



TC07646

INCOME TAX – mobile care worker - mileage allowance relief – amount of tax deducted under PAYE – whether errors in tax returns deliberate or careless – whether decision not to suspend penalties flawed – appeal allowed in part

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/00350

BETWEEN

AMARA AKHTAR

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE ZACHARY CITRON
MR RICHARD LAW**

Sitting in public at Taylor House, London EC1 on 29 January 2020

The Appellant was represented by her daughter-in-law, Ms Jemma Akhtar

Mr A Barrett, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. This income tax appeal concerned the amount of mileage allowance relief the appellant, a mobile care worker, was entitled to over four tax years, as well as whether errors in her tax returns regarding the amount of tax deducted under PAYE were deliberate or careless.

THE HEARING

2. The appellant was represented at the hearing by her daughter in law, Ms Jemma Akhtar (who was not a lawyer or a tax specialist). An interpreter attended the hearing and translated the proceedings to Mrs Akhtar's native language.

BACKGROUND TO THE APPEAL

3. HMRC issued closure notices amending Mrs Akhtar's income tax returns for the tax years 2013-14 to 2016-17 inclusive on 18 April 2018, charging tax of £7,887, £6,863.60, £6,850.20 and £4,728.48 respectively.

4. Mrs Akhtar notified HMRC of her appeal against these tax return amendments on 30 April 2018.

5. HMRC raised penalty assessments amounting to £9,737.78 for the same four tax years (2013-14 to 2016-17 inclusive) on 8 January 2019. This was on the basis that

(1) errors in Mrs Akhtar's tax returns as regards the amount deducted under PAYE were deliberate as well as "prompted"; HMRC applied an overall penalty percentage of 37.5%, reflecting full 40% and 30% reductions for "helping" and "giving" respectively but only 20% of a maximum 40% reduction for "telling"; and

(2) errors in her tax returns regarding mileage allowance relief were careless as well as "prompted"; HMRC applied a penalty percentage of 15%, reflecting the maximum possible reduction in the circumstances for "telling", "helping" and "giving".

6. Mrs Akhtar notified the Tribunal of her appeal against the tax return amendments and assessments described above, on 15 January 2019.

7. During the course of the hearing, Mrs Akhtar withdrew her appeals against discovery assessments for the tax years 2011-12 and 2012-13.

MATTERS IN CONTENTION

8. The matters in contention between the parties can be summarised as follows:

(1) Amount of mileage allowance relief to which Mrs Akhtar was entitled:

(a) 2013-14: Mrs Akhtar claimed £7,755 business travel and subsistence expenses (including business travel mileage of 16,744 at 45p per mile = £7,534) in her tax return; HMRC amended this to £4,469;

(b) 2014-15: Mrs Akhtar claimed £7,754 business travel and subsistence expenses (including business travel mileage of 16,744 at 45p per mile = £7,534); HMRC amended this to £4,469;

(c) 2015-16: Mrs Akhtar claimed £6,388 business travel and subsistence expenses (including £6,168 for business travel); HMRC amended this to £4,469;

(d) 2016-17: no figure for business travel claim included in Mrs Akhtar's tax return; HMRC amended this to a claim for £4,573.

- (2) Amount of tax deducted under PAYE from Mrs Akhtar's wages:
- (a) 2013-14: Mrs Akhtar claimed £8,079 had been deducted; HMRC revised this to £849.20;
 - (b) 2014-15: Mrs Akhtar claimed £8,487 had been deducted; HMRC revised this to £2,280.40;
 - (c) 2015-16: Mrs Akhtar claimed £7,804 had been deducted; HMRC revised this to £1,337.60;
 - (d) 2016-17: Mrs Akhtar claimed £8,620 had been deducted; HMRC revised this to £2,976.92.
- (3) The penalties.

EVIDENCE

9. We had a document bundle and an authorities bundle, both prepared by HMRC. The documents bundle included extensive correspondence between the parties (including relatives of Mrs Akhtar representing her) between mid-2017 and the beginning of 2019. Mrs Akhtar gave evidence at the hearing, as did Mr G Turkish, the HMRC officer who dealt with her tax returns. We found them both to be open and co-operative witnesses.

