



TC01779

Appeal number TC/2011/06363

MONEY LAUNDERING REGULATIONS 2007 – Penalty for failure by accountant to register under Regulations (reg 32(4)) – Whether the person “took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with” (reg 42(2)) – Appeal dismissed

FIRST-TIER TRIBUNAL

TAX

RENAISSANCE ACCOUNTANCY SERVICES LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: DR CHRISTOPHER STAKER (Tribunal Judge)
MS ELIZABETH BRIDGE (Tribunal Member)**

Sitting in public in London on 2 November 2011

Mr S Cucuccio of the Appellant

Mr A Vesikari for the Respondents

DECISION

Introduction

5 1. This is an appeal against a penalty of £137.91 imposed on the Appellant pursuant to regulation 42(1) of the Money Laundering Regulations 2007 (the “Regulations”), for failure to register under the Regulations within the applicable deadline as required by regulation 33.

10 2. This appeal was heard in London on 2 November 2011. The Tribunal gave its decision orally at the end of the hearing. The parties agreed pursuant to Rule 35(3) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 that is it unnecessary for this decision to include full or summary findings of fact and reasons for the decision. The Appellant subsequently requested full reasons for the decision, which are now provided.

The relevant legislation

15 3. Regulation 3(7) and (8) of the Regulations define, respectively, the expressions “external accountant” and “tax adviser” for purposes of the Regulations.

4. Regulation 32(1) and (4) provide that HMRC may maintain registers of external accountants and tax advisers who are not supervised by relevant bodies.

20 5. Regulation 32(5) provides that where a supervisory authority decides to maintain a register under the Regulations, it must take reasonable steps to bring its decision to the attention of those relevant persons in respect of whom a register is to be established.

25 6. Regulation 33 provides that where a supervisory authority decides to maintain such a register in respect of relevant persons, “a relevant person of that description may not carry on the business or profession in question for a period of more than six months beginning on the date on which the supervisory authority establishes the register, unless he is included on the register.

30 7. Regulation 42(1) provides for the imposition of a penalty on a person for a breach of regulation 33. It provides that the designated authority imposing the penalty may impose a penalty of “such amount as it considers appropriate ... and for this purpose, “appropriate” means effective, proportionate and dissuasive”.

35 8. Regulation 42(2) provides that: “The designated authority must not impose a penalty on a person under paragraph (1) where there are reasonable grounds for it to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with”.

9. Regulation 43 provides for an appeal to the Tribunal against any penalty imposed pursuant to regulation 42. Regulation 43(4) provides that on appeal, the Tribunal has the power “to quash or vary any decision of the supervisory authority, including the

power to reduce any penalty to such amount (including nil) as it thinks proper”, and “to substitute its own decision for any decision quashed on appeal”.

The hearing and arguments of the parties

5 10. At the hearing, Ms Cucuccio, who is the only person in the Appellant company, appeared in person and gave evidence.

10 11. It is not in dispute that the Appellant is an external accountant for purposes of the Regulations, that HMRC established a register for external accountants under regulation 32 on 1 April 2008, and that external accountants had to register with HMRC by 1 January 2009. It is further not in dispute that the Appellant began
15 carrying on business as an accountant on 8 November 2010, and that the Appellant did not send HMRC an application for registration form with the applicable fee until 3 March 2011. In that application form, she disclosed the fact that the Appellant had commenced carrying on business as an accountant on 8 November 2010. On 24 March 2011, HMRC issued a penalty in the sum of 137.49 pursuant to regulation 42, and the Appellant now appeals to the Tribunal against that penalty pursuant to regulation 43.

20 12. The Appellant’s case is that in May 2011 she was diagnosed with certain medical problems, which made it very difficult for her to work more than 2 to 4 hours per day. She is now managing the problem, and is able to work 6-7 hours per day, albeit with discomfort.

25 13. The Appellant states that when completing the money laundering registration forms, she read the relevant guidance notes on the HMRC website. She said that there was nothing on the website to confirm the time allowed for registration by an accounting service provider which had commenced providing services after 1 January 2009. She says that a notice referred to in an HMRC internal review was not linked to the money laundering regulations webpages of the HMRC website, and that this notice would be impossible to find unless someone was aware of its existence.

