



TC04763

Appeal number: TC/2014/04376

INCOME TAX – Self Assessment returns – PAYE deducted per returns – tax repayments made under ‘process first check later’ procedure – verification against Employers’ P14s submitted – Enquiry and Closure notices – Sections 9A and 28A of TMA 1970 – whether decisions based on credible evidence – held yes – whether taxpayer’s rights infringed – held no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ABRAHAM EBRIMA JALLOW

Appellant

- and -

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

TRIBUNAL: JUDGE POON

The Tribunal determined the appeal on 12 November 2015 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 1 August 2014 (with enclosures), then HMRC’s Statement of Case dated 10 October 2014 (with enclosures), and the Appellant’s Statement of Case dated 27 October 2014 (with enclosures).

DECISION

Introduction

1. The appeal is against the closure notices issued by HMRC in relation to Mr Jallow's Self Assessment ('SA') returns for the three tax years ended 5 April 2010, 2011 and 2013. (No closure notice is issued for the year 2011-12.)
2. The closure notices have been issued following enquiry into Mr Jallow's employment income and PAYE for the relevant tax years, in which there are discrepancies in the figures between the SA returns and the Employers' P14 records.
3. The principal issue for the Tribunal to determine is whether these closure notices have been issued correctly in terms of s28A of Taxes Management Act 1970 ('TMA').
4. This Decision is based on the bundle of documents submitted by the parties relating to the appeal. The documents, in consecutive pagination including some blank pages, number 308 pages.

Factual background

Employment profile

5. Mr Jallow was employed by a number of nursing agencies in the relevant years. As many as eight agencies had been Mr Jallow's employers at different periods in the three years concerned. There were four employers for years 2009-10 and 2012-13, and two employers for year 2010-11.
6. Where an individual has multiple employments, one of the employments is normally classified as the main or principal employment, and is customarily the employment that accounts for the highest proportion of the individual's overall earnings, or the one that engages most of the individual's working hours. The employer of the main employment is the *principal* employer, and the PAYE system can collect the right amount of tax if the individual's tax-free allowance is claimed only *once* against the overall earnings. As a general rule therefore, the principal employer is the *only* employer to apply the tax-free allowance against the individual's earnings arising from the main employment. This is to ensure that the tax-free allowance is claimed only *once* by the individual, despite the multiple sources of employment income.
7. Employers other than the principal employer are referred to as 'secondary' employers, and should have operated the Basic Rate (BR) tax code against the income arising from the individual's secondary employments, in the case where the individual's overall income does not exceed the basic rate band. An individual starting employment is obliged to fill in a form P46, which is a questionnaire to assist with the identification of secondary employment, so that the BR tax code can be correctly applied, and avoiding the tax-free allowance being claimed more than once.
8. Due to the nature of Mr Jallow's work, it might not have been possible to identify which employer would emerge as the principal employer. The fact is, with only one exception (that of Care Dynamics Ltd for 2009-10), all of the agencies that

engaged the service of Mr Jallow in the relevant years operated the tax code with the full personal tax-free allowance. Given that the tax-free allowance was allocated against Mr Jallow's overall earnings more than once, there was an underpayment in the income tax due for each of the three tax years.

Repayments processed on submission of SA returns

9. On identifying the PAYE underpayments, HMRC issued notices to require SA returns for the year 2008-09 onwards under s8 of TMA for the purpose of establishing the extent of underpayment for each tax year.

10. Mr Jallow submitted paper SA returns for 2009-10 and 2010-11, both dated 29 April 2013, and online return for 2012-13 on 4 December 2014.

11. The figures on Mr Jallow's SA returns were processed under the 'process now check later' procedure for Self Assessment. Based on the figures on the SA returns submitted, a tax repayment is generated for each of the relevant years as follows:

- (a) £14,311.44 for 2009-10; repayment processed on 27 June 2013;
- (b) £1,803.47 for 2010-11; repayment processed on 8 August 2013;
- (c) £645.40 for 2012-13; repayment processed on 9 December 2013.

12. Since the SA procedure operates on a 'process now check later' basis, the tax repayments were all paid out before HMRC's Risk and Intelligence Service ('RIS') identified the discrepancies between Mr Jallow's return figures and those on his Employers' P14s which were submitted with the Employers' annual returns.

