



TC01666

Appeal number: TC/2011/04583

Income Tax – Penalty – Schedule 36 Finance Act 2008 – whether information supplied fulfilled terms of notice requesting information – Appeal refused.

FIRST-TIER TRIBUNAL

TAX

MICHAEL AND JULIE IVISON

Appellant

- and -

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

Respondents

TRIBUNAL JUDGE:W Ruthven Gemmell, WS

**Sitting in public at George House, 126 George Street, Edinburgh on Friday
11 November 2011**

Case heard on papers only

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DECISION

Introduction

1. This is an application by Michael and Julie Ivison (“MJ”) against a penalty issued by Her Majesty’s Revenue and Customs (“HMRC”) for £300 relating to the non submission of information requested in a formal notice under Paragraph 1, Schedule 5 36 of the Finance Act 2008.
2. The appeal against the penalty was on the grounds that the information required in the notice had already been provided before the penalty was issued.

Facts

- 10 3. HMRC issued a notice on 27 September 2010 asking for the following information documents:-
 - (1) Details of all employees for whom employment was not reported on form P14 for the 2007-2008 tax year;
 - 15 (2) Copies of the forms P46 or P38(S) showing the reason why payment was not reported on form P14;
 - (3) If forms P46 or P38(S) are not held the names, addresses and National Insurance numbers for each worker are required;
 - (4) A breakdown of the total discrepancy showing how much was paid to each worker.
- 20 4. The information had been requested, as had been set out in HMRC’s letter of 15 July 2010, as the total wages shown in MJ’s accounts for 2007-2008 amounted to £46,364 whereas the total wages and Employer’s National Insurance Contributions, shown on MJ’s form P35, amounted to only £29,286.
- 25 5. A dispute had taken place over the availability of the records as Michael Ivison who dealt with the 2007-2008 PAYE side of the business left the business in 2010 as did the bookkeeper involved in PAYE for MJ.
6. MJ’s current agents, Paterson Reid, were not dealing with the tax affairs of the business in 2007-2008.
7. Extensions to time limits were agreed by MJ and HMRC but as no information or 30 documentation had been received, notice was given by HMRC on 19 January 2011 that penalties under Section 39, Schedule 36 of the Finance Act 2008 would be pursued if the details referred to in the notice of 27 December 2010 were not provided by 2 February 2011.
- 35 8. On 19 January 2011, crossing in the post, MJ’s agent, Paterson Reid, submitted a schedule providing a breakdown of wages and costs showing the names, addresses and amounts paid to all employees but the schedule clearly stated the information was for 2008-2009 and not 2007-2008 as requested.

9. As such, the information requested on 27 September 2010 was still outstanding and a penalty notice was issued on 7 February 2011 charging a fixed penalty of £300.

10. On 18 March 2011, Paterson Reid apologised for the error and advised that the information submitted for 2008-2009 was actually for 2007-2008.

5 11. They also included further schedules amended from 2008-2009 which they advised were a week by week analysis of the wages record in an attempt to reconcile their figures to the wages figure in the partnership accounts of £46,364 although there was still a discrepancy of £442.

Legislation

10 12. The Finance Act 2008 -

SCHEDULE 36 Information and inspection powers

Part 1 Powers to obtain information and documents

Power to obtain information and documents from taxpayer

15 (1) An officer of Revenue and Customs may by notice in writing require a person ("the taxpayer")—

(a) to provide information, or

(b) to produce a document,

if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position.

20 (2) In this Schedule, "taxpayer notice" means a notice under this paragraph.

Submissions by the Party

13. MJ say that the notice for 2007-2008 was addressed to them at the Cross Inn, Paxton, Berwick upon Tweed.

25 14. The notice was received by Mrs Ivison as by that time the couple had separated in June 2010 leaving Mrs Ivison to run the business.

