[2019] UKFTT 656 (TC)

TC07431

PAYE – Self Assessment – Closure notice – Discovery assessments – record keeping obligations – taxable source of funds – casino gambling – appeal dismissed

Appeal number: TC/2018/03741

FIRST-TIER TRIBUNAL
TAX CHAMBER

MR SEAR AHMAD **Appellant**

- and -

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

TRIBUNAL: JUDGE JOHN MANUELL
Mrs SONIA GABLE

Sitting in public at Bournemouth Combined Court, Courts of Justice, Deansleigh Road, Bournemouth BH7 7DS on 5 September 2019

Having heard the Appellant in person and Mr Adrian Turner, Presenting Officer, for the Respondents

DECISION

1. The Tribunal decided that the appeal should be dismissed. The Appellant appealed against the Closure Notice for the tax year 2015/2016 which raised additional duties of £3,132.84 and the Discovery Assessment for the following tax year 2016/2017 which raised additional duties of £3,223.17. (The Appellant had not appealed against separate penalties imposed.)

2. The Appellant, as noted above, was unrepresented. He is originally from Afghanistan. He speaks fluent, grammatical English and is highly articulate. He was accompanied to the hearing by a friend who took no active part. The Tribunal explained the appeal procedure to the Appellant and that it would assist him on any points of law which arose. The Tribunal checked throughout the hearing that the Appellant was following the proceedings and ensured that he had the fullest opportunity to produce evidence and to make submissions. Helpful cooperation was provided by Mr Turner for HMRC.

3. The Appellant is a self employed taxi driver, licensed in Poole, as from the 2014/2015 tax year. He was accordingly required to file self assessment tax returns. Following an enquiry which revealed significant unexplained bank deposits in the Appellant's account, HMRC reassessed the Appellant's income and allowable expenses for the tax years 2015/2016 and 2016/2017.

4. The history of the enquiry was set out in HMRC's Statement of Case dated 3 September 2018 and was not in dispute. The main applicable legislation was section 9a Taxes Management Act 1970 ("TMA"), section 28a (1) and (2) TMA, section 29 TMA and section 34 TMA. The Appellant was provided with copies of the legislation by HMRC as part of the evidence produced. The key legislation is set out as an appendix to the present decision, together with other statutory materials concerning the right of appeal to the First-tier Tribunal, as well as the penalty provisions. No legal issue arose during the hearing and the outcome turned on the Tribunal's findings of fact.

5. The Appellant's case as set out in his Notice of Appeal was that the additional sums queried by HMRC were not income from his self-employment as a taxi driver but rather were his winnings from the casino. He produced a document from Genting Casinos dated 12 August 2014 showing a substantial win. The Appellant accepted that this was the only evidence he had of any gambling winnings for the relevant period. No records had been kept by him of other gambling winnings. He accepted that he had also not kept full records of his fares received as a taxi driver. The unexplained additional mileage queried by HMRC had been personal in nature, visiting family and friends. He had been inexperienced at that time. He was an honest man.

6. The initial burden of proof was on the Respondent, to the civil standard (balance of probabilities), to show the discovery of a loss of tax. In the simplest of terms, once the Respondent had shown a *prima facie* case, the burden shifted to the Appellant to provide a cogent explanation, i.e., to show that the sums challenged were not the fruits of trade. It was not in issue before the Tribunal that winnings from gambling do not

amount to a trade and are not taxable: see *Graham v Green* (1925) 9 TC 309 at [313-314] and HMRC Guidance "Meaning of trade: exceptions and alternatives: betting and gambling – introduction."

7. By HMRC Self Assessment Guidance CH14550 (with reference to CH11200), reflecting section 12B TMA, the Appellant in summary was obliged to retain records until (a) the first anniversary of 31 January next following the year of assessment, e.g., the records for the year ending 5 April 2015 had to be kept at least until 31 January 2017; (b) completion of any enquiry into the matters to which the records relate; and (c) the end of the day on which the enquiry window closes.

