



**TC02680**

**Appeal number: TC/2011/04584**

*VAT – assessment under S.73(1) VATA 1994 – civil evasion penalty – appeal  
against penalty allowed in part*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MR I ARGENT**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE JILL GORT  
MR J ROBINSON**

**Sitting in public in London on 1 March 2013**

**Mr Argent himself appeared but took no part in the proceedings**

**Mr O'Leary, HMRC Officer, appeared on behalf of the Respondents.**

## DECISION

1. This is an appeal against:

5 (i) An assessment dated 7 March 2011 raised by HM Revenue & Customs (“HMRC”) under s.73(1) of the Value Added Tax Act 1994 (“VATA”) in the sum of £38,971; and

10 (ii) A civil evasion penalty raised by HMRC under s.60 VATA on 7 March 2011 in the amount of £122,939. This was subsequently reduced under review to £122,447.27.

2. The grounds of the appeal were not entirely clear. Following HMRC’s application for a direction for Mr Argent to provide further and better particulars of his grounds of appeal, Mr Argent stated *inter alia*:

15 “You state and I quote ‘the Appellant has submitted a return for VAT for the period from 1 April 2004 to 31 January 2010 where he has used the net value of his turnover from his returns for Self Assessment income tax purposes as a VAT inclusive amount to calculate the output tax he has declared’. You are correct in stating this. The reasons for my doing so are as follows and are correct:

20 (a) I was not registered for VAT and could not charge my clients VAT at any time until I was VAT registered early in 2010.

25 (b) Because of (a) I had to treat the fees charged by me as inclusive of VAT – even though they weren’t. Obviously if a client paid me a fee of say £300 this sum did not include any VAT but I had to treat this sum as inclusive of VAT. In other words I had to treat this fee of £300 as if it is £250 + VAT + 20% = £50 – total £300 which I received. If I had not dealt with the position this way I would be charged VAT which I never received from my clients.

30 (c) Moreover this position also means that I have paid tax and Class 4 NIC on a fee of £300 when I should only have paid on a fee of £250. I am therefore due a refund of tax and NIC on £50 for this one transaction. The refund due on all my transactions between 1 April 2004 and 31 January 2010 must be very substantial and must be brought into account. It must be very clear to any fair minded person that it is me who has been very substantially defrauded by HMRC.”

35 3. Mr Argent had also in his initial grounds of appeal referred to his understanding that HMRC under s.67 VATA had the power to impose a penalty of between 5% and 15% of the net tax due between the date notification was required and the actual date of notification. Additionally he regarded the review officer as being biased.

40 4. At the outset of the hearing Mr Argent informed the Tribunal that he was withdrawing his appeal, but there was a certain ambiguity in this statement and we have found his grounds of appeal somewhat unusual. We informed him that we would

not treat this purported withdrawal as effective and that we would hear HMRC's evidence. We took this course principally without allowing any mitigation. Mr Argent chose to remain in the hearing room but effectively took no part in the proceedings.

## 5 The Facts

5. The brief facts are that Mr Argent had started in business as an accountant on 6 April 1977, and was registered for VAT between 5 April 1977 and 1 January 1997. On his self-assessment returns for years ended 5 April 2003 to 5 April 2009 Mr Argent had stated his turnover and accounting periods as follows (VAT Registration thresholds indicated below were added by HMRC):

| <b>Year ended</b> | <b>Turnover</b> | <b>Accounting period</b>     | <b>VAT registration threshold)</b> |
|-------------------|-----------------|------------------------------|------------------------------------|
| 5 April 2003      | £53,746         | 1 August 2001 – 31 July 2002 | (£55,000)                          |
| 5 April 2004      | £73,007         | 1 August 2002 – 31 July 2003 | (£56,000)                          |
| 5 April 2005      | £84,476         | 1 August 2003 – 31 July 2004 | (£58,000)                          |
| 5 April 2006      | £104,583        | 1 August 2004 – 31 July 2005 | (£60,000)                          |
| 5 April 2007      | £126,775        | 6 April 2006 – 5 April 2007  | (£61,000)                          |
| 5 April 2008      | £104,792        | 6 April 2007 – 5 April 2008  | (£64,000)                          |
| 5 April 2009      | £84,040         | April 2008 – 5 April 2009    | (£67,000)                          |

6. Upon reviewing Mr Argent's business records for the period to 5 April 2006 HMRC's caseworker, Officer Hindocha noted that the invoices recorded an amount of VAT. Upon checking with a colleague it was discovered that Mr Argent had de-registered for VAT in 1997.

7. Officer Hindocha telephoned Mr Argent on 7 July 2008 and he referred on that occasion to his mother being ill but informed her he would bring his VAT returns up-to-date as soon as the direct tax enquiry was completed. He also said that he had de-registered for VAT and could not remember his number.

8. By a letter dated 3 November 2009 Mr Argent was informed that HMRC had reviewed his returns and discovered that he had exceeded the VAT threshold during the year ended 5 April 2004 and accordingly he should have registered for VAT during the year ended 5 April 2004. Mr Argent then completed and submitted an application for VAT registration dated 23 November 2009, received by HMRC on 25 November 2009.

