TC02335

Appeal number: TC/2012/06016

INCOME TAX –penalty – Schedule 24 Finance Act 2007 – penalty for careless inaccuracy in tax return – whether Appellant took reasonable care – held no - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

STEPHEN MCHALE

Appellant

- and -

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

TRIBUNAL: JUDGE GREG SINFIELD
MR IAN ABRAMS

Sitting in public at 45 Bedford Square, London on 30 August 2012

The Appellant appeared in person

Ms Susan Crane, officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. Mr McHale appealed against a penalty of £681.24 imposed under Schedule 24 to the Finance Act 2007 for a careless inaccuracy in his tax return for 2009/10. Mr McHale did not dispute that his tax return contained inaccuracies. At the hearing on 30 August 2012, Mr McHale submitted that he was not liable to pay the penalty because he had taken reasonable care. At the conclusion of the hearing, the Tribunal announced its decision which was that the appeal was dismissed.

2. On 10 September 2012, the Tribunal sent a written summary decision to the parties confirming the decision given at the hearing. The final paragraph of the summary decision stated that a party wishing to appeal against the decision must apply to the Tribunal within 28 days of the date of release for full written findings and reasons. On 26 September, the Tribunal received an application for permission to appeal to the Upper Tribunal from Mr McHale. The Tribunal decided to treat this as a request for full written findings and reasons for the decision to enable Mr McHale to apply for permission to appeal to the Upper Tribunal. We set out below in full our findings and the reasons for our decision in the appeal. If, having considered the full decision, Mr McHale still wishes to appeal against it then he must resubmit the application for permission to appeal with this decision.

Facts

3. Mr McHale gave evidence at the hearing. His evidence was not challenged by Ms Crane, appearing on behalf of HMRC. We find the material facts to be as follows.

4. Until 30 September 2009, Mr McHale, a shipping broker, was employed by Howe Robinson & Co Limited. With effect from 1 October 2009, Mr McHale was employed by Galbraith's Limited.

5. Mr McHale submitted his tax return for the year 2009/2010, in time, on 17 September 2010. Mr McHale frankly admitted that the return contained the following inaccuracies:

(1) In box 2.1, it said that Mr McHale had one employment during the period covered by the return, whereas he had two;

(2) In box 2.2, it showed Mr McHale's income from all employments as £45,000 during the period, whereas that was only the amount that he earned from his employment with Galbraith's; and

(3) In box 2.4, it showed the benefits and taxable expenses received during the period as £603, whereas that amount was only the value of benefits etc relating to his employment with Howe Robinson.

In response to a question from the Tribunal, Mr McHale said that he would have prepared his tax return from P60s provided by Howe Robinson and Galbraith's.

6. As a result of the understatement of his income and benefits in kind, the return showed an overpayment of tax by Mr McHale of £5,080.40. In August 2011, HMRC opened an enquiry into Mr McHale's tax return and discovered the errors. HMRC accepted that Mr McHale had not deliberately under-declared his income on the tax return but concluded that the inaccuracy was due to carelessness. HMRC issued a closure notice in November 2011 and imposed a penalty of £681.24 which was 15% of the amount under-declared. That was the minimum level of penalty under Schedule 24 Finance Act 2007 for a careless error. Mr McHale contested the liability to a penalty and, after a review confirmed the penalty, appealed to the Tribunal.

Legislation

7. Schedule 24 to the Finance Act 2007 provides for liability for penalties for errors in certain types of document given to HMRC, including a self-assessment return. The penalty in this case was charged under paragraph 1 of Schedule 24, which provides as follows:

> "(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."

8. The only issue in this appeal is whether Mr McHale was careless. HMRC did not suggest that the inaccuracy was deliberate or dishonest. Paragraph 3(1)(a) of Schedule 24 provides that an inaccuracy in a document is careless if the inaccuracy is due to failure by the person giving the document to HMRC to take reasonable care.

9. Paragraph 4 of Schedule 24 prescribes the amount of penalty for each type of inaccuracy. This appeal concerns a careless inaccuracy and paragraph 4(1)(a) imposes a penalty of 30% of the potential lost tax. In this case, there is no dispute that the potential lost tax was £4,541.60 i.e. the tax on the under-declared income.