10. The documents bundle included details of visits by Mrs Akhtar to clients compiled by Carewatch, her employer, including precise times and the client's name and full address, including post code, and with figures for mileage between clients added in manuscript by Mrs Akhtar or her representatives, for:

- (1) 6-26 May 2013 (21 full days)
- (2) 4-7 September 2013 (4 full days)
- (3) 5-25 May 2014 (21 full days)
- (4) 4 September 2014 (1 full day)
- (5) 4-23 May 2015 (20 full days)
- (6) 3-11 September 2015 (9 full days)
- (7) 6-26 June 2016 (21 full days); and
- (8) 3-11 September 2016 (9 full days).

11. The documents bundle also included

- (1) forms P60 for the four tax years in question, showing how much tax had been deducted from Mrs Akhtar's pay from Carewatch
- (2) Mrs Akhtar's employment contract with Carewatch.

FINDINGS OF FACT

12. Mrs Akhtar was employed as a mobile care worker during the four tax years in question. Her employer, Carewatch, was (like Mrs Akhtar) based in Luton. She worked long hours, from early in the morning until late into the evening, seven days a work – she needed the money to support her family (she had been divorced from her husband some years earlier, and had children at home), and her employer paid by the hour (plus 20p for each visit to a client). She took four weeks holiday a year.

13. Her work involved caring for elderly and unwell clients in their homes, to which she travelled in her own car, and doing errands with or for them. During the course of a working day she would visit 14 or so clients (the precise number varied from day to day), travelling

from one to the other in her car. The errands with or on behalf of clients included shopping, going to the post office, attending doctors' appointments and collecting prescriptions. Mrs Akhtar returned home most nights, but, when requested, stayed overnight at clients' premises.

14. Mrs Akhtar immigrated to the UK from Pakistan as a young woman in the 1980s; her English was adequate for her work as a carer but was otherwise basic. She had difficulty reading or writing in English, though could do so in her native language. She knew next to nothing about tax and had relied on an elderly client with whom she had become friends, and whom she regarded as more educated and experienced about life in the UK, to prepare her tax returns for the tax years in question. She kept no mileage records of her car journeys for work. She did not check the tax returns prepared by her friend on her behalf before signing them.

15. The mileage allowance relief in HMRC's amended tax returns for Mrs Akhtar (following the closure notices) was calculated as follows:

(1) She was entitled to mileage allowance relief for 8,774 miles of business travel between clients for each of the three tax years 2013-14 to 2015-16 inclusive. The figure of 8,774 was derived from Carewatch visit details for 3-11 September 2015 (see [10(6)] above), annualised on the basis of Mrs Akhtar working seven days a week, 48 weeks a year. The same figure was applied to the two earlier tax years. No regard was had to other Carewatch visit details which had been provided by Mrs Akhtar for those three years – see [10(1)-(5)] above.

(2) She was entitled to mileage allowance relief for 8,624 miles of business travel between clients for the tax year 2016-17. The figure of 8,624 was derived from Carewatch visit details for 3-11 September 2016 (see [10(8)] above. No regard was had to the Carewatch visit details for 6-26 June 2016 which had been provided by Mrs Akhtar – see [10(7)] above.

(3) In addition to the above, she was entitled to mileage allowances of 5,072 miles of travel doing errands for clients for each of the four tax years 2013-14 to 2016-17 inclusive.

16. We find that Mrs Akhtar's mileage travelling between clients, and between first and last client and home, on all of the days for which information was provided in the documents bundle (see [10(1)-(8)] above) (and where a complete days' information was provided) was as set out in the appendix to this decision.

17. The mileage figures in the appendix reflect those found in manuscript on the Carewatch records (corrected by reference to Google Maps where there was obvious inconsistency); and for journeys to and from Mrs Akhtar's home (for which manuscript figures were not generally given on the Carewatch records: the appendix figures reflect the distance found in Google Maps for travel by car between the relevant client postcode set out in the Carewatch records and the postcode for Mrs Akhtar's home). Mrs Akhtar's average mileage per day for those days, per tax year, is also calculated in the appendix.