8. The Appellant has been aware since 25 August 2016 when the enquiry was first opened by HMRC that he would need to provide evidence of his earnings from self-employment and of any other funds he received, such as from gambling successes, if he wished to show that his funds were not liable to tax. He was aware that he had not kept proper records of his actual earnings. The Appellant has had the benefit of accountancy advice during the enquiry, and has also had the opportunity to seek legal advice.

9. His evidence as given to the Tribunal about his gambling, where, when and how it took place was vague. It was also contradictory. The Appellant was unable to identify activity relating to gambling in any of the various bank statements he produced. There was no evidence from any other witness about his gambling, successful or otherwise. The claim that he had been a successful gambler was not made until well after the enquiry had commenced. It is reasonable to expect that the Appellant would have known where the funds in his bank account had come from and to have declared the source without delay. Moreover, in the Tribunal's view, it is improbable that the Appellant could have sustained such a prolonged winning streak in the types of gambling he said he played at the casino, e.g., roulette, because it is well known that the odds are stacked in favour of the house. No casino would otherwise survive.

10. The analysis of the Appellant's likely earnings from his self employment made by HMRC's officer was careful and thorough. One of the key starting points was the mileage for the Appellant's motor vehicle, the taxi, as disclosed by the annual MoT certificates, which was compelling independent evidence that the car had been in far greater use than the Appellant's declared earnings indicated. The Appellant was given the opportunity by HMRC to provide detailed personal expenditure figures and further details of expenses incurred in the course of his self employment. There was discussion with the Appellant's accountant and the expenses figures were revised in part in the Appellant's favour. The Appellant was given credit for the capital allowance for the motor vehicle. Although the Appellant argued that the area where he was licensed as a taxi driver (Poole) was not especially lucrative, he produced no comparable figures from other local taxi drivers to suggest that HMRC's proposed income figures were exaggerated or excessive. There was significant undeclared income from taxi driving by the Appellant, as discovered by HMRC's officer. In the Tribunal's view, the final figures determined by HMRC, including the continuation

figures, are logical and reasonable, and are supported by the calculations presented. The Tribunal so finds.

11. There was no evidence which indicated that there was a reasonable excuse nor any special circumstances.

12. It follows that the appeal must be dismissed.

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.

JOHN MANUELL
TRIBUNAL JUDGE

RELEASE DATE: 24 OCTOBER 2019

APPENDIX

Key statutory provisions

[Relevant extracts and current versions only reproduced]

Taxes Management Act 1970 (as amended)

9A Notice of enquiry

(1) An officer of the Board may enquire into a return under section 8 or 8A of this Act if he gives notice of his intention to do so ("notice of enquiry")—

(a) to the person whose return it is ("the taxpayer"),

(b) within the time allowed.

(2) The time allowed is—

(a) if the return was delivered on or before the filing date, up to the end of the period of twelve months after the day on which the return was delivered;

(b) if the return was delivered after the filing date, up to and including the quarter day next following the first anniversary of the day on which the return was delivered;

(c) if the return is amended under section 9ZA of this Act, up to and including the quarter day next following the first anniversary of the day on which the amendment was made.

For this purpose the quarter days are 31st January, 30th April, 31st July and 31st October.

(3) A return which has been the subject of one notice of enquiry may not be the subject of another, except one given in consequence of an amendment (or another amendment) of the return under section 9ZA of this Act.

(4) An enquiry extends to—

(a) anything contained in the return, or required to be contained in the return, including any claim or election included in the return, …

but this is subject to the following limitation.

(5) If the notice of enquiry is given as a result of an amendment of the return under section 9ZA of this Act—

(a) at a time when it is no longer possible to give notice of enquiry under subsection (2)(a) or (b) above,

(b) after a final closure notice has been issued in relation to an enquiry into the return, or

(c) after a partial closure notice has been issued in such an enquiry in relation to the matters to which the amendment relates or which are affected by the amendment,

the enquiry into the return is limited to matters to which the amendment relates or which are affected by the amendment.

(6) In this section "the filing date" means, in relation to a return, the last day for delivering it in accordance with section 8 or 8A.

