



TC02559

Appeal number: TC/2012/07816

CAPITAL GAINS TAX AND INCOME TAX – penalty for non-compliance with Information Notice issued under FA 2008, Schedule 36 – whether offer to meet with HMRC provided a reasonable excuse for non-compliance with the Notice –no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DILIP AMIN

Appellant

- and -

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

**TRIBUNAL: ANNE REDSTON
(TRIBUNAL PRESIDING MEMBER)
TOBY SIMON**

Sitting in public at 45, Bedford Square, London on 30 January 2013

The Appellant in person

**Karen Weare of HM Revenue & Customs Appeals and Reviews Unit for the
Respondents**

DECISION

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1. This was Mr Amin's appeal against a £300 penalty for non-compliance with an information Notice issued by HM Revenue & Customs ("HMRC") under Finance Act 2008, Schedule 36 ("the Notice").

10 2. The Tribunal dismissed the appeal and confirmed the penalty.

The evidence

3. The Tribunal was provided with:

- (1) the correspondence between the parties;
- (2) a professional valuation of a property at 334-336 Goswell Road, London ("the property");
- 15 (3) three documents entitled "deed of assignment" and dated 4 April 2008, 25 June 2008 and 23 April 2010;
- (4) the capital gains tax pages from Mr Amin's 2008-09 tax return; and
- 20 (5) a number of documents relating to the charity Akina Mama Wa Afrika, including its report and accounts for the years to March 2006, 2007 and 2008.

4. Mr Blundell, the HMRC officer who issued the Notice, provided a witness statement and gave evidence in chief, led by Mrs Weare. He was cross-examined by Mr Amin. Mr Amin also gave oral evidence.

The facts

25 5. Based on the evidence provided, we found the following facts.

6. Mr Amin is an accountant in the firm Amin, Patel and Shah, which operates from the property.

7. On 24 March 2010 the property was independently valued at £950,000.

8. A deed of assignment dated 4 April 2008 stated that 22.7% of the property was transferred from Mr Amin to the trustees of "Mini Pension Scheme" on that date.

9. In his 2008-09 tax return Mr Amin included a capital gain relating to the assignment. The gain was stated to be £92,105 based on a disposal value of £249,700. In calculating the gain, Mr Amin deducted £1,000 as incidental costs of disposal. He also claimed entrepreneur's relief of £81,365 against the gain.

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10. In his 2009-10 tax return Mr Amin included a gain on the assignment of a further 22.7% of the property to the same trustees. The disposal value was also stated to be £249,700 and entrepreneur's relief was claimed.
- 5 11. On 3 September 2009, HMRC opened an enquiry into Mr Amin's 2008-09 return under section 9A Taxes Management Act 1970.
12. HMRC wrote a number of detailed letters to Mr Amin asking for information and issued two information notices, one on 8 November 2010 and one on 26 September 2011.
- 10 13. HMRC obtained information from other sources that the charity, Akina Mama Wa Afrika, had occupied part of the property and paid Mr Amin rental income.
14. On 16 February 2012, HMRC issued the Notice. It required that the following information be provided:
- (1) The use that Mr Amin had made of the Goswell Road property during his period of ownership "in detail".
 - 15 (2) Income and expenses relating to the property, by tax year, and if no income was received, why this was the case.
 - (3) Where the above information was placed on his tax returns.
 - (4) What was represented by sums shown on his tax returns as "other business income".
 - 20 (5) How Mr Amin had calculated the acquisition cost.
 - (6) The disposal value he wished to use.
 - (7) How the incidental costs of disposal had been calculated.
- 15 15. The Notice said that this information must be provided by 19 March 2012, and that if it was not provided Mr Amin "may have to pay a penalty of £300." It asked for the information to be sent "by post".
16. On 29 March 2012 Mr Amin wrote a short letter to HMRC. He said:
- 30 "It appears that this case is open for sometime and at centre the issue is entrepreneurial relief. I request you to attend my offices by prior appointment ASAP to run through your issues in the meeting and visiting the subject premises."
17. On 24 April 2012, HMRC issued a penalty of £300 for non-compliance with the Notice.
18. By letter dated 30 April 2012, Mr Amin appealed the penalty as follows:
- 35 "we make an appeal against the penalty £300 on the grounds that we requested your office to visit our office and deal with the issues on visit basis, where one of the issue is who occupies the premises. This

was already answered however he had requested this again. You can visit our premises by prior appointment with the writer.”

