

Tax Networks Ltd

Suspended Penalties – Flaws in HMRC Policy Guidelines

Paragraph 14(3) Schedule 24 FA07 sets out a new regime for suspension of penalties. The apparent underlying purpose of the legislation is not simply to allow a taxpayer the opportunity of “a last chance” if he mends his ways (like a suspended sentence in the criminal sphere) but only to allow him that last chance if he takes some specific and observable action which is specifically designed to improve his tax compliance.

There appears to be linkage between the default and later action required by the suspense condition - the use of “*further*” in paragraph 14(3) seems to imply this.

It is unlikely that paragraph 14(3) is intended to cover a situation where, for example, a taxpayer carelessly gives inaccurate information in a CIS return and then seeks to have the penalty suspended because of promised improvements in his PAYE record keeping processes.

The suspended penalty situation is illustrated in the case of *Testa v HMRC*. On termination of his employment Mr Testa’s (the “taxpayer”) final salary and PAYE was on his P45. This excluded his later severance payment which was (correctly) taxed at 20% using code “OT” after the £30,000 exemption.

He subsequently filled in his tax return using only the figures from his P45. When challenged by HMRC, the taxpayer acknowledged that it was his careless error to omit the severance payment and the tax from his SA Return. As a result he under-declared income tax of £38,866.07 on his self-assessment tax return for 2009-10. HMRC accepted the taxpayer’s explanation of how the [typical] error had arisen and because of his co-operation they mitigated the penalty down to 15% which was the minimum provided for in Schedule 24.

At the appeal hearing the taxpayer confirmed he had informed HMRC that he would retain a tax adviser and as there were “specific, time bound, measurable conditions that can be set to help him avoid careless inaccuracies in the future’ the penalties imposed by HMRC should be suspended.

The tribunal rejected HMRC’s policy statement that “one off” inaccuracies could never benefit from the suspension regime and upheld the taxpayer’s appeal and entitlement to a suspension of penalties.

In conclusion, this case demonstrates that HMRC published policy is not the law, but also it is a reminder of how HMRC profiles employers PAYE “returns” with taxpayers SA Returns and Enquiries are not random.

The above comments are for general guidance only and more information is available at <http://www.taxnetworks.co.uk/> or you can contact Chris Leslie at chris.leslie@taxnetworks.co.uk