



**TC01295**

**Appeal number TC/2010/06746**

*information notice to taxpayer-whether failure to comply-question of fact-  
penalty upheld*

**FIRST-TIER TRIBUNAL**

**TAX**

**TOM WAN**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE AND CUSTOMS (INCOME TAX)**

**Respondents**

**TRIBUNAL: ANDREW LONG (TRIBUNAL JUDGE)  
NICHOLAS DEE**

**Sitting in public at 138-142 Holborn, London EC1N on 21 February 2011**

**The Appellant in person**

**P S Maffia, Presenting Officer, HM Revenue and Customs, for the Respondents**

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## DECISION

1. The Appellant, Tom Wan, appeals against the daily penalties of £1340 imposed by HMRC for alleged failure to comply with the requirements of an Information Notice dated 9 September 2009 issued under Schedule 36 (1) Finance Act 2008. The Respondent HMRC ask us to uphold the penalty in the amended sum of £1320.

2. Background facts. The Appellant started business as a self employed electrical retailer on 1 October 2003, but did not submit any tax returns for the business until 10 March 2008, when he submitted returns for years 6 April 2003 - 5 April 2007. On 29 November 2008 he delivered a return for the year ended April 2008. In January 2009 HMRC opened an enquiry into his tax returns for the years ended 5 April 2004-2008.

3. On 9 September 2009 HMRC sent a notice under Schedule 36 (1) Finance Act 2008 to the Appellant. The notice required production to HMRC by the Appellant of, amongst other things, at para 3 ' bank statements, cheque book stubs and paying in counterfoils for all personal bank and investment accounts (to include all tax exempt savings accounts such as ISAs, PEPs and trust accounts etc) over which you had control whether in your own name, joint names, children's name (if a minor) or any other names by which you are or have been known..' for the period 6 April 2003 – 5 April 2008.

4. On 9 December 2009 a penalty of £300 was imposed for non compliance with the Notice. The £300 penalty was upheld by HMRC on review.

5. On 21 April 2010 a daily penalty of £10 per day was imposed for non compliance during the period 9 December 2009 to 21 April 2010. The total imposed was £1340 for 134 days. The Appellant appeals against the daily penalties.

6. The Appellant's Notice of Appeal states 'I supplied all business information plus all personal information but the Inland Revenue still ask for something (which) does not exist'. By contrast HMRC asserted that there were four accounts for which the Appellant had not made any disclosure and therefore was failing to comply with the notice.

7. The evidence. HMRC relied on the documents in the bundle principally consisting of correspondence with the Appellant, together with extracts from the Appellant's disclosed material and his tax returns. HMRC also relied on their own records in relation to the accounts with Barclays and Northern Rock. The Appellant repeated orally to the Tribunal that there were no accounts other than those that he had already disclosed. The Appellant provided very little else to the Tribunal - he did not provide a list of documents, nor bring with him nor rely on any documents

8. The law. By Schedule 36 of the Finance Act 2008 at paragraph 1 "an officer of Revenue and Customs may by notice in writing require a person ("the taxpayer")... to provide information or to produce a document ... if the information or document is reasonably required by the officer the purpose of checking the taxpayer's tax position". By paragraph 7 of Schedule 36 the person must do so within such period

and at such time, by such means and in such form as is reasonably specified or described in the notice". By paragraph 39 "a person who... fails to comply with an information notice... is liable to a penalty of £300". By paragraph 40 "if the failure mentioned in paragraph 39 (1) continues after the date on which a penalty is imposed  
5 under that paragraph in respect of that failure ... the person is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which failure... continues"

9. The issue is whether the Appellant has complied with paragraph 3 of the Information Notice. He eventually supplied details to HMRC of some accounts, such  
10 as with Leeds Building Society and Lloyds TSB. However at the hearing HMRC referred to four possible further accounts which had not been disclosed, respectively with National Savings, Northern Rock, Barclays and an account or accounts in a child's name.

10. The National Savings account. The documentary evidence showed, and it was not  
15 disputed, that the Appellant had between 15 April 2004 and 20 May 2004 made four round figure lump sum payments totalling £43,600 to a National Savings Account. The Appellant stated that these were business payments to a foreign supplier, KSS in Korea, and he said that he paid in advance to obtain a 3% discount and to expedite supplies. But he produced no documents or other evidence in support. In the absence  
20 of any documentary evidence we are not persuaded by this explanation. We do so after taking into account all relevant factors but for two principal reasons. Firstly this seems an unlikely method - namely payment to a foreign supplier into a UK National Savings account. Secondly, and more importantly, if the explanation were true, there would be at least some documentary evidence in support of it.

