TC03244

Appeal number: TC/2012/07399

INCOME TAX – under-declaration - assessments of tax and penalties.

FIRST-TIER TRIBUNAL
TAX CHAMBER

ANDREW CORCORAN **Appellant**

- and -

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

TRIBUNAL: JUDGE RICHARD BARLOW
CHRISTINE OWEN FCA

Sitting in public at Bradford on 11 December 2013

The Appellant in person.

Mrs Paula O'Reilly for HM Revenue and Customs, for the Respondents

DECISION

1. Mr Andrew Corcoran appeals against notices of assessment of income tax issued on 16 December 2011 for the years ending 5 April 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2007, 2008 and 2009. It is alleged that his returns for those years were incorrect and that he had failed to notify a liability and that his conduct was fraudulent. He also appeals against a closure notice issued on 16 December 2011 for the year ending 5 April 2006 in respect of which it is alleged he had failed to notify a liability. There is no assessment for the year ending 5 April 2005.

2. He also appeals against penalties under section 95 of the Taxes Management Act 1970, also issued on 16 December 2011, for those years in which it is alleged his returns were incorrect, except for the year ending 5 April 2004 and a penalty, also issued on 16 December 2011, under section 7 of that Act for that year.

3. A penalty chargeable under Schedule 24 of the Finance Act 2007 for the year ended 5 April 2009 was issued on 19 March 2012 alleging an incorrect return had been made for that year. It was agreed at the hearing that that penalty should be treated as being under appeal and we so direct.

4. We need not set out the precise amounts of the assessments and penalties. The total tax assessed is £50,256.95 and the total penalties are £25,109.29 although the precise amounts may need amendment as will appear later in this decision. It is not in dispute that the assessments and penalties were based on the following allegations. It is alleged that Mr Corcoran had a Royal Bank of Scotland Isle of Man bank account in which large sums of money were kept. The assessments and penalties are based on three aspects of those accounts.

5. The first is the interest credited to Mr Corcoran on the sums held in the account which he did not declare in his tax returns. The second is a larger sum credited to the account on the maturity of a 'guaranteed return stock market investment' that Mr Corcoran held with the Bank. The third aspect is based on the allegation that large sums paid into the account for most of the years in question are to be treated as additional undeclared income from trading in the UK.

6. The evidence relating to the interest credited to the account was that the amounts were clearly shown on the bank statements but an issue arose as to whether those amounts should be taxable in the UK.

7. Mr Corcoran gave evidence about opening the bank account. His evidence about the source of the funds he had used to open the account is dealt with in detail below. (It is that it was gambling winnings). He said that he had wanted to buy a property and had taken £30,000 in cash from those winnings to a solicitor as a deposit for the purchase but that the purchase fell through. The solicitor said he could not give him the money back in cash but that if he took the solicitor's cheque to a bank they would cash it. Mr Corcoran said he went to the bank and the cashier made

enquiries, he assumed she rang the solicitor, before putting a bag containing £30,000 on the counter. Mr Corcoran said that at that point he became concerned that anyone else in the bank who saw the money being handed over might rob him after he left the bank and so it was suggested he should speak to someone from the bank in a back office.

8. That person suggested opening an account. Apparently Mr Corcoran did not have an account at any bank at that time. In his written statement Mr Corcoran said this: "I explained to [the bank clerk] that the money was gambling winnings and that if I opened an account I would then need to declare the account as I was self-employed and no doubt that would lead to all sorts of unnecessary questions". He added: "As a result [the clerk] offered me an account with the bank in the Isle of Man which I was assured would be tax free and as this seemed to involve the fewest complications I agreed to proceed and the cheque was paid in".

9. When HMRC started to enquire into Mr Corcoran's tax affairs he repeatedly asserted that he had been told the account was tax free. The bank was reluctant to reply to his enquiries and those of more than one accountant who acted for him. Eventually, on 4 December 2012, a Mr Callow from the bank emailed to say that he could confirm that the interest was paid gross and that interest did need to be reported to the UK tax authorities.

