TC04881

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Appeal number: TC/2015/03250

Penalty – Self-assessment – incorrect Return for 2012/13 – whether "careless" – Yes – FA 2007, Sched 24

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FIRST-TIER TRIBUNAL
TAX CHAMBER

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JOHN GRAHAM **Appellant**

- and -

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

TRIBUNAL: JUDGE KENNETH MURE, QC, CTA (Fellow)
MEMBER: CHARLOTTE BARBOUR, MA, CA, CTA (Fellow)

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Sitting in public at The Eagle Buildings, 215 Bothwell Street, Glasgow, on 26 and 30 October 2015

25 **The Appellant appearing in person**

Respondents – Mr M Mason, Presenting Officer of HMRC

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DECISION

Preliminary

1. This appeal was set down initially for 26 October 2015. Because of some confusion Mr Graham, the appellant, was not in attendance. The appeal had been adjourned previously on the application of HMRC. Given particularly that, having perused the papers, we were anxious to hear directly from the appellant himself, we considered it to be in the interests of justice to adjourn the hearing again, and happily an alternative diet of 30 October 2015 was convenient for those involved.

2. The appeal is in respect of a penalty of £318.48 in respect of an incorrect Return for 2012/13, being 15% of the sum of tax (£2,123.20) which HMRC considered was the potential lost revenue. While HMRC considered that there had been *carelessness* on the appellant's part, he had been fully cooperative in relation to their enquiries, and a maximum reduction of the penalty from 30% to 15% was appropriate.

3. The appellant disputed that he had been careless in completing his Return and gave evidence in support of this. His error had been in incorrectly recording in his self-assessment Return (see C3) his gross pensions in box 10 (the net figure had been entered) and a sum of tax deducted of £2,497 in box 11 when, in fact, only £467 had been deducted. The correct information would have been recorded in his P60. The appellant claimed to have used his bank statements. We observe that at C10 at qn 19, the net values of both of the appellant's pensions are stated.

The Law

4. The penalty regime applicable is that introduced by the Finance Act 2007, Schedule 24. Also, included in our papers is a decision of the First-tier Tax Tribunal in *Anthony Fane* (TC/2010/08765) which we found helpful, and we would refer particularly to paras 49, 50 and 51.

The Facts

5. We heard evidence from the appellant and we made further reference generally to the Bundle of correspondence and other documents produced.

6. The appellant explained that having retired from the Armed Forces, he started an electronics business which he ran for many years. It had about 10-12 employees. That business submitted tax, PAYE and VAT Returns, and their accuracy had never been disputed. The appellant had had an accountant who had submitted all his personal Returns prior to 2012/13. Having retired and now with a limited income the appellant was anxious to prepare and submit his (and his wife's) Returns personally. He felt that the professional fees of an accountant were disproportionate to the amount of tax involved.

7. The appellant confirmed that a tax repayment had been made to him. This did not raise his suspicions, however. While in business repayments of tax had been

made commonly to him. He only learned of the error in the Return on being advised by HMRC. He tried to trace the error but without success. He believed genuinely, he insisted, that he could complete the Return accurately himself. In any event he submitted that the penalty was excessive.

8. On questioning by the Tribunal the appellant acknowledged that he had completed the narrative answer at C10. He had assumed that tax codes relating to him were correct. At C3, box 10, he acknowledged that he had entered "£9,985" in box 10 as being the net amount of pensions received. He could not explain how the entry of tax deducted of "£2,497" in box 11 had been recorded. He had not paid tax of that amount. He surmised that it might have been inserted automatically. He could not be certain or more helpful in his answer, he explained, as the Return had been made so long ago.

9. The Tribunal then asked the appellant about the sources of information used. In particular he was asked whether he had used his P60s. The appellant stated that he had not. He could not find them, nor had he asked for copies. He had relied on his bank statements instead. The appellant considered that he might not have considered HMRC's guidance with sufficient care. He believed that the task of completing the Return would be straightforward.

10. In cross-examination by Mr Mason the appellant accepted that he had not sought advice from HMRC or anyone else. Mr Mason then invited the appellant to comment on certain discrepancies. On C24, the employer's Return for 2012/13, the appellant's gross annual income is recorded as £2,818.11, with tax deducted of £351.80. The gross pensions and tax deducted are shown by HMRC at B11, reflecting the P60's to which reference should have been made. These figures, Mr Mason suggested, were what should have been stated in C3, boxes 10 and 11. (It seems clear that in box 10 the appellant entered a total figure for pensions <u>net of tax</u>, but there is no basis for the entry of tax deducted of £2,497 in box 11.) The appellant conceded that he had not read HMRC's guidance notes: he had believed that the process would be simple.