28A Completion of enquiry into personal or trustee return

(1) This section applies in relation to an enquiry under section 9A(1) . . . of this Act.

(1A) Any matter to which the enquiry relates is completed when an officer of Revenue and Customs informs the taxpayer by notice (a "partial closure notice") that the officer has completed his enquiries into that matter.

(1B) The enquiry is completed when an officer of Revenue and Customs informs the taxpayer by notice (a "final closure notice")—

(a) in a case where no partial closure notice has been given, that the officer has completed his enquiries, or

(b) in a case where one or more partial closure notices have been given, that the officer has completed his remaining enquiries.

(2) A partial or final closure notice must state the officer's conclusions and—

(a) state that in the officer's opinion no amendment of the return is required, or

(b) make the amendments of the return required to give effect to his conclusions.

29 Assessment where loss of tax discovered

(1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a year of assessment—

(a) that any income which ought to have been assessed to income tax, or chargeable gains which ought to have been assessed to capital gains tax, have not been assessed, or

(b) that an assessment to tax is or has become insufficient, or

(c) that any relief which has been given is or has become excessive,

the officer or, as the case may be, the Board may, subject to subsections (2) and (3) below, make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax.

(2) Where—

(a) the taxpayer has made and delivered a return under section 8 or 8A of this Act in respect of the relevant year of assessment, and

(b) the situation mentioned in subsection (1) above is attributable to an error or mistake in the return as to the basis on which his liability ought to have been computed,

the taxpayer shall not be assessed under that subsection in respect of the year of assessment there mentioned if the return was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made (or, where the error or mistake is in an end of period statement forming part of the return, if that statement was provided on the basis of or in accordance with the practice generally prevailing at the time when it was provided).

(3) Where the taxpayer has made and delivered a return under section 8 or 8A of this Act in respect of the relevant year of assessment, he shall not be assessed under subsection (1) above—

(a) in respect of the year of assessment mentioned in that subsection; and

(b) . . .in the same capacity as that in which he made and delivered the return,

unless one of the two conditions mentioned below is fulfilled.

(4) The first condition is that the situation mentioned in subsection (1) above was brought about carelessly or deliberately by the taxpayer or a person acting on his behalf.

(5) The second condition is that at the time when an officer of the Board—

(a) ceased to be entitled to give notice of his intention to enquire into the taxpayer's return under section 8 or 8A of this Act in respect of the relevant year of assessment; or

(b) in a case where a notice of enquiry into the return was given—

(i) issued a partial closure notice as regards a matter to which the situation mentioned in subsection (1) above relates, or

(ii) if no such partial closure notice was issued, issued a final closure notice,

the officer could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the situation mentioned in subsection (1) above.

(6) For the purposes of subsection (5) above, information is made available to an officer of the Board if—

(a) it is contained in the taxpayer's return under section 8 or 8A of this Act in respect of the relevant year of assessment (the return), or in any accounts, statements or documents accompanying the return;

(aa) it is contained in any information provided by the taxpayer to HMRC under regulations under paragraph 7 of Schedule A1 (periodic updates);

(b) it is contained in any claim made as regards the relevant year of assessment by the taxpayer acting in the same capacity as that in which he made the return, or in any accounts, statements or documents accompanying any such claim;

(c) it is contained in any documents, accounts or particulars which, for the purposes of any enquiries into the return or any such claim by an officer of the Board, are produced or furnished by the taxpayer to the officer. . .; or

(d) it is information the existence of which, and the relevance of which as regards the situation mentioned in subsection (1) above—

(i) could reasonably be expected to be inferred by an officer of the Board from information falling within paragraphs (a) to (c) above; or

(ii) are notified in writing by the taxpayer to an officer of the Board.

(7) In subsection (6) above—

(a) any reference to the taxpayer's return under section 8 or 8A of this Act in respect of the relevant year of assessment includes—

(i) a reference to any return of his under that section for either of the two immediately preceding chargeable periods; . . .

(ia) . . .

