



**TC02414**

**Appeal number: TC/2012/08045**

*Income Tax – Penalty Notice – Failure to comply – reasonable excuse –  
Appeal dismissed.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ROBERT DAVIDSON**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP  
HELEN M DUNN, LLB**

**Sitting in public at George House, 126 George Street, Edinburgh on  
Friday 9 November 2012**

**Richard Spence for the Appellant**

**Ian Mowat, Solicitor, Office of the Advocate General for Scotland, for the  
Respondents**

## DECISION

1. This Appeal concerned the imposition of a £300 fixed penalty for failure to  
5 comply with an information notice under paragraph 1, Schedule 36 Finance Act 2008.  
The Appeal was dismissed and the penalty confirmed.

2. The 2010-11 Self Assessment Tax Return (SA Return) was submitted by  
Mr Davidson on 14 April 2011 showing a profit from land and property of £730. On  
23 January 2012 HMRC wrote to Mr Davidson noting the content of the Return and  
10 indicating that they wished to check the Return in terms of section 9A of the Taxes  
Management Act 1970 (TMA). That letter requested a meeting at his premises. The  
Appellant was asked to contact HMRC. He did not do so. Accordingly HMRC  
attempted to telephone him but were unable to make contact. On 9 February 2012  
HMRC wrote to Mr Davidson referring to the letter of 23 January 2012 and also to the  
15 failed attempt at telephonic contact. That letter intimated that HMRC would visit  
Mr Davidson at his home on 6 March 2012 at 10.00am. Further it made it explicit  
that the purpose of the meeting was to check financial records for the period  
6 April 2010 to 5 April 2011. In particular there would be a focus on income,  
expenditure and personal means. The letter included a list of the records that would  
20 be required for examination. The information sought related to rental income and in  
particular item h stated “all bank and/or building society books or statements, cheque  
book stubs and deposit book counterfoils for any accounts held by you during the  
period 6 April 2010 to 5 April 2011”. The letter acknowledged that it might not be  
possible to have all records available for the date of the visit and stated “if it will be  
25 difficult for you to get some of the records together by the date of the visit, please  
phone me as soon as possible. I may be able to re-arrange the visit for another date or  
may arrange to see those records at another time.” Mr Davidson did not have any  
bank statements available for the meeting on 6 March and he had made no attempt to  
contact HMRC.

3. Following that meeting HMRC wrote to Mr Davidson confirming that they had  
written to him on 9 February 2012 requesting sight of documents, that those  
documents were reasonably required in order to verify the entries on the SA Return  
and that HMRC had not received any of the items requested. That letter included a  
Notice issued under paragraph 1 Schedule 36 of the Finance Act 2008 and amongst  
35 other things reiterated the request for the bank and/or building statements for the year  
ended 5 April 2011. That information had to be provided before 13 April 2012 and  
Mr Davidson was advised that if he felt that he could not do what the notice asked or  
could not respond within the time scale then he should contact HMRC as soon as  
possible. It also intimated that if he failed to comply with the notice then he might  
40 have to pay a penalty of £300 together with a further daily penalty of up to £60 per  
day. A separate letter issued to Mr Davidson which was a covering letter, also  
indicated that Mr Davidson had undertaken to seek copies of the bank statements  
from his bank and identified that HMRC required sight of statements for all bank or  
building accounts.

4. Mr Davidson responded supplying some of the information and he emailed HMRC on 19 March 2012 saying that he had requested a statement from the Royal Bank of Scotland (RBOS) but he had sent the statement for the Clydesdale Bank to HMRC. HMRC wrote to him on 21 and 28 March 2012. However, although those  
5 letters were addressed to the correct postcode the number of the house was number 14 instead of number 47. On 12 April 2012 HMRC received their correspondence marked "addressee gone away". Mr Davidson promptly emailed by return to say that he had made a mistake on his address and confirming the correct address. On  
10 20 April 2012 HMRC rectified the position writing to Mr Davidson enclosing copies of all of the letters. In addition, having apologised for any inconvenience, HMRC confirmed that the deadline for receipt of any remaining bank statements (and that obviously included in particular the RBOS bank statements) had been deferred until 11 May 2012.

