[2016] UKFTT 0465 (TC)

TC05218

Appeal number: TC/2015/06904

INCOME TAX - Professional footballer playing for a succession of clubs in one tax year - Omission of a source of income from his self-assessment return, prepared by accountants - Inaccuracy Penalty - Admitted inaccuracy - Whether careless on the part of the taxpayer? - Yes - Decision not to suspend - Not flawed - Whether special circumstances? - No - Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

MR NICHOLAS BLACKMAN **Appellant**

- and -

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

TRIBUNAL: JUDGE CHRISTOPHER MCNALL
MRS BEVERLEY TANNER

Sitting in public at Manchester Tribunals House, Parsonage, Manchester on 23 June 2016

Mr Tony Tivnan BA and Mr Elliot Cohen FCA MLIA, of Shacter, Cohen & Bor LLP, Chartered Accountants, on behalf of the Appellant

Mr A J O'Grady, an Officer of HMRC, for the Respondents

DECISION

Introduction

1. This is an appeal against an inaccuracy penalty of £1,141.87 imposed on the appellant in relation to his self-assessment return for the tax year 2012/13. That return omitted a source of income and thereby understated the appellant's income by approximately £45,000. It was accepted that this was an inaccuracy. The only point raised in the Notice of Appeal is whether the appellant is responsible for that inaccuracy.

2. The appellant has been a professional footballer since 2005, when he left school aged 16. In 2009 he moved from his first club, Macclesfield Town, to Blackburn Rovers. On 9 August 2012 he was transferred by Blackburn Rovers to Sheffield United. On 30 January 2013 he was transferred again, by Sheffield United to Reading. Therefore, during the tax year 2012/13 he was employed by three clubs in succession - Blackburn Rovers, Sheffield United, and Reading.

3. His self-assessment return for 2012/13 was completed for him by his then-accountants (not the firm which represented him before us). It was filed, late, on 25 April 2014. We were not provided with any information as to why the return had been filed late. But, even though it was late, it dealt with matters which were, even at the time of filing, no more than two years old.

4. The return only declared the appellant's income from his latter two clubs - Sheffield and Reading. The 'other information' given in the return recorded the dates upon which he had started his employment with each of those teams. The earliest date given was 10 August 2012. Two employment pages were attached - one for each declared employment.

5. There was no mention at all of his employment from 6 April 2012 to 9 August 2012 - that is to say, for the first four months of the tax year 2012/13. There was no mention of Blackburn Rovers at all.

6. On 16 December 2014, HMRC wrote to the Appellant. It said that HMRC held information that Mr Blackman had been in receipt of income of £45,317 for the year 2012/13 from Blackburn Rovers F & A Plc which had not been recorded on his tax return.

7. On 8 January 2015, newly-instructed advisers wrote to HMRC that it was apparent that the self-assessment return for 2012/13 contained *'a glaring error'* in that it had omitted Mr Blackman's income from Blackburn Rovers. They commented that the appellant's mother collated all his financial information and passed it to his accountants, who were left to deal with all tax matters. It was said that neither Mr Blackman nor his mother could understand why those accountants had omitted the income from his employment with Blackburn Rovers. That letter commented that Mr Blackman was not aware that his previous accountants had not completed his self-assessment return fully.

8. HMRC revised the Appellant's self-assessment return. The additional tax due was £7,612.50. HMRC also indicated that it was minded to impose a penalty for an inaccurate return.

9. The imposition of a penalty or suspended penalty was challenged by Mr Blackman's representatives in these terms:

> "Mr Blackman is a footballer, not a financial consultant, professional man nor does he have a university degree. All paperwork that he received was sent through to his mother for her to send through to the accountants. The accountants sent Mr Blackman the tax return and Mr Blackman had every right to expect the accountants, professional people to whom he paid a not insubstantial fee, to prepare his tax return correctly. If the accountants made a mistake - a glaring mistake - by missing out a chunk of employment income when it was quite obvious that he was employed and Mr Blackman had let them have all bank statements for the year indicating income banked where it clearly is marked on the bank statement 'Blackburn Rovers', then he has every reason to expect that the tax return that is provided to him would be correct. Having met Mr Blackman myself, I would not expect him to understand a tax return and all its complexities'.

