



TC02363

Appeal number: TC/2010/04064

Income Tax - Closure Notice - Discovery Assessments - Penalties - whether sufficient disclosure made by appellant - whether oppressive demands made

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MICHAEL J RAYNER

Appellant

- and -

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

**TRIBUNAL: JUDGE W D F COVERDALE
MR R PRESHO**

Sitting in public at North Shields on 20th January 2011

The Appellant in person

Mr JI Daley, Officer of HMRC for the Respondents

DECISION

5 1. The Appellant Mr Michael Rayner is a solicitor practising from offices in Darlington. He submitted his Self Assessment Income Tax Return for the year ended 05.04.2007 and this was received by HMRC on 02.10.2007. It included details of his solicitor's practice income and expenditure for the accounting year ending on 01.04.2007.

10 2. HMRC selected Mr Rayner's Self Assessment Return for an enquiry in accordance with Section 9A Taxes Management Act 1970 and an opening Enquiry letter was issued on 01.08.2008 asking for information, analyses and supporting business documentation for all amounts declared as business income and expenditure.

15 3. The requested information not having been forthcoming by 15.09.2008 a formal request letter was issued in accordance with S19A Taxes Management Act 1970. This letter warned Mr Rayner of the possibility of penalties if the information and documents were not provided. Mr Rayner did not appeal against the S19A Notice.

4. On 15.01.2009 a final penalty warning letter was issued informing Mr Rayner that the continued failure to provide the requested information and documents could result in an initial penalty of £50 under S97AA Taxes Management Act 1970.

20 5. In a letter dated 27.02.2009 Mr Rayner provided some explanation of the business accounts entries but no analyses or documents were supplied. HMRC took the view that the explanations and information that were provided suggested that income had been omitted for the period 01.01.2006 to 01.04.2006 and that the business account details in the 2006/07 Return were either based on estimates or were
25 not fully supported by records. In a letter dated 23.03.2009 HMRC requested documentary evidence to support the accuracy of the declared business income and the amounts of expenses being claimed.

30 6. Mr Rayner's response was that he was reluctant to provide any documents to HMRC. He had a large number of reasons for this attitude (and further reference will be made to these below) and there was then correspondence between him and HMRC which attempted to break the impasse that had apparently occurred. Agreement could not be reached as to the manner of disclosure or indeed as the requirement for disclosure at all and on 19.05.2009, some nine months after the Enquiry had opened, an Initial Penalty of £50 was imposed under S97AA Taxes Management Act 1970.

35 7. Mr Rayner appealed against the £50 penalty by letter dated 09.06.2009; the letter did not specify the grounds of appeal but concentrated upon allegations of misconduct by the officer conducting the enquiry and indicated that he would complain "to the ombudsman".

40 8. Having been requested to do so by HMRC (letter dated 16.06.2009) Mr Rayner gave further details of the basis of his appeal in a longer letter dated 19.06.2009: it was said that "the notice was invalid as the information contained in it was incorrect

and false”; reference was made to the alleged deliberate loss of documentation by HMRC; Mr Rayner maintained that HMRC was motivated by malice towards him.

5 9. On 24.09.2009, in the continuing absence of the requested documentation and information, a Daily Penalty Notice was issued in the sum of £640. Mr Rayner had evidently failed to refer his 09.06.2009 appeal to the Tribunals Service despite having been given full details of the appeals procedure in a letter from HMRC dated 10.07.2009; no issue about that has been taken and the Tribunal is prepared to admit that appeal and deal with it today.

10 10. The Daily Penalty charge was based on a penalty of £5 per day for a 128 day period covering 20.05.2009 to 23.09.2009.

11. In subsequent correspondence Mr Rayner alleged that he did not receive the Daily Penalty Notice dated 24.09.2009.

15 12. On 01.12.2009 HMRC wrote to Mr Rayner informing him that it was intended to bring the Enquiry to a close by amending amounts of expenditure which had not been justified by information or documents; the proposed amendments would be invoked if the required information and documents were not submitted within 30 days of 01.12.2009.

20 13. In response to a letter from Mr Rayner (mistakenly dated 27.02.2009) received by HMRC on 30.12.2009 a decision was made by HMRC on 24.02.2010 (presumably in the interests of fairness) to transfer the enquiry to a more senior officer. It was stressed that “this in no way reflects upon the work that [the enquiry officer] has done which as far as I can see has on his part been conducted professionally and in accordance with normal HMRC procedures”.

25 14. The replacement officer, having reviewed the case, informed Mr Rayner by letter dated 09.03.2010, that she intended to issue a Closure Notice for the year ended 05.04.2007 and to make discovery assessments for the years 2003/04, 2004/05 and 2005/06 in the amounts stated in the letter dated 01.12.2009 (mentioned in paragraph 12 above). The assessments and the Closure Notices were issued on 15.03.2010.

