

**Accountants, get a clear view of your clients cash flow during a recession**

Register for webinar

xero



# TAXATION

Since 1927 the leading authority on tax law, practice and administration. [Home](#) [About Us](#) [Logout](#) [Contact](#) | [Twitter](#) [LinkedIn](#)

[News](#)

[Cases](#)

[Comment & Analysis](#)

[Readers' Forum](#)

[Awards](#)

[Taxation Jobs](#)

[Directory](#)

[Tolley CPD](#)

[Issue Ar](#)

Search for Articles, Authors and Issues

SEARCH

## Readers' forum: Dividend income errors in HNW client's return

06 March 2023

Issue: [4879](#) / Categories: [Forum & Feedback](#)



### Innocent error?

One of my high net worth clients has just been through an HMRC investigation. He received a clean bill of health on everything except dividend income. He has a large investment portfolio which is not managed by a broker so each year one of my staff has to work through all of the dividend paperwork to produce a schedule which is used in the tax return.

HMRC has flagged two errors in the schedule: 1) one dividend out of a total of 30 was missed out – the client appears to have mislaid the relevant papers; 2) there is a transposition error on our spreadsheet where a dividend of £8,300 was keyed in as £3,800. The combined tax effect of these two errors amounts to about £6,000 of additional tax (a small amount in proportion to the client's total tax liability for the year of over £150,000). Our client is diligent but didn't spot this error. HMRC says that a penalty is due because our client did not take reasonable care, particularly as the return was prepared by an accountant. Our client feels strongly that this was simply a mistake, and he should not be penalised. Is HMRC likely to accept the argument that this was an error which doesn't justify a penalty?

Query 20,092 – Adviser.

### Apply to have the penalty suspended.

We must consider two separate issues. One is the dividend that was missed (client error) and the other is the transposition error (adviser error). The only way HMRC will accept that these errors do not justify a penalty is if it can be demonstrated that the client took reasonable care, has a reasonable excuse for the error or if the client was careless and HMRC accepts suspension of the penalty.



## READERS' FORUM S

[Read All](#)

[Readers' forum: Is business property relief available?](#)

[Readers' forum: Dividend income errors in HNW client's return](#)

[Readers' forum: Can a group registration be formed with no VATable sales?](#)

[Readers' forum: Apportioning time used at the dining room table](#)

[New queries: 9 March 2023](#)

**FIVE WAYS TO MAKE ACCOUNTS PRODUCTION AND TAX EASIER.**

Download the exclusive Xero free report [here](#).

HMRC's *Compliance Handbook* (CH160200) sets out what HMRC considers a 'reasonable excuse' and what a 'reasonable person' who wanted to meet their obligations would have done. So we have to look at the client and, in particular, their level of expertise and how they have handled their affairs in the past.

Reasonable care is referred to in legislation but we look to the courts for a definition. It is a mixture of (i) an objective test (*Coales* (TC2154)) where Judge Brannan said that the reasonable excuse exception was 'an objective test applied in the individual facts and circumstances of the appellant in question', and that 'the word "reasonable" imports the concept of objectivity, whilst the words "the taxpayer" recognise that the objective test should be applied to the circumstances of the actual (rather than some hypothetical) taxpayer' [26]; and (ii) a subjective test (Judge Medd QC in *The Clean Car Co Ltd v CCE* [1991] VATTR 23 said: 'One must ask oneself: was what the taxpayer did a reasonable thing ... having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time...?').

One thing that might raise concerns from HMRC's perspective is that the documents supporting the value of the dividend that was missed have been misplaced. We would argue however, that: (a) the fact that the documents were lost was the reason that the dividend was missed (objective); (b) only one transaction was missed which could happen even by taking reasonable care (objective); and (c) as a proportion of income, the amount missed was small and so easily overlooked (objective); and (d) carelessness implies a level of negligence and you would have to demonstrate that the errors were missed.

The courts have determined that reliance on an adviser alone is not an excuse but if the client has done all they could be expected to do, they cannot be responsible for an adviser's error.

In our experience, HMRC tries to levy penalties unless there is an obvious and direct reason for not doing so (eg death). HMRC's view of reasonable excuse can be a lot stricter than a tribunal's, so it may be worth seeing if careless behaviour could be accepted and an apply to suspend the penalty. – *London Tax Network*.