10. On 12 March 2015, HMRC sought further information, including whether Mr Blackman had advised his former accountants that he was employed by Blackburn Rovers during the 2012/13 tax year, and what checks or discussions Mr Blackman had with his accountants before the self-assessment return was submitted.

11. On 25 March 2015, Mr Blackman's representatives wrote as follows:

> "...Mr Blackman is a footballer nor a financial wizard. He rightly employed professional accountants to deal with his affairs in the same way that he wouldn't deal himself with any football injuries he might have but employ the use of physiotherapists, doctors, etc. He has every right to rely upon advice he is given by qualified professionals...'

12. We note that the response from Mr Blackman's representatives did not answer the questions which had been asked on 12 March 2015, nor did his representatives provide any explanation why those questions were not being answered.

13. Pursuant to Schedule 24 of the *Finance Act 2007*, HMRC imposed a penalty, not suspended, of £1,141.87. That was calculated at 15% of the additional tax due. HMRC had therefore treated the inaccuracy as careless (but not deliberate) and prompted (because made only after HMRC had pointed out the inaccuracy to Mr Blackman) but went on to apply the maximum deductions for 'telling', 'helping' and 'giving'. Hence, the penalty which is presently in issue is the minimum penalty which could have been imposed for a prompted, careless, inaccuracy in a self-assessment income tax return.

14. This is not a case in which any dishonesty has ever been alleged against Mr Blackman, his mother, or his previous advisers. The allegation is of an honest, but careless, mistake.

15. The HMRC officer put HMRC's position in this way:

> "Whilst I take on board that you may have provided all relevant details to your tax adviser at the time, I also believe its reasonable to have expected a prudent person to have checked all their employments were included on the return before it was submitted".

16. HMRC said that it was not aware of any special circumstances which would justify any further reduction in the penalty.

17. On 29 June 2015, Mr Blackman's advisers, in refusing to accept the penalty, wrote as follows:

> "...As a footballer he wouldn't have had the training to establish whether the tax return was correct or even be able to understand the tax return, a complicated document."

The parties' arguments

18. In summary, the Appellant's arguments were these:

(1) Mr Blackman is a sports professional and not a tax professional;

(2) He appointed an accountant to deal with his tax affairs;

(3) He provided his accountant with all relevant documents;

(4) He was entitled to treat the tax return produced by his accountant as accurate.

19. In summary, HMRC's arguments were these:

(1) The responsibility for checking his self-assessment return lay with Mr Blackman;

(2) The inaccuracy was a careless one, assessed according to an objective standard.

Discussion

20. Unfortunately, neither Mr Blackman nor his mother attended the hearing and there was no written evidence of any kind from either of them. We were told that Mr Blackman was on holiday (it being the closed season, and Mr Blackman not being on international duty) and that his mother had gone with him. Although his absence had been known to his advisers in advance of the hearing, no application for a postponement on that account had been made. His present representatives had been appointed after the tax year in question, and were not able to assist us even to the extent of telling us when Mr Blackman had first used the services of his previous accountants, which might (at the very least) have helped shed some light on the mistake which had been made.

21. We entirely agree with the description of the omission of the appellant's income from Blackburn Rovers as a 'glaring error'. Mr Blackman, as he must have known,

had been employed by three clubs in that tax year, and not two. As he also must have known, he had been in continuous employment for the whole of that tax year, and hence between April 2012 and August 2012, and not merely since August 2012. That error pervaded the entire tax return, and cropped up in a number of places. For instance, the additional information provided on the return referred only to Sheffield and Reading and there were two (and not three) individual exployment sheets.

22. There was no explanation as to how the mistake made by the previous accountants came about. But neither the accountants, when they prepared the self-assessment return and transmitted it to Mr Blackman for his approval, nor Mr Blackman, when he came to authorise the filing of the self-assessment return, noticed the error. In the absence of any evidence from Mr Blackman, or his mother, we cannot go further so as to make any findings as to how exactly the error came to be made by the accountants and missed by Mr Blackman. But the result was that Mr Blackman's originally declared income for that tax year was significantly - £45,000 - less than it should have been.