15. Mrs Ivison was also taking care of her son and daughter and had a very limited knowledge of bookkeeping and PAYE.

30 16. She had to change her bookkeeper and also her accountants as her husband had been in charge of dealing with the bookkeeping and dealing with the operation of PAYE.

17. Mrs Ivison had great difficulty in obtaining the requested information but managed to produce parts of this by 19 January 2011.

35 18. Paterson Reid say there was a typing error on the schedule which they accept was entirely their error as this stated 2008-2009 instead of 2007-2008.

19. Paterson Reid realised their error on 18 March 2011 and wrote apologising, enclosing a copy of the previous agent's working papers showing the analysis of the accounts figure.

5 20. Paterson and Reid say that they have no argument with HMRC being entitled to ask for information specified in the information notice but say that Mr Wood, the reviewing officer, arrived at the wrong conclusion by not looking at the details of the information notice.

10 21. Paterson Reid say the reviewing officer was concerned he was unable to reconcile forms P14 together with the reconciliation of the figures shown in the accounts and enclosed a further three forms P14 stating that these did not reconcile with the information.

22. Paterson Reid say that Mrs Ivison was unable to supply details of all employees for whom payments were not reported on form P14 and copies of forms P46 showing the reason payment was not reported on forms P14.

15 23. They say HMRC have been given a full analysis of the wages showing the names, addresses and amounts paid to each worker but no NI numbers had been shown as it would not be necessary to have the NI numbers for some of the employees. Paterson Reid claim that the information notice had been totally discharged and, as such, no fine should be levied for the supply of non information.

20 **Submissions for HMRC**

24. HMRC say that Paterson Reid supplied the wrong information as this was headed up applying to 2008-2009 which was not requested in the notice. Consequently, the information requested for 2007-2008 remained outstanding.

25 25. Some two months later Paterson Reid acknowledged that they had incorrectly headed up the schedule and resent a number of spreadsheets.

26. HMRC carried out their review and were unable to reconcile the wages schedule supplied by Paterson Reid for named individuals, allegedly for 2007-2008, against P14 end of year documents already submitted by the employer for 2007-2008.

27. HMRC say the figures were markedly different.

30 28. HMRC say that two employees whose P14s had already been supplied by the employer did not appear on Paterson Reid's wage analysis schedule for 2007-2008 and that they were C Bell and Claire Jeffrey.

35 29. HMRC say that the previous agent's trial balance included a figure for 2007-2008 of £7,106 paid to self employed bar staff included the figure of £46,364. Paterson Reid's schedule showed income paid to self employed staff of £189.88.

30. Paterson Reid's schedule showed income paid to self employed bar staff at £189.88.

31. HMRC say that the information supplied does not explain the discrepancy in the wages figure and that the information requested on 27 September is still outstanding.

32. HMRC say that they were correct in issuing the penalty.

5 33. HMRC say that the taxpayer must supply the information requested or confirm the information does not exist.

34. Supplying something else that was not requested or was not relevant to the point at issue does not satisfy the requirements of the legislation.

Reasons for the Decision

10 35. The Tribunal note the difficult circumstances in which Mrs Ivison found herself when submitting her 2007-2008 tax return.

36. It is clear that there was an error by Paterson Reid, a firm of Chartered Accountants.

15 37. HMRC identified a discrepancy between the employed costs reported on forms P14 for the 2007-2008 tax year and the costs reported on the corresponding self assessment return and asked for four specific items of information.

38. The Tribunal accept that HMRC would accept such information on its face value, that is to say 2008-2009, from a firm of such professional standing especially when they knew that Paterson Reid did not act for the firm for the tax year 2007-2008.

20 39. The Tribunal do not accept that the information that was provided satisfied the requirements of the notice, particularly in relation to providing a breakdown of the discrepancy, and, accordingly, the appeal is dismissed.

25 40. 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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**W RUTHVEN GEMMELL, WS
TRIBUNAL JUDGE**

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RELEASE DATE: 15 DECEMBER 2011