



TC04058

Appeal number: TC/2011/02640

INCOME TAX – *failure to submit accurate self-assessment returns – enquiries followed by closure notices – section 29 TMA1970 assessments for earlier years.*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

FRANCIS MEDLICOTT

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE CHRISTOPHER HACKING
MR LESLIE BROWN**

Sitting in Manchester on 11 July 2014

There was no appearance by or on behalf of the Appellant

Mr Bryan Morgan, Case Presentation Officer for the Respondents

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DECISION

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1. The Appellant did not appear as it was said that he was unwell and unable to attend.

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2. An application to postpone the hearing had been made by letter but no medical evidence was placed before the tribunal explaining with particularity what the immediate problem was. The letter had however included a sick note from the Appellant's GP (Med 3) but this was the same sick note as had been previously produced on an earlier application to adjourn.

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3. The Appellant does appear to suffer with a heart condition which has flared up from time to time. This undoubtedly causes him distress and it is said that attending the hearing would cause him stress.

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4. Previous adjournments had been allowed as follows :

24 April 2012 (due to the bereavement of a close family member)

23 August 2012 (heart palpitations under investigation)

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12 December 2012 (signed off work by GP – awaiting a minor operation)

17 June 2013 (unfit to travel – palpitations under hospital investigation)

20 November 2013 (letter from GP – currently convalescing from major surgery – sick note for 5 months)

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14 May 2014 (palpitations under investigation. A Med 3 certificate from GP dated 01/02/2014 signed off work for 6 months.

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5. On the occasion of the adjournment of the hearing listed for 20 November 2013 it was directed by Judge Cannan that:

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“The hearing shall not be further vacated for any reason connected with the Appellant's heart condition. In the event that the Appellant is unable to attend the hearing because of his heart condition then the witness statement referred to in paragraph 2 shall stand as his evidence in this appeal

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In the event that the Appellant is unable to attend the hearing and does not make arrangements for anyone to represent him at the hearing he shall be entitled to serve on the Respondents and on the Tribunal at least 14 days prior to the hearing date any further written submissions he wishes the Tribunal to take into account in determining his appeal”

6. Despite a yet further adjournment no arrangements had been made by Mr

Medlicott for someone to represent him at the hearing nor had any written submission been received from him in accordance with the alternative proposed by Judge Cannan. Mr Medlicott had also failed to serve a witness statement setting out the evidence he intended to give to the Tribunal at the final hearing referring to and explaining any documents on which he intended to rely.

7. In all the circumstances and having regard to the excessive period of time it has taken to bring this matter to a hearing the Tribunal, whilst sympathising with the health problems experienced by Mr Medlicott, decided that the interests of justice required the matter to be heard. Accordingly the Tribunal decided to hear the appeal and requested the Respondents' representative to explain the matters at issue between the Respondents and the Appellant.

The Appeal

8. This was an appeal against closure notices under section 28 (1) and (2) Taxes Management Act 1970 for the tax years 2006-2007 and 2008-2009 and assessments raised under section 29 of the same Act for the years 2004-2005; 2005-2006 and 2007-2008.

9. The appeals relate to the disallowance of expenses and pension payments in the above years. In his Notice of Appeal dated 18 March 2011 Mr Medlicott expressed his grounds of appeal thus:

"I have had some allowable expenses for travel and office use denied from my claims for several years.

I have also had pension payments refused against earlier years

Documents will be posted as they cannot be scanned.

I am also requesting a letter from a previous employer, who I had a difficult Employment tribunal and won and I am struggling to get them to confirm some information for the HMRC

I have wrote to them and asked for this information again

I attach a copy of the Review from HMRC which I disagree with relating to the points above"

10. The Revenue contends that Mr Medlicott has:

- failed to satisfy it that expenses relating to travel and subsistence are not excessive or have not been reimbursed by his employer.
- claimed an excessive amount in respect of the use of his home as an office

- failed to provide sufficient information to show that the amounts claimed in respect of pension payments have been so expended.

5 11. Mr Medlicott's 2006-2007 tax return was selected for enquiry on 31 July 2008. The enquiry had as its focus pension payments, employment income, employment benefits and expenses claimed.