9. HMRC by a letter dated 23 December 2009 informed Mr Argent that he was liable to a penalty under s.67 VATA for the period 1 April 2004 to 24 November 2009 and invited him to provide his net VAT liability for the period which he subsequently did by a letter dated 11 January 2010. He submitted a VAT return dated 23 February 2010 which covered the period 1 April 2004 to 31 January 2010 and showed the following amounts:

|   |   |            |
|---|---|------------|
|   | Total VAT due:  | £86,670.16 |
|   | VAT reclaimed in this period on purchases and other inputs: | £524.49    |
| 5 | Net VAT to be paid to HMRC:                                 | £86,145.67 |

10. By a letter dated 22 March 2010 to Officer Hindocha Mr Argent provided the following figures and stated that his turnover on the self-assessment returns had been overstated as it was declared on a VAT inclusive basis.

| Year         | Sales per my Accounts | VAT Included   | Net sales - VAT excluded |
|--------------|-----------------------|----------------|--------------------------|
| 2005         | £84,476               | £12,582        | £71,894                  |
| 2006         | £104,583              | £15,576        | £89,007                  |
| 2007         | £126,775              | £18,881        | £107,894                 |
| 2008         | £104,792              | £15,607        | £89,185                  |
| 2009         | £84,040               | £11,998        | £72,042                  |
| <b>Total</b> | <b>£504,666</b>       | <b>£74,644</b> | <b>£430,022</b>          |

11. Subsequently a VAT Local Compliance Officer Chaudhary contacted Mr Argent and advised him that once the figures on the VAT return were agreed, she could review the self-assessment returns. Mr Argent was subsequently advised that an inquiry under Public Notice 160 was being conducted and he was invited to attend a meeting. This he declined to do. The implications of this refusal were explained to him in a letter dated 19 May 2010 by which various documents and information were requested. On 26 May 2010 Mr Argent telephone Officer Chaudhary and said he had already provided those documents and that information, and that his VAT date of registration and declarations had been checked. He named a number of Officer Hindocha's colleagues. Officer Chaudhary checked and it appears that the information provided by Mr Argent may have been supplied by him because she then informed him that she was not covering the ground previously covered with those officers and repeated her request for the documents and information.

12. By a letter dated 3 July 2010 Mr Argent wrote to Officer Hindocha setting out his past dealings with HMRC.

13. Officer Chaudhary again requested the documents and information and sent a Notice under paragraph 1 Schedule 36 Finance Act 2008 requiring Mr Argent to provide the information and the documents. By a letter dated 2 August 2010 Mr Argent asked for any subsequent inquiry to be conducted by a senior officer. A considerable amount of further correspondence followed in which Mr Argent made various complaints and ultimately in August 2010 said he would not be providing the documents and information required. This correspondent was passed to HMRC's complaints team who upheld the actions of the two officers.

14. In October 2010 Mr Argent was warned that a penalty would become chargeable if he did not comply with the Notice. When he failed to do so, on 15 December 2010 Mr Argent was advised that a £300 penalty was payable.

5 15. By a letter dated 11 November 2010 Officer Chaudhary outlined to Mr Argent her concerns about how some items had been treated on his working papers, particularly in relation to turnover, effective date of registration, bad debts and creditors, and invited his comments.

10 16. After further communication between Mr Argent and Officer Chaudhary, on 7 March 2011 Officer Chaudhary issued an assessment under s.73 of the VATA. In making this assessment Officer Chaudhary had estimated the under-declaration of VAT based on the records for the year ended 5 April 2006 and all the other information available to her. She had concluded that the turnover was VAT  
15 exclusive. Mr Argent had disputed this in earlier correspondence and maintained that his turnover was VAT inclusive and the accounts provided to Officer Hindocha should be ignored. He did not comment on the bad debts or the closing VAT creditor amounts which had been taken into account by Officer Chaudhary.

20 17. Also on 7 March 2011 Officer Chaudhary issued a civil evasion penalty in the sum of £122,939 which was calculated on the basis of the £83,968.75 output tax which Mr Argent had notified to HMRC for the period 1 April 2004 to 24 November 2009 plus £38,971 which was the amount of the assessment. She made no allowance for any mitigation. Further to a statutory review, the penalty decision was reduced to  
25 £122,447.27 to take into consideration the input tax of £491.73 also notified by Mr Argent. Upon review the s.73 assessment was upheld.

30 18. Having heard evidence from both Officer Hindocha and Officer Chaudhary, and having heard nothing by way of argument from Argent, we decided that in the circumstances given the lack of further information available to Officer Hindocha, the assessment had been made to best judgment and the appeal with regard to it was dismissed.

35 19. We considered the imposition of the penalty and, whilst we considered that as an accountant registered with the Institute of Chartered Accountants in England and Wales as from at least March 2007, Mr Argent would be expected to comply with both the requirement to be registered for VAT and to provide any documents and information when it was requested by HMRC, we also took into consideration however the fact that Mr Argent was very elderly (in his mid-80s at the time of the  
40 hearing) and that he had, after an initial failure to respond, subsequently continually responded to communications from HMRC and had, at an earlier stage, provided his documents and papers to HMRC, albeit to a different officer. From the correspondence it appears that Mr Argent believed that he had provided all the necessary documents to earlier officers dealing with his case, and he appeared truly to  
45 believe that the amounts provided on his self-assessment returns were VAT inclusive. In the circumstances, we announced at the hearing that we would allow the appeal to the extent that the penalty was reduced by 20%. We add that, although Mr Argent had

5 taken no part in the hearing itself, at the end, after we had announced our decision, he appeared confused about whether or not he still was obliged to pay anything further to HMRC. To clarify matters for him, our Decision leaves Mr Argent with the obligation to pay the amount of the assessment, which was in the sum of £38,971 and the reduced sum of £97,957.82 in respect of the penalty.

10 20. 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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**JUDGE J C GORT  
TRIBUNAL JUDGE**

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**RELEASE DATE: 29 April 2013**