18. We find that the mileage data for those days was, on the balance of probabilities, representative of Mrs Akhtar's mileage for the whole of the tax year in which the days fell (and certainly more representative than the more limited number of days' data relied on by HMRC in the amended tax returns – see [14(1) and (2)] above).

19. We have found that Mrs Akhtar worked seven days a week, 48 weeks a year, during the tax years in question. This means, applying our finding immediately above, that the average per day mileage set out in the appendix is representative for the whole of the tax year in question, that Mrs Akhtar's mileage travelling between clients, and between first and last client and home, for the whole of the tax year was as follows:

- (1) 2013-14: 30 miles x 48 x 7 = 10,080 miles
- (2) 2014-15: 35 miles x 48 x 7 = 11,760 miles
- (3) 2015-16: 36 miles x 48 x 7 = 12,096 miles
- (4) 2016-17: 41 miles x 48 x 7 = 13,776 miles

20. We find that Mrs Akhtar's mileage running errands for clients in each of the tax years was 5,072 miles (being the figure calculated by HMRC, which we find to be reasonable).

21. Our findings immediately above mean that Mrs Akhtar's total mileage in travelling for work during the tax years in question was as follows:

- (1) 2013-14: 10,080 + 5,072 = 15,152 miles
- (2) 2014-15: 11,760 + 5,072 = 16,832 miles
- (3) 2015-16: 12,096 + 5,072 = 17,168 miles
- (4) 2016-17: 13,776 + 5,072 = 18,848 miles

22. We note that, apart from the Carewatch records for the days set out above, there was some other evidence of Mrs Akhtar's mileage - an MOT certificate for vehicle registration mark DY13 LFF issued in April 2017 which showed about 19,000 miles driven between March 2016 and April 2017, and an invoice from a garage in Hemel Hempstead called Evans Halshaw dated in March 2017 for an MOT for car registration LR14 LLG, recording mileage of just over 64,000 since being acquired three years before. However, this evidence was less specific and detailed as regards Mrs Akhtar's business travel than the Carewatch records, and so we have put little weight on it in coming to our findings as to Mrs Akhtar's mileage.

23. We find that the actual amounts of tax deducted from Mrs Akhtar's pay from employment are those shown in the tax returns as revised by HMRC.

24. HMRC opened enquiries into Mrs Akhtar's self-assessment returns for the four tax years in question on 21 August 2017. In the course of extensive correspondence over the next 18 months, HMRC obtained information about Mrs Akhtar's mileage (see [10] above) and the amount of tax deducted from Mrs Akhtar's pay (her P60s).

RELEVANT LAW

Mileage allowance relief

25. Under s231 Income Tax (Earnings and Pensions) Act 2003, Mrs Akhtar, as an employee, was entitled to "mileage allowance relief" for a tax year

- (1) if she used a vehicle (which includes a car) for "business travel", and
- (2) the total amount of "mileage allowance payments" made to her was less than the "approved amount" for such payments.

26. Under s229(2), mileage allowance payments are amounts paid for expenses related to an employee's use of the car in question for business travel.

27. Under s230, the "approved amount" for "mileage allowance payments" is $M \times R$, where

- (1) M is the number of miles of "business travel" by Mrs Akhtar
- (2) R is that rate for cars, which is 45p for the first 10,000 miles, and 25p after that.

28. "Business travel" means travelling the expenses of which would be deductible under ss337-342. We summarise below the parts of those sections which are relevant to this appeal.

