



TC01355

Appeal number: TC/2010/8984

Construction Industry scheme- delivery of photocopy return – compliance with regulations? Appeal allowed

FIRST-TIER TRIBUNAL

TAX

SCOTTS GLASS AND GLAZING SERVICES

Appellant

- and -

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

Respondents

TRIBUNAL: CHARLES HELLIER (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 30 June 2011 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 23 November 2010, HMRC's Statement of Case submitted on 29 March 2011.

DECISION

1. This case concerns the obligation under the Construction Industry Scheme to make a monthly return of any amounts deducted from payments made by a contractor to a subcontractor.
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2. Regulation 4(1) of the Income Tax (CIS) Regulations 2005 (2005/2045) provides:
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 “A return must be made to the Commissioners for Her Majesty’s Revenue and Customs in a document or format provided or approved by the Commissioners.
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 HMRC provide CIS returns to persons subject to the scheme. They send them monthly. The Appellant did not use an original return as supplied by HMRC but say that they submitted a photocopy of an original return duly completed.
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3. HMRC say that returns made on photocopied forms are unacceptable, and accordingly say that the making of a return on such a photocopy does not satisfy the requirements of Regulation 4(1). As a result they say that the Appellant is liable for penalties of £1,500 for failing to deliver the relevant returns on time.
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4. Regulation 4(1) uses “or” twice.: “a document *or* format” and “provided *or* approved”. It does not say “ a document approved or a format provided” or any other combination. It is clear that the return must be made on a document approved or provided, or in a format approved or provided.
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5. It is also clear that if HMRC provide a document to be used as a return that they must have approved its format. Thus the format of an original return is approved. That means that the format of a copy of that document is also approved. HMRC may not approve the document – the photocopy – but they must be taken to have approved its format.
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6. That means that the submission of a return on a document which is a photocopy of an original return is the making of a return within Regulation 4(1).
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7. The Appellant’s adviser asserts in correspondence that he submitted the photocopy returns on time and that monies due under the CIS scheme were paid on time. The letters make no suggestions that the remittances were included with the return. HMRC say that their records indicated that the remittances were received by electronic transfer and were received on time. That provides some corroboration of the adviser’s statement.
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8. HMRC say they have no record of receipt of the photocopies. They also say that their standard practice on receiving a photocopy return is to reject it. If so their records are hardly likely to record it as having been received.
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9. I conclude that it is likely that the Appellant's adviser did submit the relevant (photocopy) returns within the time limit.
- 5 10. I conclude that the Appellant was not in default in respect of the periods by reference to which the penalties of £1,500 are sought by HMRC.
- 10 11. Even if I were wrong, I would hold that the Appellant had a reasonable excuse for his failure. The failure would be that occasioned by the submission of a photocopy returns rather than originals. It would in my view be quite reasonable for a taxpayer to conclude that such submission constituted compliance with the Regulations .
- 15 12. The appeal is allowed.
- 20 13. 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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CHARLES HELLIER
TRIBUNAL JUDGE
RELEASE DATE: 26 JULY 2011

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