13. On 17 March 2014, HMRC issued enquiry notices into the SA returns for the three years under the provisions of s9A of TMA.

Tax year 2009-10

14. For the tax year 2009-10, the discrepancies between the summary of earnings and PAYE per forms P14 submitted by the four employers of Mr Jallow and the figures on the SA return are as follows:

Employer	Code	P14 Gross Pay	P14 PAYE	Pay per Rtn	Tax per Rtn
Wimborne Nursing	647L	10,611.51	826.20	14,997.07	8,129.57
Newcross Healthcare	647L	3,988.02	25.00		
Dorset Healthcare NHS	647L	3,375.25	499.60		
Care Dynamics Ltd	BR	1,774.45	354.80	16,897.87	11,265.67
Total		<u>£19,749.23</u>	<u>£1,705.60</u>	<u>£31,894.94</u>	<u>£19,395.24</u>
Tax payable /(refunded)			£949.00		(£14,311.44)
Overall underpayment			<u>£15,260.44</u>		

15. Jobseekers allowance of £1,221 was received in 2010-11 on which no tax was paid and was not included in HMRC's re-calculation of the tax liability for the year.

16. Of the four agencies employing Mr Jallow in 2009-10, three of which had used a 647L tax code, and only one had used the Basic Rate (BR) tax code. Wimborne Nursing should have been the principal employer, while Newcross Healthcare and Dorset Healthcare NHS should have been secondary employers operating a BR tax code like Care Dynamics Ltd. As three out of the four employers had operated a 647L tax code, it means the annual tax-free allowance of £6,470 had been given more than once against Mr Jallow's income from his secondary employers, resulting in an underpayment of tax of £949 for the year.

17. The closure notice for 2009-10 seeks to recover the tax repayment made of £14,311.44 and collect the underpayment of £949, in the total sum of £15,260.44.

Tax year 2010-11

18. For the tax year 2010-11, the discrepancies between the summary of earnings and PAYE per P14s submitted by the two employers for Mr Jallow plus Jobseeker allowance received against the figures on the Self Assessment return are as follows:

Employer	Code	P14 Gross Pay	P14 PAYE	Pay per Rtn	Tax per Rtn
Wimborne Nursing	647L	17,437.87	2,191.60		
Newcross Healthcare	647L	1,429.95	nil	12,577.88	3,647.27
Care Wise Homes				5,933.94	563.20
Jobseekers allowance	647L	557.79	nil		
Total		<u>£19,425.61</u>	<u>£2,191.60</u>	<u>£18,511.82</u>	<u>£4,210.47</u>
Tax payable/ (refunded)			£398.00		(£1,803.47)
Overall underpayment			<u>£2,201.47</u>		

19. As all three sources of income had used a 647L tax code, it means the annual tax-free allowance of £6,470 had again been given more than once against Mr Jallow's overall income, resulting in a tax underpayment of £398 for the year.

20. The Jobseekers allowance was included as taxable pay in 2010-11 as a result of the decisions on review of benefits claimed by Mr Jallow by Poole Borough Council. The decision relating to Jobseekers allowance states that Mr Jallow was 'not entitled to Jobseekers Allowance with effect from 16/10/07 to 05/04/08 and from 10/05/08 to 02/02/09 because he is engaged with remunerative work.' In consequence of the Council's decision, Mr Jallow 'has been overpaid Jobseekers Allowance'.

21. The Council's decisions regarding the overpayment of other benefits (Housing and Council Tax) to Mr Jallow were the subject of an appeal listed for hearing in February 2014 at Bournemouth Magistrates' Court.

22. The closure notice for 2010-11 seeks to recover the tax repayment made of £1,803.47 and collect the underpayment of £398, in the total sum of £2,201.47.

