



TC03856

Appeal number: TC/2013/06797

VAT – penalty assessment for ‘prompted careless inaccuracy’ in VAT return – Appellant failed to notify HMRC that centrally issued assessments were too low – Appellant asserted that returns were completed in accordance with HMRC advice – whether reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DAVID MILNER t/a STAFFCALL

Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL S CONNELL
MR DEREK ROBERTSON**

Sitting in public at Hull Combined Court Centre Lowgate Hull on 4 July 2014

The Appellant did not attend and was not represented

Mr Barry Sellars, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by Mr David Milner t/a Staffcall ('the Appellant') against a
5 penalty assessment issued under Schedule 24 Finance Act 2007 for a prompted careless
inaccuracy in his tax return for the year ended 5 April 2012.

2. The penalties were issued following the Appellant's failure to notify the
Respondents that centrally issued assessments were too low for the VAT periods 08/11,
11/11, 02/12, 05/12, and 08/12. Central assessments were raised as the Appellant's
10 returns for the periods were outstanding.

3. The Appellant did not attend the hearing. However the Tribunal was satisfied that
the Appellant had been given notice of the time, date and venue of the appeal hearing and
that it was in the interests of justice to proceed.

Background

4. The Appellant traded as a supplier of staff to care homes and hospitals. The
principle place of business was 116 Louis Pearlman Centre, Goulton Street, Hull, HU3
4DL and applied to register for VAT on 28 June 2011 via the Respondents' website

5. The Respondents confirmed receipt of the application by letter on 4 July 2011. The
letter contained detailed instructions on how to account for VAT before registration. The
Appellant was registered with an effective date of registration (EDR) of 29 June 2011.
The Appellant was deregistered with effect from 1 December 2012 following
incorporation as a limited company.

6. On 4 July 2011 the Respondents acknowledged the application and advised how
applicants should account for VAT prior to registration:

“While we review your application, you must start accounting for VAT from the date you
are liable to be registered — not just the date of your application or the date on which we
register you. If you do not have to register for VAT but have applied to do so voluntarily,
you must start accounting for VAT from the registration date you asked for in your
application.

You cannot charge VAT, or show VAT as a separate item on any invoice, until you are
registered. However, if you wish you can change your prices in anticipation of
registration to reflect the VAT that you will have to account for. If your customers need a
VAT invoice you will have to send it to them later, once you are registered. You may
wish to show them this letter by way of explanation”

7. In October 2012 the Respondents contacted the Appellant to arrange a visit to
review its records. At the time of booking, the Appellant's VAT returns for the periods
08/11, 11/11, 02/12, 05/12 and 08/12 remained outstanding. Effectively, all the VAT
returns since registration had not been filed. A visit was arranged for January 2013.

8. On 22 November 2012, after the Respondents contacted the Appellant to book the
visit, he submitted the VAT returns for the period 08/11, 11 /11, 02/12, and the return for
11/12 (which was later reduced to 'nil'. This was done on 22 November 2012. The 08/11
return was 406 days late, 11/11 was 314 days late, and 02/12 was 223 days late.

9. The Respondents then visited the Appellant in January 2013, and it was noted that
the returns for the periods 05/12 and 08/12 remained outstanding

10. In January 2013 the Respondents again visited the Appellant to review his VAT account and associated records. At the time of the visit the 05/12 and 08/12 VAT returns remained outstanding.

5 11. On 23 January 2013, following the visit, the Respondents wrote to the Appellant to clarify the points discussed. The letter:

- Requested the submission of outstanding returns.
- Discussed partial exemption calculations.
- Provided calculations of the VAT liabilities for the outstanding returns
- 10 • Explained that when returns are not received 'central assessments' were issued, and this had been done in relation to periods 08/11, 11/11, and 02/12. The letter also explained that if the central assessments were too low, the Appellant had 30 days from the date of issue to notify the Respondents that they were too low, and that failure to do so would result in penalties being issued.
- 15 • The letter also advised that penalties would be raised in relation to the 08/11, 11/11, and 02/12 periods, and that penalties would be due for the later periods. However, the Respondents advised the Appellant that if he was to submit the missing returns the Respondents would allow the full reductions for “telling, helping, and giving”, which meant that the inaccuracy penalty would be calculated at 15% of the potential lost revenue. The rate of 15% is the lowest percentage allowable for a prompted disclosure. The penalty was deemed as prompted as no returns were submitted prior to the Respondents making contact to book a visit.
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12. Central assessments were issued as per the table below:

Assessment	Amount	Date	Return	Amount	Date
08/11	277.00	Oct 11	08/11	2658.50	22/11/12
11/11	385.00	Jan 12	11/11	11638.79	22/11/12
02/12	365.00	Apr 12	02/12	10268.28	22/11/12
05/12	464.00	13/07/12	05/12	6629.21	20/02/13
08/12	580.00	12/10/12	08/12	6970.90	20/02/13

13. On 11 February 2013 the Appellant's representative wrote to the Respondents to
30 correct the VAT return for the period 11/12 and to advise that the Appellant had ceased to trade as a sole trader.

