



TC06314

Appeal number: TC/2016/05423

Income tax – schedule 24 FA 2007 penalties – taxpayer included dividend details in company accounts – whether sufficient notice to HMRC – HMRC guidance not ambiguous – penalties correctly imposed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JACOB TAIWO

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE ALASTAIR J RANKIN
MS ANN CHRISTIAN**

**Sitting in public at Leeds ET, 4th Floor, City Exchange, 11 Albion Street, Leeds,
LS1 5ES on Friday 12 January 2018 at 10:00 AM**

The Appellant in person

**Mr John Nicholson, Presenting Officer, HM Revenue and Customs, for the
Respondents**

DECISION

1. This is an appeal by Mr Jacob Taiwo against the following penalties imposed under either the Taxes Management Act 1970 (TMA), the Finance Act 2007 (FA2007) or the Finance Act 2008 (FA2008)

Tax year 2006/7	£2,716.16	Section 7(8) TMA
Tax year 2007/8	£3,905.68	Section 7(8) TMA
Tax year 2008/9	£3,266.94	Section 7(8) TMA
Tax year 2009/10	£6,468.50	Schedule 41 FA 2008
Tax year 2010/11	£76.89	Schedule 24 FA 2007
Tax year 2010/11	£194.25	Schedule 24 FA 2007
Tax year 2010/11	£6,865.81	Schedule 24 FA 2007
Tax year 2011/12	£80.91	Schedule 24 FA 2007
Tax year 2011/12	£224.25	Schedule 24 FA 2007
Tax year 2011/12	£8,749.35	Schedule 24 FA 2007
Tax year 2012/13	£90.84	Schedule 24 FA 2007
Tax year 2012/13	<u>£606.76</u>	Schedule 24 FA 2007
Total	<u>£33,246.34</u>	

2. The six large penalties relate to Mr Taiwo's failure to declare substantial dividend income while the smaller penalties relate to the incorrect completion of his income tax returns in respect of rental income for 2010/11 to 2012/13 and claiming personal allowances for 2010/11 and 2011/12 to which he was not entitled due to the amount of his income. HMRC initially claimed these smaller penalties were not under appeal but as they were included in Mr Taiwo's Notice of Appeal the Tribunal considers all penalties are under appeal. At the hearing HMRC confirmed that all penalties were under appeal.

Background

3. In each of the tax years ending 5 April 2007 to 5 April 2012 Mr Taiwo received dividend income varying from £67,456.67 to £126,354.03 but in the year ending 5 April 2013 the dividend was reduced to £16,901.17. He had not been asked to complete tax returns for the tax years prior to 6 April 2010. On 9 August 2013 HMRC sent Mr Taiwo tax returns for the three tax years ending 5 April 2013. Although he filed these tax returns well within the required time on 19 September 2013 he did not enter any figure for dividend income. Instead in the box headed "Any other information" he wrote the following or similar:

- 25 "Daresys Consultancy Ltd Employment – additional information Director of the company. Dividend payment received after the company's account have been submitted to HMRC."

4. Mr Taiwo qualified as a chartered accountant in 1991 but never practised. He traded through his own company – Daresys Consultancy Ltd (DCL) – where he was the sole

director and shareholder. The Company was incorporated on 11 May 2004 and returned accounts each year to 31 May. The following was shown in DCL's accounts each year as "Creditors: amounts falling due within one year":

<u>Date</u>	<u>Tax on Dividend</u>
31/05/07	£18,946.09
31/05/08	£16,467.36
31/05/09	£14,093.42
31/05/10	£28,203.23
31/05/11	£24,819.00
31/05/12	£33,331.81
31/05/13	£1,690.12

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5. Mr Taiwo was not sent a notice to file self assessment tax returns for the years ended 5 April 2007 to 5 April 2010. HMRC wrote to Mr Taiwo on 12 August 2013 stating that they had received information that required him to complete Self Assessment Income Tax Returns for the tax years ended 5 April 2010, 2011 and 2012. On 14 August 2014 HMRC wrote to Mr Taiwo to inform him of his Unique Taxpayer Reference (UTR) following his registration for Self Assessment. HMRC then wrote to Mr Taiwo on 16 July 2014 to inform him that they were checking his return for the year ended 5 April 2013. Upon enquiry Mr Taiwo was informed that the enquiry was into his dividend income to which he replied that he "interpreted the dividend as those received from investment in shares in other UK companies, as Daresys is my trading name." He also informed HMRC that for the year end May 2013 a total of £16,901.17 was declared as dividend.

