



TC07827

*INCOME TAX- penalty for inaccuracy in return - whether taxpayer took reasonable care -
reliance on accountant -suspension of penalty - whether possible to set conditions*

FIRST-TIER TRIBUNAL

Appeal number: TC/2019/08750

TAX CHAMBER

BETWEEN

LISA MCCANN

Appellant

-and-

THE COMMISSIONERS FOR

HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

TRIBUNAL: JUDGE MARILYN MCKEEVER

The Tribunal determined the appeal on 19 August 2020 without a hearing with the consent of both parties under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. A hearing was not held because of the Covid-19 pandemic and the consequent cancellation of oral hearings and the Tribunal considered it was able to decide the matter without a hearing. The documents to which I was referred are a Documents Bundle, which included HMRC's Statement of Case and the Appellant's Notice of Appeal, of 125 pages and a Legislation and Authorities Bundle of 98 pages.

DECISION

INTRODUCTION

1. Miss McCann appeals against a penalty imposed for inaccuracies contained in her 2016-17 tax return. She argues that she took reasonable care in its completion and that she provided all the information requested by her accountant. In the event that the penalty is upheld, she argues that it should be suspended and that HMRC are wrong to say that appropriate conditions cannot be imposed because she is no longer within the self-assessment regime.

THE LAW

2. Paragraph 1 of Schedule 24 Finance Act 2007 (“Schedule 24”) provides that a penalty is payable if a person submits a self-assessment tax return to HMRC which contains an inaccuracy and this leads to an understatement of the liability to tax and the inaccuracy was careless or deliberate.
3. References below to paragraph numbers are to paragraphs in Schedule 24 unless otherwise specified.
4. Paragraph 3(1) provides that an inaccuracy is careless if the person failed to take reasonable care.
5. Paragraph 4 provides that the standard penalty for a domestic matter where the taxpayer was careless is 30% of the Potential Lost Revenue (“PLR”). Paragraph 5 defines PLR. Broadly, it is the difference between the tax liability declared and the actual tax liability.
6. Paragraphs 9 to 10A make provision for the standard penalty to be reduced depending on whether the disclosure of the inaccuracy was prompted or unprompted and the degree of cooperation provided by the taxpayer. Deductions are available for telling HMRC about the inaccuracy, giving HMRC help in quantifying it and allowing HMRC access to relevant records.
7. Paragraph 14 provides for a penalty to be suspended where the taxpayer is careless and paragraph 17 sets out the Tribunal’s powers on an appeal against a refusal to suspend a penalty. Those provisions are set out below.

“14

(1) HMRC may suspend all or part of a penalty for a careless inaccuracy under paragraph 1 by notice in writing to P.

(2) A notice must specify

(a) what part of the penalty is to be suspended,

(b) a period of suspension not exceeding two years, and

(c) conditions of suspension to be complied with by P.

(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.

...

(a) if P satisfies HMRC that the conditions of suspension have been complied with, the suspended penalty or part is cancelled, and

(b) otherwise, the suspended penalty or part becomes payable.

(6) If, during the period of suspension of all or part of a penalty under paragraph 1, P becomes liable for another penalty under that paragraph, the suspended penalty or part becomes payable.

15...

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

17...

(4) On an appeal under paragraph 15(3)

(a) the 1 tribunal may order HMRC to suspend the penalty only if it thinks that HMRC's decision not to suspend was flawed, ...

[(5A) In this paragraph tribunal means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 16(1)).]1

(6) In sub-paragraphs (3)(b), (4)(a) and (5)(b) flawed means flawed when considered in the light of the principles applicable in proceedings for judicial review”

FINDINGS OF FACT

8. In the tax year 2016-17 Miss McCann was director of a company and received employment income and dividends from it. She also had employment income from other sources and a small amount of untaxed bank interest. She was liable to make student loan repayments.
9. HMRC received Miss McCann’s tax return for the year 2016-17 on 5 February 2018. They opened an enquiry into the return by a letter dated 18 September 2018. The letter stated that they would be looking specifically at student loan repayments, employment income and bank interest. HMRC’s information indicated that Miss McCann had failed to declare £13,029 employment income from the London Borough of Brent, £16.11 of bank interest and that she should have made a student loan repayment. The total amount of additional tax due was £1,354.73. This was the PLR.
10. Miss McCann did not respond to the enquiry letter and HMRC sent a reminder letter.
11. Miss McCann telephoned HMRC on 30 October 2018 as she was confused by the letters. HMRC explained about the employment income which appeared to be missing and she requested time to obtain the information from her previous employer.
12. Her accountant telephoned HMRC on 28 November and said they were unaware of the missing employment income. They asked for a suspension of the penalty.
13. Neither the appellant nor her agent contacted HMRC and a further reminder was sent on 1 March 2019.
14. There were further telephone calls and letters, the figures were agreed and HMRC issued a closure notice on 12 April 2019 assessing additional tax due of £1,354.73
15. A penalty assessment was issued on 16 April 2019 under Schedule 24 in the sum of £243.85. This was based on the inaccuracy being careless and disclosure being prompted. Reductions were given from the standard penalty of
 - (a) 20% for telling. HMRC did not give the maximum reduction because of the delays in responding to their letters.