14. On 20 February 2013 the Appellant submitted its VAT returns for the periods 05/12 and 08/12.

15. On 4 March 2013 the Respondents issued a central assessment in relation to period
35 11/12. By letter on 15 April 2013 the Respondents provided further detail with regard to the calculation and reasoning behind the assessment. This assessment was later withdrawn following discussion with the Appellant's representative.

16. On 17 May 2013 the Respondents issued penalties under Schedule 24 of the Finance Act 2007 for the periods 08/11, 11/11, 02/12, 05/12, and 08/12.

Period	PLR	Amount	Date	Prompted	Penalty Range	Mitigation	Penalty
08/11	£2381.00	£357.15	23/11/12	Yes	15-30%	100%	15%
11/11	£11253.00	£1687.95	23/11/12	Yes	15-30%	100%	15%
02/12	£9903.00	£1485.45	23/11/12	Yes	15-30%	100%	15%
05/12	£6165.00	£924.25	22/02/13	Yes	15-30%	100%	15%
08/12	£6390.00	£958.50	22/02/13	Yes	15-30%	100%	15%

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17. On 24 June 2013 the Appellant's representative requested a review of the decision to raise penalties under Schedule 24 Finance Act 2007.

18. The review was concluded on 1 August 2013, the outcome of the review was to uphold the original decision in full. The review conclusion letter made reference to the points raised by the Appellant in relation to the pre-registration visit and suggested contacting the relevant complaints unit.

19. On 25 September 2013 the Appellant made its appeal to the Tribunal.

Relevant legislation

20. The relevant legislation is at Schedule 24 Finance Act 2007.

2 (1) A penalty is payable by a person (P) where-

(a) an assessment issued to P by HMRC understates P's liability to a relevant tax, and

(b) P has failed to take reasonable steps to notify HMRC, within the period of 30 days beginning with the date of the assessment, that it is an under-assessment.

(2) In deciding what steps (if any) were reasonable HMRC must consider-

(a) whether P knew, or should have known, about the underassessment, and

(b) what steps would have been reasonable to take to notify HMRC.

(3) In sub-paragraph (1) "relevant tax" means any tax mentioned in the Table in paragraph 1.

(4) In this paragraph (and in Part 2 of this Schedule so far as relating to this paragraph)-

(a) "assessment" includes determination, and

(b) accordingly, references to an under-assessment include an under-determination.

3 (1) For the purposes of a penalty under paragraph 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,

(b) “deliberate but not concealed” if the inaccuracy is deliberate on P's part but P does not make arrangements to conceal it, and

(c) “deliberate and concealed” if the inaccuracy is deliberate on P's part and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure).

(2) An inaccuracy in a document given by P to HMRC, which was neither careless nor deliberate on P's part when the document was given, is to be treated as careless if P-

(a) discovered the inaccuracy at some later time, and

(b) did not take reasonable steps to inform HMRC.

4 (1) This paragraph sets out the penalty payable under paragraph 1.

(2) If the inaccuracy is in category 1, the penalty is-

(a) for careless action, 30% of the potential lost revenue,

(b) for deliberate but not concealed action, 70% of the potential lost revenue, and

(c) for deliberate and concealed action, 100% of the potential lost revenue.

(3) If the inaccuracy is in category 2, the penalty is-

(a) for careless action, 45% of the potential lost revenue,

(b) for deliberate but not concealed action, 105% of the potential lost revenue, and

(c) for deliberate and concealed action, 150% of the potential lost revenue.

(4) If the inaccuracy is in category 3, the penalty is-

(a) for careless action, 60% of the potential lost revenue,

(b) for deliberate but not concealed action, 140% of the potential lost revenue, and

(c) for deliberate and concealed action, 200% of the potential lost revenue.

(5) Paragraph 4A explains the 3 categories of inaccuracy.

4 A(1) An inaccuracy is in category 1 if-

(a) it involves a domestic matter, or

(b) it involves an offshore matter and-

(i) the territory in question is a category 1 territory, or

(ii) the tax at stake is a tax other than income tax or capital gains tax.

13 (1A) A penalty under paragraph 1, 1A or 2 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(2) An assessment-

(a) shall be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Act),

(b) may be enforced as if it were an assessment to tax, and (c) may be combined with an assessment to tax.

(3) An assessment of a penalty under paragraph 1 or paragraph 1A must be made before the end of the period of 12 months beginning with-

(a) the end of the appeal period for the decision correcting the inaccuracy, or

5 (b) if there is no assessment to the tax concerned within paragraph (a), the date on which the inaccuracy is corrected.

(4) An assessment of a penalty under paragraph 2 must be made before the end of the period of 12 months beginning with-

10 (a) the end of the appeal period for the assessment of tax which corrected the understatement, or

(b) if there is no assessment within paragraph (a), the date on which the understatement is corrected.