12. In his 2006-2007 return Mr Medlicott reported the following:

10	Salary from Forkway Group Ltd	£70,373
	Tax	£18,602
	Medical benefit	£600
	Other benefits	£3,900
	Travel & subsistence expenses	£22,107
15	Other expenses	£2,750
	Retirement annuity relief	£8,371
	Pension payments	£3,580

20 13. The information concerning salary and tax declared was in fact that of 2005 - 2006. During 2006-2007 Mr Medlicott had had two employments. One was with Forkway Group Limited. That ended on 8 September 2006. The second employment was with Jungheinrich UK Ltd which commenced on 8 January 2007.

25 14. The correct position concerning income and benefits was:

	Forkway Group Ltd salary	£34,087.39
	Tax	£8,748.80
30	Jungheinrich UK Ltd salary	£8,579.70
	Tax	£1,659.56
	Benefits in kind Forkway Group Ltd	
	Other	£7,496
35	Medical	£468
	Benefits in kind Jungheinrich UK Ltd	
	Car	£962
	Medical	£93

40 15. Mr Medlicott was advised that based on his return figures he had received an over repayment which was £3,092.50 higher than if the correct pay and tax figures were used. HMRC wrote to Mr Medlicott on 31 July 2008 asking for documents and information for the purposes of the 2006-2007 enquiry.

45 16. There was no response to this request and as a result an initial penalty of £50 and daily penalties of £670 were imposed.

17. On 14 July 2009 HMRC wrote again to Mr Medlicott setting out the position as they understood it and summarising the points at issue. Mr Medlicott was warned

that penalties could be charged as a result of the errors and omissions identified in his tax return.

18. It was not until 18 September that Mr Medicott finally provided some information concerning the claims he had made in respect of car expenses, the use of his home as an office and pension payments. Further documents were promised but had not appeared by 30 November 2009 when HMRC wrote once again saying that it would proceed to amend the returns in line with proposals it had made if there was no full response to the request for documents and information by 14 December 2009.

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19. On 8 January 2010 an enquiry was opened into Mr Medicott's 2008-2009 self assessment return.

20. On this occasion Mr Medicott reported his income, tax and benefits thus:

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Salary from Jungheinrich UK Ltd	£55,270
Tax	£13,451

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Benefits in kind	Nil
Travel/subsistence	£24,007
Other	£2,500
Retirement annuity	£9,862
Pension payments	£4,447

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21. On enquiry of the employer the correct figures were shown to be:

Salary from Jungheinrich	£52,965
Tax	£9,517

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Benefits in kind	£4,422
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22. It was also discovered that the pay and tax figures for the year 2007-2008 had been incorrectly returned by Mr Medicott. He had declared pay of ££84,280 instead of £38,534.50 and tax of £27,812 instead of £5170.49.

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23. HMRC closed its enquiries for the 2006-2007 and 2007-2008 returns by way of closure notices under section 28A(1) and (2) TMA 1970. Revenue amendments were issued for the years 2004-2005; 2005-2006 and 2007-2008 under the discovery provisions of section 29 TMA 1970.

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24. Mr Medicott appealed to HMRC on 23 March 2010 supplying some additional information on 17 May 2010. HMRC responded with proposals to settle matters on a without prejudice basis but this was rejected by Mr Medicott on 31 August 2010.

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25. Subsequently in November 2010 Mr Medicott accepted the revised figure of pension payments for 2006-2007. He explained that he had not claimed any expenses

back from his employer and had been advised by his accountant to claim these on his tax returns.

26. An independent review was carried out by HMRC. Some of the decision
5 maker's original decisions were varied.

27. The main issues concerned pensions and Retirement annuity payments; travel
expenses and use of home as an office.

10 *Pensions/Retirement annuity payments*

28. Mr Medlicott appears at some stage to have taken out a pension plan with
Aegon/Scottish Equitable. In June 2010 he had provided a schedule of payments
made which was rounded to £1,830 for 2005-2006 and 2006-2007 and allowed. Mr
15 Medlicott confirmed that these figures were correct but provided no explanation as to
why he had reported quite different (higher) figures in his tax return.