23. Schedule 24 of the Finance Act 2007 reads as follows:

> *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*
> *(b) Conditions 1 and 2 are satisfied.*
>
> *1(2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to—*
> *(a) an understatement of P's liability to tax,*
> *(b) a false or inflated statement of a loss by P, or*
> *(c) a false or inflated claim to repayment of tax.*
>
> *1(3) Condition 2 is that the inaccuracy was careless or deliberate (within the meaning of paragraph 3).*
>
> ***Degrees of culpability***
>
> *3(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.*

24. Paragraph 18 of Schedule 24 removes the liability of a taxpayer to a penalty where a return is completed and lodged by an agent; and the inaccuracy in the return is the result of something done or omitted by the agent; and the taxpayer took *'reasonable care to avoid that inaccuracy'*.

25. It is admitted that the return contained an inaccuracy. Mr Blackman used an agent. We are assuming, for the sake of this decision, and giving Mr Blackman the benefit of the doubt, that the inaccuracy was the result of something done or omitted by the agent, and not by Mr Blackman. We must therefore consider whether Mr Blackman took reasonable care to avoid that inaccuracy.

26. In *Hanson v HMRC [2012[UKFTT 314 (TC)* the Tribunal (Judge Cannan) gave the following guidance (at Para [21] and following):

> "21. What is reasonable care in any particular case will depend on all the circumstances. In my view this will include the nature of the matters being dealt with in the return, the identity and experience of the agent, the experience of the taxpayer and the nature of the professional relationship between the taxpayer and the agent. In my view, if a taxpayer reasonably relies on a reputable accountant for advice in relation to the content of his tax return then he will not be liable to a penalty under *Schedule 24*.
>
> 22. I am fortified in these conclusions in relation to *paragraph 18* by the content of the HMRC Compliance Handbook at CH84540 which states in relation to paragraph 18 as follows:
>
> "*A person cannot simply appoint an agent and deny responsibility for their tax affairs. The person still has a duty to take reasonable care, within their ability and competence, to make sure that what they are signing for is correct. The person has to show that they took reasonable care, within their ability and competence, to avoid default by their agent. This will include*
>
> - *making sure that they give the agent all relevant information with which to work ...*
> - *implementing the professional advice received, and not neglecting some vital step*
> - *checking the agent's work to the extent that the person is able to do so. For example, an ordinary person cannot be expected to challenge specialist professional advice on a complex legal point. But they ought to be able to recognise the complete absence of a major transaction.*

A person saying and meaning 'I leave it all to my agent' is hardly taking care, let alone reasonable care, over their obligations or the work of their agent.

... The person has an obligation to choose an adviser who is trained and competent for the task in hand ...

The benchmark is a person who goes to an apparently competent professional adviser

- *gives the adviser a full and accurate set of facts*
- *checks the adviser's work or advice to the best of their ability and competence and*
- *adopts it.*

The person will then have taken reasonable care to avoid inaccuracy on the part of themselves and their agent."

> 23. At one extreme is an error of omission, for example failing to declare a source of income. In those circumstances it seems to me that

> a taxpayer will almost always be expected to identify the error. At the other extreme an error might involve wrongly construing a complex piece of legislation. In those circumstances the possibility of a penalty may still arise because of the carelessness of the agent, but the taxpayer's liability to a penalty might well be excluded on the basis that he took reasonable care but did not identify the error.
>
> 24. I agree with the general thrust of the guidance given in the HMRC Compliance Handbook. In particular that a taxpayer cannot simply leave everything to his agent. A taxpayer must certainly satisfy himself that the agent has not made any obvious error. That might involve the taxpayer seeking to understand the basis upon which an entry on his return has been made by the agent. However in matters that would not be straightforward to a reasonable taxpayer and where advice from an agent has been sought which is ostensibly within the agent's area of competence, the taxpayer is entitled to rely upon that advice. At the heart of this issue is the extent to which a taxpayer is required to satisfy himself that the advice he has received from a professional adviser is correct. The answer to that will depend on the particular circumstances of the case."