30 14. The Appellant argues that HMRC should make its website much clearer on the subject, that she was not given the necessary information regarding the current deadline for registration, that she took reasonable steps to find out the procedure to register, and that the penalty is therefore unjust.

35 15. At the hearing, Ms Cucuccio confirmed that she had not checked the website prior to 8 November 2010. She said that at the time that the Appellant commenced providing services, she was aware that it would be necessary to register under the Regulations. However, she assumed that there would be a reasonable period of grace in which it would be possible to register after commencing business.

40 16. The HMRC case is as follows. The Regulations do not fix the amount of the penalty, but provides that HMRC shall fix such penalty as it considers appropriate, and that “appropriate” means “effective, proportionate and dissuasive”. According to HMRC guidelines, a penalty is fixed of £100 for an unprompted disclosure (which

was the case here), or £500 for a “prompted” disclosure. To this has been added the amount of registration fee that would in any event have been paid in respect of the period of non-disclosure, had registration occurred on time.

5 17. HMRC argues that the relevant information about the time period for registration (that is, that it must occur before business commences), was available on the HMRC website, and was not “impossible” to find as the Appellant contends. In any event, the HMRC website provides e-mail and postal contacts for obtaining further guidance, and the Appellant did not avail herself of this possibility. Ignorance of the law is no excuse.

10 **The Tribunal’s findings**

18. The Tribunal sympathises with the medical problems that the Appellant has been experiencing. It is however noted that she was on the evidence only diagnosed in May 2011, some 6 months after she commenced business, and two months after she registered. While it is accepted that the medical issues that were only diagnosed in
15 May 2011 may have been affecting her ability to work even earlier, the evidence is that she was able to work, and indeed, she would not have been required to register if this had not been the case. The Tribunal is not satisfied on the evidence before it that medical issues provide a reason for lowering the penalty.

19. The Appellant argues that she took all reasonable steps and exercised all due
20 diligence to ensure that the requirement would be complied with. However, she admits that she knew at the time of commencement of business on 8 November 2010 that she was required to register. She says that at the time she did not know that she had to register before commencing to provide services, and assumed that there would be a period of grace to do so afterwards. The Tribunal considers that, in principle,
25 ignorance of the law is no excuse. Thus, even if a person had no idea at all that there was a requirement to register, this would not in principle be a reason to justify setting a penalty aside. In this case, however, the evidence is that the Appellant did know of the registration requirement at the time of commencing business, but simply did not know the deadline for doing so. The Tribunal considers that in particularly in these
30 circumstances, a person exercising all reasonable steps and all due diligence would ascertain the deadline before commencing business, and would confirm whether, rather than assume that, there was any period of grace.

20. As to the claimed difficulty of finding information on the internet, the Tribunal is prepared to assume that the Appellant did not find the HMRC website user-friendly.
35 However, it is not persuaded that a person exercising all reasonable steps and all due diligence would not be capable of finding the relevant information without unreasonable effort, either from the HMRC website, or by other means from which guidance is available from HMRC, such as through e-mail or postal contacts. The Tribunal therefore does not accept that regulation 42(2) is applicable in this case.

40 21. The Tribunal is satisfied that the penalty is appropriate within the meaning of regulation 42(1). Ms Cucuccio did not take issue with the imposition of £37 to reflect the registration fee that would have been applicable in any event. The “dissuasive”

element of the penalty is £100. The Tribunal finds that a £100 penalty in the circumstances is not disproportionate, and considers that any lower penalty would be unlikely to be effective in achieving the dissuasive purpose.

5 22. The Tribunal is not persuaded that there is any other reason to quash or vary the decision appealed against, or to reduce the penalty.

Conclusion

23. For the reasons above, the Tribunal finds that the appeal must be dismissed.

10 24. 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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Christopher Staker

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TRIBUNAL JUDGE
RELEASE DATE: 25/01/2012