6. HMRC then wrote to Mr Taiwo on 23 October 2014 to state that they had reason to suspect that he had committed tax fraud. He was sent a copy of Code of Practice 9 (COP9) and a Contractual Disclosure Facility (CDF) letter. As the letter dated 23 October 2014 was returned to HMRC by the Return Letter Service, HMRC reissued it on 6 July 2015. Mr Taiwo declined to complete the Outline Disclosure form as he noted the last paragraph of section 2.2 of the COP9 stated that the CDF was not appropriate for people who want to disclose only careless errors or mistakes.

7. Following the rejection of the CDF HMRC wrote to Mr Taiwo requesting information about DCL. Mr Taiwo supplied the information requested and co-operated with HMRC. A meeting was held on 1 September 2015 which lasted two hours thirty minutes. At this meeting Mr Taiwo explained during the meeting that he had set up DCL as he wanted independence from working for a big company and as the clients he dealt with were themselves big companies they preferred to trade with other limited companies rather than individuals. He also explained that all income in the company bank account would eventually be transferred into his private current bank account but none of the transfers were specifically described as wages and the amounts claimed for wages could not be specifically identified. Mr Taiwo and Mr La Roche, one of the HMRC officers at the meeting disagreed about the transfers. Mr Taiwo claimed the

transfers were his 'director takings'. Mr La Roche explained that there was no such thing as 'director takings' in an incorporated company; the only way a director could take money from a limited company was through wages as a director or through dividends as a shareholder. Mr Taiwo said he thought differently. He thought the dividends were just his money but was unable to explain why he thought they would not be taxable. Mr Taiwo accepted that he had made a mistake, had corrected it and paid the resulting tax liability. He had tried to alter earlier years but had been unable to do so.

8. Following this meeting HMRC issued revised assessments on 2 September 2015 for the tax years 2006/7 to 2012/13. The total additional tax amounted to £93,395.91 (subsequently revised to £97,531.15). Mr Taiwo paid £75,000.00 towards the additional tax almost immediately from the bank account of DCL. By letter dated 29 September 2015 HMRC advised Mr Taiwo that they were going to issue penalties and enclosed factsheet CC/FS13 headed "The Human Rights Act and penalties" and factsheet CC/FS7a headed "Penalties for inaccuracies in returns and documents".

9. By letter dated 5 October 2015 HMRC once again explained that Mr Taiwo and DCL were separate legal entities. This letter also confirmed that HMRC's enquiry under COP9 was into Mr Taiwo's personal affairs and not the tax affairs of DCL. In summary HMRC stated:

20 "- A limited company pays corporation tax on its business profits
 - Dividends are a distribution of the company's profits to shareholders
 - Dividend income is the personal income of the recipient shareholder who is personally liable to any higher rate tax arising on them
 - It is a personal legal obligation to notify HMRC of your personal chargeability."

25 10. Mr Taiwo paid the balance of the amended assessments following which HMRC requested a breakdown of the creditors shown in DCL's accounts. Mr Taiwo replied on 8 October 2015 supplying a breakdown of the creditors, confirming that creditors were not cumulated from year to year and that he had contacted HMRC for help with corporation tax but had been unable to get help with national insurance and dividend tax though he was later contacted about national insurance which he then paid promptly. He also confirmed that he waited for HMRC to contact him with regard to dividend tax. In a further letter dated 12 October 2015 Mr Taiwo explained that he had not been aware that DCL was entitled to 10% tax credit with the result that he had calculated the tax due on the dividends on each whole dividend. He also enclosed details of the interest which had formed part of each mortgage payment in respect of his rented property.