(ii) where the return is under section 8 and the taxpayer carries on a trade, profession or business in partnership, a reference to any partnership return with respect to the partnership for the relevant year of assessment or either of those periods; and

(b) any reference in paragraphs (b) to (d) to the taxpayer includes a reference to a person acting on his behalf.

(7A) The requirement to fulfil one of the two conditions mentioned above does not apply so far as regards any income or chargeable gains of the taxpayer in relation to which the taxpayer has been given, after any enquiries have been completed into the taxpayer's return, a notice under section 81(2) of TIOPA 2010 (notice to counteract scheme or arrangement designed to increase double taxation relief).

(8) An objection to the making of an assessment under this section on the ground that neither of the two conditions mentioned above is fulfilled shall not be made otherwise than on an appeal against the assessment.

(9) Any reference in this section to the relevant year of assessment is a reference to—

(a) in the case of the situation mentioned in paragraph (a) or (b) of subsection (1) above, the year of assessment mentioned in that subsection; and

(b) in the case of the situation mentioned in paragraph (c) of that subsection, the year of assessment in respect of which the claim was made.

34 Ordinary time limit of 4 years

(1) Subject to the following provisions of this Act, and to any other provisions of the Taxes Acts allowing a longer period in any particular class of case, an assessment to income tax or capital gains tax may be made at any time not more than 4 years after the end of the year of assessment to which it relates.

. . .

(2) An objection to the making of any assessment on the ground that the time limit for making it has expired shall only be made on an appeal against the assessment.

(3) In this section "assessment" does not include a self-assessment.

36 Loss of tax brought about carelessly or deliberately etc

(1) An assessment on a person in a case involving a loss of income tax or capital gains tax brought about carelessly by the person may be made at any time not more than 6 years after the end of the year of assessment to which it relates (subject to subsection (1A) and any other provision of the Taxes Acts allowing a longer period).

(1A) An assessment on a person in a case involving a loss of income tax or capital gains tax —

(a) brought about deliberately by the person,

(b) attributable to a failure by the person to comply with an obligation under section 7, . . .

(c) attributable to arrangements in respect of which the person has failed to comply with an obligation under section 309, 310 or 313 of the Finance Act 2004 (obligation of parties to tax avoidance schemes to provide information to Her Majesty's Revenue and Customs), or

(d) attributable to arrangements which were expected to give rise to a tax advantage in respect of which the person was under an obligation to notify the Commissioners for Her Majesty's Revenue and Customs under section 253 of the Finance Act 2014 (duty to notify Commissioners of promoter reference number) but failed to do so,

may be made at any time not more than 20 years after the end of the year of assessment to which it relates (subject to any provision of the Taxes Acts allowing a longer period).

(1B) In subsections (1) and (1A), references to a loss brought about by the person who is the subject of the assessment include a loss brought about by another person acting on behalf of that person.

(2) Where the person mentioned in subsection (1) or (1A) ("the person in default") carried on a trade, profession or business with one or more other persons at any time in the period for which the assessment is made, an assessment in respect of the profits or gains of the trade, profession or business in a case mentioned in subsection (1A) or (1B) may be made not only on the person in default but also on his partner or any of his partners.

(3) If the person on whom the assessment is made so requires, in determining the amount of the tax to be charged for any chargeable period in any assessment made in a case mentioned in subsection (1) [or (1A)] above, effect shall be given to any relief or allowance to which he would have been entitled for that chargeable period on a claim or application made within the time allowed by the Taxes Acts.

(3A) In subsection (3) above, "claim or application" does not include an election under . . . any of sections 47 to 49 of ITA 2007 (tax reductions for married couples and civil partners: elections to transfer relief). . .

(4) Any act or omission such as is mentioned in section 98B below on the part of a grouping (as defined in that section) or member of a grouping shall be deemed for the purposes of subsections (1) and (1A)] above to be the act or omission of each member of the grouping.

50 Procedure

. . .

(6) If, on an appeal notified to the tribunal, the tribunal decides—

(a) that, . . ., the appellant is overcharged by a self-assessment;

(b) that, . . ., any amounts contained in a partnership statement are excessive; or

(c) that the appellant is overcharged by an assessment other than a self-assessment,

the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good.

