NCN: [2021] UKFTT 227 (TC)

# TC08176

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

**Appeal number: TC/2018/08108**

**BETWEEN**

**MR RADICE** **Appellant**

**-and-**

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

**TRIBUNAL: JUDGE HARRIET MORGAN**
**MEMBER MR CHRISTOPHER JENKINS**

**Having heard Mr Davis of Cameron Baum Davis LLP for Mr Radice and an officer of HMRC for HMRC**

## DECISION

1. The appellant appealed against a penalty of £4,500 issued by HMRC under schedule 24 of the Finance Act 2007 ("**schedule 24**") on 24 October 2018 and upheld on review on 7 December 2018 in relation to an inaccuracy in his tax return for the tax year 2015/16.

2. HMRC considered that the appellant had been careless in failing to include in the return certain information and, on the basis of that information, paid the incorrect amount of tax for that year. The penalty was the minimum due for a careless prompted inaccuracy.

### Facts and correspondence

3. The appellant submitted his tax return for the tax year 2015/16 on 27 January 2017 and, on 23 August 2017, HMRC opened an enquiry into that return. The penalty assessment in question was issued on 14 August 2018 and a closure notice was issued regarding the enquiry on 16 August 2018.

4. In the 2015/15 tax return, the appellant's advisers ticked box 31 in the residency pages stating that he had been resident in the UK for 12 or more of the preceding 14 tax years. However, it was not disputed that they should have ticked box 30 indicating that he was resident in the UK for 17 out of the 20 preceding tax years as he had in fact been resident in the UK for

19 of those years. Also, he had not provided his date of entry into the UK in box 27 of the return. On the basis of the incorrect information, the advisers had incorrectly computed what is commonly known as the "remittance basis charge" for the taxpayer's ability to benefit from the "remittance basis" of taxation available to taxpayers who are not domiciled in the UK for tax purposes. Accordingly, Mr Radice paid a "remittance basis charge" of only £60,000 when he should have paid £90,000.

5. From the correspondence in the bundles, Mr Davis sent the draft tax return to Mr Radice on 2 January 2017. He set out his understanding of Mr Radice's income for the relevant year and said:

> "As at 31st January 2017 your tax payment due is £14,167.28. This comprises tax due for 2016-17 of £70,369 less paid on account £91,313 being an overpayment of £20,944 but there is a first payment on account due of £35,111, leaving a net balance to pay of £14,167.28. To avoid a charge on a remittance to the UK, please settle this from UK based funds."

6. Mr Radice sent the signed version of the return to Mr Davis on 7 January 2017. He asked Mr Davis whether he could pay the tax shown as due from his overseas account.

7. Mr Davis replied as follows:

> "As regards the tax payment, your expected tax liability for 2016-17 based on 2015-16 is £70,369 of which £60,000 is the remittance basis charge and £10,369 relates to UK income.
>
> The overpayment from 2015/16 amounts to £20,944.42 which nets off against the 50% payment on account re 2016-17 of £35,111.7- to give a net repayment due of £14,167.28.
>
> While for 2016-17 the RBC is due in full, although you have now left the UK, as of the end of December 2016, your UK income may be less than in 2015-16."
>
> If you have the funds available in the UK, I would prefer you to pay the £14,167 from UK source, in case you end up in an overall repayment position for 2016-17, in which case the repayment could cause a taxable remittance.
>
> If you do not have the funds in the UK then of course you will have to remit from overseas and we will endeavour to complete your 2016-17 tax return before the next payment in July 2017, the last one for you, becomes due, so that we can avoid the repayment position for 2016-17."

8. When HMRC closed their enquiry into his return for the 2015/16 tax year, the appellant accepted that the wrong entries had been made in the return and promptly paid the additional £30,000 of tax which was due.

9. The appellant's advisers submitted that:

(1) The appellant relied completely upon their advice as to the tax due for 2015/16 and the entries which were made in his tax return. The inaccuracy related to the newly updated "remittance basis charge" that changed the charge from a flat £30,000 to a charge that related to the period of residence. Although the relevant partner knew that the appellant had arrived in the UK more than 20 years prior, this was not communicated correctly with the staff completing the tax return nor was its relevance communicated to Mr Radice for him to consider when reviewing his tax return and the tax computed as due.

(2) There have been a number of cases where it has been held that a taxpayer may reasonably rely on a professional adviser as regards the completion of his tax return. Whilst HMRC assert that the appellant should have known that the fact he was in the UK for more than 20 years was relevant to his tax return and tax liability, this was a minor change in the tax legislation that a taxpayer cannot be expected to follow or understand.

(3) The appellant was reasonable to rely on the firm to compute his tax liability. It should also be noted that for a taxpayer the tax payment itself is not simply the tax due for the year (as set out in the correspondence above). The appellant had paid on account for 2015/16 £45,656.71 at January and July 2016, then owed £14,167.28 at January 2017 with a further payment on account of 2016/17 based on the 2015/16 tax return of £35,111.70. These figures were based on the incorrect information on the tax return but nonetheless are significant and, therefore, it would not have been straight forward for Mr Radice to follow that the "remittance basis charge" had been undercharged by £30,000 and reported as £60,000 rather than £90,000. The appellant was acting reasonably and with due care in reviewing but not amending the return and computation as prepared by the firm.

