



TC04919

Appeal number: TC/2015/06978

*INCOME TAX – penalties for careless inaccuracies in self-assessment
income tax returns – sch 24 FA 2007 – appeal against penalty and refusal to
suspend – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Mr SUKHJIT SINGH

Appellant

- and -

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

**TRIBUNAL: Judge Peter Kempster
 Mr Terence Bayliss**

Sitting in public at Centre City Tower, Birmingham on 24 February 2016

The Appellant did not appear and was not represented

Mr C Smithson (HMRC Appeals Unit) for the Respondents

DECISION

1. The Appellant (“Mr Singh”) appeals against penalties assessed by the Respondents (“HMRC”) for careless inaccuracies in his self-assessment income tax returns for the tax years 2009-10, 2010-11, 2011-12 and 2012-13.

2. The Appellant did not appear and was not represented. Mr Singh’s notice of appeal dated 30 November 2015 was filed on his behalf by a firm of accountants (Primus Accountants). On 16 December 2015 the Tribunal wrote to both Mr Singh and Primus Accountants requiring written authority for Primus to act as Mr Singh’s Rule 11 representative (Rule 11(2) refers). Neither Mr Singh nor Primus Accountants replied. On 21 December 2015 the Tribunal wrote to Mr Singh notifying him that his appeal was to be heard on 24 February 2016. Prior to commencement of the hearing the Tribunal’s clerk telephoned Primus Accountants using the telephone number stated on the notice of appeal, but there was no reply. That was done on the instructions of Judge Kempster and notwithstanding the absence of any reply to the Tribunal’s 16 December letter. The Tribunal was satisfied that reasonable steps had been taken to notify Mr Singh of the hearing and considered that it was in the interests of justice to proceed with the hearing, pursuant to Tribunal Procedure Rule 33.

Facts

3. On 3 December 2014 HMRC opened enquiries under s 9A Taxes Management Act 1970 into Mr Singh’s self-assessment income tax returns for the tax years 2009-10, 2010-11, 2011-12 and 2012-13. HMRC notified him that they were checking his claims for employee travel expenses in those returns, and asked for stated information in support of those claims. HMRC also wrote similarly to Mr Singh’s then adviser (“the First Adviser”). In the absence of any reply HMRC wrote again on 26 January 2015 to both Mr Singh and the First Adviser requiring the information by 17 February 2015, after which the enquiries would be closed on the basis that the claims were incorrect. In the continued absence of any reply HMRC issued a formal closure notice (s 28A TMA 1970 refers) for all four tax years on 23 February 2015. The closure notice also notified an inaccuracy penalty of £3,033.90 (aggregate for all four years).

4. The First Adviser appealed to HMRC against both the closure notice and the penalties. No evidence was supplied to support the appeal and on 3 September 2015 HMRC confirmed their decision. Mr Singh’s new adviser (Primus Accountants) requested a formal review of the closure notice but that was made late and HMRC declined to accept it out of time. However, there was further correspondence on the matter. On 30 October 2015 HMRC reiterated to Primus Accountants that “in the absence of contracts, receipts/invoices, mileage logs etc we have literally no basis to form a view of the likely level of allowable expenditure” and declined to adjust the closure notice. On 16 November 2015 HMRC wrote to Primus Accountants setting out in detail the calculation of the penalties and offering a formal review. On 30 November 2015 the notice of appeal against the penalties was filed with the Tribunal.

Law

5. Schedule 24 Finance Act 2007 provides for penalties for errors in returns.

6. In summary:

5 (1) Distinction is drawn between inaccuracies that are careless and those that are deliberate (para 3 sch 24).

(2) For careless inaccuracies the standard penalty is 30% of the potential lost revenue (para 4).

(3) Penalties may be reduced for disclosure by the taxpayer, depending on the quality of disclosure (paras 9-10).

10 (4) Penalties may be suspended (para 14):

“(1) HMRC may suspend all or part of a penalty for a careless inaccuracy under paragraph 1 by notice in writing to P [ie the taxpayer].

(2) A notice must specify—

15 (a) what part of the penalty is to be suspended,

(b) a period of suspension not exceeding two years, and

(c) conditions of suspension to be complied with by P.

20 (3) HMRC may suspend all or part of a penalty only if compliance with a condition of suspension would help P to avoid becoming liable to further penalties under paragraph 1 for careless inaccuracy.

(4) A condition of suspension may specify—

(a) action to be taken, and

(b) a period within which it must be taken.

...”

