



**TC02339**

**Appeal number: TC/2012/00214**

*CONSTRUCTION INDUSTRY SCHEME – amount of determination under regulation 13 of the Income Tax (Construction Industry Scheme) Regulations 2005 – whether correct – taxpayer alleging that the amount was based on incorrect information supplied by third parties to HMRC – lack of evidence – determination reduced to an amount accepted by the appellant to be due in the exercise by the Tribunal of the overriding objective as provided by rule 2 of the Tribunal procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 – appeal allowed in part*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**RUSSELL WINSOR  
t/a WINSOR ELECTRICAL**

**Appellant**

**- and -**

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

**Respondent**

**TRIBUNAL: JUDGE JOHN WALTERS, QC  
SHEILA CHEESMAN**

**Sitting in public at Bedford Square, London on 1 October 2012**

**The Appellant in person**

**Paul O'Reilly, Officer, for HM Revenue & Customs, for the Respondents**

## DECISION

- 5 1. The appellant, Mr Russell Winsor (“Mr Winsor”) appeals against a Notice of Determination (“the Determination”) issued by the Commissioners (“HMRC”) under regulation 13 of the Income Tax (Construction Industry Scheme) Regulations 2005 (“the Regulations”). By the Determination, which was in respect of the year 2008/2009, HMRC determined the amount which Mr Winsor was liable to pay under the Regulations at £22,478, being 20 per cent. of £112,392.
- 10 2. HMRC contend that that figure of £112,392 represented payments to Mr Winsor from a contractor within the construction industry named Ward Contract Services Limited (“Ward”), which were paid on by him to one or more subcontractors and should have been paid under deduction of tax at 20%, pursuant to the Construction Industry Scheme (“CIS”).
- 15 3. The figure of £112,392 is arrived at by deducting from £212,124 (the figure indicated by evidence in HMRC’s possession for the total of payments made gross by Ward to Mr Winsor in 2008/2009) the amounts of £27,340 (Mr Winsor’s turnover for that year as declared in his self-assessment tax return) and £72,392 (the turnover of a company formed by Mr Winsor, Ward Power & Data Ltd., later Winsor Power &  
20 Data Ltd., (“WPD”) as recorded in the accounts of WPD for the period 4 April 2008 to 3 April 2009). HMRC have exercised their judgment pursuant to regulation 13(2) of the Regulations to reach the conclusion that the difference of £112,392 so arrived at represents subcontractor payments giving rise to an obligation to deduct tax under the CIS.
- 25 4. Mr Winsor contends that the figure of £212,124 for payments made to him or WPD by Ward in 2008/2009 is fictitious and grossly exaggerated.
5. We heard oral evidence given by Mr Winsor, and also received a Witness Statement made by Officer Christine Chatfield of HMRC, who was the officer who made the original determination under regulation 13 of the Regulations (it was  
30 subsequently reduced on review to the amounts referred to above). Officer Chatfield also gave oral evidence to the Tribunal.
6. According to HMRC’s Statement of Case, the following facts are not in dispute:
7. Mr Winsor has been self-employed as an electrical contractor since 2004.
8. He has been registered under the CIS both as a contractor and as a subcontractor  
35 and holds gross payment status entitling him to receive payments from contractors without deduction of CIS tax.
9. The latest year for which Mr Winsor submitted a CIS return was 2006/2007. Nil returns had been made from 2007/2008 onwards.

10. In his self-assessment tax return for 2008/2009, Mr Winsor declared turnover of £27,340 and employee costs of £7,348. (Officer Chatfield's evidence was that Mr Winsor had noted on his return that he had been forced to employ agency labour due to his illness, for which an operation was planned for February 2010. Medical certificates accompanied the return described the disorder causing absence from work as 'brain tumour', 'pituitary tumour' and 'micro prolactinoma'.)

11. Mr Winsor established WPD, of which he was the only director and shareholder. WPD began trading on 1 June 2008 and was dissolved on 28 September 2010.

12. WPD submitted accounts for the period 4 April 2008 to 3 April 2009 declaring turnover of £72,392 and claiming agency costs of £29,765.

13. WPD was not registered under the CIS, or for PAYE.

14. No records were retained to support the figures returned by WPD. (Mr Winsor told us that this was – at any rate in part – due to the fact that any records had been made and retained by his wife from whom he was now separated.)

15. Mr Winsor's evidence was that as a self-employed electrician he had obtained work in Docklands for Ward, the head contractor. His work was putting in electrical supply systems to computer systems to make them run and protect them in case of interruption to power supplies, and providing other protections. He said that he did this work himself and was at the same time a college lecturer. He was able to manage both functions because the job for Ward had a slow start and was controlled from India, and the work needed to be done to Indian time rather than UK time – thus enabling him to work at his lecturing job in UK time. He had formed WPD as a vehicle through which he could carry out work for Ward and had assumed (wrongly, as he accepted) that he was entitled to use his own gross payment status under the CIS to enable WPD to receive payments gross. However he said that the payments received from Ward were received by him personally, and not by WPD.