Submissions

11. We heard first from Mr Mason on behalf of HMRC. He submitted that the gross income and tax deducted in respect of each pension would have been stated on the P60's which the appellant would have received. These figures should have been transferred into the Return. By the appellant's stating incorrect figures, it appeared that tax had been overpaid by him, and that was refunded. While the appellant had assumed that basic rate tax had been deducted, he had not sought guidance or clarification about completing the Return. A prudent individual would have done so, Mr Mason suggested. Hence, Mr Mason argued, the appellant should be considered to have been "careless" in the context of the penalty regime introduced by FA2007, Sched 24.

12. Mr Mason acknowledged that there had been full disclosure and cooperation by the appellant once the error had been pointed out. Thus a 30% penalty had been

reduced to a minimum of 15%. That had been levied in respect of a potential loss to HMRC of £2,123.20, being the total of the repayment of £1,452.70 and the tax liability of £670.52 ultimately found due.

13. Mr Mason indicated that "suspension" had been considered but ruled out as inappropriate. He did not consider that "special circumstances" arose.

14. In reply the appellant stressed that the error had not been intentional. He considered that the amount of the penalty was unfair. If the provisions of Schedule 24 were to be applied rigidly, penalties should be reduced. He had found the system of electronic submission of the Return very complicated and not user-friendly, even although he had been in business for in excess of 30 years. He had not learned of the mistake until too late.

Conclusion

15. Much of the appellant's evidence was not controversial. However, we did not consider that he provided a satisfactory explanation of certain crucial entries in the Return. We considered three entries in particular. We noted the brief narrative at C10 where the appellant has recorded correctly the net amounts received in respect of each of the two pensions. He has not indicated there their gross value, nor has he stated a sum of tax deducted. He has made an unspecific reference to basic rate tax as "presumably" having been deducted. Thus far we do not consider that the appellant can be faulted.

16. However, there are two discrepancies on page C3 which cannot readily be explained away. At box 10 the gross (or pre-tax) amount of the pensions should be recorded, and at box 11 the amount of tax actually deducted should be stated. (We understand that HMRC's guidance notes indicate this.) In fact it is the net of tax total of the pensions which is stated at box 10, viz £9,985. Further, having heard from the appellant we are unclear as to why "£2,497" was entered in box 11. We would observe that it represents basic rate tax of 20% on net income (ie 80%) of £9,985, which is the sum entered in box 10.

17. We discussed carefully with the appellant the basis for these entries. He explained that he had referred to his bank statements. He had not, however, relied on the P60s, which for whatever reason he did not have. As Mr Mason submitted, had the appellant referred to the P60s, the correct gross figures and tax deducted could have been ascertained easily. On the other hand the most which the bank statements would show accurately would be the net amount of the pensions paid. The tax could not be quantified from that figure alone as the amount of tax would depend on tax codings and personal allowances.

18. It seems that the appellant did not seek advice about completing the online Return. He had anticipated – perhaps not unreasonably – that it was a straightforward process and preferable to paying professional fees for Returns for himself and his wife, who had a half share of the investment income declared.

19. Had the appellant retained his P60s or obtained copies, he would have been able to complete boxes 10 and 11 on C3 accurately. With only the information gleaned from his bank accounts, he could not do so, and we consider that he should have appreciated that. Only the net amount received would be shown. That could not be reliably "grossed-up" by adding one-quarter to represent basic rate tax, given the impact of personal allowances.

20. "Carelessness" is defined for the purposes of Schedule 24FA 2007 as referring to a failure to take reasonable care: para 3(1)(a). We consider that, having only the figure of the net pension paid, the appellant could not correctly complete his Return, and that this should have been obvious to him. "Carelessness" is in our view established.

21. The penalty has been reduced to the minimum of 15% to reflect the appellant's full co-operation. We consider that this concession has been correctly made. The amount has been calculated by reference to the total of the repayment and the ultimate liability correctly ascertained. We agree again with this calculation, which produces a total of £2,123.20.

22. We are not unsympathetic to the appellant. His tax affairs are otherwise free of blemish. However, there is a burden and responsibility on the individual taxpayer to provide accurate figures. That in the present case required reference to accurate information such as that contained in the P60s.

23. Accordingly we refuse the appeal and confirm the penalty of £318.48.

24. 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.

KENNETH MURE
TRIBUNAL JUDGE

RELEASE DATE: 12 FEBRUARY 2016