29. Under s337, a deduction from earnings is allowed for travel expenses if

- (1) The employee (here, Mrs Akhtar) is obliged to incur and pay them as holder of the employment; and
 - (2) The expenses are necessarily incurred on travelling in the performance of the duties of employment.
30. Under s338(1), a deduction from earnings is allowed for travel expenses if
 - (1) The employee (here, Mrs Akhtar) is obliged to incur and pay them as holder of the employment; and
 - (2) The expenses are attributable to Mrs Akhtar's necessary attendance at any place in the performance of the duties of the employment.
31. However, under s338(2), the above does not apply to the expenses of "ordinary commuting" or travel between any two places that is for practical purposes substantially "ordinary commuting".
32. "Ordinary commuting" means travel between
 - (1) The employee's (here, Mrs Akhtar's) home and a "permanent workplace"; or
 - (2) A place that is not a "workplace" and a "permanent workplace".
33. "Workplace" here means a place at which Mrs Akhtar's attendance is necessary in the performance of the duties of her employment.
34. "Permanent workplace" here means a place which –
 - (1) Mrs Akhtar regularly attends in the performance of the duties of her employment; and
 - (2) is not a "temporary workplace".
35. "Temporary workplace" here means a place which Mrs Akhtar attends in the performance of the duties of her employment
 - (1) for the purpose of performing a task of limited duration; or
 - (2) for some other temporary purpose.
36. A place is not regarded as a temporary workplace for these purposes if the employee's attendance is—
 - (1) in the course of a period of continuous work at that place—
 - (a) lasting more than 24 months, or
 - (b) comprising all or almost all of the period for which the employee is likely to hold the employment, or
 - (2) at a time when it is reasonable to assume that it will be in the course of such a period.
37. For the purposes of the above,
 - (1) a period is a period of continuous work at a place if over the period the duties of the employment are performed to a significant extent at the place; and
 - (2) an actual or contemplated modification of the place at which duties are performed is to be disregarded if it does not, or would not, have any substantial effect on the employee's journey, or expenses of travelling, to and from the place where they are performed.

38. An employee is treated for the purposes of these rules as having a permanent workplace consisting of an area if—

- (1) the duties of the employment are defined by reference to an area (whether or not they also require attendance at places outside it),
- (2) in the performance of those duties the employee attends different places within the area,
- (3) none of the places the employee attends in the performance of those duties is a permanent workplace, and
- (4) the area would be a permanent workplace if the provisions summarised at [34-37] above referred to the area where they refer to a place.

Penalties for errors

39. Penalties are payable where inaccuracy in tax returns leads to an understatement of a liability to tax or a false or inflated claim to repayment of tax, if the inaccuracy was careless (i.e. due to a failure by the taxpayer to take reasonable care) or deliberate.

40. The standard amount of penalty for careless action in Mrs Akhtar's circumstances is 30% of the potential lost revenue (PLR). This can be reduced to 15% where disclosure about the inaccuracy is "prompted", and to 0% where it is "unprompted". Disclosure is prompted if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the inaccuracy; otherwise it is unprompted. A person discloses the inaccuracy by

- (1) Telling HMRC about it,
- (2) Giving HMRC reasonable help in quantifying the inaccuracy, and
- (3) Allowing HMRC access to records for the purpose of ensuring that the inaccuracy is fully corrected.

41. The normal rule is that PLR in respect of an inaccuracy in a document is the additional amount due or payable in respect of tax as a result of correcting the inaccuracy.

42. HMRC may suspend all or part of a penalty for careless inaccuracy, but only if compliance with a condition of suspension would help the taxpayer to avoid becoming liable to further penalties for careless inaccuracy.

43. On an appeal against a decision of HMRC as to the amount of a penalty payable, the Tribunal may affirm HMRC's decision or substitute for HMRC's decision another decision that HMRC had power to make.

44. On an appeal against a decision of HMRC not to suspend a penalty payable, the Tribunal may order HMRC to suspend the penalty only if it thinks HMRC's decision not to suspend was flawed.

BURDEN OF PROOF

45. As regards the amount of mileage allowance relief she was entitled to, and the correct amount of tax deducted under PAYE in her tax returns, the burden of proof was on Mrs Akhtar to show that the tax charged in the tax returns as amended by HMRC was excessive.

46. As regards the penalty assessments, the burden of proof was on HMRC to show Mrs Akhtar was prima facie liable. The burden of establishing that she should not be liable for the penalty because, for example, she took reasonable care, lay with Mrs Akhtar.

47. The standard of proof was the normal civil standard: on the balance of probabilities.

DISCUSSION

Mileage allowance relief

48. Mrs Akhtar received no mileage allowance payments: the 20p per visit payments were not related to her use of the car. That means that the amount of mileage allowance relief to which Mrs Akhtar was entitled under s231 was the “approved amount” for such payments. We need therefore to decide the amount of “M” for the tax years in question under s230 (see [27(1)] above): the number of miles of “business travel”.