27. Judge Cannan allowed the appeal on the basis that, on the facts of that appeal, the taxpayer had taken reasonable care in relying on accountants when making a claim for Capital Gains Tax relief on the disposal of loan notes. In particular, the taxpayer had relied on positive advice from his accountants that such relief was available, when in fact it was not. It was a matter which would not have been straightforward to a reasonable taxpayer.

28. We were also referred to the Tribunal's decision in *Nigel Barrett v HMRC [2015] UKFTT 0329 (TC)*. The appellant relied heavily on it. In that case, the appellant was a 'jobbing builder' who undertook minor building work for private householders. Judge Berner allowed his appeal against penalties imposed under section 98A(2)(a) of the *Taxes Management Act 1970* for failure to make Construction Industry Scheme ('CIS') returns in relation to his occasional use of sub-contractors.

29. The taxpayer argued that he had a reasonable excuse for any alleged compliance failures, within the meaning of s 118(2) of the 1970 Act. He argued that he had appointed an accountant to deal with all relevant filings, and to provide him with relevant advice. He had no reason to believe that his accountant would be unable to provide him with the services he needed. He argued that he had done what would reasonably have been expected of a taxpayer trying to comply with his statutory obligations, and had been let down by the accountant.

30. Although Judge Berner considered several decisions of the Tribunal, he was not apparently referred to *Hanson*. However, he remarked (at Para [154]):

> "The test of reasonable excuse involves the application of an impersonal, and objective, legal standard to a particular set of facts and circumstances. The test is to determine what a reasonable taxpayer in the position of the taxpayer would have done in those circumstances,

> and by reference to that test to determine whether the conduct of the taxpayer can be regarded as conforming to that standard..."

31. At Para [156] Judge Berner went on to remark:

> "Nor do I consider that there can be any principled distinction between cases which involve complex or “arcane” provisions of tax law, and those which may be regarded as more commonplace. That is nothing more than one of the circumstances to be taken into account in the application of the objective standard."

32. At Para. [161] he remarked:

> "The test is one of reasonableness. No higher (or lower) standard should be applied. The mere fact that something that could have been done has not been done does not of itself necessarily mean that an individual's conduct in failing to act in a particular way is to be regarded as unreasonable. It is a question of degree having regard to all the circumstances, including the particular circumstances of the individual taxpayer. There can be no universal rule; what might be considered an unreasonable failure on the part of one taxpayer in one set of circumstances might be regarded as not unreasonable in the case of another whose circumstances are different."

33. *Hanson* and *Barrett* are decisions of Tribunal's of equivalent jurisdiction. Neither decision is binding upon us. However, and whilst we do not disregard what Judge Berner said in *Barrett*, we consider that the guidance in *Hanson* is appropriate to this case:

(1) *Hanson* deals with the statutory provisions which are directly in issue in this case, whereas *Barrett* deals with different provisions;

(2) Schedule 24 of the 2007 Act is not a 'reasonable excuse' test;

(3) Schedule 24 simply asks us to consider whether the taxpayer took reasonable care to avoid the inaccuracy;

(4) That is an objective test, calibrated with reference to the hypothetical reasonable taxpayer.

34. In our view, the following factors are relevant:

(1) At the time his 2012/13 tax return was filed, Mr Blackman had already been in continuous employment as a professional footballer for several years;

(2) Throughout his employment, at any one time, the appellant (even if out on loan) was an employee of a single club;

(3) He would, in the ordinary course of things, have been filing self-assessment returns for each of those years, in which his employment income was recorded;

(4) There had been at least one other tax year in which he had been employed by more than one club in succession (2008/9);

(5) There was no admissible evidence that he had not in fact understood his tax return;

(6) The appellant was collating financial information, with the help of his mother, and was forwarding it to the accountants. The impression is that the role of the accountants was to complete the tax return fully and accurately - that is, to act in an administrative capacity;

(7) The task being performed and which went wrong was the completion of the employment parts of a self-assessment return.