Tax year 2012-13

23. For the tax year 2012-13, the discrepancies between the Employers' forms P14 and the figures on the Self Assessment return are as follows:

Employer	Code	P14 Gross Pay	P14 PAYE	SA Rtn Pay	Tax
Dimensions	810L	23,238.15	3,025.80	23,238.00	3,026.00
Newcross Healthcare	810L	248.11	nil	248.00	nil
Mayday Healthcare	500T	74.75	14.80	74.00	15.00
Nurse Plus & Carer Plus	320L	101.77	nil	101.00	nil
Dorset Healthcare NHS	810L			8,787.00	2,473.00
Total		<u>£23,662.78</u>	<u>£3,040.60</u>	<u>£32,448.00</u>	<u>£5,514.00</u>
Tax payable/ (refunded)			£70.60		(£645.40)
Overall underpayment			<u>£716.00</u>		

24. Dimensions as the principal employer had operated a PAYE code of 810L, utilising the annual tax-free allowance against 98% of Mr Jallow's overall income in the year. The secondary employers did not use the BR code, and as a result, there was a small tax underpayment of £70.60 for the year.

25. The closure notice for 2010-11 seeks to recover the tax repayment made of £645.40 and collect the underpayment of £70.60, in the total sum of £716.

Communications between HMRC and Employers

26. On 21 July 2014, HMRC wrote to several employers to obtain the full employment history of Mr Jallow with each of them. The employers receiving the letter of request for information are: (1) Wimborne Nursing Agency Ltd, (2) Dorset Healthcare University NHS Foundation Trust, (3) Carewise Homes Ltd, (4) Care Dynamics Ltd, (5) Newcross Healthcare Solutions Ltd.

27. Each of these employers responded to the information request by supplying copies of forms P60 in relation to Mr Jallow's employment with them, and where relevant, forms P45 as well. For example, Newcross Healthcare's reply was by the Group Payroll Manager on 25 July 2014. The covering letter states that Mr Jallow was employed as a Home Care Assistant from 10 May 2008 to 30 March 2011 and re-employed on 1 June 2011 to 21 June 2012. Two copies of P45 were enclosed (with leaving dates as 30 March 2011 and 21 June 2012). Four copies of P60 were enclosed for the four years from 2009-10 through to 2012-13, bearing the following details:

- (a) 2009-10 pay £3,988.02, tax £25;
- (b) 2010-11 pay £1,429.95, tax nil;

- (c) 2011-12 pay £5,845.59, tax £609.60;
- (d) 2012-13 pay £248.11, tax nil.

28. Other employers such as Dorset NHS Trust, Care Dynamics Ltd, and Carewise Homes Ltd enclosed further documentation in addition to forms P60s and P45. For example, Dorset NHS Trust's reply was by the Deputy Payroll Manager, and included the 'Details of Earnings Certificate'. The earnings certificate is the equivalent of a timesheet with P11 deduction workings. The certificate shows the shifts worked in the seven weeks from 7 December 2009 to 29 January 2010, and the calculations of the weekly gross pay, and the deductions thereon for Tax and NI contributions to arrive at the Net Pay for the week, followed by the date of payment and method of payment. The gross pay for these seven weeks made up the total of £3,375.25 for the tax year 2009-10 from Dorset NHS Trust. A typical day shift is 7.5 hours, and Mr Jallow worked 5 day-shifts in the first week; a weekly total of 37.5 hours and £328.40 gross pay, giving an hourly rate of £8.75. Care Dynamics Ltd's payroll manager also enclosed P11 deduction workings, detailing the weekly gross pay in 2009-10 and basic rate tax being deducted.

29. The reply from Carewise Homes Ltd came from the firm of chartered accountants representing the employer. In the covering letter, the starting date of Mr Jallow's employment is stated as 15 November 2011, and the leaving date as 1 April 2012. A copy of the P45 and P11 deduction form were enclosed. The deduction form records pay and tax deduction details on a monthly basis in the year 2011-12; *the year has not resulted in a closure notice*. The taxable gross pay for the 5 months worked at Carewise is £5,933.94, and tax deducted £563.20. The earnings and PAYE details from Carewise Homes Ltd would appear to have been *included in the SA return for 2012-13* by Mr Jallow, when in fact all the earnings details relate to 2011-12.

Communications between HMRC and Mr Jallow

30. The notice to open s9A enquiry dated 17 March 2014 invited Mr Jallow to produce evidence supporting the figures used on his SA returns.