49. It was common ground between the parties that Mrs Akhtar’s travelling between clients in her car was “business travel”. We agree.

50. The parties also appear to have come to the view early on in their correspondence that Mrs Akhtar’s travel from home to the first client of the day, and from the last client of the day to home, was not eligible for mileage allowance relief: HMRC stated this in a letter to Mrs Akhtar of 13 October 2017. This can only have been on the basis that such travel was “ordinary commuting”. We do not agree with this: although the homes of the clients she visited fell within the definition of “workplace”, and she attended such homes regularly in the course of her employment, we find that such places fell within the definition of a “temporary workplace”, as the tasks she performed there were of limited duration (there was regular turnover in the identity of her clients, especially those she visited first and last in the day, as can be seen by comparing the names of clients at the roughly six-months intervals for which detailed information was available). In addition, the specific exclusion from “temporary workplace” summarised at [36-37] above is not in point here, as Mrs Akhtar’s work at a particular client’s home would not exceed 24 months.

51. As Mrs Akhtar’s employment contract expected her to perform duties at a location within reasonable travelling distance of her home, that “area” is to be treated as “permanent workplace” – this does not, however, affect the treatment of travel between home and her first and last clients of the day, as this is travel within the “deemed” permanent workplace (and not travel between home and that permanent workplace).

52. Given the above, we find that the entirety of the mileage calculated at [21] above qualifies as “business travel” for the purposes of mileage allowance relief. Applying the “M x R” formula, the approved amount for mileage allowance payments – and accordingly the mileage allowance relief to which Mrs Akhtar is entitled – is therefore as follows:

- (1) 2013-14: 10,000 @ 45p + 5,152 @ 25p = £5,788
- (2) 2014-15: 10,000 @ 45p + 6,832 @ 25p = £6,208
- (3) 2015-16: 10,000 @ 45p + 7,168 @ 25p = £6,292
- (4) 2016-17: 10,000 @ 45p + 8,848 @ 25p = £6,712

Tax deducted under PAYE

53. We have found that the correct figures for the amount of tax deducted under PAYE are those found in Mrs Akhtar’s forms P60 for the relevant years (and shown in her tax returns as amended by HMRC).

Penalties

54. It follows from our conclusions at [52] and [53] above that there were errors in Mrs Akhtar’s tax returns both as regards mileage allowance relief claims and as to the amount of tax deducted under PAYE.

Inaccuracies relating to amounts deducted under PAYE

55. HMRC argued that the errors as regards tax deducted under PAYE were deliberate. In our view, Mrs Akhtar was not in control of her tax returns: she relied on a client whom she had befriended to prepare them (and there is nothing to suggest that this person had any tax expertise). Mrs Akhtar was unable to give a clear explanation for the “tax withheld” figures in her tax returns – we take this of further evidence of her not taking responsibility for her tax affairs. We do not, however, regard this as evidence that Mrs Akhtar actually knew that the tax returns she submitted had the errors we have identified. We find therefore that the errors were not deliberate, applying the explanation of this concept from *Auxilium Project Management Ltd* [2016] UK FTT 249 (TC) (Judge Greenbank) at [63]:

“In our view, a deliberate inaccuracy occurs when a taxpayer knowingly provides HMRC with a document that contains an error with the intention that HMRC should rely upon it as an accurate document. This is a subjective test. The question is not whether a reasonable taxpayer might have made the same error or even whether this taxpayer failed to take all reasonable steps to ensure that the return was accurate. It is a question of the knowledge and intention of the particular taxpayer at the time.”

56. We do, however, find that Mrs Akhtar failed to take reasonable care in the preparation of her tax returns, judging her by the standard of a prudent and reasonable taxpayer in her position (being the approach taken in *David Collis* [2011] UKFTT 588 (TC) (Judge Berner) at [29]): we acknowledge that Mrs Akhtar was a single parent working very long hours, and had only a basic command of English, but the prudent and reasonable taxpayer in those circumstances would have been able to identify someone with some tax knowledge to assist in preparing her tax returns, and would have reviewed and checked her tax returns to the best of her ability (both of which we find that Mrs Akhtar failed to do).