35. Even if Mr Blackman may have been let down by his previous accountants, Mr Blackman is the taxpayer, and it is his conduct which we must assess.

36. Having taken account of the above, we consider that Mr Blackman did fail to take reasonable care to avoid the inaccuracy and was therefore careless:

(1) It is entirely reasonable to expect an individual to know and understand their employment history in a given tax year. There was no evidence in this case that Mr Blackman did not know or understand his employment history in the year 2012/13. Transfers are milestone events in the lives and careers of professional footballers. Whether the transfer is for better or worse, they bring about an immediate change of club, manager, team-mates, home ground, prestige and income. Mr Blackman cannot possibly have forgotten, or not known, when authorising the filing of his tax return in April 2014, that he had been transferred twice, and hence had been employed by three clubs, between April 2012 and April 2013;

(2) Mr Blackman would have been expected to identify the error. It was an entirely obvious one to anyone reading the tax return with sufficient care. The error consisted both of inclusion and exclusion. It appeared several times throughout the return (for instance, in stating 2 employers, and not 3 - which was on page 2 of the return) and was also spelled out in writing. This married with the absence of any mention of Blackburn Rovers at all;

(3) The scenario was not complex. This is a self-assessment return of an employed individual, in continuous employment throughout the whole year, and in a single employment at any one time. His tax affairs were correspondingly simple and straightforward. We do not consider that having three consecutive employments in one year amounts to such complexity that Mr Blackman could not reasonably have been expected to identify the error. We reject any argument that the format or length of the tax return in this appeal, or the fact it contains figures, absolves Mr Blackman from having failed to spot the error. We reject the argument that Page 2 of the Tax Return (which asks whether the taxpayer had been employed, and, if so, by how many employers) is intelligible only to tax professionals;

(4) We reject the argument as to the way in which the error is said to have arisen (namely, the inclusion on Mr Blackman's P45 only of his income from Reading and Sheffield). The P45 itself was not in evidence. But, even if this

were correct in fact, it does not excuse the failure by Mr Blackman to have spotted any failure to mention Blackburn Rovers on the tax return;

(5) Although Mr Blackman may have left school at 16, there was no evidence that his level of educational attainment or literacy meant that he was unable to read the tax return himself, and needed the tax return reading out to him.

37. Whilst submissions were made to us, on Mr Blackman's behalf, that many taxpayers, of whom he was said to be one, do not read their tax returns before authorising them, there was no evidence in this case as to whether Mr Blackman had in fact read this particular tax return or not. We have proceeded on the basis that Mr Blackman read the return and failed to spot the error, which, as we have explained, for the above reasons, we consider to have been careless. But, for the avoidance of any doubt, if the submissions on Mr Blackman's behalf were genuinely intended to make the point that Mr Blackman either did not read his return at all, or limited his reading of it to the first two pages, then that conduct, of its very nature, would without any doubt be careless.

38. Accordingly, the appeal against the imposition of the penalty is dismissed.

Suspension

39. The sole ground of appeal in the Notice of Appeal dated 11 November 2015 is that Mr Blackman's advisers believed that he had a reasonable excuse for the inaccuracy. As such, the appellant's advisers did not formally advance any appeal on the alternative basis that, even if the penalty was correctly imposed, it should nonetheless have been suspended.

40. As far as we are aware, there was never any request for the penalty to be suspended. At its highest, the appellant's representatives only made passing mention to a suspended penalty at the end of a much longer letter (dated 25 February 2015) calling for no penalty at all to be imposed. There is no evidence that the appellant or his representatives, at any time after HMRC first indicated that an inaccuracy penalty might be imposed - which was 18 months ago (22 January 2015) - had ever proposed any conditions upon which the penalty could be suspended. The focus of their fire was always on the penalty itself.

