



TC01424

Appeal number TC/2010/06955

Information notice – failure to comply – penalty – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

DAVID PARKER

Appellant

- and -

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

Respondents

**TRIBUNAL: ANDREW LONG (TRIBUNAL JUDGE)
M FAROOQ**

Sitting in public at Auchinleck House Birmingham b15 1DL on 28 February 2011

Having heard Mr Morgan for the Respondents and the Appellant not attending

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DECISION

1. The Appellant appeals against a penalty of £1020 imposed on 12 May 2010 for failing to comply with the requirements of an Information Notice dated 25 June 2009.
- 5 2. The facts. On 29 January 2009 the Respondents opened an enquiry into the Appellant's partnership tax returns for the year ended 5 April 2007 of Parkers Accountancy and Taxation. On 25th June 2009 the Respondents issued a notice to the Appellant under paragraph 1 of Schedule 36 of the Finance Act 2008 requiring the production of the material set out in the schedule to the Notice.
- 10 3. On 27th November 2009 the Tribunal directed the Appellant to comply with the Notice dated 25 June 2009 within 30 days from the date of the notice. The Tribunal also dismissed the Appellant's application for a closure notice in respect of the enquiry into the Appellant's firm's tax return for the year ended 5 April 2007.
- 15 4. The Appellant was in attendance at the hearing on 27th of November 2009. The Decision Notice records " the Appellant candidly admitted that he had no reason in law for refusing to comply with the notice issued on 25 June 2009. His stated reason for failing to comply with the notice was grounded in a belief that the Respondents had unfairly targeted his practice and clients for special attention and enquiries. He had, he said, asked frequently for a meeting at which his concerns might be discussed
20 but there had been no satisfactory response from HMRC. He felt that his refusal to comply with the Schedule 36 (1) notice was necessary to call attention to his concerns... the Tribunal found that there was no reason in law why the Appellant should not be required to provide the required documents and information. His application for a closure notice was without merit and was refused"
- 25 5. The decision notice was issued on 4 December 2009. Despite a reminder the Appellant did not comply. On 29 January 2010 an initial penalty of £300 was charged. The Appellant appealed but did not accept the offer of a review nor refer the appeal to the Tribunal.
- 30 6. On 12 May 2010 the Respondents issued a further penalty notice for non-compliance for the 102 days from 30 January 2010 to 11 May 2010. The amount charged was £10 per day, producing a total of £1020.
- 35 7. The Appellant appeals against the imposition of this penalty. The grounds of appeal in the Notice of Appeal dated 1st September 2010 were stated as " HMRC are pursuing a vendetta against me and I will not put up with this persecution. I have requested a meeting to air my views which they refused, they are hiding behind legislation. This enquiry is malicious."
- 40 8. The appeal was listed to be heard on 3rd December 2010. On 2 December 2010 at 15.12pm the Appellant sent an email to the Tribunal stating "I am the Appellant in this matter, due to illness I will be unable to attend the hearing tomorrow and would ask the matter be adjourned to the first available date". The Appellant's request for an adjournment was granted.

9. The matter was relisted to be heard on 28 February 2011. At 8.57 on the morning of the hearing the Appellant sent a fax to the Tribunal stating "it is with regret that I must request a further adjournment. My mother has been seriously ill for some while and over the weekend took a further turn for the worse. I am meeting this morning with doctors to decide what must be done. I am sorry for the short notice" The request for an adjournment was refused; we concluded that it was in the interests of justice to proceed and took into account all relevant factors including the previous adjournment and the lack of merit of the grounds of appeal or of any arguable issue on behalf of the Appellant.

10. The relevant law is contained in Schedule 36 to the Finance Act 2008. By 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 taxpayers tax position". By paragraph 40 " the person is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure continues" (after the imposition of an initial penalty under paragraph 39)

11. There is no dispute that the Appellant has failed to comply with the notice. The Appellant has previously told the Tribunal at the hearing on 27th November 2009 that there was no reason in law for failure to comply. That, in our judgement, remains the position. The matters raised in the grounds of appeal do not constitute either a reason in law or reasonable excuse for non-compliance. We note in passing that on 16 June 2010 a meeting is recorded as having taken place between the Appellant and HMRC to discuss the Appellant's concerns about his views of HMRC's failings.

12. The penalty of £10 per day is reasonable and proportionate. The period for which it is charged of 102 days is fully permissible.

13. Therefore the appeal is dismissed and the penalty of £1020 upheld.

14. 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: 7 September 2011

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