5. On 26 April 2012 Mr Davidson wrote to HMRC enclosing further information and stating "the RBOS bank sent me only what enclosed, they said they would send more statements but they did not. I think due to my account being closed." The statement which he sent to HMRC was a simple end-of-year certificate of tax deduction issued for the purposes of section 975 of the Income Tax Act 2007.

6. On 23 May 2012 HMRC wrote to Mr Davidson thanking him for his letter of  
20 26 April and apologising for the delay in reverting to him. It stated that the information was not sufficient as the bank statements for the full year had been requested and there were transactions which required verification. That letter then enclosed the Penalty Notice which is the subject matter of this Appeal.

7. Mr Davidson appealed the issue of the penalty notice on 27 May 2012 stating that  
25 he had done all that he could to provide the relevant paperwork. He stated that he would visit RBOS in the North Berwick branch and ask for statements from 2010 to 2011. The statements were finally received by HMRC on 5 July 2012.

8. In summary the penalty relates to the failure to produce the bank statements from the Royal Bank of Scotland (RBOS) in the extended time scale given to Mr Davidson.  
30 That penalty would not have to be paid if Mr Davidson had a reasonable excuse for his failure to comply with the information timeously. The Tribunal therefore explored with Mr Davidson, at some length, his failure to produce the information timeously. It was an informal hearing and Mr Davidson was repeatedly given the opportunity to explain apparent conflicts in the evidence provided to the Tribunal.

9. An example is that he was specifically asked why he had not had copies of the bank statements available for the meeting on 6 March as requested in the letter of 9 February or contacted HMRC in advance to say that he did not have them. He was asked why he had not kept copies and initially he said that he had not done so because he had not been told precisely what was required. It was drawn to his attention that  
40 the letter of 9 February said precisely what was required. He then said that he had not done so because he always destroyed his bank statements within a few days of receiving them because, having had money stolen from his house on one occasion, he was worried about security and thought it was safer to tear up his bank statements and

put them out with his refuse. When it was put to him that keeping them in the house would be more secure than disposing of them in that method he confirmed that that would be true. As is indicated in paragraph 17 below neither of these explanations was consistent with his grounds of appeal.

5 10. The biggest inconsistencies surrounded his account of the attempts to get the  
RBOS statements. At the beginning of the Tribunal, the Tribunal drew his attention  
to the letter to him of 25 June 2012 when, in recording the history of the case, HMRC  
pointed out that it had been indicated to him at the meeting that HMRC could obtain  
10 the statements but that they would require a mandate to enable them to approach the  
institutions. However, Mr Davidson had said that he would arrange for the statements  
to be supplied and he would make the approaches to the institutions. Mr Davidson  
then said that he disagreed with that entirely and that it had always been the  
responsibility of HMRC to obtain the information. In support of that contention he  
15 pointed to his letter of appeal where he stated that HMRC had said in his home, when  
they visited, that they could get the bank statements that they sought. He said that he  
had relied on that. He was asked why he had said that he would visit RBOS again and  
why he had said that he had previously sought to get statements from them. His  
response was that he had only approached RBOS in order to increase the chances of  
20 getting the statements in case HMRC had difficulty, given that the account had been  
closed. The Tribunal found that to be wholly lacking in credibility. As indicated  
above, the correspondence from HMRC before and after the meeting at his home was  
quite explicit to the effect that it was Mr Davidson's responsibility to obtain all  
statements and that there would be a penalty if he did not do so. If he had thought that  
25 it was the responsibility of HMRC then he would have been expected to have  
challenged those letters and indeed not to have emailed, as he did, to say that he was  
attempting to obtain these statements.

