



**TC06227**

**Appeal number TC/2017/04833**

*Income Tax - penalty assessment for prompted disclosure of careless inaccuracy in tax return - Appellant omitted lump sum received on encashment and partial reinvestment of a pension annuity - whether careless - yes - whether a special reduction should have been applied - no - appeal dismissed*

**FIRST-TIER TRIBUNAL**

**TAX**

**MOHAMMED K RAHMAN**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE MICHAEL CONNELL  
MEMBER SONIA GABLE**

**Sitting in public at Alexandra House, The Parsonage, Manchester on 5 September 2017**

**The Appellant did not attend and was not represented.**

**Ms Joanne Bartup, Officer of HMRC, for the Respondents.**

1. This is an appeal by Mohammed K Rahman ('the Appellant') against a penalty assessment of £844.83 issued under Schedule 24 Finance Act 2007 for a prompted disclosure of a careless inaccuracy in his tax return for the year ended 5 April 2015.
2. The Appellant did not attend the hearing. The Tribunal was satisfied that the Appellant had been given notice of the time, date and venue of the appeal hearing and that it was in the interests of justice to proceed.
3. The issue is whether the penalty assessment has been issued correctly and if so whether penalty is the correct amount.

### **Background**

4. The Appellant's agents electronically filed the Appellant's 2014-15 self-assessment tax return on 19 January 2016.
5. The Appellant's tax return omitted £20,000 gross income received by the Appellant on 31 July 2014 from a pension company.
6. HMRC opened an enquiry into the Appellant's tax return on 18 November 2016 under s 9A TMA 1970 and issued a closure notice on 2 February 2017 under s 28A(1) and (2) TMA 1970.
7. HMRC determined that the £20,000 was taxable. The increase in tax due was £5,632.23. This is not in dispute and the Appellant had paid the additional tax.
8. HMRC issued a penalty assessment on 15 February 2017 in the sum of £844.83 for a prompted careless inaccuracy in the Appellant's tax return.
9. The Appellant disagrees that a penalty is due. On his behalf his accountants say that although he agrees the amounts of income and tax deduction, which were omitted from the return, he does not know why the details were omitted.
10. The accountants explained that the Appellant held monies in a pension annuity fund with MGM which was partially encashed by a third party intermediary, (Whitewell Financial Planning Ltd, the Appellant's Independent Financial Adviser). The payment was however received from Suffolk Life to which the MGM business had been transferred. The Appellant says that he and his accountants were unaware of this and that is why the monies were not recognised as relating to the partial annuity encashment. After HMRC opened their enquiry, they made formal enquiries of Suffolk Life and obtained a copy of the P60 information and correspondence which confirmed the Appellant took a lump sum and used the balance to purchase an annuity from Just Retirement. It was also confirmed that that tax had been deducted at 20%.

5 11. The accountants explained that as the Appellant did not receive any correspondence and had not been sent the original P60 relating to the payment, he was not in a position to make a formal declaration of the income and tax deducted. Once this had been established, and after checking with NatWest the Appellant's bank that the monies had been paid into his bank account, he immediately settled the tax due.

10 12. The Appellant's accountants argue that because of the lack of documentation received and taking into account the busy nature of the Appellant's business as a Consultant Psychiatrist, the omission was not of a deliberate nature. The omission was due at least in part to the contributory factors, in that the Appellant did not receive a P60 from of the insurance company.

15 13. The accountants also state that in their view the penalty, in the circumstances, is "too harsh" and there should be a reduction.

### Relevant legislation

14. The relevant legislation is at Schedule 24 Finance Act 2007 and summarised below:

20 Paragraph 1

(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

25 (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

30 (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.

Paragraph 3

35 (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,

40 Paragraph 4

(2) If the inaccuracy is in category 1, the penalty is

(a) for careless action, 30% of the potential lost revenue,

Paragraph 5

45 (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.

Paragraph 10

50 (2) Where a person who would otherwise be liable to a 30% penalty has made a prompted disclosure, HMRC reduce the 30% to a

5 percentage, not below 15%, which reflects the quality of the disclosure.

Paragraph 11

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

Paragraph 14

15 (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.

Paragraph 15

20 (1) A person may appeal against a decision of HMRC that a penalty is payable by the person.

(2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by the person.

25 (3) A person may appeal against a decision of HMRC not to suspend a penalty payable by the person.

Paragraph 17

30 (1) On an appeal under paragraph 15(1) the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 15(2) the tribunal may -  
(a) affirm HMRC's decision, or  
(b) substitute for HMRC's decision another decision that HMRC had power to make.