35 11. HMRC wrote to Mr Taiwo on 11 November 2015 with proposals for settlement of his tax affairs. They proposed imposing penalties as detailed in paragraph 1 above together with their reasons for imposing them. For the tax years 2006/7, 2007/8 and 40 2008/9 the reasons were:

- that he was a qualified chartered accountant and therefore his knowledge should be above average
- he knew that tax was due but made no effort to pay it

- the creditors were only shown in that year and were not cumulated with the result that they disappeared from the balance sheet when they had not been paid and remained outstanding
- 5 • a reasonable person would understand that they were only entitled to a dividend as a shareholder and that the income being a distribution of company profits already taxed would therefore be personal to them. The argument that he thought this was a company liability was therefore not realistic
- 10 • why would he think that a company would suffer further tax on the distribution of its profits that had already suffered corporation tax
- 10 • he was waiting to be contacted by HMRC to advise how to pay the dividend tax – this establishes that he knew the tax was due yet he made no effort to pay it
- 15 • he claimed he did not know how to pay the tax and was unable to contact HMRC by telephone yet he did make contact to discuss payment of corporation tax, could easily have mentioned the dividend position but did not do so
- 15 • he lived within easy travel of Sheffield HMRC enquiry office and could easily have made an appointment to discuss this
- 20 • a reasonable person in possession of income of tens of thousands of pounds, (sometimes over £100,000) would surely understand that there would be a tax liability to this
- 20 • a reasonable person could surely not conclude that tax on dividends paid to a shareholder would be the liability of the company
- 20 • it would not be reasonable for HMRC to consider that a personal tax liability had been included in the creditors of a limited company and to look for it there.

25 12. As a result HMRC considered that Mr Taiwo's disclosure had been good though the earlier dividends had not been disclosed at the outset. HMRC proposed a penalty loading of 10% against a maximum of 20%. They considered his co-operation had been good and suggested a penalty loading of only 5% giving an abatement of 35%. As Mr
30 Taiwo had been in receipt of substantial dividends but had failed to take any steps to register with HMRC as an individual they suggested an abatement of 20% leaving a penalty loading of 20%. This resulted in a suggested penalty for 2006/7, 2007/8 and 2008/9 of £9,889.79 being 35% of the tax due of £28,253.69.

35 13. HMRC proposed penalties for 2009/10 to 2012/13 under section 7 TMA 1970 for the submission of inaccurate tax returns. HMRC considered that Mr Taiwo's disclosure had been prompted as a consequence of HMRC enquiries. HMRC also considered Mr
40 Taiwo's behaviour had been deliberate. In addition to the reasons given for the years 2006/7 to 2008/9 HMRC stated:

- 40 • The returns had been sent as part of an enquiry and the covering letter explained that the only issue under enquiry was dividends. Mr Taiwo was aware that he was in receipt of dividends from DCL but did not declare them on the returns
- 40 • Mr Taiwo stated that he did not think that DCL shares counted as it was his company and he thought the section referred to shares held in companies as an investment. HMRC had pointed out that his shares in DCL were exactly that as they are dividends based upon the profitability of the company