30 15. On 16.04 2010 Mr Rayner submitted an Appeal to the Tribunals Service. In summary the Assessments under appeal today are as follows:

2006/07	Closure Notice	Tax £3,086.34
2005/06	Discovery Assessment	Tax £3,300.00
2004/05	Discovery Assessment	Tax £2732.00
2003/04	Discovery Assessment	Tax £3280.00
35 19.05.2009	£50 Initial Penalty under S97AA & 100 Taxes Management Act 1970	
24.09.2009	£640 Daily Penalties under S97AA & 100 Taxes Management Act 1970	

16. HMRC correctly observes, therefore, that the points at issue in today’s appeal are:

- 1.) Whether business income and expenditure for the years 2003/04, 2004/05, 2005/06 and 2006/07, as declared by Mr Rayner in Self Assessment Returns for those years, are correct and complete and can be fully supported by documentary evidence.
- 5 2.) Whether an Initial Penalty of £50 and subsequent Daily Penalties of £640 have been validly charged due to Mr Rayner's failure to comply with a formal notice for Information and Documents issued under S19A Taxes Management Act 1970.
17. Mr Rayner's position is set out in his Notice of Appeal dated 16.04.2010. In
10 summary he says that:
- 1.) He contends that there was some defect in information supplied in the context of the appeal process relating to the Initial Penalty of £50.
- 2.) He denies that he received the Daily Penalty Notice dated 24.09.2009.
- 3.) With regard to the Closure Notice and Discovery Assessments covering the
15 years 2003/04, 2004/05, 2005/06 and 2006/07 he contends that HMRC are not prepared to give an undertaking to pay any replacement costs for documents that may be lost by HMRC; he says that he would not be able to afford to pay for replacement documents. He says that as a consequence of his failure to produce his documents, which was deemed to be a refusal, he was reassessed
20 for the year 2006/07 and "acting out of spite" HMRC reopened his claims for the previous three years and reassessed them.
- 4.) Mr Rayner then goes on to make a number of personal comments and allegations against HMRC staff and suggests that there has been bad faith in dealing with his tax affairs.
- 25 18. With regard to the appeal process relating to the Initial Penalty Notice for £50 dated 19.05.2009 Mr Rayner has not pursued any complaint about this in his submissions to the Tribunal today. It is acknowledged that the appeal relates to this penalty and it has already been noted in Paragraph that the matter is before the
30 Tribunal. Further reference will be made to this penalty in the context of the Tribunal's findings and determinations in respect of the substance of this appeal.
19. It is apparent that a Daily Penalty Notice in the sum of £640 was sent to Mr Rayner on 24.09.2009. A copy of it appears at page B83 of the Basic Bundle produced by the Respondents. Mr Rayner says that he did not receive it. The Tribunal is prepared to acknowledge that there is a presumption that a letter purporting to have
35 been sent by post will have been received by the intended recipient. It is therefore for Mr Rayner to rebut that presumption. There has been a very large volume of correspondence passing between Mr Rayner and HMRC and he has not alleged that any other correspondence addressed to him (copies of which are in the Basic Bundle) has failed to reach him. He has not alleged that he has had any problem with his post.

20. Mr Rayner wrote to HMRC on 04.11.2009 stating that he did not receive the notice and, surprisingly, there does not appear to have been any response to that letter. The obvious thing to have done would have been to reply and send a copy of the notice.
- 5 21. Nevertheless Mr Rayner was clearly aware (from the contents of his letter dated 04.11.2009) of the existence of a penalty notice. The Tribunal concludes that, on the balance of probabilities, he did receive the Daily Penalty Notice sent to him by post on 24.09.2009. There have, therefore, been no procedural defects in the issue and service of the Initial Penalty Notice or the Daily Penalty Notice.
- 10 22. In 2008 HMRC had identified a number of substantial issues with Mr Rayner's 2007 Tax Return. It is appropriate to set these out in some detail in order to demonstrate the scale of the enquiries that were being made.
- 15 23. On an internal Memorandum dated 14.04.2008 it had been noted that Mr Rayner's accounts should be drawn up on an accrual basis and although the expenditure had not been incurred the liability had and therefore if a balance sheet had been prepared this would show a creditor with the appropriate deduction in the profit and loss account. Expenditure as claimed should have been allowed against 2007.
- 20 24. Furthermore the fact that Mr Rayner did not claim the expenditure in the original profit and loss account suggested that he was drawing up his accounts on a 'cash' basis instead of an 'accruals' basis and this was considered to be unacceptable.
- 25 25. It was noted that the debit for employer's costs of £21,500 appeared to be an estimate and had been the same figure for the previous two years. 'General Admin' of £24,000 also appeared to be an estimate. Mr Rayner had claimed for depreciation of £4,000 together with capital allowances; the depreciation had not been added back in the tax computation. The 2006 Return appeared to be full of estimates in that the turnover was in a round sum figure, employee costs, general administration, repairs, travel and subsistence and depreciation had been claimed and not added back and capital allowances had been claimed. Furthermore the 2005 Return appeared to be comprised largely of estimates. The 2007 Return needed to be amended to allow a
- 30 26. On 01.08.2008 Mr Rayner was sent a schedule of Information and Documentation required, namely:
- Details of estimated or balancing figures and the basis of any estimates used.
 - Details of any adjustments for own goods or private use of business assets.
 - 35 • Computations showing the application of UITF 40 in the accounts for the period ended 01.04.2007.
 - Analysis of the figure for Turnover of £98,709.
 - Analysis of the figure for employee costs of £21,500.