35 (3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 11 -

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

40 (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 11 was flawed.

**HMRC's contentions**

45 15. HMRC contend that a penalty is payable as the Appellant gave HMRC an incorrect tax return. The return contained an inaccuracy which led to an understatement of liability to tax. This is not in dispute. HMRC says that the inaccuracies were careless.

50 16. The information on the Appellant's tax return shows that he retired prior to receiving the payment in question and had appointed Whitewell Financial Advisers in connection with his pension planning. The Financial Adviser would not have been permitted to encash the Appellant's pension annuity without his authority. Clearly he must have been involved at some point to decide how the funds were used and given the level of regulation imposed on the Financial Services Industry it would be very unusual that no supporting documentation existed.

5 17. The Appellant may not have been familiar with the name Suffolk Life. However the transfer of business from one company to another in the financial sector would have also given rise to additional documentation explaining how the transaction would affect the customer. HMRC consider that the Appellant would have received some documentation relating to this.

10 18. Although the Appellant says he does not recall receiving the monies into his bank account, payment of £16,000 would stand out simply because it was a large amount. A prudent and reasonable person would have noticed this and identified the payment. The Appellant appears not to have done this.

15 19. Further, the Appellant must have received a P60 from Suffolk Life. It was correctly addressed and there is no evidence that it was returned undelivered. It can only be assumed that it was received by the Appellant but mislaid.

20. A reasonable and prudent person, keeping check of all their financial interactions would have taken steps to find out what the payment related to and entered it on their tax return. The Appellant did not do this and therefore was careless in filing his return.

20 21. HMRC have charged the penalty at the lowest rate permitted by law, which acknowledges the Appellant's co-operation with the enquiry. HMRC has taken into account the quality of the disclosure in reducing the penalty from 30% of the Potential Lost Revenue to the minimum 15% allowed by the legislation.

25 22. HMRC considered Special Reduction under Paragraph 11, but there are no special circumstances which would enable HMRC to further reduce the penalty. Penalty legislation provides for common circumstances and these are therefore taken into account in establishing the liability to and/or level of a penalty.

23. Special circumstances, in HMRC's submission, are either;

- 30
- i. uncommon or exceptional, or
  - ii. where the strict application of the penalty law produces a result that is contrary to the clear compliance intention of that penalty law.

35 24. To be special circumstances, the circumstances in question must apply to the particular individual and not be general circumstances that apply to many taxpayers by virtue of the penalty legislation. HMRC have not found any evidence of circumstances that might allow a special reduction.

### **Conclusion**

40 25. The burden of proof is on HMRC to establish that the Appellant was careless in completing his 2014-15 tax return. The Appellant says that omission of the lump sum he received on partial encashment of his annuity with Suffolk Life was not deliberate, but an oversight and that there was no intention to be dishonest.

5 26. The legislation recognises that there can be a degree of culpability, even though it may fall short of dishonesty or deliberate conduct. In this case HMRC say there has been a ‘prompted disclosure of a careless inaccuracy’. For that a lesser penalty is prescribed.

10 27. A prudent taxpayer is expected to exercise reasonable care and diligence when completing a tax return. The lump sum received by the Appellant was a large amount and although arriving into his bank account from Suffolk Life, with which institution he could not recall having any previous dealings, the taking of reasonable care and identifying the payer and to what the payment related would have resulted in the Appellant not omitting the payment from his return. The failure to take reasonable care resulted in a careless inaccuracy.

15 28. The penalty has been applied at the rate applicable to a prompted disclosure of a careless inaccuracy and reduced to the minimum level of 15% of the potential lost revenue. The penalty can only be reduced further if there are special circumstances. HMRC say they have not identified any special circumstances and the tribunal can only rely on paragraph 11 if it considers that HMRC’s decision, that there were no special circumstances, is flawed on judicial review principles. In that regard the general test is whether the decision is so demonstrably unreasonable as to be irrational or perverse so that no reasonable authority could ever have come to it (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 HL). The tribunal must consider whether HMRC have taken into account some irrelevant matter or disregarded something to which they should have given weight.

25 29. Adopting that rationale and on the facts, we find that HMRC’s decision is not flawed on judicial review principles. We agree that there are no special circumstances. It is clear how the inaccuracy in the Appellant’s return occurred. The Appellant did not take enough care to identify the lump sum payment he had received, and as a result inadvertently omitted the payment from the return.

30 30. The appeal is refused and the penalty confirmed.

35 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.

**MICHAEL CONNELL**  
**TRIBUNAL JUDGE**

40 **RELEASE DATE: 21 NOVEMBER 2017**