19. HMRC refused the appeal, and the refusal was upheld on review.

20. In Mr Amin’s appeal to the Tribunal he said, under “grounds of appeal”:

5 “1. An offer of a a meeting was made to HMRC in our letter of 29/03/12 to visit the premises and to discuss the queries HMRC have. This would have helped to assist HMRC in the information they required and to have concluded the enquiry.

10 2. The offer of the meeting at the premises was not considered in the review.”

The scope of the appeal and the issue in the case

21. Although Mr Amin had appealed to HMRC only against the penalty, HMRC had treated his appeal as being against both the penalty and the Notice. Mr Amin’s appeal to the Tribunal was expressly only against the penalty and he confirmed to the Tribunal that he had never appealed the Notice and did not wish to do so.

22. The only issue before the Tribunal was thus whether Mr Amin had a reasonable excuse for non-compliance with the Notice, so as to eliminate liability to the penalty.

The legislation

23. The penalty charged on Mr Amin was levied under FA 2008, Sch 36, para 39, which reads as follows:

Penalties for failure to comply or obstruction

(1) This paragraph applies to a person who—

(a) fails to comply with an information notice, or

(b)

(2) The person is liable to a penalty of £300.

24. Under FA 2008, Sch 36, para 45(1), no penalty arises if there is a reasonable excuse for the failure to comply. The relevant part of that sub-paragraph reads:

Reasonable excuse

(1) Liability to a penalty under paragraph 39 or 40 does not arise if the person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure....

Mr Amin’s submissions

25. Mr Amin said he had not explicitly refused to supply the information and that but had instead offered a meeting.

26. If HMRC had accepted the offer and visited him at the property “a meeting would have concluded everything more quickly”. He said “HMRC should have accepted that offer.”

HMRC’s submissions

5 27. HMRC submitted that the Notice required that the information be provided in writing. This was for the following reasons:

(1) the current use of the property was not evidence of its use at the material time;

10 (2) the information requested involved a lot of detail, including calculations and analysis, and needed to be written down;

(3) there was a risk of error if the information was supplied orally.

28. In addition, and as a “side issue”, attending a meeting was an inefficient use of Mr Blundell’s time. He was the officer responsible for the case, but was based some 200 miles from the property.

15 29. HMRC submitted that Mr Amin did not have a reasonable excuse for not complying with the Notice.

Discussion

20 30. The Notice did not come out of the blue. It was sent to Mr Amin following a long process during which HMRC had tried to obtain information they require to complete their enquiry into Mr Amin’s 2008-09 self-assessment return.

31. The Notice clearly asked for the information to be provided “by post”, and Mr Amin was told that “by law” it had to arrive by 19 March 2012.

25 32. Mr Amin did not make any response to the Notice until his letter dated 29 March 2012. Even then, he did not provide the information, but offered a meeting to discuss the issues.

30 33. The Notice is a legal document. It sets out precise requirements. Mr Amin is required by law to comply with those requirements. He did not do so, and in our judgment the mere offer of a meeting, made some ten days after the deadline given in the Notice, does not provide Mr Amin with a reasonable excuse for not complying with the Notice.

35 34. The Tribunal also agrees with HMRC that there were very good reasons for asking for the information in writing: detailed analysis and calculations were required and the current occupancy of the property would not evidence the position in 2008-09, the year under enquiry. We find that it was unrealistic of Mr Amin to submit that the issues in dispute could be resolved by oral discussion, and for this further reason we find that his offer of a meeting did not provide him with a reasonable excuse.

Decision and appeal rights

35. As a result of the foregoing, the Tribunal dismisses Mr Amin’s appeal and confirms the penalty of £300.

5 36. 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.

10 37. 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 REDSTON
TRIBUNAL PRESIDING MEMBER**

RELEASE DATE: 19 February 2013

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