31. By letter dated 19 March 2014, Mr Jallow responded to the request for evidence by relating the following:

'I have moved address since making those tax assessments. And as a matter of fact I destroyed every thing concerning those Agency work during the years and periods as mentioned in your letter. So, effectively I had no information whatsoever concerning those employments ...'

32. Mr Jallow's continued in his 19 March letter by asking:

'I read in your letter that the reason you are checking is because you have concerns that the pay and tax figures declared are incorrect. Now is it the figures or /and tax declared by myself or by those Agencies I worked for? Which is which?'

Mr Jallow then followed his questions by requesting for copies of Employers' records as referred to by HMRC for his own verification.

33. Mr Jallow then related the sources of the figures he used on his SA returns:

'In my part, I was only able to give out the figures I declared after using the P60, P45 and payroll advice from those Agencies. ...'

I could not go back to those Agencies any more and ask them such information as we didn't part in good terms. ...

Some of the figures I got from those Companies or Agencies were dispatched by junior staff members and who are not in charge of my tax figures, P45, and P60. And so I had to declare the figures given to me at the time. I put down what was given and or sent to me to use.'

34. On 8 April 2014, HMRC replied to Mr Jallow's March letter. The letter summarises the differences between the figures for 'Gross Pay' and 'Tax Deducted' on the SA returns and those according to the relevant forms of P14 (End of year statements) sent to HMRC by Mr Jallow's employers. Enclosed with the letter were copies of the tax returns that have been filed for the years 2009-10, 2010-11, and 2012-13, and the forms P14 supporting the figures that HRMC had used for the comparison.

35. There were telephone communications and further correspondence between Mr Jallow and HMRC after HMRC's letter of April 2014, but no substantive evidence in relation to the figures used in Mr Jallow's returns has been provided.

36. On 19 June 2014, in the absence of any evidence from Mr Jallow, closure notices were issued for the relevant years under enquiry, with assessments being raised for each of the three years as follows:

- (a) £15,260.44 for 2009-10;
- (b) £ 2,201.47 for 2010-11;
- (c) £ 716.00 for 2012-13.

The total of the assessments is £18,177.91, and relates to the tax repayments that have been processed in consequence of the figures on the SA returns, together with the PAYE underpayment for each of the said years.

37. On 23 June 2014, Mr Jallow responded to the closure notices by requesting a review, which was undertaken and the closure notices were upheld and the review decision communicated by letter dated 18 July 2014. The review decision confirmed the amounts to be settled for each of the three years as £15,260.44 for 2009-10; £2,201.47 for 2010-11; £716.00 for 2012-13.

38. On 1 August 2014, Mr Jallow wrote to HMRC, 'refuting' the review decision. A Notice of Appeal was lodged, also dated 1 August, in which Mr Jallow's letters of 23 June and 1 August 2014 were referred to as part of his grounds of appeal.

39. On 25 September 2014, the Debt Management team of HMRC sent a 'Statement of liabilities' showing outstanding balance at £18,870.97, which includes interest of £693.06 accrued as at the date of the statement on the total outstanding tax due of £18,177.91. Mr Jallow has questioned the figure for the total liabilities keeps changing, and that is due to the interest that is accruing on a daily basis.

The legislative framework

40. The legislation governing the taxpayer's obligations to complete a personal tax return is provided under s8 of TMA:

'8 Personal return

(1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment,

and the amount payable by him by way of income tax for that year, he may be required by a notice given to him by an officer of the Board—

(a) to make and deliver to the officer. . . , a return containing such information as may reasonably be required in pursuance of the notice, and

(b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.

...

(2) Every return under this section shall include **a declaration by the person** making the return to the effect that the return is to the best of his knowledge **correct and complete**.

(3) A notice under this section may require different information, accounts and statements for different periods or in relation to different descriptions of source of income.

(4) Notices under this section may require different information, accounts and statements in relation to different descriptions of person.

...

(5) In this section and sections 8A, 9 and 12AA of this Act, any reference to **income tax deducted at source** is a reference to income tax deducted or treated as deducted from any income or **treated as paid on any income.**' (emphasis added)

41. The legislation governing the opening of enquiry is under s9A of TMA:

'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;

...