57. We find that Mrs Akhtar’s disclosure to HMRC of this inaccuracy in her tax return (in the course of lengthy correspondence following the opening of enquiries by HMRC) was prompted rather than unprompted. It can therefore potentially be reduced from 30% to a minimum of 15% of PLR, depending on the quality of her disclosure. We agree, based on the course of that correspondence, with HMRC’s assessment that she should be given the maximum reduction for giving them help in quantifying the inaccuracy and allowing them access to records, but only a 50% reduction for telling them about it (given that some explanations for the error given in the course correspondence were, in the event, not convincing). This, adopting HMRC’s scheme of 40%, 30% and 30% to these three elements respectively, which we consider reasonable, results in an 85% reduction of the difference between the maximum penalty of 30% and the minimum penalty of 15%, i.e. 2.25%, which, when added to the minimum penalty, results in an overall penalty percentage of 17.25% of PLR.

58. The penalties for inaccuracy relating to tax deducted under PAYE should be therefore be:

- (1) 2013-14: £7,229.80 (PLR) at 17.25% = £1,247.14
- (2) 2014-15: £6,206.60 (PLR) at 17.25% = £1,070.63
- (3) 2015-16: £6,446.60 (PLR) at 17.25% = £1,112.03
- (4) 2016-17: £5,643.08 (PLR) at 17.25% = £973.43

59. The Tribunal has power to order HMRC to suspend a penalty on an appeal against a decision by HMRC not to suspend the penalty, but only if the Tribunal thinks that HMRC’s decision not to suspend was flawed (when considered in the light of the principles in proceedings for judicial review).

60. As Mrs Akhtar was not legally represented, we think it is just and fair to treat her appeal as an appeal against HMRC's decision not to suspend this penalty. Moreover, we think the decision not to suspend was flawed in the required sense: HMRC did not even consider suspension, because they thought (incorrectly, on our analysis above) that the penalty should be for a deliberate inaccuracy (in which case, there was no power to suspend). Whilst we have the power to order suspension, we do not have the power to make the suspension conditions: this is a matter for HMRC on issuing the suspension notice under paragraph 14 Schedule 24 Finance Act 2007. We do however consider that this penalty is an appropriate one for suspension in that we think conditions could be made to avoid further inaccuracies in Mrs Akhtar's tax returns (such as Mrs Akhtar keeping full records of the miles she travels to and from clients and between them in a form that can be provided to HMRC (if requested); identifying an appropriate person (perhaps someone who speaks her native language) to assist her in preparing future tax returns; ensuring that Mrs Akhtar provides relevant tax documents, such as forms P60, to that person in a timely manner; and establishing a system by which Mrs Akhtar reviews her tax returns before submission).

Inaccuracies relating to mileage allowance relief

61. HMRC maintained that the inaccuracies in Mrs Akhtar's mileage claims were attributable to a failure on Mrs Akhtar's part to take reasonable care. We agree, for much the same reasons as set out at [56] above. A prudent and reasonable taxpayer in Mrs Akhtar's circumstances would have kept better records of her mileage, particularly as detailed records, to assist in this task, were available from her employer. We also agree with HMRC's making the maximum reduction, on account of disclosure, from 30% to 15% of PLR (as these disclosures were prompted).

62. However, in the light of our conclusions as to the correct amount of mileage allowance relief, the PLR figures used by HMRC in calculating these penalties are incorrect. The correct amount of PLR should be:

- (1) 2013-14: £7,755 (relief claimed in tax return) - £5,788 (see [52(1)] above) = £1,967 @ 20% tax rate = £393.40
- (2) 2014-15: £7,754 (relief claimed in tax return) - £6,208 (see [52(2)] above) = £1,546 @ 20% tax rate = £309.20
- (3) 2015-16: £6,388 (relief claimed in tax return) - £6,292 (see [52(3)] above) = £96 @ 20% tax rate = £19.20
- (4) 2016-17: no amounts claimed in tax return

63. On these figures, the penalties for inaccuracies relating to mileage allowance relief, charged at 15%, should be:

- (1) 2013-14: £59
- (2) 2014-15: £46.38
- (3) 2015-16: £2.88

64. In their letter of 28 November 2018 concerning the penalties, HMRC stated; "We cannot suspend any of this penalty. This is because you have not given any indication that you will agree to bringing your tax affairs fully up to date."

