



**TC02665**

**Appeal number: TC/2012/06196**

***INCOME TAX – PAYE – Extra-Statutory Concession A19 – Underpayments of tax  
- Appellant with two employments – Subsequent adjustments to recover  
underpayments - Appellant’s claim to have received wrong coding instructions –  
Whether Tribunal can direct HMRC not to collect the underpaid tax – No -  
Tribunal has no authority to enforce compliance with Extra-Statutory Concession –  
Appeal dismissed***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**CHRISTOPHER FLOOD**

**Appellant**

**- and -**

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

**TRIBUNAL:    SIR STEPHEN OLIVER QC  
                  MARK BUFFERY FCA AIIT**

**Sitting in public in London on 3 April 2013**

**The Appellant in person**

**Mrs KM Evans, Appeals and Reviews, for the Respondents**

## DECISION

1. Mr Christopher Flood appeals against a decision in a letter from HMRC of 16 May 2012. The decision reads as follows:

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*"Thank you for your letter of 20 April 2012 asking us to reconsider Extra Statutory Concession A19, which allows us not to collect tax in certain cases.*

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*We have reviewed your case again but we still have the same opinion that ESC A19 does not apply in your case and the tax is still due. This is because we still have no record of any information sent by you or a third party which we failed to act on.*

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The underpayment has arisen because you paid tax at the basic rate of 20% when you were due to pay tax at the higher rate of 40%. We received no notification of your income from London Borough of Lewisham. Please note that P14 (end of year forms, equivalent to the P60 that you receive) is not considered as information we failed to act upon. This is because we receive these after the tax year has commenced."

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2. Mr Flood explained the circumstances. HMRC were seeking to recover £2615.96 (relating, as to £2491, for 2009/10 and £124 for 2010 for 2010/11) that they claimed to have been underpaid through the operation of the PAYE system. He did not dispute that £2615.96 was the proper amount of tax due on his earnings. During those years he had had two employments, one of them for one day a week and the other for four days a week. During the relevant periods he had paid 40% tax on the one day a week employment (with a university) and 20% tax on his employment with Lewisham. This, he said, had been on advice from "the tax office". Later, he said, HMRC staff had identified that there had been a calculation error on their part and that he would have to pay the additional amount of £2615.96. To have to pay that amount would, he said, cause him financial difficulties; his earnings had dropped by £400 a month because he had been made redundant in May 2011 and he had used the redundancy payment to pay off part of his mortgage and to reduce financial overheads.

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3. Contending that it was not reasonable of HMRC to have made an error and then to have expected him to have to make a large retrospective payment at a time when he was in financial difficulties, Mr Flood referred us to HMRC's policy rules (P800 notes 09/11, page 3). These state that "*in certain circumstances we (HMRC) can agree not to collect tax from you or a third party if we have failed to make use of information from you or a third party for a complete tax year since it was sent to us and it was reasonable for you to think that your tax affairs were in order*". (We understand that that statement reflects ESC A19.)

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4. HMRC's case is that this tribunal has no authority to give a ruling as to the proper application of an Extra Statutory Concession (or a statement such as that quoted in the previous paragraph) which has had the effect of giving a taxpayer a legitimate expectation. Thus, even if Mr Flood had been given a legitimate expectation that

underpaid tax of £2615.96 would not be collected, the tribunal had no power to give effect to that expectation. In any event, as noted, HMRC say that they had not acted unreasonably. They had not been notified of Mr Flood's four day a week earnings through the P14 system or at all until after the end of the relevant tax year.

5 5. The operation of the PAYE system in the case of an individual, like Mr Flood,  
who has two employments, is by no means straightforward. Precisely what happened  
here is not clear to us. He has evidently suffered hardship and inconvenience and we  
can only sympathise with him. However, in a number of appeals to this tribunal (dealt  
with is the single decision in *Prince and others*, TC 01852 published in February  
10 2012) the Tribunal has (correctly, in our view) concluded that it does not have  
authority to consider the application of ESC A19 and P800s. Mr Flood has not sought  
to challenge the correctness of that decision.

6. Consequently we cannot intervene here. And, bearing in mind that Mr Flood  
acknowledges that £2615.96 is the amount of tax properly due in law, we are left with  
15 no opportunity to make any adjustment to that amount.

7. For those reasons we are bound to dismiss Mr Flood's appeal.

8. 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  
20 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.

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**SIR STEPHEN OLIVER QC  
TRIBUNAL JUDGE**

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**RELEASE DATE: 19 April 2013**