(7) If, on an appeal notified to the tribunal, the tribunal decides—

(a) that the appellant is undercharged to tax by a self-assessment . . .;

(b) that any amounts contained in a partnership statement . . . are insufficient; or

(c) that the appellant is undercharged by an assessment other than a self-assessment,

the assessment or amounts shall be increased accordingly.

(7A) If, on an appeal notified to the tribunal, the tribunal decides that a claim or election which was the subject of a decision contained in a closure notice under section 28A of this Act should have been allowed or disallowed to an extent different from that specified in the notice, the claim or election shall be allowed or disallowed accordingly to the extent that the tribunal decides is appropriate, but otherwise the decision in the notice shall stand good.

(8) Where, on an appeal notified to the tribunal against an assessment (other than a self-assessment) which—

(a) assesses an amount which is chargeable to tax, and

(b) charges tax on the amount assessed,

the tribunal decides as mentioned in subsection (6) or (7) above, the tribunal may, unless the circumstances of the case otherwise require, reduce or, as the case may be, increase only the amount assessed; and where any appeal notified to the tribunal is so determined the tax charged by the assessment shall be taken to have been reduced or increased accordingly.

(9) Where any amounts contained in a partnership statement are reduced under subsection (6) above or increased under subsection (7) above, an officer of the Board shall by notice to each of the relevant partners amend—

[(a) the partner's return under section 8 or 8A of this Act, or

(b) the partner's company tax return,

so as to give effect to the reductions or increases of those amounts.

(10) Where an appeal is notified to the tribunal, the decision of the tribunal on the appeal is final and conclusive.

(11) But subsection (10) is subject to—

(a) sections 9 to 14 of the TCEA 2007,

(b) Tribunal Procedure Rules, and

(c) the Taxes Acts.

Finance Act 2008

SCHEDULE 41 PENALTIES: FAILURE TO NOTIFY AND CERTAIN VAT AND EXCISE WRONGDOING

Section 123

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).

Degrees of culpability

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

(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—

(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[, or to assess an amount of landfill tax as due from P under section 50A of FA 1996,] is—

(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 or (as the case may be) chargeable soft drinks in respect of which a payment of soft drinks industry levy is due and payable and has not been paid is—

(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.

Amount of penalty: standard amount

6

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

(1A) If the failure is in category 0, the penalty is—

(a) for a deliberate and concealed failure, 100% of the potential lost revenue,

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

(c) for any other case, 30% of the potential lost revenue.

(2) If the failure is in category 1, the penalty is—

(a) for a deliberate and concealed failure, 125% of the potential lost revenue,

(b) for a deliberate but not concealed failure, 87.5% of the potential lost revenue, and

(c) for any other case, *30%* 37.5% of the potential lost revenue.

…

(4) If the failure is in category 3, the penalty is—

(a) for a deliberate and concealed failure, 200% of the potential lost revenue,

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

(c) for any other case, 60% of the potential lost revenue.

(5) Paragraph 6A explains the 4 categories of failure.

6A

(1) A failure 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.

(A1) A failure is in category 0 if—

(a) it involves a domestic matter,

(b) it involves an offshore matter or an offshore transfer, the territory in question is a category 0 territory and the tax at stake is income tax or capital gains tax, or

(c) it involves an offshore matter and the tax at stake is a tax other than income tax or capital gains tax.

…

(5) A failure "involves a domestic matter" if it results in a potential loss of revenue and does not involve either an offshore matter or an offshore transfer.

(6) If a single failure is in more than one category (each referred to as a "relevant category") —

(a) it is to be treated for the purposes of this Schedule as if it were separate failures, one in each relevant category according to the matters or transfers that it involves, and

(b) the potential lost revenue in respect of each separate failure is taken to be such share of the potential lost revenue in respect of the single failure (see paragraphs 7 and 11) as is just and reasonable.

Potential lost revenue

7

(1) "The potential lost revenue" in respect of a failure to comply with a relevant obligation is as follows.