### HMRC does not expect perfection.

The issue of a penalty following an HMRC compliance check is always a client sensitive matter, especially if, as it appears to be in Adviser's case, this is not necessarily of their own making. FA 2007, Sch 24, Para 1 provides the legislative framework for HMRC to charge a penalty, with the caveat that an inaccuracy must, at least, be careless. Para 1(4) also makes it clear that: 'where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.'

The starting point for HMRC being able to charge a penalty is thus the need to demonstrate reasonable care has not been taken. The two errors identified need to be separately considered and potentially have very different treatments.

In relation to the first inaccuracy, we are not told the value of the omitted dividend but it appears to be somewhere around £4,000. As set out in CH81140, HMRC does not expect perfection. However, it is suggested that taking reasonable care should encompass a record system of allowing an accurate dividend listing. While it may, sometimes, be possible to identify missing vouchers through a comparison of a previous year, this may not have been the case here and hence why the error was not picked up. For this error therefore, it may be difficult to refute HMRC's call for a penalty.

Regarding the transposition error there are two opportunities to argue no penalty is due. First, HMRC states that an arithmetical or transposition inaccuracy is potentially an example of where an individual has taken reasonable care, so no penalty should arise (see HMRC's *Compliance Handbook* CH81130). However, this is caveated by the inaccuracy not being so large that it would have permitted the error to be identified. The tax at stake on the transposition error is less than 4%, so it may be possible to argue this is not large. As the client doesn't provide a totalled spreadsheet to Adviser, it

## New queries

Please email any questions you might have to: [taxation@lexisnexis.co.uk](mailto:taxation@lexisnexis.co.uk).

## Taxation Awards 2023

Entries now open  
[www.taxationawards.co.uk](http://www.taxationawards.co.uk)

## NEWS

[Read All](#)

[Early day motion calls for a resolution to the loan charge](#)

[Leisure services are non-business activities](#)

[Deadline for voluntary NI contributions extended](#)

[In brief: 9 March 2023](#)

[Forms can be downloaded to report property disposals for capital gains tax](#)

## DEADLINE DATES



## CASES

[Read All](#)

[Taxpayer was domiciled in England](#)

[Inadequate records to support 5% VAT charge](#)

[Effect of SORN on availability of vehicle](#)

[Adequate information to issue closure notices](#)

[Suspension of careless error VAT penalty](#)

## MOST POPULAR

may be reasonable to conclude the client had no reference against which to judge whether a transposition error had arisen. Secondly, as set out in Sch24 para 18, reliance on an agent can mitigate a penalty where the two stages of the required test are met.

It is strongly suggested the penalty in relation to the transposition error be resisted, or, at the very least apply to suspend the penalty, conditional on no similar errors arising in the next return. – *Elman Wall – Xeinadin Group*.

[Taxpayer was domiciled in England](#)

[Early day motion calls for a resolution to the loan charge](#)

[Leisure services are non-business activities](#)

[Inadequate records to support 5% VAT charge](#)

[Deadline for voluntary NI contributions extended](#)

Issue: [4879](#) / Categories: [Forum & Feedback](#)



# TAXATION



LexisNexis, Quadrant House, The Quadrant, Sutton, Surrey, SM2 5AS

CONTACT US  
[0330 161 1234](tel:03301611234)

GET IN TOUCH

Worldwide: [United Kingdom](#)

## QUICK LINKS

- [News](#)
- [Cases](#)
- [Comment & Analysis](#)
- [Readers' Forum](#)
- [Tolley\\_CPD](#)
- [Awards](#)
- [Directory](#)
- [Jobs](#)
- [Authors](#)
- [Events](#)
- [Writing guide](#)

## PARTNER SITES

- [Tolley, LexisNexis, Tolley's](#)
- [Tax Books, Tax Guidance,](#)
- [Taxation jobs, Tax Journal](#)

## POLICIES

- [Cookie Settings](#)
- [Data Protection](#)
- [Privacy Policy](#)
- [Terms & Conditions](#)
- [Terms for authors](#)

[Newsletter sign-up](#)

[Subscribe](#)

[Advertise with us](#)

## FOLLOW US ON

- [Twitter](#)
- [Linked in](#)

[Protecting human rights: Our Modern Slavery Act Statement](#)