



TC05208

Appeal number: TC/2016/00631

Income Tax – inaccurate SA Return for 2010/11 – Penalty – Finance Act 2007, Schedule 24 – whether “careless” – Yes – Appeal refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MRS ISOBEL M DOHERTY

Appellant

- and -

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

**TRIBUNAL: JUDGE KENNETH MURE
MEMBER: MISS PATRICIA GORDON**

Sitting in public at The Royal Courts of Justice, Belfast on Monday 13 June 2016

Appellant – (not present or represented)

Respondents – Miss K Murphy and Miss L Long, Presenting Officers, HMRC

DECISION

1. This is an appeal against the imposition of a penalty of £1,483.20 in respect of
5 an under-declaration of interest of £24,000 in Mrs Doherty's Tax Return for 2010/11. Originally a higher penalty had been imposed in respect of "deliberate, but not concealed" behaviour. However, following on a Review (produced, incomplete, at C50-52 of the Bundle) this was modified to "carelessness" with a reduced penalty at 15.45% of the potential loss to the revenue (B25).

10 2. The penalty provisions are contained in FA2007, Schedule 24. Reference was made also to the decisions in *David Collis v HMRC* [2011] UKFTT 588 (TC) and *Stephen Taylor v HMRC* [2015] UKFTT 182 (TC).

15 3. Although Mrs Doherty was not present or represented, we were provided helpfully with written representations from her accountants (produced as extra papers). Essentially these argue that Mrs Doherty had instructed a professional firm to submit her Return. She had provided to them accurate and sufficient information for that purpose. However, by error of an employee of that firm a substantially lower figure for interest received had been recorded. The accountants acknowledged the error as theirs (C33). The Return had been sent to Mrs Doherty for her approval and
20 signature. The document had been returned signed by her to her accountants, but apparently the error in the amount of interest stated had been overlooked by her. A repayment of tax for 2010/11 had resulted, but in the two preceding Years repayments had been made too. That as a factual narrative was not challenged by HMRC.

25 4. The nub of the issue for us is whether Mrs Doherty should have noted and corrected her accountants' error when the Return was sent to her for approval and signature. HMRC's Presenting Officer submitted that ultimately it was her responsibility to check and correct the Return. That was required to meet the standard of reasonable care. We were referred by the PO to paras 30 and 31 of the decision in *David Collis* in which the taxpayer had failed to note the omission of benefits-in-kind
30 received in his Return.

35 5. In the present circumstances we are sympathetic to Mrs Doherty's plight, but ultimately we consider that HMRC's argument is correct. Mrs Doherty did provide accurate information to her accountant, and their employee admittedly made the error, but we consider nonetheless that Mrs Doherty's responsibility extended to cross-checking the Return before signing and submitting it to HMRC. The error was for a substantial amount.

40 6. We have to consider also two reserve arguments advanced in the written submissions. Mrs Doherty's accountants sought a *special reduction* in terms of para 11 of Schedule 24. This would require, the PO suggested, some exceptional or abnormal factor. While the concept is not statutorily defined exhaustively, we think that the PO's approach is sound. We agree that no such factor is present here.

7. Also, a *suspended* penalty was proposed by the appellant’s accountants (see para 14). A “system” to avoid further default was set out by them. However, we agree with the PO’s response that this is an exceptional remedy, appropriate only in limited circumstances. This might be apt in the case of incapacity, but no such significant factor seems to arise in the present case. The circumstances are routine except for the clerical error on the part of the accountants. While Mrs Doherty may find tax matters problematical, her cognitive abilities are not impaired. There is certainly no evidence to the contrary. The error in the present case relates to a straightforward elementary point.

8. For these reasons we consider that the appeal must fail. We think that the mitigation calculation set out at C25 fairly reflects the limited culpability and responsibility of Mrs Doherty in the present case.

9. 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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**KENNETH MURE
TRIBUNAL JUDGE**

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RELEASE DATE: 24 JUNE 2016