(1A) In the case of an obligation under section 7 of TMA 1970 which arises by virtue of subsection (1B) of that section, the potential lost revenue is so much of any income tax or capital gains tax to which P is liable in respect of the tax year in question as is, by reason of the failure to comply with the obligation—

(a) where the period specified in subsection (1C)(b)(ii) of that section applies and ends after the relevant date, unpaid at the end of that period, or

(b) in any other case, unpaid on the relevant date.

(1B) For the purposes of sub-paragraph (1A) the relevant date is—

(a) 31 January following the tax year, or

(b) if, after that date, HMRC refund a payment on account in respect of the tax year to P, the day after the refund is issued.

(2) In the case of a relevant obligation relating to income tax or capital gains tax and a tax year[(not falling within sub-paragraph (1A)), the potential lost revenue is so much of any income tax or capital gains tax to which P is liable in respect of the tax year as by reason of the failure is unpaid on 31 January following the tax year.

(3) In the case of a relevant obligation relating to corporation tax and an accounting period, the potential lost revenue is (subject to sub-paragraph (4)) so much of any corporation tax to which P is liable in respect of the accounting period as by reason of the failure is unpaid 12 months after the end of the accounting period.

(4) In computing the amount of that tax no account shall be taken of any relief under section 458 of CTA 2010 (relief in respect of repayment etc of loan) which is deferred under subsection (5) of that section.

11

(1) In calculating potential lost revenue in respect of a relevant act or failure on the part of P no account is to be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential over-payment by another person (except to the extent that an enactment requires or permits a person's tax liability to be adjusted by reference to P's).

(2) In this Schedule “a relevant act or failure” means—

(a) a failure to comply with a relevant obligation,…

Reductions for disclosure

12

(1) Paragraph 13 provides for reductions in penalties—

(a) under paragraph 1 where P discloses a relevant failure that involves a domestic matter, and

(b) under paragraphs 2 to 4 where P discloses a relevant act or failure.

(1A) Paragraph 13A provides for reductions in penalties under paragraph 1 where P discloses a relevant failure that involves an offshore matter or an offshore transfer.

(1B) Sub-paragraph (2) applies where P discloses—

(a) a relevant failure that involves a domestic matter,

(b) a non-deliberate relevant failure that involves an offshore matter, or

(c) a relevant act or failure giving rise to a penalty under any of paragraphs 2 to 4.

(2) P discloses the relevant act or failure by—

(a) telling HMRC about it,

(b) giving HMRC reasonable help in quantifying the tax unpaid by reason of it, and

(c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid.

(2A) Sub-paragraph (2B) applies where P discloses—

(a) a deliberate relevant failure (whether concealed or not) that involves an offshore matter, or

(b) a relevant failure that involves an offshore transfer.

(2B) P discloses the failure by—

(a) telling HMRC about it,

(b) giving HMRC reasonable help in quantifying the tax unpaid by reason of it,

(c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid, and

(d) providing HMRC with additional information.

(2C) The Treasury must make regulations setting out what is meant by "additional information" for the purposes of sub-paragraph (2B)(d).

(2D) Regulations under sub-paragraph (2C) are to be made by statutory instrument.

(2E) An instrument containing regulations under sub-paragraph (2C) is subject to annulment in pursuance of a resolution of the House of Commons.

(3) Disclosure of a relevant act or failure—

(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 relevant act or failure, and

(b) otherwise, is "prompted".

(4) In relation to disclosure "quality" includes timing, nature and extent.

(5) Paragraph 6A(4) to (5) applies to determine whether a failure involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.

(6) In this paragraph "relevant failure" means a failure to comply with a relevant obligation.

13

(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) for a prompted disclosure, in column 2 of the Table, and

(b) for an unprompted disclosure, in column 3 of the Table.

(3) Where the Table shows a different minimum for case A and case B—

(a) the case A minimum applies if—

(i) the penalty is one under paragraph 1, and

(ii) HMRC become aware of the failure less than 12 months after the time when the tax first becomes unpaid by reason of the failure, and

(b) otherwise, the case B minimum applies.