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,

...

(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, or

(b) after an enquiry into the return has been completed,

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.’

42. The legislation for the closure of enquiry is provided under s28A of TMA:

‘28A Completion of enquiry into personal or trustee return ...

(1) An enquiry under section 9A(1) ... of this Act is completed when an officer of the Board by notice (a “closure notice”) informs the taxpayer that he has completed his enquiries and states his conclusions.

In this section “the taxpayer” means the person to whom notice of enquiry was given.

(2) A closure notice must either—

(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.

(3) A closure notice takes effect when it is issued.

(4) The taxpayer may apply to the [tribunal] for a direction requiring an officer of the Board to issue a closure notice within a specified period. ...’

43. The Tribunal’s jurisdiction in connection with a closure notice is provided under s50 of TMA:

‘50 Procedure

(1)–(5) ...

(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.

(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) ...

(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.’

The grounds of appeal

44. Mr Jallow appealed against the closure notices; and per the Notice of Appeal dated 1 August 2014, the stated grounds of appeal can be summarised as follows:

- (1) That the enquiry was instigated by Poole Borough Council;
- (2) Reasons as laid out in letter dated 23 June 2014, that HMRC’s decisions were illegal, biased and fictitious;
 - (a) Illegal because the decisions were made without his consent;
 - (b) Biased because HMRC did not accept his letter of 19 March 2014 as evidence;
 - (c) Fictitious because Mr Jallow believes there are inaccuracies in the figures relied upon by HMRC.
- (3) Reasons as laid out in Mr Jallow’s letter of 1 August 2014,
 - (a) That HMRC was wrong to pay now and check later;
 - (b) That Mr Jallow had never asked to be paid without verification and checks being carried out first by HMRC;
 - (c) That HMRC have relied upon inaccurate information from Mr Jallow’s employers.

45. In his Statement of Case, Mr Jallow asserted that HMRC have ignored and demeaned his Convention rights under Articles 1, 3, 7 and 8.

46. Mr Jallow enclosed as evidence to accompany his Hardship Application: bank statements, children’s birth certificates, tenancy agreement; payslip, utility bills and

bills from media and mobile network providers – TV licence, Sky Television, Virgin Media, and Orange mobile.

47. A Hardship Application only applies in a case where the disputed tax is indirect tax such as VAT or excise duty. As the appeal concerns income tax, which is a direct tax, the Hardship Application is not relevant. And indeed Mr Jallow had not been asked to pay the disputed tax before his appeal was admitted.

HMRC's case

48. That the enquiry was instigated by HMRC's internal Risk and Intelligence Service ('RIS') as part of the routine process to identify potential errors in submitted tax returns; that the enquiry was unrelated to Poole Borough Council.

49. In terms of the points raised by Mr Jallow's letters of 23 June and 1 August 2014, HMRC contend that:

- (a) Returns were correctly required, and notice was given in accordance with s8A of TMA;
- (b) The returns were processed correctly; ie: in accordance with the submitted figures;
- (c) That Self Assessment is intended to vest 'new and more clearly defined obligations' on the taxpayers, and correspondingly to vest 'more clearly defined powers to ensure compliance with those obligations';
- (d) The SA procedure is 'process now/check later' regime. The 'process now' stage is supported by firmer procedural rules for filing of returns and payment of tax, and the 'check later' stage is underpinned by enquiry and information powers.
- (e) Even when a repayment has been processed, the repayment claim or the SA return may still be subject to later enquiry and amendment.
- (f) That the enquiry notices were correctly issued in accordance with s9A of TMA;
- (g) The decision is based upon the most reliable evidence available;
- (h) The Employer's Returns are more credible than Mr Jallow's figures;
- (i) That the closure notices were correctly issued in accordance with s28A of TMA.

50. Finally, HMRC contend that by complying with the legislation and procedures, HMRC have not ignored Mr Jallow's rights, which were explained to Mr Jallow at the start of the enquiry. As such, HMRC are unable to comment further as it is not clear what right has been breached.

Discussion

The principal issue

51. The principal issue in this appeal is whether the closure notices seeking the total of £18,177.91 for the three years concerned have been correctly assessed.