11. The oral evidence from Mr Davidson in regard to his contact with RBOS was  
difficult. Quite apart from the fact that it was not consistent with his alleged  
understanding that HMRC would be obtaining the information, it did not appear to be  
30 inherently credible. Only one element seems to be quite clear. It is evident that he  
did attend the branch in North Berwick on 11 June 2012, he completed a request for  
paper statements and, as is indicated by the use of the code O, this was not the first  
request as O means original not received.

12. Mr Davidson's argument was that the first time he went to the bank he saw a part-  
35 timer but when he went back into the bank two weeks later he saw his usual girl. He  
had no idea why he had not received the bank statements. He had not complained to  
the bank because of the problems that had arisen. He stated that he had at one time  
contacted a manager of the bank but he had no recollection as to who that manager  
might have been or when that had happened. He was asked if he had sent any letters  
40 to the bank and he said that they had been lost. He later said that it was not his letters  
that had been lost but that the bank had lost papers. He said that they had told him  
that they had really just put them into a pile and they were not treated as a priority.  
He could not recall who might have told him that or when other than it was not the  
part-time member of staff at the beginning.

13. When he produced the request form from the bank referred to in the preceding paragraph, he was asked if he had filled in that form or a similar one on the previous occasions and he said not. That seemed unlikely to the Tribunal since the bank would require a paper trail in order to generate the statements. It was put to him that he had  
5 said that his letters requesting bank statements had apparently been lost and he had not filled in these forms.

14. He also said that at that time, because of his medication he had sometimes been hyper-active and sometimes been lethargic and that might have contributed to any delay because he could get confused. The Tribunal explained that both members  
10 happened to have expertise relating to his prescribed medication and thought that side effects would be unlikely to last for any period of time. He said that it had persisted from February until June. The Tribunal explicitly put it to him that he had been meeting with the Revenue and had been dealing with affairs in that timescale and that there was no evidence of confusion. He had nothing further to add on that point.

15. The Tribunal did not accept Mr Davidson's assertion that HMRC had undertaken to obtain the bank statements. That was wholly inconsistent with everything else in the papers. In particular it had been made entirely explicit to him both at the outset and when the deadline was extended that the responsibility was on him to produce all  
20 bank statements and that before the expiry of the deadline. He did not do so. It was only after HMRC issued the Penalty Notice that he made any suggestion that it was not his responsibility.

16. He agreed that the bank statements were necessary for HMRC and indeed he relied on the fact that when he did produce them, they proved to HMRC that what he had been saying to them was true and that no further tax was due or payable.  
25 Accordingly the Tribunal finds that it was reasonable for HMRC to require the information.

17. Did Mr Davidson have a reasonable excuse for the delay in making the information available. Firstly, the Tribunal did not accept his explanation that he did not know from the outset what information was required. At all times it was made  
30 explicit. It was a matter of agreement that he made no attempt to obtain copies of the documentation before the meeting on 6 March. He did not cooperate with HMRC to the extent that he did not take up the offer made in the original letter of 9 February to contact HMRC to tell them if he did not have any information in his possession. His explanation as to why he did not have the bank statements firstly was not referred to  
35 until the day of the hearing and, secondly, and perhaps more importantly, the only previous indication as to why the information was not existence was that his mother had destroyed "documents". Did he do enough after the meeting on 6 March? He knew, or ought to have known, that he required to produce all the copy statements to HMRC by the deadline, which failing, a penalty might be imposed. He did not  
40 explain any difficulties to HMRC, he did not seek an extension of the deadline and the Tribunal found his account of his dealings with HMRC prior to 11 June 2012 to be lacking in specification, inherently inconsistent and therefore lacking in credibility. The Tribunal most certainly did not accept his explanation that he was simply trying to amplify HMRC's activities in that regard.

18. In all these circumstances the Tribunal finds that no reasonable excuse has been established and that therefore the penalty falls to be confirmed.

19. 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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**ANNE SCOTT, LLB, NP  
TRIBUNAL JUDGE**

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**RELEASE DATE: 11 December 2012**