29. By concession and with no verifiable evidence this sum was allowed also for the
years 2004-2005; 2007-2008 and 2008-2009. It is, say HMRC, likely that the
20 allowance of these figures for the years 2007-2008 and 2008-2009 is incorrect as it is
likely that on changing employer this pension ceased but there is no plan by HMRC to
disturb this.

30. Payments were made by Mr Medlicott into the Standard Life pension plan
25 operated by Jungheinrich in the sum of £4,828.48 and these payments have been
allowed for the years 2007-2008 and 2008-2009.

Travel expenses

30 31. Mr Medlicott has claimed substantial travel expenses for all five of the years
reviewed. These expenses have not been fully substantiated. A company car was
provided by Jungheinrich, which with the company's consent was used by Mr
Medlicott's wife. Mr Medlicott provided evidence that he could have claimed
reimbursement of mileage costs but had not done so. HMRC have allowed mileage at
35 the rate of 40p/mile for the first 10,000 miles and 25p/mile for each mile thereafter.
This produced a figure of £12,744.50 whereas Mr Medlicott had claimed £22,107.
Again no explanation of this discrepancy was forthcoming

32. Mr Medlicott apparently claimed reimbursement of travel expenses whilst at
40 Forkway but has, as yet, not provided any evidence of earlier years mileages or
provided details of all car allowances paid by Forkway. Accordingly HMRC have not
allowed any additional allowance for 2004-2005 and 2005-2006 but have allowed a
figure of £6,254 for 2006-2007 based on Mr Medlicott's mileage schedule from the
date he first began work with Jungheinrich.

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Use of home office

33. It is accepted by HMRC that Mr Medlicott did use an office at his home address. For 2006-2007 Mr Medlicott claimed one sixth of his total household bills

34. As the purpose of a home allowance for office use is to offset the additional costs likely to be incurred by such use HMRC have accepted one sixth of heating, lighting, water and phone bills at a figure of £8,496, one sixth of which is £1,416. Diaries produced by Mr Medlicott showed that he spent much of his time (around half) travelling extensively so HMRC have allowed one half of these costs - £708. Similar percentage estimates were put in place for subsequent years.

Summary of tax liabilities following HMRC adjustments

34. The following table summarises the effect of the revisions to Mr Medlicott's tax returns showing the amounts due.

Year	Original self-assessment	Revised assessment	Overall Tax/NIC due
2004-05	£3,219.20	£6,816.60	£10,035.80
2005-06	(£6,227.80)	£6,563.00	£12,790.80
2006-07	(£8,032.90)	£2,408.72	£10,441.62
2007-08	(£17,179.94)	(£2,302.87)	£14,877.07
2008-09	(£10,877.80)	(£4,173.00)	£6,704.80

The tribunal's decision

35. It is quite clear that Mr Medlicott has simply not given, or been able to give, to the matter of his tax returns the priority that this task calls for. He has failed despite repeated requests to provide evidence of expenditures or other information necessary to calculate his tax liability and has thereby incurred penalties. He has also been negligent in the preparation of his self-assessment tax returns not even having been able to correctly state his earnings.

36. In relation to this appeal Mr Medlicott has wholly failed to put forward any plausible explanation or excuse for his neglect of his tax affairs. He has not troubled to participate in any meaningful way in these proceedings.

37. The tribunal is satisfied that in these circumstances HMRC has done its best on the information available to it to assess Mr Medlicott's tax liabilities for the years reviewed.

38. Mr Medlicott should understand that HMRC were only able to revert to the earlier years of these enquiries because he had acted negligently. That is the practical effect of section 29 of the Taxes Management Act 1970.

39. In the circumstances the tribunal can do no other than to confirm the closure notices for the years 2006-2007 and 2008-2009 and the assessments raised under section 29 TMA 1970 for the years 2004-2005;2005-2006 and 2007-2008.

5 40. Accordingly this appeal is dismissed.

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**CHRISTOPHER HACKING
TRIBUNAL JUDGE**

RELEASE DATE: 8 October 2014

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