(5) For the purpose of sub-paragraphs (3) and (4) a reference to an appeal period is a reference to the period during which-

15 (a) an appeal could be brought, or

(b) an appeal that has been brought has not been determined or withdrawn.

20 18 (1) P is liable under paragraph 1(1)(a) where a document which contains a careless inaccuracy (within the meaning of paragraph 3) is given to HMRC on P's behalf.

(2) In paragraph 2(1)(b) and (2)(a) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.

25 (3) Despite sub-paragraphs (1) and (2), P is not liable to a penalty under paragraph 1 or 2 in respect of anything done or omitted by P's agent where P satisfies HMRC that P took reasonable care to avoid inaccuracy (in relation to paragraph 1) or unreasonable failure (in relation to paragraph 2).

(4) In paragraph 3(1)(a) (whether in its application to a document given by P or, by virtue of sub-paragraph (1) above, in its application to a document given on

30 P's behalf) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.

(5) In paragraph 3(2) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.

35 The Appellant's Case

21. The Appellant's case, as stated on his Notice of Appeal is as follows:

"The 11/11-08/12 returns weren't inaccurate as I corrected the appropriate amount and paid them correctly within set timescales

40 When my offices were visited I showed the officers everything I was doing regarding my VAT returns and they both said I was doing the right thing! - Misled by both officers

This case hasn't been heard fairly. I was told that when my notices arrive just simply correct the amounts and post relevant amounts etc. which I did -then was

45 inappropriately fined, (which also keeps increasing from £5k to £6389.09)"

The Respondents' Case

22. The Respondents contend that:

- a. The visiting officers did not mislead the Appellant, and in fact advised the correct way to deal with pre-registration VAT. This is evidenced by way of the Officers' witness statements and supporting Officers' visit report.
- b. HMRC reinforced the advice that had been given regarding how to deal with pre-registration VAT by letter dated 23 January 2013.
- c. No evidence has been adduced by the Appellant to suggest or prove that on the balance of probabilities the Appellant was misled by the Respondents.
- d. The relevant returns were submitted by the Appellant only when a visit was arranged. Some were furnished after the visit, and furthermore, after the central assessments were issued, as per the table below:

Assessment	Amount	Date	Return	Amount	Date	Delay between assessment and return
08/11	277.00	Oct 11	08/11	2658.50	22/11/12	406 days
11/11	385.00	Jan 12	11/11	11638.79	22/11/12	314 days
02/12	365.00	Apr 12	02/12	10268.28	22/11/12	223 days
05/12	464.00	13/07/12	05/12	6629.21	20/02/13	222 days
08/12	580.00	12/10/12	08/12	6970.90	20/02/13	131 days

23. The Appellant failed to notify the Respondents that the central assessments had been issued for amounts lower than his actual liability.

24. The Appellant acknowledges that the assessments were too low and states that he was relying on his accountant to correct the errors in the long run. Paragraph 18(3) of Schedule 24 states "...P is not liable to a penalty under paragraph 1 or 2 in respect of anything done or omitted by P's agent where P satisfies HMRC that P took reasonable care to avoid inaccuracy...". The Appellant took no steps to notify the Respondents of the inaccuracy of the assessments, and cannot therefore be deemed to have taken reasonable steps to avoid the inaccuracy.

25. The penalties raised were correctly calculated and issued in accordance with Schedule 24 Finance Act 2007. (Paragraph 16 above).

26. The Respondents have given full reductions for the quality of the disclosure, i.e. for telling, helping, and giving access. The disclosure was prompted giving a penalty range of 15% to 30%.

5 27. The Respondents have considered special reduction but do not feel that the Appellant's case falls within required parameters.

Conclusion

10 28. At the conclusion of the hearing the Tribunal gave its decision, which now follows.

29. Under paragraph 2(1)(a), Schedule 24, Finance Act 2007 the Appellant was required within 30 days of the issue of an assessment to take reasonable steps to notify the Respondents that the assessment was too low.

15 30. The Appellant relied on his accountant to correct the errors and took no steps to notify the Respondents of the inaccuracy of the assessments. Therefore as HMRC say, he cannot be deemed to have taken reasonable steps to avoid the inaccuracy.

20 31. We are satisfied that the visiting officers did not mislead the Appellant. It is inherently improbable that he would have been misled as to the correct way to deal with his pre-registration VAT. Evidence by way of Officers' witness statements and the supporting Officers' visit report confirms this. No evidence has been adduced by the Appellant to show that the Appellant was wrongly advised by HMRC.

32. We find that the relevant returns were submitted by the Appellant only after a visit was arranged. They were submitted after central assessments had issued and the Appellant failed to notify HMRC that the assessments were too low.

25 33. We therefore conclude that the decision to issue penalties for errors under Schedule 24 of the Finance Act 2007 was correct and the appeal is dismissed.

30 34. 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.

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**MICHAEL S CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 31 July 2014