- Analysis of the figure for repairs of £773.
 - Analysis of the figure for General Administration costs of £24,000.
 - Analysis of the figure for motor expenses of £3,191.
 - Analysis of the figure for Travel and subsistence of £1,200.
- 5
- Analysis of the figure for advertising of £1,009.
 - Analysis of the figure for Legal and Professional fees of £43,508.
 - Analysis of the figure for Other finance charges of £282.
 - Analysis of the figure for Depreciation of £4,000 with explanations.
 - Analysis of the figure for Other expenses of £2821.
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- Analysis of Debtors/prepayments.
 - Analysis of Stock/work in progress.
27. A substantial quantity of specific documentation was also requested , namely:
- A copy of the financial accounts for the period ending 01.04.2007 including the capital allowance and income tax computations.
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- All business records from which the accounts were prepared including all sales and purchase invoices.
 - Non-financial records such as business diary or appointment book.
 - All employee records including names, addresses and National Insurance numbers of all employees.
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- Computer records if these were kept in the business.
 - Bank Statements, cheque stubs and paying-in books for all bank accounts used in the business.
 - Credit card statements if a credit card was used in the business.
 - Business cash books.
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28. The above requests were repeated in a letter dated 08.08.2008 and in the Notice requiring documents and other information issued pursuant to S19A of the Taxes Management Act 1970 on 15.09.2008. That Notice stated that in opening any enquiry HMRC is required to give consideration to minimising the burden to the taxpayer in terms of their time and finances. It was believed that the request for information and

documentation was reasonable and proportional and that its sole purpose was to establish the accuracy of Mr Rayner's 2006/07 Tax Return.

29. On 15.10.2008 Mr Rayner telephoned HMRC to say that he was happy to give the information requested but was not satisfied with the reasons for the enquiry.

5 30. There then followed further extensive correspondence but the requested information and documentation was not forthcoming from Mr Rayner.

31. The Tribunal considers that the requested information and documentation was reasonably required by HMRC and that, although the request was extensive, it was not oppressive and was properly required for the purpose stated in paragraph 28
10 above. It is typical information that will be required by HMRC while they discharge their statutory duties and was information that Mr Rayner had in his possession and could reasonably be expected to produce.

32. In the absence of the requested information HMRC were entitled to issue the Initial Penalty Notice and the Daily Penalty Notice.

15 33. Mr Rayner continued in his failure to provide the requested information and documents. Specifically he tells the Tribunal that he was victimised by being selected for a full enquiry at a time when his legal practice was not functioning (he had been suspended as a practising solicitor). He met with HMRC staff but no agreement could be reached with regard to the process of production of documents. Some information
20 was supplied but most was not. Nevertheless Mr Rayner tells the Tribunal that "I have no problem dealing with any legitimate Revenue enquiry".

34. Mr Rayner has identified a number of perceived problems which prevented him from further compliance with HMRC requests. He says that his photocopier was broken; that problem could have been solved by his producing original documents to
25 HMRC for them to inspect and copy as appropriate. He complains that some 360 client files were being requested; issues of confidentiality arose and he would have had to obtain the consent of all clients and the administrative cost would have been a burden and would have cost thousands of pounds.

35. Mr Daley, the HMRC Presenting Officer, deals with this matter of confidentiality by referring to strict protocols that HMRC have in place and the severe penalties that can be imposed if confidentiality is breached. He denies any breach of the high standards of integrity that are demanded of HMRC staff and, in so far as Mr Rayner has alleged that an Enquiry Agent was sent to go through his waste paper bins, Mr Daley absolutely denies that any such practice would be initiated or
35 condoned by HMRC; in 41 years he has never heard of such a thing happening.

36. Mr Daley also observes that it was not, in any case, the entire client files that were being requested: it was only the invoices contained in some 300 or 400 files. This is therefore substantially less, in volume, than Mr Rayner suggests.

