



**TC03203**

**Appeal number: TC/2013/04270**

***TYPE OF TAX – VAT – REGISTRATION THRESHOLD EXCEEDED –  
MINIMUM PENALTY IMPOSED – WHETHER REASONABLE EXCUSE? - NO  
– F.A. 2008 SCHEDULE 41 – APPEAL REFUSED.***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**JOSE GONZALEZ  
t/a GONZALEZ JOINERY AND BUILDING**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE KENNETH MURE QC  
MR LESLIE BROWN, LLB SOLICITOR**

**Sitting in public at North Shields on 5 November 2013.**

**The Appellant in person.**

**The Respondent was represented by Mrs Oliver, Officer of HMRC.**

## DECISION

1. This appeal relates to a penalty of £952 imposed on the Appellant Mr Gonzalez for his failure to register timeously for VAT. Mr Gonzales is a small builder with an  
5 impeccable record of tax compliance. He himself volunteered his exceeding the annual threshold, then £77,000, in April 2011, and it is accepted that the failure was not deliberate or concealed. The disclosure was made over twelve months late: while due on 30<sup>th</sup> May 2011, it was not made until September 2012. The minimum penalty, being 10% of tax due, was imposed.

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2. Mr Gonzalez explained that he was aware of the registration level. He had not appreciated that the calculation was made by reference to a “rolling” year, rather than a fixed year, from April to March. He had undertaken two relatively large contracts, for which he had engaged two employees on a short-term basis. The scale of his  
15 business is modest. His personal drawings are about £1,500 per month, which just about meets the mortgage repayment due on his house. His wife works. At the relevant time he was experiencing financial difficulties arising from the re-mortgaging of his house. He has had to run down his business because of poor trading and to lay off his employees. The Appellant had changed his accountant at about the relevant  
20 time and his new accountant had advised him that the registration threshold had been exceeded.

3. We found Mr Gonzalez an entirely credible and sincere witness. He admitted quite candidly that he was aware of the registration level. He explained quite simply  
25 that “he had taken his eye off the ball”. He personally has had to meet the VAT due of £9,822. He cannot recover this from his customers.

4. Mr Gonzalez submitted that in these circumstances he had a *reasonable excuse* and invited us to allow the Appeal.

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5. In reply Mrs Oliver argued that *reasonable excuse* for the purposes of F.A.2008, Schedule 41, was strictly construed and did not extend ordinarily to personal financial difficulties or reliance on a third party. (We note the terms of para 20 thereof). We have considerable sympathy for Mr Gonzalez. Quite apart from any penalty he has to  
35 bear personally the unexpected VAT liability. He cannot seek recompense from any of his customers. Notwithstanding we have to pay regard to the limited scope prescribed in construing *reasonable excuse* in this context. This was an entirely innocent mistake on the part of Mr Gonzalez as is reflected in the minimum penalty being imposed, but the responsibility for complying with registration rules falls on the  
40 tax payer. We consider that we have no alternative but to dismiss the Appeal and confirm the penalty of £958 imposed.

6. This document contains full findings of fact and reasons for the decision. Any  
45 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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**KENNETH MURE QC  
TRIBUNAL JUDGE**

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**RELEASE DATE: 10 January 2014**