



**TC03592**

**Appeal number: TC/2013/06443**

*Income Tax – penalty assessment for ‘prompted careless inaccuracy’ in tax return submitted electronically – Appellant asserted that return completed correctly – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ANDREW BANKS**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE MICHAEL S CONNELL  
                  MR JOHN COLES**

**Sitting in public at 45 Bedford Square, London WC1B 3DN on 20 February 2014**

**Mr Andrew Banks, the Appellant, appearing in person**

**Ms Karen Weare, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

### The Appeal

1. This is an appeal by Mr Andrew Banks (“the Appellant”) against a penalty  
5 assessment issued on 10 June 2013 under Schedule 24 Finance Act 2007 for a  
prompted careless inaccuracy in his tax return for the year ended 5 April 2011.

### Background

10 2. The Appellant was set up within the Self-Assessment Regime by HMRC on 21  
October 2011. HMRC issued him with a Notice to File his 2011 Tax Return on 27  
October 2011 for the purpose of considering his liability to higher rate tax and any  
reduction of his personal allowance if his income was in excess of £100,000.

15 3. The Appellant internet filed his self-assessment tax return on 21 January 2012.  
HMRC say that he declared no income on his self-assessment return and that this was  
incorrect as he was in receipt of employment income and benefits from his employers.  
The Appellant was in receipt of income and benefits from Calibre One Limited which  
HMRC say was omitted from his return. The amount claimed to be omitted was  
20 income £31,925.51 with tax deducted £10,388.00, medical benefit of £236, and other  
benefits of £167.

4. The Appellant was also in receipt of income and benefits from Blackwood  
Recruitment LLP. HMRC say that this source was also omitted from the return. The  
amount omitted was income of £171,987.20 with tax deducted of £66,528.50 and  
25 medical benefit of £960.

5. The Appellant’s self-assessment calculation showed income tax due of £0.00

6. HMRC opened an enquiry into Mr Banks’ tax return on 11 January 2013 under  
30 s 9A TMA 1970 and concluded the enquiry on 11 June 2013 (Section 28A(1)&(2)  
TMA 1970) to include the two sources of income and the benefits from each source of  
income.

7. The increase in tax due was £3,241.00. This amount is not in dispute. The  
35 reason for the additional tax was that although tax had been deducted at source under  
PAYE by the Appellant’s employers, there was reduction of the Appellant’s personal  
allowance to nil. The Appellant made a payment of £3,336.12 on 12 March 2013  
to include interest.

40 8. HMRC issued a penalty assessment on 10 June 2013 for a prompted careless  
inaccuracy in the Appellant’s tax return for the year ended 5 April 2011.

9. The Appellant disagrees that a penalty is due. He says that he has not been  
45 careless and that he included his earned income in the return.

## Relevant Legislation

5 10. The relevant legislation is at Schedule 24 Finance Act 2007 summarised below.

1-

(1) A penalty is payable by a person (P) where—

10 (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—

15 (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.

20 Tax	Document
Income tax or capital gains tax	Return under Section 8 of TMA 1970 (personal return)

3-

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

(a) “careless” if the inaccuracy is due to failure by P to take reasonable care,

4-

30 (2) If the inaccuracy is in category 1, the penalty is - (a) for careless action, 30% of the potential lost revenue,

5-

35 (1) “The potential lost revenue” in respect of an inaccuracy in a document... is the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment.

10-

40 (2) Where a person who would otherwise be liable to a 30% penalty has made a prompted disclosure, HMRC reduce the 30% to a percentage, not below 15%, which reflects the quality of the disclosure.

11-

45 (10) If they think it right because of special circumstances, HMRC may reduce a penalty...

14-

50 (1) HMRC may suspend all or part of a penalty for a careless inaccuracy under paragraph 1.

(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.

15-

- 5 (1) A person may appeal against a decision of HMRC that a penalty is payable by the person.  
6 (2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by the person.  
7 (3) A person may appeal against a decision of HMRC not to suspend a penalty payable by the person.

17-

- 10 (1) On an appeal under paragraph 15(1) the tribunal may affirm or cancel HMRC's decision.  
11 (2) On an appeal under paragraph 15(2) the tribunal may—  
12 (a) affirm HMRC's decision, or  
13 (b) substitute for HMRC's decision another decision that HMRC had power to make.  
14 (3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 11—  
15 (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or  
16 (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of  
17 paragraph 11 was flawed.

### The Appellant's contentions

25 11. The Appellant says that he did not make an error in completing his tax return. All his employment income was included in his submitted return. He submitted all the details requested by HMRC in his online application, which he says was accurate when he submitted it.

30 12. The Appellant says that he suspects an HMRC system error in capturing all the details from the return. He disputes HMRC's submission that their evidence shows the return was not completed. HMRC have only sent an excerpt of the system report and have been unable to answer clear questions from him about the online submission process. He says that the investigating officer, Mr Bains, said that he could not share the 'full technological investigation' which had been carried out, and could not account for why that should be the case.

35 13. The Appellant claims that the HMRC online system is beset by well publicised technical challenges and it is not acceptable to be penalised for HMRC systems being unable to capture the information submitted. The Appellant says that he has a contemporaneous note of a conversation with Mr Bains and his comment that "system errors do happen between the different systems here at HMRC".