Standard %	*Minimum % for prompted disclosure*	*Minimum % for unprompted disclosure*
30%	case A: 10% case B: 20%	case A: 0% case B: 10%
70%	35%	20%
100%	50%	30%

13A

(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) for a prompted disclosure, in column 2 of the Table, and

(b) for an unprompted disclosure, in column 3 of the Table.

(3) Where the Table shows a different minimum for case A and case B—

(a) the case A minimum applies if HMRC becomes aware of the failure less than 12 months after the time when the tax first becomes unpaid by reason of the failure;

(b) otherwise, the case B minimum applies.

Standard %	*Minimum % for prompted disclosure*	*Minimum % for unprompted disclosure*

30%	case A: 10% case B: 20%	case A: 0% case B: 10%
37.5%	case A: 12.5% case B: 25%	case A: 0% case B: 12.5%
45%	case A: 15% case B: 30%	case A: 0% case B:15%
60%	case A: 20% case B: 40%	case A: 0% case B: 20%
70%	45%	30%
87.5%	53.75%	35%
100%	60%	40%
105%	62.5%	40%
125%	72.5%	50%
140%	80%	50%
150%	85%	55%
200%	110%	70%

Special reduction

14

(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any of paragraphs 1 to 4.

(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.

Interaction with other penalties and late payment surcharges

15

(1) The amount of a penalty for which P is liable under any of paragraphs 1 to 4 shall be reduced by the amount of any other penalty incurred by P, or any surcharge for late payment of tax imposed on P, if the amount of the penalty or surcharge is determined by reference to the same tax liability.

(1A) In sub-paragraph (1) "any other penalty" does not include a penalty under Part 4 of FA 2014 (penalty where corrective action not taken after follower notice etc) or Schedule 22 to FA 2016 (asset-based penalty).

(2) If P is liable to a penalty under section 9 of FA 1994 in respect of a failure to comply with a relevant obligation, the amount of any penalty payable under paragraph 1 in respect of the failure is to be reduced by the amount of the penalty under that section.

(3) Where penalties are imposed under paragraph 3(1) and (2) in respect of the same act or use, the aggregate of the amounts of the penalties must not exceed 100% of the potential lost revenue.

Assessment

16

(1) Where P becomes liable for a penalty under any of paragraphs 1 to 4 HMRC shall—

(a) assess the penalty,

(b) notify P, and

(c) state in the notice the period in respect of which the penalty is assessed.

(2) A penalty under any of paragraphs 1 to 4 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) 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.

(4) An assessment of a penalty under any of paragraphs 1 to 4 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 unpaid by reason of the relevant act or failure in respect of which the penalty is imposed, or

(b) if there is no such assessment, the date on which the amount of tax unpaid by reason of the relevant act or failure is ascertained.

(5) In sub-paragraph (4)(a) "appeal period" means 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-paragraph (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) The references in this paragraph to "an assessment to tax" are, in relation to a penalty under paragraph 2, a demand for recovery.

Appeal

17

(1) P may appeal against a decision of HMRC that a penalty is payable by P.

(2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P.

18

(1) An appeal shall be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or the Upper Tribunal).

(2) Sub-paragraph (1) does not apply—

(a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or

(b) in respect of any other matter expressly provided for by this Act.

19

(1) On an appeal under paragraph 17(1) the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 17(2) the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

(3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 14—

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 14 was flawed.

(4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.

(5) In this paragraph, “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 18(1)).

Reasonable excuse

20

(1) Liability to a penalty under any of paragraphs 1, 2, 3(1) and 4 does not arise in relation to an act or failure which is not deliberate if P satisfies HMRC or [(on an appeal notified to the tribunal) the tribunal] that there is a reasonable excuse for the act or failure.

(2) For the purposes of sub-paragraph (1) —

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the relevant act or failure, and

(c) where P had a reasonable excuse for the relevant act or failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the relevant act or failure is remedied without unreasonable delay after the excuse ceased.