**Law**

*Self-assessment and enquiries*

10. Under the self-assessment system, a taxpayer is required to make and deliver to HMRC a return by the prescribed time limits where he/she received a notice to do so (s 8 of the Taxes Management Act 1970 ("**TMA**"). For the purposes of the return the amount payable by a person by way of income tax is the difference between the amount in which he is chargeable to income tax and the aggregate amount of any income tax deducted at source. Where a taxpayer is required to submit a tax return for a tax year (under s 8 TMA) this is required (under s 9 TMA) to include a "self assessment, that is to say -

> "(a) an assessment of the amounts in which, on the basis of the information contained in the return and taking into account any relief or allowance a claim for which is included in the return, the person making the return is chargeable to income tax and capital gains tax for the year of assessment; and
>
> (b) an assessment of the amount payable by him by way of income tax, that is to say, the difference between the amount in which he is assessed to income tax under paragraph (a) above and the aggregate amount of any income tax deducted at source and any tax credits…"

11. Under s 9A TMA an officer of the Board may enquire into a return under s 8 if he gives notice of his intention to do so to the person whose return it is within the time allowed.

*Penalty provisions under schedule 24*

12. The penalty provisions of schedule 24 work as follows (all references to paragraphs are to paragraphs of schedule 24):

(1) A penalty is payable by a person (P) who gives HMRC a tax return submitted under s 8 TMA and (a) the return contains an inaccuracy which amounts to or leads to an understatement of a liability to tax, and (b) the inaccuracy was careless within the meaning of para 3 (or deliberate) (para 1).

(2) An inaccuracy is careless if the inaccuracy is due to a failure by P to take reasonable care (para 3).

(3) Where these conditions are satisfied the penalty is 30% of the potential lost revenue (para 4).

(4) 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 (para 5).

(5) There is a reduction in the penalty where a person discloses an inaccuracy by (a) telling HMRC about it, (b) giving HMRC reasonable help in quantifying the inaccuracy or (c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy

is fully corrected. The level of reduction depends in part on whether the disclosure is "unprompted" or "prompted". The disclosure is "unprompted" if made at a time when the person making it has no reason to believe that HMRC have discovered it or are about to discover the inaccuracy and otherwise is prompted (para 9).

(6) Where a person has made a disclosure HMRC must reduce the percentage of penalty which would otherwise apply to a percentage that reflects the quality of the disclosure provided that it cannot be reduced below the specified minimum. For this type of penalty, the minimum is specified as 15% where the disclosure is prompted and 0% where it is unprompted (para 10). In this case,HMRC have reduced the penalty they assert is due from Mr Radice to the minimum for a prompted disclosure.

(7) HMRC may reduce a penalty if they think it right because of "special circumstances" (under para 11). HMRC did not consider there are any special circumstances.

(8) HMRC may suspend all or part of a careless inaccuracy penalty (under para 14). HMRC did not consider it appropriate to suspend the penalty.

**Decision**

13. Having considered all of the appellant's and HMRC's submissions as set out above, for the reasons set out below we have concluded that the appellant was not careless within the meaning of schedule 24.

14. HMRC consider that the appellant acted carelessly in failing to take reasonable care in filling his tax return for 2015/16 in particular, in failing to spot that certain boxes in the residence pages of the return should have been ticked.

15. As set out in *Collis v Revenue & Customs* [2011] UKFTT 588 (TC), whether there is a failure to take reasonable care falls to be judged by reference to a prudent and reasonable taxpayer, in the position of the taxpayer in question. The question, therefore, is what action a prudent and reasonable taxpayer, in the appellant's circumstances, would have taken as regards the inclusion of the omitted information and related under-assessment of tax due in the tax return for 2015/16.

16. It is an essential part of a self-assessment system that there is an obligation on a taxpayer himself correctly to include all taxable income in a tax return and account for the tax due on it. Our view is that the hypothetical reasonable and prudent taxpayer can be attributed with an awareness of this obligation and with the need to be mindful to take reasonable steps to fulfil that obligation. In the context of declaring all taxable income a reasonable and prudent taxpayer would, therefore, take all reasonable steps to ensure he/she is aware of all amounts which may need to be included in the tax return.

17. In general terms, where a taxpayer engages an adviser to submit a return on their behalf, as the taxpayer is the person responsible for the self-assessment tax return, we would nevertheless expect the taxpayer, acting reasonably and prudently, to take reasonable steps to provide accurate information to the adviser and to review and to take some part in checking the information included in the return. What it is reasonable to expect from the taxpayer will depend on all of the circumstances of each case.

18. In a situation such as this, it is the action of a reasonable and prudent taxpayer to obtain advice on the basis for and computation of charges to tax under the complex "remittance" rules applicable to non-UK domiciled person and, accordingly, it is reasonable for the taxpayer to rely on that advice. In the context of this understandable and good sense reliance and the difficulties for taxpayers in understanding and keeping up to date with such rules, we do not consider that Mr Radice was careless in failing to spot that an error had been made in his return which lead to an underpayment of tax. From the correspondence, it is plain that Mr Radice

reviewed the return. He would have seen the statement in box 31 that he had been resident for 12 out of the last 14 tax years which, on its own terms, was correct. We do not consider that he could reasonably have been expected to realise that other boxes in that section of his return needed to be filled in (or what the significance of the information required in the other boxes is) when his advisers, on whom he reasonably relied, had selected box 31 and he knew that the information in it was correct.

19. For all the reasons set out above, this appeal is dismissed.

20. 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.

**JUDGE HARRIET MORGAN**
**TRIBUNAL JUDGE**

**Release date: 27 May 2021**