25 11. In coming to this conclusion we recognise that we are rejecting the Appellant's version; plainly that is not a conclusion to reach lightly. However, we take into account the history. This includes previous non-compliance with legislation in not submitting tax returns until 2008 for a business started in 2003. There has also been belated and piecemeal disclosure of other matters requested under the notice and  
30 extensive opportunities leading up to this hearing in which to produce material on this point.

12. On the (albeit limited) evidence, we conclude that it is more likely that the account is one over which the Appellant has control. On the balance of probabilities we conclude that the National Savings account falls within paragraph 3 of the  
35 Information Notice.

13. Northern Rock and Barclays Bank. HMRC information showed interest of £141.66 paid in 2005-6 on an account with Barclays Bank and of £122.73 in 2006-7 on an account with Northern Rock. The Appellant accepted that the information showed his correct name, address, date of birth and National Insurance number.

40 14. The Appellant asked at the hearing for a 14 day adjournment (which we refused) to investigate the Barclays and Northern Rock information, which he had not seen until a few days before the hearing. The Appellant said that with a 14 day

adjournment he could make contact with each of those two institutions and produce evidence ( probably documentary evidence) that he did not hold such accounts. However a Northern Rock account had been mentioned specifically to the Appellant in the HMRC letter of 24 June 2010. The Appellant had also had ample time to consider more generally what accounts he has had. Applying the overriding objective, we decided not to grant an adjournment.

15. However, we also concluded that, should the Appellant be able to obtain the evidence within 14 days for which he sought an adjournment, he should have the opportunity to put that material before the Tribunal. Our summary decision stated that should the Appellant carry out that investigation and find independent evidence that he has no such accounts, then he should ask the Tribunal to consider a review of this decision. Our decision also stated that any such application should be supported by a statement from the Appellant plus copies of any such independent evidence.

16. The Appellant said that neither of the accounts was his; that he had no account with Northern Rock and that the Barclays account was not his, but that there might have been some confusion with another Barclays account. There was one reservation on the HMRC material in that the "health warning" column had a "yes" for the Barclays account.

17. We conclude then that both these accounts are on the balance of probabilities accounts of the Appellant. We accept the documentary evidence of HMRC's records. We do so because these records clearly identify the Appellant as the account holder; in rejecting the Appellant's version we take into account all factors including the history.

18. Child's account. HMRC asked us to conclude that there was an undisclosed account or accounts in the name of a child of the Appellant. HMRC's note of a telephone call on June 2010 with the HMRC officer Mr Bunger states "Mr Wan advised that he had a daughter named Beth who did have a bank account... Mr Wan stated that she was now 16. Bunger stated that she was therefore a minor during the period of enquiry and as such he will require sight of all her bank statements for all bank accounts in view of the fact that those accounts are under the control of the parents. Mr Wan agreed to look into this"

19. The Appellant's written response to this was "I divorced on 25 March 1999. Beth Wan lives with Mother in Taiwan. You can contact mother H Oll in Taiwan. I do not have any statements. Divorce WT98D00231 Wandsworth County Court London UK". He repeated this to the Tribunal. The Appellant did not provide any documentary evidence, but the details given relating to the divorce are reasonably precise and capable of being checked. Our conclusion was that, taking this item in isolation, we were not satisfied for the purposes of imposing a penalty that there were accounts held by the Appellant's daughter that were sufficiently under the Appellant's control to fall within the terms of the Information Notice.

20. Burden of proof. HMRC contended that the burden of proof was on Mr Wan and relied on s50 (6) Taxes Management Act 1970 ("TMA 1970"), which was not

disputed by the Appellant. That is, in our view, the correct outcome of the (somewhat convoluted) statutory provisions, including s103ZA of TMA 1970. Mr Wan fell far short of discharging such burden. There may be human rights arguments that the burden of proof ought to be on HMRC. However, this would not change our decision; HMRC have satisfied us on the evidence that they have discharged the burden of proof even if it is on them.

21. We are satisfied that the Appellant was in breach of the Information Notice in respect of the three accounts and that the daily penalty of £10 was properly imposed and is proportionate. There was no challenge to the amount of the daily penalty. The only revision is, as accepted by the HMRC review, that the first and last days of the period should be excluded so as to reduce the period to 132 days and the penalty to £1,320.

22. 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.

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**TRIBUNAL JUDGE**  
**RELEASE DATE: 5 JULY 2011**

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