40 14. Mr. Banks denies the conversation referred to in paragraph 20 below, to the effect that 'he did not realise he had to declare his employment income because his employer had dealt with the tax deduction; he assumed that HMRC would have the details'. Mr. Banks says that he made his own contemporaneous notes of the call.

45 15. The Appellant says that copy emails between officers of HMRC clearly show that it is not possible for HMRC to establish that his claim (that he completed

his earned income in the return) was false. In an email to Mr Bains dated 9 May 2011, Mr Lynch of HMRC Digital Service said:

5 “When a customer completes an online return a submission receipt reference number (SRRN) is calculated based on the details entered. The reference number is unique and made up of alphanumeric characters. ...”

In his reply, Mr Bains said:

10 “You say the SRRN is calculated based on the details entered on the online return. Where can this reference be found and what would the reference have been if the employment pages had been completed? The taxpayer wants to know what checks have been made and what makes HMRC so sure the employment pages on his 2010-11 were not completed as he is adamant that the pages were completed by him, and it was our system fault for the non-capture.”

In his reply Mr Lynch said:

15 “... I’m afraid it isn’t possible to confirm what it would have been had the customer completed the employment pages as there is no set standard for each schedule within the return...”

16. The Appellant says that whilst completing his return he had to ‘log on again’ a number of times and that this might have contributed to either the information he provided not being captured or a fault in the system.

20 17. The Appellant submits that in penalty matters the burden of proof is on HMRC and no proof of carelessness has been produced. He says that he has pursued his appeal as a matter of principle, and that the cost to him in financial terms has been considerably more than the penalty amount.

#### The Respondents contentions

25 18. HMRC contend that the Appellant did not include his earned income in the tax return and omitted it because he thought that earned income did not need to be included. He was careless not to refer to ‘Guidance on how to complete the return’ which had been sent to him.

30 19. HMRC contend that a penalty is payable as the Appellant gave HMRC an incorrect document (a tax return) listed in the table in the legislation. Condition 1 is satisfied as the document contained four inaccuracies leading to an understatement of liability to tax. HMRC suggest that condition 2 is satisfied in that the inaccuracies were careless.

35 20. HMRC contend that on 21 January 2013, during a telephone call to Mr Bains of HMRC, Mr Banks said he did not realise that he had to declare his employment income because his employer had dealt with the tax deduction; he assumed that HMRC would have the details. HMRC contend that if Mr Banks really had entered his employment details on his tax return he would have told them that during that first

5 telephone conversation. Mr Banks did not do that, and only said that he had entered the employment details once he was informed that a penalty was to be charged. HMRC suspects that on the balance of probabilities the first response that he gave (he didn't know he had to enter those details because he thought HMRC already knew about them) is more likely than not to be the truth.

21. The Appellant said in his letter of 14 February 2013 that the calculation provided when he submitted his return showed that no tax was due. HMRC contend that this clearly demonstrates that he had not entered his employment income as he later alleges, because had he entered his employment income he would have been provided with an underpayment calculation. HMRC contend that this endorses its view that Mr Banks failed to complete his return fully, as he alleges.

22. HMRC says that it interrogated its computer system, and found no faults. Had the return been corrupted whilst Mr Banks was completing it, the whole return would have failed and it would have been rejected by HMRC's computer system; but that did not happen. HMRC contends that the Appellant's claim that he completed the return fully is false.

23. HMRC contend that there is no evidence for the Appellant's statement, that HMRC's computer system was "beset by well publicised technical challenges". The Appellant needs to explain exactly what well publicised technical challenges were relevant to his submission. HMRC refutes the claim completely.

24. In respect of the penalty HMRC has taken into account the quality of the disclosure in reducing the penalty from 30% of the PLR to the minimum 15% allowed by the legislation. HMRC say that they have correctly calculated 15% of the PLR to give a penalty of £486.15.

25. HMRC considered Special Reduction under Paragraph 11 but did not consider there were any special circumstances in this case which would enable HMRC to reduce the penalty.

### Conclusion

26. At the conclusion of the hearing the Tribunal gave its decision, the reasons for which now follow.

27. As the Appellant says, the burden of proof is on HMRC to establish that the Appellant was careless in completing his 2010-11 tax return. The standard of proof is on a balance of probabilities.

28. HMRC say that the Appellant declared no income on his self-assessment return and that this was incorrect as he was in receipt of employment income and benefits from his employers. It is however difficult to envisage the Appellant completing a return without any earned income details. The Appellant had no other income and so there would be little point in completing the return if he did not complete the earned income pages. It is equally difficult to envisage HMRC's systems failing in such a rudimentary way.

29. We agree the Appellant's assertion, based on what he was told by Mr Bains, that HMRC have not established with sufficient certainty that if the Appellant did not complete the employed income pages the system would necessarily show this. This raises doubt as to whether the Appellant was careless in completing his online return.  
5 On the facts and on a balance of probabilities we find that the Appellant was not careless in completing his return.

30. The Appeal is allowed and the penalty discharged.

31. 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.  
15

20

**MICHAEL S CONNELL  
TRIBUNAL JUDGE**

**RELEASE DATE: 12 May 2014**

25