- Mr Taiwo had suggested that the notes on dividends were ambiguous. HMRC did not agree. The notes say the ‘only figure to enter on your tax return is the total of all dividend payments’. HMRC could not see any ambiguity nor did they believe that any reasonable person would.
 - 5 • If he had been in any doubt why not phone the enquiry caseworker before submitting the returns on the personal phone number given. This is what HMRC consider a reasonable person would have done.
 - Mr Taiwo was aware that further tax was due on the dividends but he did not pay it. If he had any intention of declaring the income he should have phoned HMRC to check what they needed to know.
 - 10 • Mr Taiwo had stated that he was waiting for HMRC to contact him regarding the dividends. However when they did do so through the initial enquiry and issue of tax returns he did not tell HMRC of the amount of the dividends.
- 15 14. In considering a penalty under Schedule 24 FA 2007 HMRC felt that Mr Taiwo was entitled to the full reduction on all three grounds – telling, helping and giving access. As a result they were proposing a penalty of £23,731.07 being 35% of the total tax due of £67,803.07.
- 20 15. However there were further inaccuracies with regard to Mr Taiwo’s rental income due to him including capital repayments on his mortgage as well as the interest payments. Although this was a prompted disclosure HMRC considered Mr Taiwo’s behaviour to be careless and as a result he was entitled to the full abatement resulting in a penalty of £473.04 being 20% of the additional tax due of £2,365.20.
- 25 16. In the same letter HMRC also included interest calculations and suggested to Mr Taiwo that he should offer to pay a total of £145,536.70 to settle matters. Mr Taiwo replied by letter dated 20 November accepting the calculation of tax due on the dividends and rental income but disputing the interest calculations. He also claimed that charging penalties was unfair as he considered he was being penalised for the lack of an integrated system at HMRC. He thought HMRC should link all his accounts and the
- 30 taxes which he had been paying to HMRC – corporation tax, income tax, VAT etc. He then commented on each of the reasons for imposing penalties.
- 35 17. HMRC replied by letter dated 9 December 2015. They explained the interest calculations and said that nothing which Mr Taiwo had said had changed their view. The simple fact was that section 7 TMA 1970 brought upon him a personal responsibility to give notice to HMRC that he was chargeable to income tax. Mr Taiwo and DCL were separate legal entities and therefore treated as such by HMRC. The letter continued by stating that HMRC was in no doubt that Mr Taiwo’s conduct was at least negligent for the years 2006/7 to 2008/9 and his behaviour was deliberate for the years 2009/10 to 2012/13. Mr Taiwo replied by letter dated 12 December 2015 raising three
- 40 queries.
18. HMRC responded by letter dated 20 and 26 January 2016. As a result of revisions to the tax liabilities the Schedule 24 penalties were amended to £22,589.51 and the section 7 penalties remained at £9,888.79. As HMRC now realised that Mr Taiwo had claimed personal allowances for 2010/11 and 2011/12 to which he was not entitled due

to his overall income in those years, HMRC proposed to raise a penalty of £418.50 being 15% of the additional tax of £2,790.00. Due to Mr Taiwo claiming a wear and tear allowance in respect of his rental income the additional tax due in respect of his rental income was reduced with a resulting decrease in the proposed penalty to £291.90.

5 In a letter dated 2 February 2016 HMRC stated that an offer to pay £143,482.40 would receive due consideration.

19. Mr Taiwo in his response dated 16 February 2016 stated that as soon as HMRC had explained to him about dividends at the meeting on 1 September 2015 he had gone online to try to correct the dividend information but had been unable to do so. He considered this to be vindictive, unjust and unfair. He again claimed that he had kept accurate records and this had been confirmed to him by HMRC.

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20. HMRC sent Mr Taiwo a further detailed letter dated 18 February 2016 reiterating their reasons for imposing the penalties and concluding that it was their intention to proceed with issuing the penalties. HMRC sent Mr Taiwo a reminder on 21 April 2016 and in the absence of any response formally wrote to him on 10 June 2016 advising him of the various penalties, how they were calculated and explaining their reasons for issuing them.

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21. Mr Taiwo responded with a ten page letter dated 13 June 2016 repeating all his arguments but enclosing a signed offer to pay £110,392.39. HMRC rejected the offer as substandard and not acceptable. As a result draft penalty notices and explanations were issued on 1 July 2016 as follows:

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- 2006/7 to 2008/9 section 7 TMA 1970:
£9,888.79 being 35% of the additional tax due of £28,253.69
- Schedule 41 FA 2008 dividend income:
25 2009/10 £6,468.50 being 35% of the additional tax due of £18,481.45
- Schedule 24 FA 2007 dividend income
2010/11 £6,865.81 being 35% of the additional tax due of £19,616.62
2011/12 £8,749.35 being 35% of the additional tax due of £24,998.17
2012/13 £606.76 being 35% of the additional tax due of £1,733.62
- Schedule 24 FA 2007 rental income and personal allowance:
30 2010/11 £271.14 being 15% of the additional tax due of £1,807.60
2011/12 £305.16 being 15% of the additional tax due of £2,034.40
2012/13 £90.84 being 15% of the additional tax due of £605.60.

35 22. Formal Penalty Determinations were issued on 26 July 2016. By letter dated 29 July 2016 Mr Taiwo informed HMRC that he did not agree with the decision to charge him penalties. He raised two questions. First, was HMRC informed of his chargeability to tax to which his answer was yes as he considered HMRC could not separate Jacob Taiwo and DCL when it comes to tax returns. His second question was whether the taxes due were paid as and when due to which he answered no, only corporation tax was paid on time.