- (b) 30% for helping out of 40%. It was not clear whether Miss McCann had failed to provide the information to the accountant or whether the information had been provided but the accountant had not acted upon it. In either case, no real explanation had been given for the omission.
 - (c) A full 30% for giving as Miss McCann had provided all the required information to HMRC.
16. This gave a total reduction of 12% from 30% so the penalty charged was 18% of the PLR.
 17. HMRC did not consider that there were special circumstances which would allow them to reduce the penalty further.
 18. Nor did HMRC consider that they could suspend the penalty as “We cannot suspend this penalty as there are no conditions that we can set that would help you avoid making an error in the future.” This was because Miss McCann would no longer be within the self-assessment system and so would not be filling in tax returns in the future.

DISCUSSION

19. Miss McCann’s grounds of appeal state that she was inexperienced in dealing with a limited company and she hired an accountant, trusting that they would handle her tax return correctly and professionally. She states that she provided the accountant with all the documents and information which he requested and trusted that the return would be completed correctly.
20. She also submits she was not careless but always acted honestly and truthfully.
21. HMRC submit that it is the taxpayer’s responsibility to submit an accurate return and that she did not take reasonable care in accordance with the test set out in *David Collis v HMRC* [2011] UKFTT 588 (TC) which requires:

“29. That penalty applies if the inaccuracy in the relevant document is due to a failure on the part of the taxpayer (or other person giving the document) to take reasonable care. We consider that the standard by which this fails to be judged is that of a prudent and reasonable taxpayer in the position of the taxpayer in question.”
22. HMRC say that the appellant should have checked the figures before submitting the tax return.
23. They also submit that reliance on an agent does not absolve the taxpayer, relying on comments made in this Tribunal in *Wald v Revenue and Customs* [2011] UKFTT 183 (TC):

“The obligation to file a correct tax return is on the taxpayer, and the taxpayer cannot transfer that obligation. If the Appellant relies on an accountant to prepare and file a tax return on his behalf, then the Appellant will be responsible if errors in the tax return are due to negligence by the accountant acting on his behalf... If there has been negligence on the part of an accountant, it may be that the taxpayer may have some recourse against the accountant. However, that does not normally affect the liability of the taxpayer to a penalty for filing an incorrect return.”
24. It is unclear whether or not Miss McCann provided to her accountant information about the employment income and other matters which were omitted from the return. She says she provided everything that was asked for. They say they were not told about the other income. They may not have asked for it.

25. In either case, it does not affect my view on whether Miss McCann took reasonable care in completing her tax return.
26. It is her responsibility to submit an accurate tax return. She was the person who knew that she had additional employment income, bank interest and a student loan. I do not dispute that she acted honestly and truthfully, but that does not preclude her also acting carelessly. It is not sufficient for her to engage an agent, hand over the information and assume that the agent will get it right. She must check the tax return herself to make sure that it is accurate, so far as she is able, taking account of her understanding and circumstances. She must show that she took the care which a “prudent and reasonable taxpayer” in her position would have taken.
27. Had the return included complex, technical matters she might have had to rely on her accountant to deal with the technical aspects but she would still be expected to check that the stated amounts of income etc were correct. This return did not contain any complex or technical aspects. Either Miss McCann relied on the accountant and did not check the return at all or, if she did check it, she failed to note that it omitted over £13,000 of additional employment income over and above the £8,841 she declared as well as the other items.
28. I conclude that she failed to take reasonable care to avoid any inaccuracy in her tax return and that a penalty under Schedule 24 was properly due.
29. HMRC have allowed a substantial reduction in the penalty percentage to reflect her cooperation with the enquiry and I see no reason to interfere with their decision.
30. I can only interfere with the decision on “special circumstances” if I consider that the decision was “flawed” in the judicial review sense and I do not consider that it was flawed.
31. HMRC have power to suspend a penalty only where “compliance with a condition of suspension would help P [the taxpayer] to avoid becoming liable to **further penalties under paragraph 1 [of schedule 24]** for careless inaccuracy.” (emphasis added)
32. A penalty is only payable under paragraph 1 where the taxpayer has to complete a tax return. If they do not have to complete a tax return, they cannot complete it carelessly and cannot be liable for a penalty under paragraph 1. The imposition of conditions cannot help a taxpayer who does not have to complete a tax return to avoid becoming liable for further inaccuracy penalties since they cannot, by definition, make further errors.
33. Miss McCann no longer has to complete self-assessment tax returns and so HMRC considered that it was unable to suspend the penalty.
34. Under paragraph 15(4)(a) I am only able to interfere with this decision if it is “flawed”, that is, if HMRC have taken something irrelevant into account, failed to take account of something which is relevant or have reached a decision which no reasonable HMRC officer could have reached.
35. I conclude that HMRC have taken a tenable view of the law and that their decision on suspension is within the range of reasonable decisions, so that it must stand.

CONCLUSION

36. For the reasons set out above, I have concluded that Miss McCann failed to take reasonable care in completing her 2016-17 tax return and that the inaccuracy penalty is due.
37. I do not consider that HMRC’s decision not to suspend the penalty is flawed.

38. Accordingly, I dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

39. 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.

MARILYN MCKEEVER

TRIBUNAL JUDGE

Release date: 26 August 2020