10. Taking into account the appellant's oral evidence and the vehemence with which it seems he believed that the interest was tax free and the extent to which he tried to pursue the question with the bank we find that Mr Corcoran did believe the bank interest was tax free in the UK. But we find that the basis for that belief was that he had misunderstood what the bank had meant when it was explained to him that tax would not be deducted at source. It became clear at the hearing that Mr Corcoran did not understand the difference between tax free and tax not deductible at source and so we conclude that he also failed to understand the difference when he was opening the account.

11. On the other hand, we hold that the interest was in fact taxable in the UK for at least most of the period covered by the assessments. A further complication, noticed by Miss Owen the Tribunal member but overlooked by HMRC, is that from a certain date it appears from the bank statements that tax may have been deducted before interest was credited to the account. We will return to that point below.

12. The second aspect of the evidence about the bank account relates to the guaranteed return stock market investment. The accumulated earnings from that investment were added to the bank account and it was not challenged that they were taxable. Mr Corcoran said that the return on that investment had been 3.5% per annum and that he had been told it would be tax free when he investment the money. We hold that the same misunderstanding arose in respect of that investment as had arisen in respect of the interest on the account and for the same reasons.

13. The third and final aspect of the evidence about the bank account relates to the large sums paid into the account in most of the years under consideration. One or two

payments into the account were made in eight of the years under consideration. The individual amounts were between £10,000 and £29,000 and the highest amount paid-in in any year was £33,500. The total of the large payments–in is £196,145.

14. During HMRC's enquiries these amounts were discussed. Mr Corcoran claimed that he had won the money through betting on horse races. He gave the same explanation in his written statement and in evidence before us.

15. Mr Corcoran said in evidence that he had only ever had four bets on horse races in his life. The first was a two shilling bet when he was young and he had no recollection of the details. The last was a small bet in Oldham when he won £78.

16. It is the other two bets that he claims were the source of the otherwise unexplained money in the Isle of Man account.

17. He said that he had worked as a pipe layer as a young man and that a colleague had told him that he should never place a bet on a horse unless the horse's name had something to do with him. He claimed that in 1978 he had been reading a newspaper and he noticed the names of two horses. One was 'Parrott Fashion' and he was working with someone called Parrott at the time. The other was 'Carriageway' and he was working on dismantling a piece of equipment part of which was called a carriageway. Both horses were favourites and he decided to have a bet on both horses. He knew someone called Billy Clay who knew about betting and so he "shot over to Billy's house" and asked him to place a bet. Billy advised him to make it a double bet and he staked £800 on the contingency that both horses would win. They did and he won £38,000.

18. Mr Corcoran claimed to have had even more success with the third bet he had placed in his life. This time four horses' names attracted his attention: 'East Coast Girl' because he had recently met a girl at an East Coast resort, 'the Welder' because that was his job, 'Mend It' because that seemed to apply to him because he mended things and 'Lucky Man' because he would be lucky if the horses won. He again asked Billy Clay to place the bets, this time as a four horse accumulator, and he staked £10. All four horses won and he claimed to have made £140,000.

19. Billy Clay has since died.

20. This evidence stretches credulity though we acknowledge that it is possible to win sums like those mentioned on bets of that sort. Mr Corcoran referred to an occasion, which certainly received a lot of publicity, when someone had won an even larger sum on an accumulator bet. However, to win on three out of four bets using a system of selection based on the names of the horses is very unlikely. To have won £178,000 on two bets is possible but highly unlikely.

21. Mr Corcoran said that he put the winnings from these two successful bets in a tin box and buried it on disused common land. He claimed that he subsequently dug it up and reburied it several times when he moved house and that from time to time he had taken large sums out, some of which he spent and some of which he paid into the Isle of Man account.

22. However, the evidence does not end there. On 2 June 2010 when Mr Corcoran was interviewed by HMRC in connection with their enquiries he gave detailed accounts of placing the bets. HMRC's record of that meeting says that Mr Corcoran had said that the four horse accumulator was placed on races at Cheltenham and he said that he attended the races there on at least one occasion and appears to have implied that he had been at Cheltenham when the £38,000 was won. In respect of both successful bets he described how the winnings had been collected. He said that the £38,000 had been collected by him in Manchester the day after the race. The £140,000 was collected from a bookmaker called Williams at a later race meeting in Carlisle.

