



Neutral Citation: [2023] UKFTT 537 (TC)

Case Number: TC08840

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

Appeal reference: TC/2022/00631

*Expense claims – no supporting documentation – HMRC issue closure notices – four penalties for inaccuracy – appeal dismissed.*

**Heard on 10 May 2023  
Judgment date: 14 June 2023**

**Before**

**TRIBUNAL JUDGE ALASTAIR J RANKIN MBE  
MS SONIA GABLE**

**Between**

**BAKERY BADJIE**

**Appellant**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS  
Respondents**

**Sitting in public at Sheffield Magistrates’ Court on 10 May 2023 at 10:00.**

**Representation:**

The Appellant in person

For the Respondents: Ms Sophie Taj litigator of HM Revenue and Customs’ Solicitor’s Office

## DECISION

### INTRODUCTION

1. This is an appeal by Mr Badjie against penalties issued under Schedule 24 of the Finance Act 2007 in respect of the four tax years 2016/17 to 2019/20.
2. The penalties were charged in respect of closure notices issued for each year. However, the closure notices are not under appeal. The penalties under appeal are:
  - 2.1 an inaccuracy penalty for the 2016/17 tax year of £378.45;
  - 2.2 an inaccuracy penalty for the 2017/18 tax year of £476.16;
  - 2.3 an inaccuracy penalty for the 2018/19 tax year of £559.77; and
  - 2.4 an inaccuracy penalty for the 2019/20 tax year of £538.56.
3. The total amount of the penalties therefore comes to £1,952.94
4. The onus of proof lies with HMRC to show that the penalties were due but once this has been established to the ordinary civil standard of proof on the balance of probabilities the onus passes to Mr Badjie to displace the amount.

### THE LEGISLATION

5. Schedule 24 of the Finance Act 2007 states:
  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.
  - (2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to—
    - (a) an understatement of liability to tax,
    - (b) a false or inflated statement of a loss or
    - (c) a false or inflated claim to repayment of tax.
  - (3) Condition 2 is that the inaccuracy was careless (within the meaning of paragraph 3) or deliberate on P's part.
  - (4) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.
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.
- (3) Paragraph 47 of Schedule 19 to FA 2016 (special measures for persistently unco-operative large businesses) provides for certain inaccuracies to be treated, for the purposes of this Schedule, as being due to a failure by P to take reasonable care.
- 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.
- 9 (A1) Paragraph 10 provides for reductions in penalties—
- (a) under paragraph 1 where a person discloses an inaccuracy that involves a domestic matter,
  - (b) under paragraph 1A where a person discloses a supply of false information or withholding of information, and
  - (c) under paragraph 2 where a person discloses a failure to disclose an under-assessment.
- (A2) Paragraph 10A provides for reductions in penalties under paragraph 1 where a person discloses an inaccuracy that involves an offshore matter or an offshore transfer.
- (A3) Sub-paragraph (1) applies where a person discloses—
- (a) an inaccuracy that involves a domestic matter,
  - (b) a careless inaccuracy that involves an offshore matter,
  - (c) a supply of false information or withholding of information, or
  - (d) a failure to disclose an under-assessment.]
- (1) A person discloses the matter by—

- (a) telling HMRC about it,
- (b) giving HMRC reasonable help in quantifying the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment, and
- (c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment is fully corrected.

(1A) Sub-paragraph (1B) applies where a person discloses—

- (a) a deliberate inaccuracy (whether concealed or not) that involves an offshore matter, or
- (b) an inaccuracy that involves an offshore transfer.

(1B) A person discloses the inaccuracy by—

- (a) telling HMRC about it,
- (b) giving HMRC reasonable help in quantifying the inaccuracy,
- (c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy is fully corrected, and
- (d) providing HMRC with additional information.

(1C) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (1B)(d).

(1D) Regulations under sub-paragraph (1C) are to be made by statutory instrument.

(1E) An instrument containing regulations under sub-paragraph (1C) is subject to annulment in pursuance of a resolution of the House of Commons.

(2) Disclosure—

- (a) is “unprompted” if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the inaccuracy, the supply of false information or withholding of information, or the under-assessment], and

(b) otherwise, is “prompted”.