25 Appellant's case

7. The grounds of appeal (contained in a letter from Primus Accountants to HMRC dated 29 October 2015 and incorporated by reference in section 7 of the notice of appeal) are:

30 (1) Mr Singh appeals against the penalty and also applies for any penalty to be suspended.

(2) Mr Singh was not in a position to disclose the inaccuracy because he was not involved in the tax returns; the First Adviser calculated all the estimated expenses without the knowledge or involvement of Mr Singh.

35 (3) No further travel claims had been made since 2012-13 and Mr Singh was now aware of the relevant rules and what records to keep for any future claims.

Respondents' case

8. Mr Smithson for HMRC submitted that the rationale for the penalty decision was set out fully in HMRC's letter dated 16 November 2015:

(1) Mr Singh made inaccurate returns.

5 (2) The inaccuracies were careless.

(3) Self-assessment gave responsibility to taxpayers to calculate the correct charge and take control of their own tax affairs. Where an agent was used, it was the taxpayer's responsibility to supply all relevant information to the agent.

10 (4) The standard penalty was 30%. Any reduction for disclosure was dependent on the quality of disclosure but no response had been received to requests for information – thus no reduction was made.

(5) Suspension of the penalty would not be permitted under the legislation – as stated in the letter:

15 "The legislation requires that compliance with the condition(s) of suspension would avoid further similar penalties. The only apparent condition that could be imposed was that [Mr Singh] should not make the same mistake again and this does not fall within the circumstances of the legislation. However, if you believe, or can provide, any appropriate condition to allow suspension of the
20 penalty, then please let me have this in writing so I may consider."

Consideration and Conclusions

9. Mr Singh has not disputed that his returns contained inaccuracies in relation to the travel claims. We find that those inaccuracies were careless. Mr Singh had a responsibility to ensure the accuracy of his returns, even though he delegated the
25 preparation of the returns to an agent. We agree with the views of the Tribunal in *Michael Anderson Lithgow v HMRC* [2012] UKFTT 620 (TC):

30 14. If a taxpayer claims that his accountant has been negligent, for example, by failing to meet a deadline for filing a return or undertaking some or other administrative task, then the negligence of the accountant will not usually provide a defence to a penalty because the accountant is simply acting as the taxpayer's agent or functionary in filing the document that needs to be filed by a particular deadline. In other words, he is acting as an agent or functionary for his principal; but not as an independent professional adviser. However, in a situation
35 where a professional adviser is not retained simply to act as a functionary, but is retained to give professional advice based upon the best of his skill and professional ability, he is not then a functionary or agent for his principal. He is a professional person acting under a retainer to give professional advice upon an identified issue. He is bound to provide that advice to the best of his professional skill and
40 ability, whilst taking reasonable care in and about preparing and giving that advice. In other words, he is acting as a true professional, rather than as an agent or functionary.

5 15. In my judgement, where an accountant acts as an administrator or
functionary, he is acting as the taxpayer's agent and his default
(whether negligent or not) will usually provide a taxpayer with little
opportunity to claim that he is not in default of a particular obligation.
10 However, when a professional acts in a truly professional advisory
capacity, the situation is otherwise and reliance upon properly provided
professional advice, absent reason to believe that it is wrong, unreliable
or hedged about with substantial caveats, will usually lead to the
conclusion that a taxpayer has not been negligent if he has taken and
acted upon that advice.

16. This is a case where the accountant agent was a mere functionary.
Accordingly the appeal must be dismissed.”

10. Similarly, in the current appeal the First Adviser was acting as a mere
functionary and their default in submitting carelessly inaccurate returns provides no
15 defence for Mr Singh.

11. We agree with HMRC that there was no disclosure or provision of information
by Mr Singh and, therefore, no reduction of the penalty is available under paras 9-10
sch 24.

12. In relation to suspension of the penalties, we agree with the views of the
20 Tribunal in *Anthony Fane v HMRC* [2011] UKFTT 210 (TC) (at [52-69]) and the
conclusion (at [64]) that “A condition of suspension, therefore, must contain
something more than just a basic requirement that tax returns should be free from
careless inaccuracies.” HMRC invited proposals as to any such appropriate condition
but no answer was given. We conclude that there is no suitable condition in the
25 circumstances of the current appeal, and that HMRC's decision to refuse to suspend
the penalties was reasonable.

13. For the above reasons we would not adjust or suspend the penalties and
accordingly would dismiss the appeal.

Decision

30 14. The appeal is DISMISSED.

15. 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
35 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 KEMPSTER
TRIBUNAL JUDGE**

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