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23. A Review Officer from HMRC carried out a review and by letter dated 4 October 2016 informed Mr Taiwo that the evidence supported the decision to impose deliberate

penalties in respect of the omitted dividend income and Mr Taiwo had made errors in reporting his rental income. The penalties were accordingly upheld.

24. By Notice of Appeal dated 9 October 2016 Mr Taiwo appealed to this Tribunal.

Arguments by Mr Taiwo

5 25. Mr Taiwo bases his appeal on the information in four letters sent by him to HMRC dated 27 July 2016, 7 August 2016, 9 September 2016 and 9 October 2016. Apart from discussing the different tax liabilities and penalties suggested by HMRC these letters repeated the same arguments. In the first letter dated 29 July 2016 Mr Taiwo states:

10 “I have never and will never use any tax avoidance scheme. I have always timely submitted my tax returns to HMRC. You cannot technically/legally separate Jacob Taiwo and Daresys Consultancy Limited when it comes to tax returns to HMRC. Since this is a fraud case, the court has set precedencies in the past by removing the veil of incorporation in order to correctly determine matters.”

15 26. The letter continued by Mr Taiwo maintaining that he had taken reasonable care in accounting for all his taxes. The only issue was where it was accounted for. Mr Taiwo had provided for it in the company accounts submitted to HMRC and Companies House. He did not account for it again under personal income due to the ambiguity of the explanatory note on “Dividend from UK companies” which led to his misinterpretation/misunderstanding.

20 27. The guide issued by HMRC entitled “How to fill in your tax return” includes the following:

Under the heading: How to fill in your tax return it states inter alia:

25 “It is very important that you enter the correct amount in the appropriate box as we will generally accept the figures you put in your return. Errors can lead to you being asked to pay the wrong amount and can take time to correct.”

Under the heading: UK dividends Box 3 it states inter alia:

30 “Your dividend voucher will show your holding of shares in the company, the dividend rate, the tax credit and the dividend payable. You will get this information even if the dividends are paid direct to your bank or through your investment broker. The only figure to enter on your tax return is the total of all dividend payments – do not add on the tax credit.”

28. As DCL is not a public company Mr Taiwo thought this explanation did not apply to the dividends from it particularly as he did not have a dividend voucher.

35 29. Mr Taiwo confirmed that each year he included in the DCL accounts the amount of tax due on the dividend. This tax was included in the creditors in the balance sheet. However he was unable to carry this liability forward from one year to the next as he

maintained the online accounting system used by Companies House did not allow for this to be done. At the hearing Mr Taiwo confirmed that at the end of each month he transferred sufficient funds from DCL's account to his personal account to enable him to discharge DCL's liabilities.

5 30. Mr Taiwo further maintained in this letter that once he became aware of the requirement to include dividend income in his personal tax return he was only able to do so in respect of the 2012/13 tax year and blamed the inadequacies of HMRC's systems from preventing him amending his tax returns for previous years.

10 31. Mr Taiwo maintained that he had taken reasonable care to get things right. HMRC guidance on imposing penalties states:

“Some of the ways you can show that you took reasonable care include:
keeping accurate records”

As he had kept accurate records he had taken reasonable care and according to the HMRC fact sheet no penalty should be imposed.

15 32. Mr Taiwo claimed that by inspecting the records of DCL and raising queries about his personal income HMRC had lifted the veil of incorporation and was treating DCL and himself as one legal entity.

20 33. Mr Taiwo also wished to appeal against one of the interest calculations. Mr Nicholson objected to this on the basis that interest calculations were statutory and not appealable. When Mr Taiwo explained that he had made payment to HMRC's reference for DCL intending this to go towards his personal tax liabilities, Mr La Roche undertook to investigate and make amendments if appropriate.

Arguments by HMRC

25 34. HMRC called Mr Richard La Roche, a senior investigator with HMRC's Fraud Investigation Service. He confirmed his witness statement dated 16 March 2017 was correct. He rehearsed the information much of which has been referred to in paragraphs 3 to 24 above. He explained that once an investigation was underway a taxpayer was not allowed to amend his tax returns as this could cause problems for the enquiry team. This was why Mr Taiwo had been unable to amend his tax returns when he discovered
30 he had omitted to enter his dividends.