52. The validity of the closure notice assessments has to be based on credible evidence. The decision for the Tribunal is whether the evidence relied upon by HMRC in making the assessment is credible.

53. Mr Jallow has raised a few grounds of appeal which are not relevant to the determination of this appeal. Ultimately, it is *evidence* that the Tribunal has to focus on to determine whether the closure notice assessments have been fairly raised. The Tribunal will address only points relevant to the appeal.

The source of evidence relied upon

54. The source of evidence relied upon by both sides is in fact the same; namely, the employers' records. For Mr Jallow, he stated in his letter of March 2014 that: '*In my part, I was only able to give out the figures I declared after using the P60, P45 and payroll advice from those Agencies.*'

55. Furthermore, Mr Jallow related the source of information he used on his SA returns in the following terms: '*Some of the figures I got from those Companies or Agencies were dispatched by junior staff members and who are not in charge of my tax figures, P45, and P60. And so I had to declare the figures given to me at the time. I put down what was given and or sent to me to use.*' Mr Jallow's own explanation of the source of the figures he used would seem to suggest that Mr Jallow himself had reservations about the accuracy of the figures given to him by 'junior staff members', but despite his reservations, he '*had to declare the figures given to [him] at the time*'.

56. The source of evidence relied upon by HMRC has also originated from the employers. Mr Jallow had referred to these junior staff members not being in charge of his 'tax figures, P45 and P60'. As far as the documents available to the Tribunal are concerned, HMRC have written to no fewer than five of Mr Jallow's key employers to build up a full picture of Mr Jallow's employment history with each employer, and the gross pay and tax deducted for each relevant tax year.

57. The employers' responses are from the best authority (by the payroll or accounts department, or chartered accountants), and backed by the best evidence that can be obtained. The P11 deduction sheets are the *primary* source of data, recording all the essential details of how each weekly or monthly payment was calculated, from the shift hours worked to the gross pay, and deductions applied for tax and NI.

58. Mr Jallow himself considers forms P45 and P60 as the relevant sources of information for completing his returns. These forms were requested by and supplied to HMRC by the employers. The credible sources of information which Mr Jallow himself had identified, namely tax figures, forms P45 and P60, but had not been able to obtain from his past employers, HMRC have produced as evidence to confirm the basis of the closure notice assessments.

The credibility of evidence on forms P14

59. The primary data produced by those employers to support their calculations of Mr Jallow's gross pay and PAYE deducted represent a *clear audit trail that lends credibility* to their records. These are meticulously kept records that detail the dates and the hours worked for each shift, through to the steps in the calculations to arrive at the net pay to be credited to Mr Jallow's bank account.

60. The accuracy of an employer's records is, to a certain extent, testified by the employee's acceptance of the *net pay* received in each pay period. If an employee is underpaid, or if PAYE is not accurately applied, the employee is most likely to have challenged the accuracy of figures used by the employer.

61. The primary data for an individual's gross pay and PAYE in each pay period are summarised into the Employer's End of year return on form P35, of which the production of forms P14 and P60 are a part of this annual compliance exercise.

62. At the end of a tax year, every employer is under a statutory obligation to supply every employee with a form P60, which records the figures in relation to gross earnings and income tax paid related to those earnings arising in the tax year.

63. While the form P60 is given to an employee for record keeping, a corresponding form P14 for each employee is sent to HMRC. The form P14 gives the *identical* summary figures as the P60.

64. If a nursing agency has 100 employees on the payroll, the agency on its Employer's annual return P35 will list all of the 100 employees' annual earnings and PAYE figures, accompanied by 100 forms of P14, one for each of the employees listed on the P35 return. There will also be 100 forms of P60 corresponding to the figures submitted on the P14s; and the P60s will be handed to each employee.

65. The Employer's P35 return and all the accompanying forms P14 are documents submitted to HMRC, and are subject to the *Error Penalty* regime under Schedule 24 to Finance Act 2007. If these submitted documents contain any inaccuracies, severe error penalties are imposed on the employers. The purpose of the error penalty regime is to promote accuracy in all the submitted documents by an employer.

