



TC07726

INCOME TAX – earlier decision in principle – second decision based on those principles – assessments and penalties under appeal reduced – appeal allowed in part.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/06270

BETWEEN

MARTIN EGAN

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE ANNE REDSTON
DUNCAN MCBRIDE**

Having heard Mr Raymond Graves, Chartered Accountant, for the Appellant and Mr O’Grady, Litigator of HM Revenue and Customs’ Solicitor’s Office, for the Respondents at an oral hearing at Taylor House in London on 10 October 2019, and having issued a summary decision in principle on 21 October 2020, and no application for a full decision having been received, this second decision applies those principles to the assessments under appeal.

DECISION

INTRODUCTION AND BACKGROUND

1. On 13 May 2016, HM Revenue & Customs (“HMRC”) opened an enquiry into Mr Egan’s 2014-15 self-assessment tax return. On 5 May 2017 HMRC closed the enquiry and amended Mr Egan’s self-assessment, increasing the tax payable.
2. On the same date, HMRC issued discovery assessments for the years 2009-10 through to 2013-14, and penalties at 70% of the “potential lost revenue” or PLR, on the basis that Mr Egan’s behaviour had been “deliberate”. On review, HMRC reduced the penalties to 59.5%, with the result that the liabilities and the penalties shown as due from Mr Egan totalled £87,127.94.
3. Mr Egan appealed those decisions, and on 10 October 2019, the Tribunal held a hearing of his appeal. Both Mr Egan and Mr Graves, the chartered accountant who had completed Mr Egan’s returns, gave witness evidence.
4. At the end of the hearing, the Tribunal gave an oral judgment setting out the principles by which Mr Egan’s tax and penalty liability for each of the years in question was to be calculated. In coming to that judgment, one of our findings of fact was that Mr Graves had completed Mr Egan’s returns using figures which bore no relation to reality.
5. Mr Egan told the Tribunal that he would find a new accountant, and so would no longer use Mr Graves. Mr Graves said that, in any event, he did not hold a practising certificate from the Institute of Chartered Accountants in England and Wales, and confirmed he would no longer act for Mr Egan.
6. After giving judgment, the Tribunal issued oral directions requiring HMRC to apply those principles to provide figures for the assessments and penalties under appeal, and for Mr Egan and/or his adviser to provide any representations on HMRC’s calculations.
7. That oral judgment and the directions were set out in a summary decision issued on 21 October 2019 (“the First Decision”). Neither party asked for a full decision. HMRC complied with the directions, but no representations were received for or on behalf of Mr Egan.
8. On 4 December 2019, the Tribunal issued a second summary decision (“the Summary Second Decision”) setting out the position for each of the years 2009-10 through to 2014-15. The overall result was that the total of £87,127.94 under appeal was reduced to £19,514.75. On 30 December 2019, Mr Graves applied for a full decision.
9. Because Mr Egan had told the Tribunal that Mr Graves was to cease to be his adviser following the hearing, and as Mr Graves had confirmed that this would be the position, the Tribunal wrote to Mr Egan to ask whether Mr Graves continued to have authority to act on his behalf. On 5 February 2020, Mr Egan confirmed that this was the position.
10. On 21 February 2020, the Tribunal asked Mr Graves whether he was:
 - (1) applying only for a full decision in relation to the Summary Second Decision; or
 - (2) also making a late application for the Tribunal to provide the First Decision as a full decision.

11. On 26 March 2020, the Tribunals Service received an email from Mr Graves confirming the first of those alternatives. Delays caused by the coronavirus meant that his email was not forwarded to the Tribunal until 14 May 2020.

12. This is that full decision. It establishes the amounts repayable by Mr Egan based on the principles set out in the First Decision. For the avoidance of doubt, the next following paragraphs §13 to §15 are provided only to provide the context for this full decision.

The First Decision

13. The First Decision included the following findings of fact:

(1) Mr Egan carried out “ground work” in the construction industry, on a self-employed basis.

(2) He claimed tax repayments for each of the tax years 2009-10 through to 2014-15. HMRC made the repayments for 2009-10 through to 2013-14 before opening the enquiry into the 2014-15 return. They did not make the repayment claimed for 2014-15.

(3) On 5 May 2017 HMRC closed the enquiry and amended Mr Egan’s self-2014-15 assessment, increasing the tax payable; on the same date, they issued discovery assessments for the years 2009-10 through to 2013-14 on the basis of the presumption of continuity, and they issued penalties at 70% of the assessments on the basis of deliberate behaviour.

(4) On review, HMRC reduced the penalties to 59.5% of the assessments, with the result that the liabilities and the penalties due from Mr Egan totalled £87,127.94.

(5) Mr Graves completed Mr Egan’s returns with numbers which bore no relation to reality. The only reliable figures before the Tribunal were the CIS deductions made by his engagers and recorded in HMRC’s records.

(6) Mr Egan’s income for each year was the figure calculated by grossing up those CIS amounts. For example, the CIS deducted for 2014-15 was £4,288, being 20% of the payments made to him by the contractors. His turnover for that year was therefore five times that amount, namely £21,440.

14. From those income figures, the Tribunal allowed 5% as being the cost of travel, and for all years except the first, a further £100 for the cost of preparing his self-assessment returns. The position for each of the years was thus as follows:

Year	Taxable profits
2009-10	£86
2010-11	£8,393
2011-12	£10,279
2012-13	£2,436
2013-14	£3,695
2014-15	£20,268

15. The Tribunal also found that Mr Egan had not acting deliberately, but was careless. We reduced the penalties from the 59.5% charged by HMRC to 30% of the PLR.

