

CASE SUMMARY

Taxpayers' appeal against evasion shortfall penalties dismissed

Decision date: 26 March 2026

CSUM 26/03

CASE

Abdullah Safi & Ors v Commissioner of Inland Revenue [2026] NZHC 745

LEGISLATIVE REFERENCES

Tax Administration Act 1994, ss 141E and 149A; Taxation Review Authorities Act 1994, s 26A; High Court Rules 2016, r 20.18

LEGAL TERMS

Shortfall penalties; evasion; onus of proof; Working for Families Tax Credits; foreign-sourced funds; remittances; credibility; records (books and accounts)

Summary

Six appellants (four brothers and two brothers-in-law) appealed a Taxation and Charities Review Authority (**Authority**) decision upholding the Commissioner of Inland Revenue's (**Commissioner**) assessments and imposition of evasion shortfall penalties. The appellants abandoned their appeal against the underlying income tax and Working for Families Tax Credits (**WfFTC**) reassessments, leaving only an appeal on whether the Commissioner had proved evasion for the purposes of s 141E. The High Court held that the Commissioner had the onus of proving that in taking their respective tax positions, each appellant intentionally avoided the payment of income tax in circumstances where he knew he was or may be under an obligation to pay. The Judge upheld the Authority's findings that the absence of records and implausible explanations given, meant that the evasion shortfall penalties were correctly imposed, and the appeal was dismissed.

Impact

The High Court confirmed that, where taxpayers appeal the correctness of a tax assessment and the imposition of an evasion shortfall penalty and later abandon the appeal against the underlying tax assessments, the Commissioner does not need to prove the existence or quantum of the tax shortfall for evasion shortfall penalties. Instead, the Commissioner need only establish the taxpayer's evasive intent in relation to that shortfall. In this case, the entire shortfall arose from evasion.

More broadly, the decision highlights the importance of meeting record-keeping obligations (including in relation to foreign sourced remittances) and that in the absence of adequate books and records, courts may accept adverse credibility findings and draw inferences from patterns of receipts and lifestyle against returned income.

Facts

The appellants operated a New Zealand vehicle dismantling/export business (through Western 4x4 Dismantlers NZ Ltd and later AKA Holdings Ltd) supplying parts to a related United Arab Emirates business (Al Munasib Used Auto Spare Parts TR LLC). Over the relevant years, substantial funds were remitted from the Al Munasib bank account to the appellants and associated family trusts (over \$6.4m during the years in issue; approximately \$19.4m over 2006 to 2018).

Despite the remittances, the appellants filed relatively modest income tax returns and received WffTC. The Commissioner reassessed the appellants to include the remittances as income, repay overpaid tax credits, and imposed evasion shortfall penalties. The appellants claimed the remittances were proceeds of overseas land/timber sales and loans, using Al Munasib's account as a conduit.

Issues

The appeal proceeded exclusively on the correctness of the Authority's decision as to the appellants' respective liabilities to pay shortfall penalties on the necessary ground that in taking their tax positions, they "evade[d] the assessment or payment of tax".

As such, the sole issue was whether the Commissioner proved (on the balance of probabilities) that, in taking their relevant tax positions, each appellant 'evaded the assessment or payment of tax' for the purposes of Tax Administration Act 1994, s 141E(1)(a), so as to be liable for evasion shortfall penalties.

Decision

The High Court held the Commissioner must prove intentional evasion by the appellants' when taking their tax positions; it was not necessary to re-litigate the underlying assessments once the appellants abandoned that aspect of the appeal. The Court was satisfied that the evidence, including the scale and pattern of remittances from Al Munasib, the lack of proper accounting records, and the Authority's credibility findings, proved the appellants intentionally avoided paying income tax in circumstances where they knew they were, or may have been, under an obligation to pay tax on the remittances.

Onus on the Commissioner for evasion shortfall penalties

The appellants argued that the onus reverses for the purposes of the evasion shortfall penalties and the Commissioner must prove the Afghani and Pakistani transactions did not happen as they had described. The Commissioner argued that the appellants' explanations for their receipts "are plainly fabrications" and "the only logical inference from the totality of the evidence" is the appellants either deliberately breached or were reckless as to their tax obligations.

The argument on appeal focused on the reliability of the evidence as to the land, timber and loan transactions said to have been conducted in Afghanistan and Pakistan and resulting in remittances to Al Munasib.

The Court held that it was for the Commissioner to "prove on the balance of probabilities to the requisite standard, that in taking their respective tax positions, each appellant intentionally avoided the payment of due income tax in circumstances indicating to him that he was or may be under some obligation to pay income tax".

Requirement to quantify the amount evaded

The appellants argued the Commissioner was required to quantify and prove the underlying tax shortfall as well as the amount of tax evaded for the purpose of imposing the evasion shortfall penalty.

However, quantification is statutory at "150% of the resulting tax shortfall" and the issue does not arise when, as here, the entirety of the shortfall is said to arise from evasion. Furthermore, the Court had "difficulty conceptualising circumstances in which a shortfall unsuccessfully challenged by the taxpayer under s 149A(2)(b) may require to be proven again by the Commissioner under s 149A(2)(a)".

Conclusion

The Court endorsed the Authority's assessment of the information provided by the appellants:

While there has been a large volume of information provided, it is riddled with inconsistencies, it was provided late in many instances and has in many cases the appearance of an endeavour to construct an explanation; not the usual task of producing accounting records from contemporaneous records.

The Court noted that it is, of course, a core taxpayer obligation to “keep all necessary information (including books and records) and maintain all necessary accounts or balances required under the tax laws”. Justice Jagose stated that the Commissioner’s proof that such information probably did not exist at all, adequately reflects the serious nature of the obligation and the consequences of its default.

The Court also gave weight to the Authority’s assessment of each appellant’s personal circumstances which raised significant doubts that in taking their tax positions, they reasonably considered such was to “correctly determine the amount of tax payable by the taxpayer under the tax laws”. Justice Jagose noted the Authority closely engaged with the appellants’ presentation of evidence before it and drew multiple inferences from the content and manner of their evidence. As such, it was best placed to assess the veracity of the appellant’s evidence, particularly as against the documents proffered to support it.

Justice Jagose concluded that:

I thus find the appellants’ knowledge of their receipt of funds from a trading enterprise—taken together with their knowledge of their obligation to return income to the Commissioner for tax purposes (illustrated by the tax positions they took), and their implausible attribution of those receipts to the contended transactions only when under the Commissioner’s scrutiny—establish, at the time of taking their respective tax positions, circumstances indicating to each he was or may be under some obligation to pay income tax in relation to the remittances from Al Munasib. That they did not do so, given the Commissioner’s effectively now-unchallenged assessments of income tax liability on those remittances, means the Commissioner has proven on the balance of probabilities to the requisite standard the appellants took those tax positions to evade the assessment or payment of income tax.

As to the appellants’ liability to pay evasion shortfall penalties, the Authority did not err.

About this document

These are brief case summaries, prepared by Inland Revenue, of decisions made by the Taxation Review Authority, the District Court, the High Court, the Court of Appeal or the Supreme Court in matters involving the Revenue Acts. For Taxation Review Authority



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