65. Based on this statement, we find that the decision not to suspend these penalties was flawed because it took into account a reason – that Mrs Akhtar had not given any indication she would agree to bring her tax affairs up to date, if the penalty was suspended – for which we find there was no good evidence. There is no statement by Mrs Akhtar or her family members representing her in the correspondence in the documents bundle, to this effect; and no such evidence was produced at the hearing.

66. We therefore decide to use our power to order HMRC to suspend these penalties as well as those considered above; and find that it is appropriate to do so for similar reasons, as conditions could be made to avoid further inaccuracies in Mrs Akhtar’s tax returns (for example, requiring her to keep more contemporaneous records of her business travel mileage).

DECISION

67. The appeal against the amounts of mileage allowance relief in the tax returns for the years in question as amended by HMRC is allowed in part. We decide that the amount of mileage allowance relief in those tax returns shall be as set out at [52] above.

68. The appeal against the penalties for inaccuracies in those tax returns relating to the amount of tax deducted at source is allowed in part. We substitute penalties in the amounts shown at [58] above and we furthermore order HMRC to suspend those penalties.

69. The appeal against the penalties for inaccuracies in those tax returns relating to the amount of mileage allowance relief sought is allowed in part. We substitute penalties in the amounts shown at [62] above and we furthermore order HMRC to suspend those penalties.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

70. 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.

ZACHARY CITRON

TRIBUNAL JUDGE

RELEASE DATE: 23 MARCH 2020

APPENDIX: Mrs Akhtar's mileage travelling between clients, and between first and last clients of the day and home

2013-14						
Day	Miles travelled from home (or overnight stay) to first client	Miles travelled from last client to home	Miles travelled between clients	Total miles travelled between clients etc	Number of days	Average miles travelled per day between clients etc
06/05/2013	2	1.7	26.1	30		
07/05/2013	2	4.5	29.9	36		
08/05/2013	0.6	3.1	24.1	28		
09/05/2013	1.4	3	21.4	26		
10/05/2013	1	4.5	26.0	32		
11/05/2013	1.4	4.5	23.9	30		
12/05/2013	1.4	4.5	23.8	30		
13/05/2013	1	4.5	36.2	42		
14/05/2013	2.1	2.1	14.9	19		
15/05/2013	1	0.9	14.4	16		
16/05/2013	2.5	3.4	21.3	27		
17/05/2013	1	4.4	28.7	34		
18/05/2013	2.5	3.4	15.1	21		
19/05/2013	2.5	4.5	28.1	35		
20/05/2013	1	3.6	28.5	33		
21/05/2013	2.1	0.9	11.6	15		
22/05/2013	1	1.7	19.6	22		
23/05/2013	1.7	1.4	5.9	9		
24/05/2013	1.4	4.3	20.0	26		
25/05/2013	1.7	5.3	13.8	21		
26/05/2013	1.7	0	15.8	18		
04/09/2013	3.3	0	49	52		
05/09/2013	4.8	0	47	52		
06/09/2013	3.3	1.8	34	39		
07/09/2013	2.9	0	51	54		
Total	47.3	68	630.1	745	25	30

2014-15						
Day	Miles travelled from home (or overnight stay) to first client	Miles travelled from last client to home	Miles travelled between clients	Total miles travelled between clients etc	Number of days	Average miles travelled per day between clients etc
05/05/2014	1.4	2.6	38.8	43		
06/05/2014	1.4	1.5	22.4	25		
07/05/2014	1.4	2.1	37.5	41		
08/05/2014	2.1	3.5	19.8	25		
09/05/2014	1.4	2.1	27.8	31		
10/05/2014	1.4	2.1	43.4	47		
11/05/2014	1.4	2.8	24.1	28		
12/05/2014	1.4	2.1	20.7	24		
13/05/2014	1.4	2.1	27.2	31		
14/05/2014	1.4	2.1	39.5	43		
15/05/2014	1.4	2.1	23.5	27		
16/05/2014	1.4	2.1	22.3	26		
17/05/2014	0.2	2.1	28.4	31		
18/05/2014	0.2	2.8	26.6	30		
19/05/2014	1.4	4.1	34.0	40		
20/05/2014	2.5	2.1	21.0	26		
21/05/2014	1.4	4.4	43.3	49		
22/05/2014	1.4	2.6	26.0	30		
23/05/2014	1.4	2.6	34.1	38		
24/05/2014	1.4	2.8	28.0	32		
25/05/2014	2.1	4.4	38.6	45		
04/09/2014	1.4	3.4	48.0	53		
Total	30.9	58.5	675.0	764	22	35