10. Paragraphs 9 and 10 of Schedule 24 provide for reductions in the penalty that would otherwise be assessed where a person discloses an inaccuracy. It is common ground in this case that the disclosure made by Mr McHale was a prompted

disclosure. Paragraph 10 provides that where a person, who would otherwise be liable to a 30% penalty, has made a prompted disclosure then HMRC must reduce the penalty to a percentage, not below 15%, which reflects the quality of the disclosure. Paragraph 9 (3) provides that "quality" includes timing, nature and extent. In this case, HMRC applied the maximum reduction and imposed a penalty of £681.24 which was 15% of the amount under-declared.

Issue

11. The only issue for the Tribunal was whether Mr McHale took reasonable care when he completed and submitted his tax return for 2009/10.

Submissions

12. Mr McHale acknowledged that he had made mistakes in filling out his tax return when he did not include the earnings from his employment by Howe Robinson or the benefits and taxable expenses received from Galbraith's. Mr McHale submitted that, although his tax return contained errors, he had taken reasonable care and he should not be liable to a penalty. As evidence that he took reasonable care, he stated that he had made four previous returns which did not contain any errors. He said that the fact that a person had made a mistake did not mean that they had not taken reasonable care. He contended that HMRC's assertion that he had been careless was purely subjective. They had produced no evidence that he had been careless. At the time, he had been trying to sell his house but the deal had fallen through and he had also changed jobs. He worked long hours in a stressful environment and, at the time he completed the return, also had two young children at home. He had taken reasonable care but mistakes had occurred. In those circumstances, he should not be liable to the penalty.

13. Ms Crane submitted that the facts showed that Mr McHale had not taken reasonable care when he had completed his return. The mistakes were significant in terms of his income and should have been obvious to Mr McHale if he had checked his return before submitting it.

Discussion

14. As we have noted, there is no suggestion in this case that the inaccuracy in Mr McHale's return was deliberate or fraudulent. All that is said against him by HMRC is that the inaccuracy was careless, namely that Mr McHale's tax return for 2009/10 contained an inaccuracy, ie an understatement of his liability to tax, because he failed to take reasonable care. As it is not disputed that the tax return contained an inaccuracy, the burden of proving that he took reasonable care falls on Mr McHale. We agree with the statement of Judge Berner when he said in *David Collis v HMRC* [2011] UKFTT 588 (TC) at [29]:

> "We consider that the standard by which this falls to be judged is that of a prudent and reasonable taxpayer in the position of the taxpayer in question."

15. In our view, Mr McHale has not established that he took reasonable care when he completed his tax return. Applying the standards expected of a prudent and reasonable taxpayer in the same position as Mr McHale, we consider that Mr McHale was careless in failing to include all his earnings and report all his benefits and taxable expenses received accurately on his tax return. We considered Mr McHale's evidence but, in our view, it tended to show that he had not taken reasonable care when completing his tax return rather than the reverse. The fact that the return contained the salary from one employer and the benefits in kind in relation to another showed that Mr McHale must have had the information, probably from the P60s provided by both employers, relating to both jobs to hand when he completed his tax return. From that, we infer that, even though he had both of them, Mr McHale did not take care to transcribe the figures from the P60s correctly and the errors in the tax return were due to carelessness on his part. Further, the mistakes were such (stating that he had one job during the period when he knew that he had had two jobs; showing an amount as income which was approximately half what he had actually earned in the period) that they would have been obvious to Mr McHale on reading the entries. From that, we infer that, having made the incorrect entries, Mr McHale did not check the return before submitting it or did not do so carefully which is also careless. In conclusion, we find that Mr McHale did not take reasonable care when he completed and submitted his tax return for 2009/10.

Decision

16. For the reasons given above, our decision is that the penalty of £681.24 should be confirmed and Mr McHale's appeal is dismissed.

Rights of appeal

17. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with the Tribunal's 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.

GREG SINFIELD
TRIBUNAL JUDGE

RELEASE DATE: 25 October 2012