35 35. Mr Nicholson claimed that Mr Taiwo had not paid tax on his dividends at the time as he had not been requested to pay by HMRC. Mr Nicholson accepted that DCL's accounts for the year 2008 showed a calculation of the tax on the dividends. This calculation correctly showed the dividend rate of 10% on the basic rate of income tax and 32.5% for profits above the basic rate. This was the correct calculation. Therefore Mr Taiwo must have carried out some research to enable him to make these calculations. This research should have enabled Mr Taiwo to discover that the applicable tax for dividends was income tax and not the responsibility of DCL which pays corporation tax. Although the tax due on the dividends was shown in DCL's

accounts each year it was not paid nor was it accumulated. Mr Taiwo simply kept it for himself.

36. Mr Nicholson accepted that Mr Taiwo had made ten separate calls to HMRC about corporation tax but noted he had not made any enquiries after the first year about tax on dividends. If he had asked HMRC he would have been told he needed to register for self assessment.

37. Mr Nicholson maintained that a person acting honestly and with care who wishes to keep his tax affairs in order would upon receipt of over £100,000 of dividends from his own company have sought advice. He further submitted that Mr Taiwo knew the tax was owed and when given the opportunity to declare the income failed to do so.

38. Mr Nicholson referred to the case of *Nicholson v Morris (HM Inspector of Taxes)* [1976] STC 269 where in the Chancery Division of the High Court of Justice Walton J said

“It is the taxpayer who knows and the taxpayer who is in a position (or, if not in a position, who certainly should be in a position) to provide the right answer, and chapter and verse for the right answer, and it is idle for any taxpayer to say to the Revenue, “Hidden somewhere in your vaults are the right answers: go thou and dig them out of the vaults.” That is not a duty on the Revenue. If it were, it would be a very onerous, very costly and very expensive operation, the costs of which would of course fall entirely on the taxpayers as a body. It is the duty of every individual taxpayer to make his own return and, if challenged, to support the return he has made, or if that cannot be supported, to come completely clean, and if he gives no evidence whatsoever he cannot be surprised if he is finally lumbered with more than he has in fact received. It is his own fault that he is so lumbered.”

39. In respect of the penalty calculations for failure to notify chargeability under section 7(8) TMA 1970 for the years 2006/7 to 2008/9 Mr Nicholson stated that the penalties were charged as Mr Taiwo had not complied with the legislation which clearly states that where an individual is liable to income tax he must inform HMRC of his chargeability. By DCL accounting for a liability to pay income tax on dividends, if correct, would only notify HMRC that DCL was chargeable to income tax, not Mr Taiwo.

40. Mr Nicholson informed the Tribunal that HMRC had made an arithmetic error in calculating the abatement. By granting 10% for disclosure, 35% for co-operation and 10% for seriousness the total abatement was 55% leaving a penalty loading of 45%. The loading actually given was 35% but HMRC does not seek to increase the loading.

41. In respect of the penalty calculation for failure to notify chargeability under schedule 41 FA 2008 for 2009/10 Mr Nicholson claimed that Mr Taiwo knew that he had received dividend income, knew he was liable to pay income tax on it and had failed to notify his chargeability. This constituted a deliberate error which was only picked up via the compliance check which commenced in July 2014.

42. The penalty calculation for an inaccurate return under schedule 24 FA 2007 for 2010/11 to 2012/13 followed the requirement for Mr Taiwo to complete tax returns as a result of the compliance check. The returns did not disclose the amount of the DCL dividends. Mr Taiwo knew his dividend income was liable to income tax and failed to include it on his tax return. Mr Nicholson maintained this was a deliberate omission.

43. Mr Nicholson maintained that including the dividend tax liability in DCL's accounts was incapable of being a notification for Mr Taiwo's personal income tax liability. For the year ended 5 April 2010 this failure was deliberate as Mr Taiwo knew the dividends had been paid gross and a tax liability was due as shown in DCL's accounts, the tax was not paid and the liability was removed from DCL's accounts in the following year. For the years ended 5 April 2011 to 5 April 2013 Mr Taiwo returned a figure of 0 for dividend income which was incorrect. Mr Taiwo as the director of DCL authorised and paid the dividend, knew that tax was due and that the dividend had been paid gross.