(3) In relation to disclosure “quality” includes timing, nature and extent.

(4) Paragraph 4A(4) to (5) applies to determine whether an inaccuracy involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.

10 (1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a “standard percentage”) has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

(2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it—

- (a) in the case of a prompted disclosure, in column 2 of the Table, and
- (b) in the case of an unprompted disclosure, in column 3 of the Table.

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	15%	0%
70%	35%	20%
100%	50%	30%

11 (1) If they think it right because of special circumstances, HMRC may reduce a penalty under paragraph 1 or 2.

(2) In sub-paragraph (1) “special circumstances” does not include—

- (a) ability to pay, or
- (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

- (a) staying a penalty, and
- (b) agreeing a compromise in relation to proceedings for a penalty.

13 (1) Where a person becomes liable for a penalty under paragraph 1 or 2 HMRC shall—

- (a) assess the penalty,
- (b) notify the person, and
- (c) state in the notice a tax period in respect of which the penalty is assessed (subject to sub-paragraph (1ZB)).

(1ZA) Sub-paragraph (1ZB) applies where—

- (a) a person is at any time liable for two or more penalties relating to PAYE returns, or for two or more penalties relating to CIS returns, or for two or more penalties relating to apprenticeship levy returns, and
- (b) the penalties (“the relevant penalties”) are assessed in respect of more than one tax period (“the relevant tax periods”).

(1ZB) A notice under sub-paragraph (1) in respect of any of the relevant penalties may, instead of stating the tax period in respect of which the penalty is assessed, state the tax year or the part of a tax year to which the penalty relates.

(1ZC) For that purpose, a relevant penalty relates to the tax year or the part of a tax year in which the relevant tax periods fall.

(1ZD) For the purposes of sub-paragraph (1ZA)—

- “a PAYE return” means a return for the purposes of PAYE regulations;
- “a CIS return” means a return for the purposes of regulations under section 70(1)(a) of FA 2004 in connection with deductions on account of tax under the Construction Industry Scheme.
- “an apprenticeship levy return” means a return under regulations under section 105 of FA 2016;

(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 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
  - (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—
- (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—
- (a) an appeal could be brought, or
  - (b) an appeal that has been brought has not been determined or withdrawn.
- (6) Subject to sub-paragraphs (3) and (4), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.
- (7) In this Part of this Schedule references to an assessment to tax, in relation to inheritance tax and stamp duty reserve tax, are to a determination.

- 15 (1) A person may appeal against a decision of HMRC that a penalty is payable by the person].
- (2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by the person.
- (3) A person may appeal against a decision of HMRC not to suspend a penalty payable by the person.
- (4) A person may appeal against a decision of HMRC setting conditions of suspension of a penalty payable by the person.

#### **GROUNDS OF APPEAL**

- 6 Mr Badjie’s grounds of appeal were summarised by HMRC as follows:

He relied upon his agent and had no knowledge of the expenses claimed on his behalf. He did not review his tax returns and had no knowledge of the claims until HMRC told him. He had not provided details of any expenses to the agent who claimed them on the returns. He was not careless and Schedule 24 FA 2007 does not apply.

- 7 Mr Badjie’s four tax returns were all received by HMRC on 20 May 2020. His returns included the following expenses:

<u>Tax year</u>	<u>Business Travel and subsistence</u>	<u>Other expenses and capital allowances</u>
2017	£9,341	£3,278
2018	£11,752	£4,124
2019	£13,818	£4,848
2020	£13,291	£4,664

- 8 HMRC disallowed all these claims. As a result, pending repayment claims were cancelled, HMRC issued closure notices and a penalty explanation letter on 5 August 2021 explaining that penalties totalling £1,952.94 were going to be charged.
- 9 At the hearing Mr Badjie informed the Tribunal that his accountant was on holiday in Africa when he gave him his instructions.

#### CASE FOR HMRC

- 10 HMRC considered the penalties should be charged on the basis of careless behaviour. Records had not been kept to support such large expense claims. Once the expense claims were looked at by HMRC it was decided they were not valid.
- 11 HMRC considered the disclosure was prompted as they had found the errors and Mr Badjie had not informed HMRC of the mistakes before HMRC discovered them. As such the penalty range was from 15% to 30%. HMRC gave a full reduction of 15%.