66. Where multiple employers are concerned, the earnings details of an individual for a particular tax year can be collated through the Employers' Annual Returns on P35 and the accompanying forms P14.

67. To base the closure notice assessments on the forms P14 related to Mr Jallow means that the details obtained are identical to those that would have been shown on the P60s received by Mr Jallow, and that there is the assurance of *completeness* that the multiple employments are identified through collating information on the Employer's P35 return database.

68. Furthermore, HMRC have taken the extra steps to substantiate the figures obtained from P14s by writing to individual employers to check the P14s against the P60s and payroll records. The additional evidence supplied by the employers' primary data and P11 deductions records lends further credence to the reliability of the figures on the P14 summaries.

69. While it has been noted earlier that some of the employers should have been operating a BR code on Mr Jallow's earnings, the Tribunal is nevertheless fully satisfied with the accuracy of the figures for Gross Pay and PAYE on the employers' records. HMRC have based their closure notice assessments on the best source of information available by corroborating evidence from forms P14, with P60s and P45s all through to P11 deduction records. The evidence produced by the individual employers shows a high standard of care being taken in compiling their records, not

only at the stage of production of Employer's end of year summary, but at the preceding stages of source data recording and deduction calculations. The Tribunal can therefore accord full credence to the accuracy of the figures on the forms P14 submitted by the employers and relied upon as the basis of assessments by HMRC.

The alleged inaccuracies in the employers' records

70. In his letter of 23 June 2014, Mr Jallow placed great emphasis on the inaccuracies in the information supplied by the employers. He described the information as 'fictitious' and claimed: '*I can proof [sic] that almost all the information passed to [HMRC] has got so many inaccuracies*', and went on to cite a few examples:

(a) 'it is stated that I got paid by Care Dynamics Ltd the amount of £1,774.45. Then for the same period or year [an officer in a document] ... put down £1,774. Which is which?'

(b) 'that my work with Care Dynamics Ltd end date was 07/02/10. That is not true because I never left at that date and in fact with agency work there is no leaving date.'

71. The rest of the page in Mr Jallow's letter was filled with examples similar to (b) above, referring to inaccuracies concerning whether Mr Jallow had left an employer, or that the leaving dates were wrong. The Tribunal does not consider that the exact duration of Mr Jallow's employment with an employer, or whether he was considered to have left and re-joined the employer, in any way undermines the reliability of the figures for Gross Pay and PAYE recorded in relation to each tax year.

72. As regards the *only* example of inaccuracy concerning the amount of pay, that of example (a), the two figures quoted in his letter are effectively identical *but for the pence* being omitted in the officer's citation.

73. None of these examples of inaccuracies in Mr Jallow's letter are of significance to discredit the P14 information relied upon as the basis of the assessments.

The amounts of PAYE claimed as paid on SA returns

74. The tax repayments made to Mr Jallow were generated as a result of the figures on his SA returns. For 2009-10, repayment of £14,311.44 was processed based on two employments reported with details as follows:

(a) Gross pay of £14,997; PAYE at £8,129; tax rate at 54.2%;

(b) Gross pay of £16,897; PAYE at £11,265; tax rate at 66.67%.

The combined annual gross pay of £31,894, and applying the hourly rate of £8.75 established from P11 records of Dorset Health NHS Trust, would equate to 3,645 hours of pay work in a year, or an average 70 hours per week for 52 weeks without any weeks off.

75. For 2010-11 and 2012-13, the material claims of PAYE as paid relate to:

(a) Gross pay of £12,577.88; PAYE at £3,647.27; tax rate at 29%;

(b) Gross pay of £8,787.00; PAYE at £2,473.00; tax rate of 28%.

76. As observed earlier, most employers of Mr Jallow – even as secondary employers – did not operate the basic rate code to tax Mr Jallow’s gross pay at 20%, let alone at 54.2% or 66.67%. The rates of PAYE claimed to have been paid at source that resulted in the tax repayments are improbable.

77. In respect of the PAYE deducted from an employee, the employer functions as a tax collector for HMRC, and is obliged to pay over the deducted income tax on a monthly basis on behalf of the employee. Late payment of the PAYE (and NI) deducted from each pay period will result in ‘Late Payment’ penalties being imposed on the employer under Schedule 56 of Finance Act 2009.