15 **The Legislation**

44. TMA 1970 states:

7 (1) Every person who –

(a) Is chargeable to income tax or capital gains tax for any year of assessment, and

20 (b) Has not received a notice under section 8 of this Act requiring a return for that year of his total income and chargeable

shall, subject to subsection (3) below, within six months from the end of that year, give notice to an officer of the Board that he is so chargeable.

25 (8) If any person, for any year of assessment, fails to comply with subsection (1) above, he shall be liable to a penalty not exceeding the amount of the tax –

(a) in which he is assessed under section 9 or 29 of the Act in respect of that tax year, and,

30 (b) which is not paid on or before 31st January next following that year.

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45. Schedule 24 FA 2007 provisions include:

PART 1

LIABILITY FOR PENALTY

Error in taxpayer's document

- 1 (1) A penalty is payable by a person (P) where—
- 5 (a) P gives HMRC a document of a kind listed in the Table below, and
- (b) Conditions 1 and 2 are satisfied.
- (2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to—
- 10 (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.
- (3) Condition 2 is that the inaccuracy was careless or deliberate (within the meaning of paragraph 3).
- 15 (4) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

There then follows a table which details the various taxes to which schedule 24 applies including a return under section 8 TMA 1970. The schedule also includes the following:

Degrees of culpability

- 20 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,
- (b) “deliberate but not concealed” if the inaccuracy is deliberate but P does not make arrangements to conceal it, and
- 25 (c) “deliberate and concealed” if the inaccuracy is deliberate 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 when the document was given, is to
- 30 be treated as careless if P—
- (a) discovered the inaccuracy at some later time, and
- (b) did not take reasonable steps to inform HMRC.

46. Schedule 41 FA 2008 provisions include:

PENALTIES: FAILURE TO NOTIFY AND CERTAIN VAT AND EXCISE WRONGDOING

Failure to notify etc

1 A penalty is payable by a person (P) where P fails to comply with an obligation specified in the Table below (a “relevant obligation”).

Tax to which obligation relates	Obligation
Income tax and capital gains tax	Obligation under section 7 of TMA 1970 (obligation to give notice of liability to income tax or capital gains tax).

5 The schedule also includes the following:

5. (1) A failure by P to comply with a relevant obligation is—
- (a) “deliberate and concealed” if the failure is deliberate and P makes arrangements to conceal the situation giving rise to the obligation, and
 - 10 (b) “deliberate but not concealed” if the failure is deliberate but P does not make arrangements to conceal the situation giving rise to the obligation.
- (2) The making by P of an unauthorised issue of an invoice showing VAT is—
- 15 (a) “deliberate and concealed” if it is done deliberately and P makes arrangements to conceal it, and
 - (b) “deliberate but not concealed” if it is done deliberately but P does not make arrangements to conceal it.
- (3) The doing by P of an act which enables HMRC to assess an amount of duty as due from P under a relevant excise provision is—
- 20 (a) “deliberate and concealed” if it is done deliberately and P makes arrangements to conceal it, and
 - (b) “deliberate but not concealed” if it is done deliberately but P does not make arrangements to conceal it.
- (4) P's acquiring possession of, or being concerned in dealing with, goods on which a payment of duty is outstanding and has not been deferred is—
- 25 (a) “deliberate and concealed” if it is done deliberately and P makes arrangements to conceal it, and
 - 30 (b) “deliberate but not concealed” if it is done deliberately but P does not make arrangements to conceal it.

Amount of penalty: standard amount

6. (1) The penalty payable under any of paragraphs 1, 2, 3(1) and 4 is—
- (a) for a deliberate and concealed act or failure, 100% of the potential lost revenue,
 - 5 (b) for a deliberate but not concealed act or failure, 70% of the potential lost revenue, and
 - (c) for any other case, 30% of the potential lost revenue.
- (2) The penalty payable under paragraph 3(2) is 100% of the potential lost revenue.
- 10 (3) Paragraphs 7 to 11 define “the potential lost revenue”.

Decision

47. Section 7 TMA 1970 places a clear onus on Mr Taiwo to notify HMRC of his liability to income tax. This he failed to do until HMRC opened an enquiry into his personal affairs.

