowed the claim for £4,560. HMRC wrote to the appellant by e-mail on 17 July 2014 outlining these concerns.

4. HMRC then went on to consider whether or not they should levy a penalty for an inaccurate return. HMRC issue a fact sheet entitled “Penalties for inaccuracies in returns and documents.”

Penalties fall into various ranges depending on the behaviour of the taxpayer. The first decision is whether the disclosure to HMRC was prompted or unprompted. It is clear that the disclosures were the result of a visit by HMRC so were prompted disclosures HMRC then consider which of 4 categories the prompted disclosure falls into i.e. Reasonable care; careless; deliberate; and deliberate and concealed. The penalty range is determined by which category is appropriate. In this case whilst HMRC considered whether or not the appellant’s behaviour was deliberate they eventually decided it was at best careless. The penalty range applicable to prompted disclosure in the careless behaviour category is 15% to 30%.

5. HMRC may reduce the penalty based on the quality of disclosures given (Finance Act 2007 Schedule 24 paragraphs 9(1),9(3) and 10.A person makes a disclosure by telling HMRC about it (telling); giving HMRC reasonable help in quantifying the inaccuracy (helping); and allowing HMRC access to records (giving access).

Telling can give up to 30% reduction. In this case the officer decided on a 20% reduction. The full reduction was not given because no explanation of how or why the inaccuracy arose in circumstances where the inaccuracy was made by someone who has been involved in the construction of new houses for some time.

Helping can give up to 40% reduction but the officer allowed 30% because the help was reactive rather than pro-active with repeated requests for information having to be made.

Giving Access can give up to 30% reduction however the officer gave only 15% reduction because whilst access to records was given during thye visit repeated requests for copies of Oakstone Homes Ltd’s VAT detailed report was never made available despite repeated requests.

The total of the reductions granted by HMRC is therefore 65%. The penalty is in the range 15% to 30% i.e. arrange of 15%. The reduction from the maximum 30% is therefore  $65\% \times 15\% = 9.75\%$ .

The penalty rate is therefore 30% reduced by 9.75% which is 20.25%.

The overclaimed tax was £6,259 which when multiplied by 20.25% gives a penalty of £1,267.44.

## **6.Appellant's submissions**

On 17 July 2014 in response to an e-mail from HMRC the appellant sent an e-mail which stated

“Photobooth,,,. How you can arrive at a decision that it is not a legitimate claim to input tax is somewhat beyond belief, a three year period rented to my son is quite legitimate quite clearly producing a profit for Gdeco Limited. It was also made quite clearly to yourself that the invoicing of rental of the booth would start from this month end.

I will send you I the next couple of days the requested Sage VAT account printout which will clearly show and show the large sum of monies due to this company from HMRC.....”

7. On 12 August 2014 in response to a chasing e-mail from HMRC dated 30 July 2014 the appellant wrote

“Please find attached, Oakstone sage info it should be noted the large sums due to Oakstone from HMRC.”

On 3 December 2014 the Appellant wrote to HMRC in response to HMRC's letter of 14 November explaining the penalty. The appellant states:

“Gdeco Limited and Oakstone Homes Ltd are separate legal entities under UK law and indeed they have slightly different officers and shareholding distribution.

Therefore if one company submits an invoice to the other then it is obliged to pay it in full for goods supplied.

As for not co-operating I quite frankly find this statement laughable we supplied information as required. However it was not complicated being that at the period in question the account invoices only totalled 7 in number hardly complicated and all were checked during the VAT inspection.

VAT output on one invoice 4560.00 being part of the alleged £6,259.00 PLR. We were told by the inspector we could not claim it and a credit issued to Oakstone and the error was satisfied. However the sum of £4,560 was in any event paid to Oakstone as it became an input and not an output due to the actions of the inspector, quite simply whichever way this could be looked at the revenue would have never been due to HM Customs which only leaves any PLR of £1,699 which was obviously an honest mistake being that the inspector thought it would be OK but had to clarify the matter back at the office.

Therefore I feel the penalty is excessive in any event.”

In the Notice of Appeal dated 2 January 2015 the Appellant states

“The penalty is total unfair due to the fact that the related company claimed the money back from HM VAT and was for goods, the other was simply a mis-declaration which even the inspector was not even sure about. The inspector also claimed none-co-operation which is stupid in the extreme as the books at that period involved 7 invoices.

## **8. HMRC Submissions**

HMRC say that the appellant was invoiced by Oakstone for “Building works completed in connection with the construction of new homes which would be zero-rated under VAT Act 1994 Schedule 8 Group 5 item 2(a). The invoice incorrectly showed VAT of £4,560 which was claimed by the appellant yet the corresponding output tax was not accounted for by Oakstone Homes Ltd which was controlled by the sole director of the appellant. Therefore the input tax was disallowed.

HMRC say the input tax relating to the purchase of the photo booth was not incurred in furtherance of a business by the appellant. At the time of their visit no invoices had been raised in respect of any onward supply to the Director’s son nor had there been any payments made to the appellant in respect of leasing the photo booth. Therefore the claim for the input tax was disallowed.

HMRC point out that the appellant does not dispute the matters and does not dispute the assessment in respect of them. However he does dispute the penalty.

HMRC applied the penalty as detailed in paragraphs 5 and 6 above. It is in some circumstances possible for them to suspend a penalty providing certain conditions are met. One of these is that all returns should be submitted on time during the suspension period. The appellant’s return for the period ended 31 July 2014 was submitted late as indeed have all returns since the appellant was registered for VAT. HMRC therefore do not consider suspension is appropriate.

## **9. The Tribunal’s observations**

HMRC have applied the penalty that is appropriate for careless behaviour. The definition of careless is provided in Schedule 24, paragraph 3(1); Finance Act 2007 as “a failure to take reasonable care”.

The appellant points out that there were only seven invoices in the period which he provided for HMRC to inspect. It is a pity he had not checked them before submitting the return. In the Tribunal’s view the fact that two out of the seven invoices were incorrectly claimed shows that insufficient care was taken in preparing the return and making the claim. The appellant has not established that his behaviour was not careless. As the sole director having responsibility for the production of the VAT returns and VAT invoices for both the Appellant and Oakstone Homes Ltd. and having been in the property industry for some years he should have known that the supply from Oakwood Homes Ltd to the appellant was zero-rated. He also knew or should have known that whilst the Appellant had claimed the input tax of £4,560 Oakwood Homes Limited was late in submitting its VAT return showing the

corresponding output tax by the time of the visit from HMRC. In the Tribunal's view HMRC have been generous in describing this behaviour as careless.

In respect of purchase of the photo booth the purpose of this was clearly to assist the son who could not get the finance himself. The appellant was not seeking to gain any profit from the acquisition which had little to do with its property business. The director should not have included the input tax of £1,699 on this expenditure in the company's VAT return. By September 2014 the appellant had still not provided to HMRC any evidence of rentals invoiced to or paid by the director's son. In the Tribunal's view HMRC have again been generous in describing this behaviour as careless.

Thus the total input tax overclaimed was £6,259.

HMRC applied the legislation correctly and has calculated the penalty of £1,267.44 for the provision of an inaccurate return for the period ended 30 April 2014. The penalty being applied in accordance with the guidelines for careless behaviour as outlined in paragraphs 5 and 6 above as being 20.25% of £6,259. Therefore the appeal is dismissed.

19. 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.

**PETER R. SHEPPARD**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 5 JUNE 2015**