2015-16						
Day	Miles travelled from home (or overnight stay) to first client	Miles travelled from last client to home	Miles travelled between clients	Total miles travelled between clients etc	Number of days	Average miles travelled per day between clients etc
04/05/2015	2.2	2.9	41.5	47		
05/05/2015	2.2	2.9	19.6	25		
06/05/2015	1	0	24.5	26		
07/05/2015	0	0	28.0	28		
08/05/2015	2.5	2.6	38.4	44		
09/05/2015	2.2	7.4	71.5	81		
10/05/2015	5	2.6	48.2	56		
11/05/2015	2.1	0.9	41.0	44		
12/05/2015	2.2	3.5	22.5	28		
13/05/2015	1	3.5	28.3	33		
14/05/2015	2.2	3.5	23.6	29		
15/05/2015	1	2.8	44.5	48		
16/05/2015	2.1	2.8	44.7	50		
17/05/2015	2.5	0.9	46.0	49		
18/05/2015	1	3.5	52.4	57		
19/05/2015	2.1	2.8	16.6	22		
20/05/2015	1	2.8	19.5	23		
21/05/2015	5	3.5	13.0	22		
22/05/2015	1	2.8	37.2	41		
23/05/2015	2.2	1.9	7.6	12		
03/09/2015	1.4	3.6	20	25		
04/09/2015	1.4	3.6	26	31		
05/09/2015	1.4	0.9	37	39		
06/09/2015	1.4	4	41	46		
07/09/2015	1.4	3.6	22	27		
08/09/2015	1.4	3.6	17	22		
09/09/2015	1.9	3.6	23	29		
10/09/2015	1.4	3.6	16	21		
11/09/2015	1.4	4.4	33	39		
Total	53.6	84.5	903.6	1042	29	36

2016/17						
Day	Miles travelled from home (or overnight stay) to first client	Miles travelled from last client to home	Miles travelled between clients	Total miles travelled between clients etc	Number of days	Average miles travelled per day between clients etc
06/06/2016	1	0.2	40.1	41		
07/06/2016	1.4	0.2	34.4	36		
08/06/2016	1	3.4	38.2	43		
09/06/2016	1	0.2	42.3	44		
10/06/2016	1	3.4	52.6	57		
11/06/2016	1	3.4	43.1	48		
12/06/2016	1	3.5	44.5	49		
13/06/2016	1	3.4	38.0	42		
14/06/2016	1	4.8	41.9	48		
15/06/2016	1	0.2	37.4	39		
16/06/2016	1	4.8	49.3	55		
17/06/2016	1	3.5	43.9	48		
18/06/2016	1	0.2	42.2	43		
19/06/2016	1	4.8	60.3	66		
20/06/2016	1	0.2	32.7	34		
21/06/2016	1	0.2	35.0	36		
22/06/2016	1	4.8	37.7	44		
23/06/2016	1	0.2	32.3	34		
24/06/2016	1	0.2	42.9	44		
25/06/2016	1	0.2	51.5	53		
26/06/2016	1	4.8	45.3	51		
03/09/2016	1.4	4	13	18		
04/09/2016	1.4	3.6	24	29		
05/09/2016	1.9	3.6	24	30		
06/09/2016	1.4	4.8	25	31		
07/09/2016	1.4	3.6	33	38		
08/09/2016	2	3.6	25	31		
09/09/2016	1.4	3.6	17	22		
10/09/2016	1	3.6	54	59		
11/09/2016	1.4	3.6	16	21		
Total	34.7	80.6	1116.6	1232	30	41