16. Mr Winsor strenuously denied that he (or WPD) had received payments totalling £212,124 from Ward in the year 2008/2009. He was vague about the amount he did actually receive, which according to his evidence might have been as much as £80,000. He produced no evidence to substantiate this.

17. He said he had intended to subcontract some of the work on the Ward contract, but he became ill and so used at least one agency worker. Andrew Saunders was an agency worker used by him. He thought (incorrectly, as he accepted) that he was not required to deduct tax under the CIS from payments made to agency workers. He never asked Andrew Saunders if he (Andrew Saunders) was entitled to receive payments gross under the CIS.

18. Andrew Saunders had a nephew, Stuart Saunders. Stuart Saunders was a young man aged 18 at the relevant time and needed to be employed in order to complete his training as an electrician.

19. Mr Winsor said that Andrew Saunders asked him to pay Stuart Saunders part of the remuneration to which he (Andrew Saunders) was entitled as an agency worker working for Mr Winsor, and to pretend that the payments to Stuart Saunders were payments under an employment. He (Andrew Saunders) would effectively re-  
5 reimburse Mr Winsor for the payments made to Stuart Saunders by deducting the amounts paid to Stuart Saunders from the amounts invoiced to Mr Winsor by him (Andrew Saunders).

20. For these reasons, Mr Winsor's case was that he never paid 'real' employment income to Stuart Saunders.

10 21. However, it was clear from the documentation before the Tribunal that Stuart Saunders had approached HMRC, ostensibly for help in completing his tax return for 2008/2009. Stuart Saunders wrote to HMRC on 24 March 2009, following a telephone conversation, saying that he had worked for WDP in 2008 and that WDP had deducted 20% tax from his wages. He said that his uncle had also worked for  
15 WDP. He also said that Mr Winsor was reluctant to pay a 'tax bill'. He gave Mr Winsor's contact details and also supplied copies of purported wages slips, covering the weeks ended 4 April 2008 to 2 May 2008, showing wages paid by WPD to him (Stuart Saunders) at a gross rate of £130 per day, for electrical work, with 20% deductions under the CIS, and evidence of receipt of payments from WPD (and/or Mr  
20 Winsor) into his (Stuart Saunders's) bank account. There was also a copy of a returned cheque (for £374.40) drawn in Stuart Saunders's favour on WDP's account, which Mr Winsor admitted had been signed by him (although made out to Stuart Saunders by his (Mr Winsor's) wife).

22. Officer Chatfield's evidence was that Ward made returns to HMRC under the CIS  
25 which showed that payments of £212,124 in total had been made by Ward to Mr Winsor as a sub-contractor in 2008/2009.

23. Officer Chatfield opened an enquiry (a check of employer and contractor records) into Mr Winsor's affairs on 3 November 2010 and wrote to him on that date requesting a meeting at his address at 10 a.m. on 17 November 2010. She went, with  
30 another officer, to the address at that time but Mr Winsor was not there. She was able to speak to a lady at the address who said she would contact Mr Winsor, but no contact was made.

24. Meanwhile, on 12 November 2010, Mr Winsor's brother, Ian Winsor ("IW"), had written to Officer Chatfield (from the address held for Mr Winsor) in response to her  
35 letter dated 3 November 2010 stating that his brother, Mr Winsor, had a brain tumour and was not expected to return to work and that he (IW) had a Lasting Power of Attorney over Mr Winsor's affairs. IW also said that there were no records available and that he had explained the situation to another officer of HMRC, a Mr Stockwell, Inspector of Taxes. IW advised that Mr Winsor was in no condition to see anybody  
40 and that Officer Chatfield would not be able to see him on 17 November 2010. This letter was not received by Officer Chatfield until after she had made the abortive visit on 17 November 2010.

25. On the basis of the evidence of Ward's returns under the CIS scheme and Stuart Saunders's information and the documents provided to HMRC by him, Officer Chatfield formed the view that Mr Winsor had received £212,124 in total from Ward in 2008/2009 and that he had made payments to subcontractors under deduction of 20% tax under the CIS in that year for which he had not accounted to HMRC, and that the amount of those payments was best estimated as £212,124 less the turnover of £27,340 declared in Mr Winsor's self-assessment return for that year. She therefore made a determination under the Regulations to the effect that tax of £36,956.80 was chargeable, being 20% of £184,784 (the difference between £212,124 and £27,340).

26. IW wrote to HMRC for Officer Chatfield's attention a letter (dated 19 March 2011) which was treated as an appeal against that determination. The basis of the appeal appears to have been that the liability was WPD's rather than Mr Winsor's. (We note that this ground of appeal was not sustained by Mr Winsor at the hearing, because he accepted that the payments received from Ward had been received by him personally, and not by WPD.)

