



**TC03855**

**Appeal number: TC/2012/07800**

**National Insurance Class 2 contributions – failure to pay – whether failure to pay attributable to ignorance or error – whether due to failure to exercise due care and diligence – appointment of accountant to deal with all tax matters – accountant failed to correctly advise appellant – appeal allowed**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SEAN MURPHY**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ALASTAIR J RANKIN  
MR JOHN ADRAIN**

**Sitting in public at Tribunals Unit, 3<sup>rd</sup> floor, Bedford House, 16-22 Bedford Street,  
Belfast, BT2 7DS on 19 June 2014**

**Having heard the Appellant in person and Mrs Linda Ramsey and Mrs Lesley  
Crawford for the Respondents**

## DECISION

1. Mr Murphy discovered in 2012 that although he had been registered as self-employed with HMRC since 1995 he had not paid any Class 2 National Insurance contributions not having notified the then Department of Social Security of his self-employment. Mr Murphy had relied on his accountant to attend to all the necessary registrations. When he tried to pay the arrears he was advised that he could only pay for the period from 9 April 2006 unless he could show that his failure to register and pay was due to his ignorance or error and that such ignorance or error was not due to any failure on his part to exercise due care and diligence.

2. The Tribunal decided that it was bound to follow the comments of Lady Justice Arden in *The Commissioners for Her Majesty's Revenue and Customs and John Joseph Kearney* [2010] EWCA Civ 288 where at paragraph 25 she said:

Moreover, it is a basic principle of justice that like cases must be decided in a like manner and so we have to identify the correct approach to determining the presence or absence of due care and diligence.

3. The First-Tier Tribunal Tax Chamber in *Dr Jeremy Schonfield and The Commissioners for Her Majesty's Revenue and Customs* (Appeal number: TC/2011/02613) found that Dr Schonfield before appointing his accountant had exercised due care and diligence by seeking a recommendation as to which accountant was most competent to deal with his tax affairs and as a result it was most unlikely he would research the matter further himself.

4. Mr Murphy had been recommended an accountant who attended with him at three interviews with his bank when he was setting up in practice as a sole practitioner, who assisted him in obtaining approval from his professional body, who arranged for his registration for VAT and dealt with all his tax affairs.

5. HMRC accepted that Mr Murphy's failure to pay Class 2 National Insurance contributions from the commencement of his self-employment on 26 March 1995 was attributable to his ignorance.

6. Following the decision in *Dr Schonfield's* case this Tribunal finds that Mr Murphy's failure to pay Class 2 National Insurance contributions from the commencement of his self-employment to 8 April 2006 was attributable to his ignorance which was not due to his failure to exercise due care and diligence as he had relied on his accountant to advise him on all aspects of his tax affairs.

7. The appeal is therefore allowed

8. 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.

**ALASTAIR J RANKIN  
TRIBUNAL JUDGE**

**RELEASE DATE: 31 July 2014**