41. In our view, if an appeal about suspension was to be pursued, then it should have been raised, fairly and squarely, by the appellant either in correspondence or (at the very latest) in his Notice of Appeal. It was not, and no explanation was put forward as to that omission. In our view, the failure to advance any appeal against the refusal to suspend was a breach by the appellant of Rule 1(4)(a) of the Tribunal's Rules, namely the obligation to help the Tribunal further the overriding objective.

42. Despite this, we were prepared to hear argument concerning the decision not to suspend the penalty, albeit that was done without expressing any conclusion as to whether the issue of suspension was properly part of this appeal or not.

43. HMRC may, at its discretion, suspend a penalty, although this can only be done subject to 'conditions of suspension': Schedule 24 Paragraph 14(2)(c). Paragraph 14(3) reads:

> HMRC may suspend all or part of a penalty only if compliance with a condition of suspension would help [the taxpayer] to avoid becoming liable to further penalties under paragraph 1 for careless inaccuracy.

44. A decision not to suspend a penalty may be subject to appeal: Paragraph 15(3). However, in relation to such an appeal, the Tribunal may order HMRC to suspend the penalty only if it thinks that HMRC's decision not to suspend was flawed: Paragraph 17(4)(a). 'Flawed' means *'flawed when considered in the light of the principles applicable in proceedings for judicial review'*: Paragraph 17(6).

45. On 28 April 2015, HMRC wrote that it could not suspend any of the penalty since *'there are no timebound conditions which can be adopted to ensure the inaccuracy does not arise in the future'*. That letter went on to refer to the Compliance Check series factsheet CC/FS10 - *Suspending Penalties for careless inaccuracies in returns or documents.*

46. Factsheet CC/FS10 reads as follows:

> "We can only suspend penalties for careless inaccuracies in returns or documents if we are able to set at least one suspension condition that will help you avoid penalties for similar inaccuracies in the future. Each condition must be:
>
> Specific - which means it must be directly related to the cause of the inaccuracy.
>
> Measurable - which means you will need to be able to show us whether you have met the condition.
>
> Achievable - which means you will need to show us that you are able to meet the condition.
>
> Realistic - which means we can realistically expect that you will meet the condition.
>
> Time bound - which means you must meet the condition by the end of the suspension period.
>
> We call these the SMART conditions."

47. Hence, the appellant and his advisers had been directed to the information which told him and them about the relevant factors to be considered when it came to suspension.

48. It is clear from the way in which the SMART conditions are expressed that there is an underlying expectation that conditions are not unilaterally arrived at by

HMRC, but instead are the result or outcome of an iterative or collaborative process between the taxpayer and HMRC. That analysis flows from the requirements that a condition should be both 'measurable' and 'achievable'. Both of these requirements impliedly connote that consideration should be given (at the outset, and before setting the condition) to the taxpayer's circumstances and their ability to comply.

49. We do not consider that it was HMRC's responsibility, of its own initiative, in this case, to seek to fashion any condition upon which the penalty could possibly have been suspended. Rather, the appellant had some responsibility to put forward conditions which, in his view and in that of his advisers, met the SMART guidelines and which could either form the basis of discussion with HMRC, or, if refused, any appeal. Given the variety of taxpayers' circumstances which are capable of giving rise to the imposition of a careless inaccuracy penalty in any individual case, then it must be the case that conditions of suspension must have to reflect those circumstances in a meaningful and not token way and, insofar as practicable, be tailored to them.

50. That leads us to conclude that HMRC was not in this case obliged to consider suspension in an exhaustive way, since the same had not been raised the appellant. That contrasts was the position in *David Testa v HMRC [2013] UKFTT 151 (TC)* in which the Tribunal (Judge Poole and Ms Debell) allowed an appeal against a refusal to suspend, but only where the appellant taxpayer had twice put forward conditions which were ignored by HMRC, which therefore rendered HMRC's decision flawed in a judicial review sense.

51. The decision not to suspend was considered at the statutory review.

52. During argument, the appellant's representatives suggested, for the very first time, that the following condition could be imposed: "*that the appellant meet his representatives for a line by line assessment of his return, which meeting is to be recorded*".