27. Officer Chatfield subsequently attempted to obtain Stuart Saunders's consent to disclosure to Mr Winsor of the details he had earlier provided to HMRC. She was unable to make contact with Stuart Saunders. She provided the information and copy documents received from Stuart Saunders to IW.

28. IW, in a letter dated 18 August 2011, requested a review of Officer Chatfield's determination, restating the case that all amounts over £27,340 which were received from Ward were received by WPD and not by Mr Winsor, and also stating, in relation to the copy payslips provided by Stuart Saunders:

'Russell did have "Sage" accounting software although I don't think he used it. The payslips you have supplied copies of do not seem to follow this pattern. Quite frankly, they look highly suspect and we would request a witness statement in relation to how they were received.'

I have spoken to Russell and he recalls a person called Jamison ([first] name) who was a trainee requiring experience and payments made to him did in fact come from his brother Frasier ([first] name) in order that he gains experience.'

29. In evidence, Mr Winsor stated that he had mixed up Stuart Saunders and his uncle Andrew Saunders with Jamison and Frasier.

30. The review requested was completed on 19 October 2011 and as a result the determination made by Officer Chatfield was reduced to a determination in the amount of £112,392 (the Determination appealed against) on the basis that the turnover declared in the accounts of WPD (£72,392) also formed part of the amount of £212,124 paid by Ward to Mr Winsor.

31. Mr Winsor in evidence made allegations to the effect that a Mr Tony Dulwich, who was the representative of Ward who made the payments from Ward to him (Mr Winsor) and/or WPD, was unreliable and indeed had been discharged for financial irregularities. This evidence related to Mr Winsor's main case that £212,124 was a gross exaggeration of the amounts actually received (gross) from Ward in the year 2008/2009.

32. He alleged that the copy payslips provided by Stuart Saunders were not genuine and that the payments actually made by him (and/or WPD) to Stuart Saunders were not remuneration for work done by Stuart Saunders but were payments in respect of amounts due to Andrew Saunders which, because he was an agency worker, Mr Winsor believed could be made without deduction of CIS tax. He also made the point that no 18 year old young man would be able to command a wage of £130 a day as an electrician.

33. Mr O'Reilly, for HMRC, agreed that the Tribunal had jurisdiction on the appeal to vary the amount charged by the Determination.

34. Mr Winsor accepted at the hearing that he was "not wholly innocent", that he had been mistaken in thinking that payments to agency workers did not require to be made under deduction of tax under the CIS and that he had made payments to Andrew Saunders and Stuart Saunders in 2008/2009 which, taken together, would have amounted to some £26,000. He accepted that he was therefore liable, under the Regulations, to pay to HMRC in respect of 2008/2009 an amount of at least 20% of £26,000, which is £5,200.

35. In the light of the evidence received by us, we decided that in order to deal with the case fairly and justly (as required by the overriding objective laid down in rule 2 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules")) we ought not to dismiss the appeal without giving Mr Winsor a further opportunity to provide documentary evidence supporting his version of events – especially relevant bank statements, which he said would be obtainable if we allowed an adjournment.

36. Mr O'Reilly informed us that if we did adjourn and give Mr Winsor a further opportunity to produce evidence to support his case that much less than £212,124 had been paid by Ward to him or WPD in 2008/2009, and he produced such evidence, it would be necessary for HMRC to cross-check the position with Ward before they would accept the probative value of any such evidence.

37. It became apparent to us therefore that an adjournment would be likely to give rise to significant extra work (and costs) on the part of HMRC, and indeed the Tribunal.

38. However, when we compared the tax assessed by the Determination, £22,478, with the amount for which Mr Winsor accepted he was liable, £5,200, we formed the view that the overriding objective of the Rules which required us to deal with the case 'in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties' (rule 2(2)(a)), indicated that we should not direct an adjournment for the production of further evidence, but instead that we should allow the appeal in part and reduce the amount of the Determination from £22,478 to £5,200.

39. We decide the appeal accordingly.

40. We wish to record, first, that Mr Winsor assured us that he would arrange payment to HMRC of the amount to which we had reduced the Determination (£5,200). We expect that amount to be paid promptly to HMRC.

5 41. We also wish to record that we make no criticism whatsoever of Officer Chatfield's conduct of the matter. She carried out her duties in the light of the information which was available to her. In particular, she is not to be blamed for accepting at face value the amount returned by Ward (£212,124) as payments made gross by Ward to Mr Winsor. Nor is she to be blamed for accepting at face value the information and documents supplied by Stuart Saunders.

10 42. 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 Rules. 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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**JOHN WALTERS, QC**  
**TRIBUNAL JUDGE**

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**RELEASE DATE: 26 October 2012**