The directions and the Summary Second Decision

16. The Tribunal directed HMRC to apply the principles set out in the oral judgment to provide revised figures for the assessments and penalties for each of the years under appeal. On 22 October 2019, in accordance with the directions, Mr O’Grady provided detailed calculations to the Tribunal and to Mr Egan.

17. By his covering letter, he said that Mr Graves was not on HMRC’s system as Mr Egan’s adviser, and asked Mr Egan to forward the computations either to Mr Graves or to his new accountant.

18. The directions also required Mr Egan to provide the Tribunal with any comments on HMRC’s calculations, by 21 days after receipt, and said that if no response had been received within that period, the Tribunal would assume that Mr Egan had accepted HMRC’s methodology. No response was received from or on behalf of Mr Egan during that period.

19. On 2 December 2019 the Tribunal checked whether any late correspondence had been received, but was informed by the Tribunals Service that they had no record of any post or email from or on behalf of Mr Egan since 22 October 2019, when Mr O’Grady had provided the computations.

20. On 4 December 2019 the Tribunal issued the Summary Second Decision, and on 30 December 2019, Mr Graves asked for this full decision.

The legislation

21. Taxes Management Act 1970, s 50(6) reads:

“If, on an appeal notified to the tribunal, the tribunal decides

(a) that, the appellant is overcharged by a self-assessment;

(b) ...; or

(c) that the appellant is overcharged by an assessment other than a self-assessment,

the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good.”

22. Finance Act 2007, Schedule 24 sets out the penalty provisions which were applied to Mr Egan. Part 3 deals with Procedure, and includes provisions about appeals. Sch 24, paras 15 and 16 both sit within Part 3. Para 15(1) and (2) sets out the appeal rights relied on by Mr Egan. Para 16 reads:

“An appeal under this Part of this Schedule shall be treated in the same way as an appeal against an assessment to the tax concerned (including...about determination of the appeal by the First-tier Tribunal....)”

23. When deciding an appeal against a penalty, the Tribunal is to apply TMA s 50(6) just as we must on an appeal against a tax assessment.

The figures for each of the years

24. By the First Decision, we had decided that:

(1) HMRC’s amendment to Mr Egan’s 2014-15 self-assessment return had overcharged Mr Egan;

(2) Mr Egan had also been overcharged by the discovery assessments and the penalty assessments; and

(3) these assessments were reduced in accordance with TMA s 50(6) in accordance with the principles set out in that Decision.

25. However, the exact figures could not be determined as part of the First Decision, because the Tribunal did not have the necessary level of detail about each of the tax years.

26. This decision determines those figures on the basis of (a) the principles set out in the First Decision, and (b) Mr Egan's personal allowances and the tax and NIC thresholds and rates for each of the years.

2009-10

27. For the tax year 2009-10, Mr Egan claimed a repayment of £2,523.12, but was only entitled to a repayment of £18, so he has to repay the difference of £2,505.12, and the assessment under appeal is reduced to that figure. The penalty is calculated at 30% of that amount, namely £751.54.

2010-11

28. For the tax year 2010-11, Mr Egan claimed a repayment of £2,901.56, but was only entitled to a repayment of £1,190.36, a difference of £1,711.20, and the assessment under appeal is reduced to that figure. The penalty is calculated at 30% of that amount, namely £513.36.

2011-12

29. For the tax year 2011-12, Mr Egan claimed a repayment of £2,643, but was only entitled to £1,349.54, so has to repay the difference of £1,293.46., and the assessment under appeal is reduced to that figure. The penalty is calculated at 30% of that amount, namely £388.04.

2012-13

30. For the tax year 2012-13, Mr Egan claimed a repayment of £6,269.17, but was only entitled to a repayment of £533.81, so has to repay the difference of £5,735.36, and the assessment under appeal is reduced to that figure. The penalty is calculated at 30% of that amount, namely £1,720.61.

2013-14

31. For the tax year 2013-14, Mr Egan claimed a repayment of £2,645.50, but was only entitled to a repayment of £799.20, so has to repay the difference of £1,846.30, and the assessment under appeal is reduced to that figure. The penalty is calculated at 30% of that amount, namely £553.89.

2014-15

32. For the tax year 2014-15, Mr Egan's taxable profit was £20,268. The tax and NICs payable on that amount totalled £3,161.68. Mr Egan had suffered CIS deductions of £4,288.70, so the difference of £1,127.02 is repayable to him.

33. However, he had claimed a repayment of £13,203.37. Although that sum was not repaid by HMRC, Mr Egan has to pay a penalty of 30% of the excess repayment claimed. This is £3,622.91, being £13,203.37 less £1,127.02, multiplied by the 30% penalty rate. The penalty assessment is reduced to that amount.

The overall position

34. As a result of the foregoing, Mr Egan's position is as follows:

	RECOVERABLE	REPAYABLE	PENALTY
2009/10	£2,505.12	£0.00	£751.54
2010/11	£1,711.20	£0.00	£513.36
2011/12	£1,293.46	£0.00	£388.04
2012/13	£5,735.36	£0.00	£1,720.61
2013/14	£1,846.30	£0.00	£553.89
2014/15	£0.00	£1,127.02	£3,622.91
TOTALS	£13,091.44	£1,127.02	£7,550.33

35. The tax and penalty assessments are reduced in accordance with the figures shown above. The overall total payable by Mr Egan is thus £19,514.75 (£13,091.44 – £1,127.02 + £7,550.33).

RIGHT TO APPLY FOR PERMISSION TO APPEAL

36. This document contains full findings of fact and reasons for the second 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. For the avoidance of doubt, this time limit is unaffected by the general stay and the further stay issued by the President of the Tribunal on 24 March 2020 and 21 April 2020.

37. 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.

**ANNE REDSTON
TRIBUNAL JUDGE**

Release date: 1 June 2020