53. This was opposed by HMRC. We were referred by HMRC to the careful discussion by the Tribunal (Judge Brannan and Ms O'Neill) in *Anthony Fane v HMRC [2011] UKFTT 210 (TC)*. At Paragraphs [60]-[61] Judge Brannan remarked:

> "....it is clear from the statutory context that a condition of suspension must be more than an obligation to avoid making further returns containing careless inaccuracies over the period of suspension ... If the condition of suspension was simply that, for example, the taxpayer must file tax returns for a period of two years free from material careless inaccuracies, Paragraph 14(6) would be redundant"

54. We agree. We also agree with the tenor of Judge Brannan's reasoning that a condition of suspension must contain a practical and measurable condition which would help the taxpayer achieve the statutory objective: i.e., that tax returns should be free from errors caused by a failure to take reasonable care.

55. We do not consider that the proposed condition of suspension meets that test.

56. Firstly, whilst it is superficially similar to the condition imposed by the Tribunal (Judge Geraint Jones QC) in *Philip Boughey v HMRC [2012] UKFTT 398 (TC)* this is a case in which Mr Blackman's self-assessment return which has given rise to the penalty had already been completed by a chartered certified accountant and certified as true to the best of the appellant's knowledge and belief.

57. Secondly, in the absence of any evidence - whether from the appellant, his mother, or his previous accountants - as to how the error specifically came to be made in the first place, we simply do not know and therefore cannot assess (and nor, had it been raised earlier, could HMRC have assessed) how the condition proposed in fact relates to what had already happened in relation to the tax return.

58. Thirdly, there was no evidence that the appellant would be able to meet that condition anyway. He is a busy man, focussed on his footballing career. The very fact that Mr Blackman's representatives, despite having been instructed in January 2015, could not tell us anything about his tax affairs before the period of their instruction does not inspire confidence in the degree of co-operation between him and them which exists even presently. That is telling particularly in circumstances where Mr Blackman had parted company from his former accountants, and is appealing to this Tribunal against a penalty which he is said to feel very strongly is unjust.

59. The appellant's representatives also challenged the decision on suspension on the basis that it was flawed *'when considered in the light of the principles applicable in proceedings for judicial review'*. It was argued that the only reason given by HMRC referred to 'Timebound', which therefore connoted a failure to consider other material features (namely, the S, M, A and R conditions of SMART) which therefore meant that the decision was flawed.

60. That criticism, made only towards the end of the hearing, is not a fair one given the appellant's failures (i) to have expressly challenged the refusal to suspend sooner or in clearer terms; (ii) to have identified sooner the alleged error in reasoning upon which he sought to rely at the hearing; and (iii) to have suggested any conditions of suspension himself, during the 18 months before the hearing.

61. In our view, the appeal advanced along that route also fails. The failure to have advanced any conditions upon which the penalty could be suspended, or to have engaged meaningfully with HMRC on the point, means that HMRC cannot reasonably be said to have disregarded something to which they should have given weight. Nothing was advanced by the taxpayer in particular relation to suspension.

62. But, even if, and for the sake of argument, that conclusion were wrong, and the appellant had earlier put forward to HMRC the condition articulated before us, and that condition had been declined by HMRC, applying the SMART guidance, we would still have declined to find that HMRC's decision to refuse it would have been flawed. That is not simply on the basis (i) that the condition fails to meet the *Fane* guidelines and the SMART conditions, but also (ii) because we consider that HMRC's decision would inevitably have been the same.

Special Circumstances

63. A final point was made about special circumstances. The maximum deduction has already been applied. We accept that special circumstances refers to something out of the ordinary. We do not see anything in the circumstances of this case which would answer to that description. This is a case in which an employed taxpayer has carelessly failed, for some unknown reason, to pay sufficient attention to the employment pages of his tax return, leading to an inaccuracy for which he has been correctly penalised.

Decision

64. For the above reasons, the Appeal is dismissed.

65. 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.

Dr CHRISTOPHER McNALL
TRIBUNAL JUDGE

RELEASE DATE: 30 JUNE 2016