37. Mr Rayner says that some of the files were Legal Aid matters and the Legal
40 Services Commission routinely requested sight of a number of files for audit

purposes. This is done with all Legal Aid practices. Mr Rayner was concerned that he might be unable to comply with such requests if his files were in the hands of HMRC. He does not suggest to the Tribunal that he had made any enquiry of the Legal Services Commission as to their attitude if any files or part files were in the possession of HMRC in circumstances beyond his control. The Tribunal has no reason to believe that the Legal Services Commission would not be sympathetic in such a situation and defer any inspection or indeed choose other files for random inspection.

38. HMRC offered to Mr Rayner to come and collect the documentation. He declined. They offered to him that he could take them to his local tax office which would transfer them securely to the office dealing with the Enquiry. He declined.

39. Mr Rayner's particular concern was that HMRC might lose his documentation. He suggests that they had done so in the past. It is not clear whether this had indeed happened before but even if it had it would be absurd to suggest that a taxpayer should be entitled to withhold information from HMRC simply on the basis of a fear of loss. HMRC would be unable to function if taxpayers were entitled to take such an arbitrary view. Mr Rayner alleges bad faith on the part of HMRC (see below) but his concerns could easily be addressed if he feared deliberate 'loss' or concealment by HMRC: he could have delivered up his papers and obtained a receipt.

40. Mr Rayner requested from HMRC an undertaking to pay for the cost of obtaining duplicates of any documents that might be lost while in the custody of HMRC. Such an undertaking was not forthcoming. This was ultimately to be the basis of the impasse that occurred. The Tribunal concludes that Mr Rayner's request was unreasonable and the production of a receipt by HMRC would have been sufficient to allay his concerns.

41. Throughout the correspondence in this matter (and there is a substantial bundle of it produced to the Tribunal today) there has been an underlying and ongoing theme pursued by Mr Rayner and he has addressed the Tribunal at considerable length about it: he maintains that HMRC's enquiries have been motivated by malice against him. He has recited a very long account of problems in his dealings with HMRC and has made a considerable number of very serious allegations about the personal lives of HMRC staff. He has suggested that there have been breaches of confidences and improper interference with the relationship between him and his former employer. He alleges corruption. One of the many reasons for his withholding documentation from HMRC has been that he believed that a member of his former employer's family worked at his local tax office and that this person might have colluded with HMRC in 'losing' documents. Nearly half of Mr Rayner's lengthy submissions to the Tribunal today have been concerned with historical matters with particular reference to his professional problems as a solicitor and his being subjected to Court proceedings with unhappy outcomes. Indeed Mr Rayner has acknowledged a number of legal outcomes that do him little credit but the Tribunal today has remained focused upon the issues of production of documents and information pursuant to legitimate requests and draws no adverse inferences from historical matters.

42. There is no evidence whatsoever before the Tribunal, whether in the bundles of documents and correspondence or in oral submissions today, of any malfeasance on the part of HMRC or any member of HMRC staff. There is no evidence of impropriety in their personal lives. There is no evidence of corruption by anyone associated with Mr Rayner or his previous employment. There is no evidence of dishonesty or malice.

43. Correspondence from HMRC addressed to Mr Rayner has been restrained and professional. On the other hand his correspondence has had recurrent themes of the unwarranted allegations mentioned in paragraph 41 above and has at times been intemperate. For example in his letter dated (mistakenly) 27.02.2009 and received by HMRC on 30.12.2009 he said:

“Previously you lied to me saying this was a genuine enquiry. The fact that you then purport to go back every tax year is obvious that this is an enquiry of spite, an enquiry at the behest of your corrupt colleagues ... you had a vested interest in helping your friends ... I have wasted about 50 hours of fee earning time dealing with you and I require not your office but YOU to pay compensation, I require 50 hrs at £180, so I require a payment from you personally of £9,000 by 31st December.”

That language is completely inappropriate. It damages Mr Rayner’s credibility in this appeal.

44. In addition to enquiring into Mr Rayner’s 2006/07 Self Assessment Tax Return HMRC has chosen to reopen enquiries into Tax Returns for the previous three years. They are entitled to do so. In the light of Mr Rayner’s continued lack of co-operation they had every reason to do so. Their requests for documentation were appropriate and proportionate. Mr Rayner has failed without good cause to meet those requests.

45. Therefore the Initial Penalty of £50 was properly imposed. The Daily Penalties of £640 were properly imposed. The Closure Notice and the Discovery Assessments listed in paragraph 15 above were properly issued: in the absence of full disclosure by Mr Rayner HMRC were entitled to conclude that business income and expenditure for the years 2003/04, 2004/05, 2005/06 and 2006/07 as declared by him in Self Assessment Returns for those years were incomplete and not fully supported by documentary evidence. The Tax listed in paragraph 15 is properly due and payable by Mr Rayner. This appeal is dismissed.

46. 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 D F COVERDALE
TRIBUNAL JUDGE**

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RELEASE DATE: 23 October 2012