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48. Although Mr Taiwo never practised as an accountant he must have been aware while passing his chartered accountancy examinations that companies pay corporation tax and individuals pay income tax. The fact that HMRC asked him questions about his company DCL during their enquiry into his personal tax affairs does not mean that as information relevant to his personal affairs was declared in DCL’s accounts, Mr Taiwo did not need to declare it in his personal tax return. As Walton J said in the case of *Nicholson v Morris* quoted in paragraph 38 above it is not the duty of HMRC to search their records of DCL for information about Mr Taiwo’s personal income.

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49. Mr Taiwo clearly carried out research in order to ascertain the rate of tax applicable to dividend income. He even tried to ascertain from HMRC how to pay the tax which he had calculated as being due but after several attempts in connection with the tax due on the first dividend he gave up. He accepts that he did not make any enquiries as to how to pay the tax on subsequent dividends.

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50. This Tribunal is unable to accept Mr Taiwo’s submission that keeping accurate records is sufficient to avoid a penalty as having taken reasonable care. This Tribunal finds that any reasonable person would interpret HMRC’s guidance as meaning one of the things which will help in arguing that Mr Taiwo took reasonable care is keeping accurate records. A literal interpretation would allow any taxpayer to avoid a penalty by simply keeping accurate records and not disclosing them to HMRC. In any event the Guidance Notes are just what they say they are. They are provided to assist but are not all inclusive.

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51. Despite Mr La Roche clearly explaining in writing to Mr Taiwo on several occasions that Jacob Taiwo and DCL were separate legal entities Mr Taiwo continued to believe that informing HMRC through DCL’s accounts of the dividends paid by DCL

was sufficient notice and he was therefore entitled to wait for HMRC to get in touch with him concerning payment of the tax.

52. At the hearing Mr Taiwo objected to HMRC claiming that he had entered zero in the box for dividend income on his tax returns as he had not in fact entered any figure.
5 This was splitting hairs. Whether Mr Taiwo did not enter any figure, which is in fact the case, or whether he entered zero as HMRC described it, there is absolutely no difference. There is no difference in law for corporation tax purposes between a PLC and a private company such as DCL. Both are subject to corporation tax and by law should create a dividend voucher when a dividend is paid. This voucher enables the
10 recipient of the dividend to know the number of shares held, the date of payment, the net amount of the payment and the amount of any associated tax credit. The fact that DCL did not issue a dividend counterfoil is not sufficient to remove the requirement of the relevant box on the tax return for the net amount of the dividends to be inserted. There is no ambiguity in the statement about dividends on the tax return. The
15 explanatory notes “How to fill in your tax return” clearly state

“it is very important that you enter the correct amount in the appropriate box as we will generally accept the figures you put on your return.”

Under the heading UK dividends it states:

20 “The only figure to enter on your tax return is the total of all dividend payments – do not add on the tax credit.”

There is no mention that this only applies to certain types of companies.

In the margin of the section of the explanatory notes headed “A very rough guide to your tax bill” it states:

25 “If your total income is between £100,000 and £112,950 reduce £6,475 by £1 for every £2 your income exceeds £100,000. If your total income is £112,950 or more Personal Allowance is zero.”

30 53. This Tribunal is satisfied that HMRC was correct in imposing penalties and applied the correct criteria in each case. For conduct to be classified as “deliberate” (as defined), it is not necessary for the taxpayer to have made a conscious decision to deliberately submit incorrect figures with a view to avoiding tax. Mr Taiwo’s conduct was deliberate with regard to the non-disclosure of the dividends in his tax returns for 2010/11, 2011/12 and 2012/13. The disclosure of the dividends was prompted as Mr Taiwo did not inform HMRC of their existence before he had reason to believe that HMRC had
35 discovered them. The same applies to Mr Taiwo’s conduct in connection with his 2009/10 income. Mr Taiwo was careless in reporting details of his mortgage interest for 2010/11, 2011/12 and 2012/13 and in claiming the full personal allowances for 2010/11 and 2011/12.

54. The appeal is accordingly dismissed and all the penalties remain due for payment by Mr Taiwo.

55. 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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**ALASTAIR J RANKIN
TRIBUNAL JUDGE**

RELEASE DATE: 30 JANUARY 2018

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