23. In evidence at the tribunal and in his written statement Mr Corcoran said he had not said he went to Manchester to collect the winnings. He said £40,000 of the £140,000 was paid to him by Billy Clay who had attended the race where that bet was placed and that he and Billy Clay had gone to the motorway services near Carlisle to collect the remaining £100,000. He said he had never been to a horse race in his life.

24. There is no reason why HMRC would have made up the details of the bets and the circumstances surrounding them when Mr Corcoran described them at the meeting. Whilst we accept there is room for misunderstanding the details given such as going to Manchester and Carlisle to collect the winnings cannot have been based on misunderstandings. We prefer the evidence of HMRC and find that the details given by Mr Corcoran were different from those given in evidence at the tribunal.

25. HMRC produced print-outs from the Racingpost.com internet site relating to horses whose names are those Mr Corcoran claimed to have backed. These print-outs were inconclusive at best as the print-outs are endorsed with the warning that the details of horses trained outside GB and Ireland and those born prior to 1986 may be incomplete. We will not rely upon that evidence.

26. It should have been possible for either party to have obtained corroboration or refutation of Mr Corcoran's claims from newspaper archives or other sources. In the absence of such evidence we will decide the issue on the evidence we have.

27. The inherent unlikelihood of someone winning £178,000 on £810 stakes on only two of the four bets he had ever placed and having won on three of the four in total is itself cogent evidence that Mr Corcoran's evidence is untruthful. If we add to that the fact that his accounts of those bets and their surrounding circumstances have been contradictory, then we find the case for rejecting his explanation of the source of the money in the Isle of Man account is overwhelming.

28. We add that even if £178,000 had been won on horse racing it does not account for the whole of the money paid into the account.

29. We hold that HMRC are fully justified in treating that money as additional income not elsewhere declared. Indeed, they have been generous in assessing the tax on the basis that the additional trading represented by the payments-in would have incurred costs of 50% which have not been claimed in Mr Corcoran's tax returns.

30. As mentioned, the interest credited to the account and the guaranteed return stock market investment fund interest were believed by Mr Corcoran to be tax free. We need to consider whether that fact affects the penalties.

31. The penalties for all the years under consideration except for 2003/4 and 2008/9 were imposed under section 95(1)(a) of the Taxes Management Act 1970. Mr Corcoran is liable to those penalties if he fraudulently or negligently delivered incorrect returns. We hold that his deliberate decision to exclude the Isle of Man account form his returns was fraudulent. Had the only sums lodged in those accounts been the interest that might have been relevant to the question whether he had acted fraudulently - because he believed they were tax free - but even then his failure to declare the interest would have been negligent. The returns seek a declaration of bank interest whether or not tax has been deducted and so his failure to declare it is at the very least negligent and of course they were not the only sums he failed to declare as he fraudulently failed to declare what we have found to be additional earnings.

32. The penalty for 2003/4 was imposed under section 7(8) of the Taxes Management Act 1970 for failure to give notice of chargeable income and it is not dependent upon any allegation of negligence or fraud.

33. The penalty for 2008/9 was imposed under Schedule 24 of the Finance Act 2007 and we find that the inaccuracy in the return was deliberate and concealed so that a 100% penalty could be imposed.

34. In respect of all the penalties the penalty has been reduced to 50% of the possible maximum which we hold to be at least as generous as Mr Corcoran could expect.

35. Such of the assessments and penalties that fall outside the normal time limits are in time because of the fraudulent conduct.

36. The quantum of the assessments is based on the interest figures in the account and upon the lodgements in the account with a 50% allowance for the latter on the basis that there should be taken to be undeclared costs as well as undeclared earnings which, as we have already said is, if anything, generous to Mr Corcoran.

37. The only adjustments that may need to be made are any that arise from the fact that some Manx tax may have been deducted from the interest for some of the later years (see paragraph 11 above). We therefore dismiss the appeals both in respect of the tax assessments and the penalties subject only to a direction that either party may give notice in writing to the tribunal, which is also to be served by that party on the other party, that a further hearing is needed to determine whether and if so by how much the assessments and penalties should be adjusted to take account of any such deductions of tax as have already been made. Any such application is to be made within three months of the issue of this decision and if no such application is made within that time the appeals are to stand dismissed in their entirety without further order.

38. 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.

RICHARD BARLOW
TRIBUNAL JUDGE

RELEASE DATE: 22 January 2014