- 12 Mr Badjie was within the PAYE system and had the following earnings:

Tax year 2016/17	£25,424
Tax year 2017/18	£29,711
Tax year 2018/19	£32,326
Tax Year 2019/20	£34,738

The expenses claimed equated to 49.63%, 53.43%, 57.74% and 51.86% respectively of his income for each tax year.

- 13 During a telephone call with HMRC on 20 May 2021 Mr Badjie informed HMRC that his brother had introduced him to an accountant who could get him a refund. He also informed HMRC that he did not have any receipts to support any of his expenses. HMRC submitted that this information showed a lack of reasonable care.
- 14 Mr Badjie telephoned to HMRC on 25 June 2020, 16 July 2020, 24 August 2020, 10 February 2021 and 12 April 2021 asking why his repayment claim had not been processed. HMRC claim that these calls indicated that Mr Badjie knew his accountant had claimed expenses on his behalf which would have resulted in a large repayment of tax due to him.

#### CASE LAW

- 15 In *David Collis v The Commissioners for Her Majesty's Revenue & Customs* [2011] UKFTT 588 (TC) Judge Bernier said:

“29. That penalty applies if the inaccuracy in the relevant document is due to a failure on the part of the taxpayer (or other person giving the document) to take reasonable care. We consider that the standard by which this falls to be judged is that of a prudent and reasonable taxpayer in the position of the taxpayer in question.”

16 In *Stewarton Polo Club v The Commissioners for Her Majesty's Revenue and Customs* [2011] UKFTT 668 (TC) Judge Staker said:

“14. The Tribunal accepts that in cases where highly specialised advice is required, a taxpayer may have no choice but to rely on the advice of a specialist. However, in cases where no specialist advice is required, the Tribunal does not consider that a taxpayer can be absolved of personal responsibility to file returns and pay taxes on time through reliance on a specialist.”

17 In *Alexander Ayers v The Commissioners for Her Majesty's Revenue and Customs* [2016] UKFTT 0190 (TC) Judge Khan said:

“17. In order for the taxpayer to succeed with his defence he would have to show that he sought help from a professional advisor who was properly instructed and who was qualified to carry out the work and to give advice. The taxpayer would also have to show that he checked the advice, complications and suggestions; which were presented to him. These are the steps one would expect of a reasonable taxpayer.

18. It is particularly important in these cases that the appropriate advisor for the particular task be selected and for complex tax advice an equally sophisticated tax advisor should be employed. If a lay person was engaged to give advice then this would amount to not taking reasonable care. A taxpayer has an obligation to choose an advisor who is trained and competent to give advice for the tax in hand.

18 Finally the Upper Tribunal said the following in *Christopher Ryan v Her Majesty's Commissioners for Revenue and Customs* [2012] UKUT 9 (TCC):

“6. ...The penalty is imposed on the person concerned, and not upon his solicitor or any other representative. The purpose of the legislation would be defeated if a penalty could be escaped by the expedient of placing the blame on a dilatory solicitor. If Mr Ryan believes he has been let down by his solicitor, his remedy is to take the matter up with the solicitor.

## **DECISION**

19 It is not enough for Mr Badjie to rely on his accountant even though it would appear that Mr Badjie did not in fact see the tax returns before his accountant submitted them. He clearly knew that as a result of his expenses claims he was due a refund of tax even though he did not have any receipts to support his expenses claim. This knowledge is confirmed by the fact that Mr Badjie made five telephone enquiries to HMRC chasing up his repayment. In addition, Mr Badjie admitted to HMRC on 20 May 2021 that he had “told the accountant what he spent and left it to the accountant to complete the tax returns.”

20 Mr Badjie was not ignorant of what was going on. He gave information to his accountant without any supporting documentation.

21 The Tribunal is unable to find any circumstances which would result in a special reduction. The appeal is therefore dismissed and the penalties remain which have been correctly calculated..

## **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

22 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.

**ALASTAIR J RANKIN MBE  
TRIBUNAL JUDGE**

**Release date: 14 JUNE 2023**