78. For cashflow reasons, an employer will seek to pay over PAYE that has been deducted from the employee’s gross pay. There is no reasonable basis to assume that an employer will make such a material error to the extent of overpaying PAYE for an employee at 66.67% when the employee is a basic-rate taxpayer. There is no reasonable basis to assume that if the employee had indeed borne PAYE at 66.67% when he was a basic-rate taxpayer, not to have addressed the matter immediately with the employer, and to have suffered the shortfall in his Net Pay during 2009-10 until he made a repayment claim in 2013.

79. The material fact is that none of these PAYE figures claimed to have been paid on Mr Jallow’s SA returns are substantiated by any evidence. Mr Jallow himself has stated that ‘*effectively [he] had no information whatsoever concerning those employments*’ because he had destroyed everything when he moved home.

80. In the absence of any evidence, and in the presence of credible evidence in relation to the Employers’ P14 figures to the contrary, the Tribunal has to disregard the SA return figures that resulted in the repayments as without any probable basis.

Taxpayer’s obligations under Self Assessment procedure

81. The wording of s8 TMA clearly states that the *onus* is on the taxpayer to make a correct and complete return:

‘Every return under this section shall include **a declaration by the person** making the return to the effect that the return is to the best of his knowledge **correct and complete.**’ (emphasis added)

82. Similar to an Employer’s annual return, a Self Assessment return is subject to the ‘Error Penalty’ regime under Schedule 24 of FA 2007 for any inaccuracies found in the return. The penalty regime is to safeguard the ‘process now, check later’ procedure from being abused.

83. It is on the premise that the taxpayer has made a correct and complete SA return that a tax repayment is processed. HMRC are not under an obligation to check every tax repayment claim before it is processed.

84. The ‘process now, check later’ in no way reverses the onus that rests with the taxpayer from beginning to end to make a *correct and complete* return.

HMRC’s compliance with legislative procedure

85. The enquiry was conducted, and the closure notices have been issued, in full compliance with the legislative framework (under s9A and s28A of TMA) providing for the taxpayer’s rights.

86. In his Statement of Case, Mr Jallow argues extensively that his Human Rights are ignored or infringed or demeaned. The legislative framework governing the enquiry is there to safeguard the taxpayer's rights. There is no breach of rights as the conduct of the enquiry is compliant with the legislative provisions.

87. As regards the tax repayments that have been paid, Mr Jallow now claims that the closure notices represent an infringement of his Convention right under Article 1 – 'right to peaceful enjoyment of possessions'. Convention right under Article 1 is not an absolute right but a qualified right. The material fact in Mr Jallow's case is that there is no evidence to support his claim of legal ownership of the PAYE that he declared on his returns as having been paid by his employers on his behalf.

88. Where there is no legal ownership, there is no 'possession'; where there is no 'possession', there is no engagement with Convention right under Article 1; where there is no engagement of right, there can be no occasion for its infringement. The Tribunal concludes that since there is no 'possession', there can be no engagement of right under Article 1 in the first place.

The onus of proof

89. Mr Jallow has the onus of proof in this appeal to provide evidence to either reduce or set aside HMRC's assessments.

90. As related, there has been no substantive, credible evidence advanced from Mr Jallow to contradict the evidence from the employers, which HMRC have relied upon to arrive at the closure notice assessments.

The Tribunal's jurisdiction

91. In relation to an appeal such as this, the Tribunal's jurisdiction is set out under s50 of TMA. Based on the evidence that has been examined in great detail, the Tribunal concludes that the amounts assessed under the closure notices are fairly quantified and have been based on the best reliable source of evidence available. There is no adjustment to be made either by increasing or decreasing the amounts.

Decision

92. For the reasons stated above, the appeal is dismissed. The amounts assessed by the closure notices in the quantum of £15,260.44 for 2009-10; £2,201.47 for 2010-11; and £716.00 for 2012-13 are confirmed.

93. 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.

**HEIDI POON
TRIBUNAL JUDGE**

RELEASE DATE: 23 NOVEMBER 2015