



TC04027

Appeal numbers: TC/2014/01227

INCOME TAX – penalties – s.95 TMA and Sch. 24, FA 2007 – whether tax returns containing admitted inaccuracies were negligently made, or contained careless inaccuracies – found on the evidence that they were, and did – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

HARRIET SHEARD

Appellant

- and -

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

**TRIBUNAL: JUDGE JOHN WALTERS QC
MR DUNCAN McBRIDE**

Sitting in public at Bedford Square. London on 5 September 2014

The Appellant in person

**Mrs N. Newham, Presenting Officer, HM Revenue and Customs, for the
Respondents**

DECISION

1. The Appellant, Ms Sheard, appeals against penalties as follows: a penalty of £1,517 sought to be imposed by the Respondents (“HMRC”) in respect of the tax year 2007/08 under section 95(1)(a) Taxes Management Act 1970 (“TMA”); and penalties of £33.61 and £70.44 respectively, assessed under Schedule 24, Finance Act 2007 (“FA 2007”) in respect of the tax years 2008/09 and 2009/10 respectively.

2. The penalty of £1,517 in respect of the tax year 2007/08 is sought to be charged by HMRC because they consider that Ms Sheard negligently delivered her tax return for that year. The penalties of £33.61 and £70.44 are assessed because HMRC contend that Ms Sheard’s tax returns for the years 2008/09 and 2009/10 both contained inaccuracies leading to an understatement of liability to income tax and the inaccuracies were careless, by reason of Ms Sheard’s failure to take reasonable care.

3. We heard oral submissions from Ms Sheard and from Mrs Newham (who appeared for HMRC). Ms Sheard was not cross-examined by Mrs Newham. We also had a bundle of documents before us. From the evidence, we find the following facts.

4. Ms Sheard’s occupation is that of a camera operator. She was formerly a client of Christopher Lunn & Company (“CLAC”), a firm of accountants, who advised her in relation to taxation. She acquired ownership of a limited company, which came to be called Haricot Limited (“Haricot”), which carried on the business of camera operating and effectively charged out Ms Sheard’s services. Ms Sheard was the director of Haricot and received director’s fees and dividends from the company.

5. Ms Sheard provided the following information to HMRC, which we find to be correct. Haricot was formerly called Yazoo TV + Film Ideas Limited (“Yazoo TV”). It was incorporated under this name and allotted the number 6513118 on 25 February 2008. The change of name from Yazoo TV to Haricot took place on 12 December 2008. Haricot issued its first invoice on 10 January 2009 (to MTV Networks Europe) charging £761.25 plus VAT for camera operator time (presumably Ms Sheard’s services) over the weekend of 10-11 January 2009.

6. We also have in the bundle an invoice from CLAC to Ms Sheard dated 30 September 2008 charging £270 plus VAT for professional services described as “New Limited Company Set-up Costs”.

7. Abbreviated Accounts for Haricot Limited (including a director’s report) covering the period from 25 February 2008 to 31 March 2009 were prepared and approved and signed by Ms Sheard as director of Haricot on 20 September 2009. Shortly thereafter they were submitted to HMRC.

8. The director’s report notes that Ms Heard was appointed as a director of 26 February 2008, the day after the incorporation of the company as Yazoo TV. We find that this is an incorrect statement. We find that she was appointed a director of the company no earlier than September 2008. The profit and loss account of Haricot for

the period from 25 February 2008 to 31 March 2009 shows turnover of £83,995 and operating profit on ordinary activities before taxation of £55,292.

5 9. On 14 January 2009 (four days after the date of the first invoice issued by Haricot) Ms Sheard's tax return for the year 2007/08 was filed on-line. We have a copy printout of that return which shows pay from her employment with Haricot (for the year 2007/08) as £2,235.00. Thus it was being represented in that tax return that Ms Sheard received £2,235 in employment income from Haricot in a period before the time at which we find she was appointed a director of the company (or had anything to do with it).

10 10. There is with our papers the copy of a note, dated 1 September 2009, taken by Zari, apparently an accountant working with CLAC, after a meeting with Ms Sheard. Various matters in connected with her tax affairs are mentioned, including Ms Sheard's insistence that the cost of gym membership should be claimed as an expense in her sole trader's accounts. There is also mention, which may be significant, that
15 Zari had sent Ms Sheard an email 'regarding the shifting of invoices that she needed to issue'.

20 11. Mrs Newham told us that HMRC had examined the tax affairs of several clients of CLAC and had opened enquiries into tax returns prepared by CLAC finding errors in the areas of apportionment of income between entities and inflated or incorrect expense claims.

25 12. On 9 July 2010, HMRC sent out a standard letter to persons identified as clients of CLAC. One of those written to was Ms Sheard. It informed her that on 2 June 2010 officers from HMRC's Criminal Investigation Group carried out a search of CLAC's business premises under a search warrant and that because of the criminal investigation HMRC might have to carry out a check of her tax returns. Further information was promised by 20 August 2010.

30 13. A standard letter dated 17 September 2010 was sent by HMRC to clients of CLAC. It informed them that information obtained to that date indicated that tax returns submitted to HMRC by CLAC may not be correct for a number of reasons including incorrect and excessive claims for various listed types of expense and omissions or understatements of income or gains, private expenditure claimed as a business expense, retrospective creation of a limited company or partnership or sole trade, retrospective apportionment of income and expenses between limited companies, partnerships and sole trades and false declaration to HMRC of self-
35 employed status.

14. It also informed the recipients of the letter that in due course their tax returns would be checked and that

'if you now think your Returns may be incorrect, or any of the reasons outlined above may apply, you should write to me or call me on the above telephone number quoting [a reference]'

40 15. The letter added:

'If you believe there may be irregularities in your Tax returns and you do not use this opportunity to make a full disclosure to HMRC by 30 November 2010, any irregularities in your Tax Returns that are subsequently identified will be dealt with either by criminal or civil procedures open to HMRC depending on the nature of those irregularities.'

5 16. On 30 November 2010, HMRC sent out another standard letter informing the recipients that HMRC had decided to cease to deal with CLAC as an agent or representative 'for any of our customers' (i.e. taxpayers). CLAC had been given 28 days to make representations but clients were being informed by HMRC so that they should have as much notice as possible to find a new representative to deal with their tax affairs. The letter also informed recipients that the deadline for contacting HMRC to notify a disclosure had been extended to 28 February 2011.

17. On 29 July 2011, HMRC sent another standard letter to clients of CLAC. It informed them that following a successful application for judicial review by CLAC, representations had been made by CLAC, but that after careful consideration of those representations HMRC had decided to cease to deal with CLAC as a tax agent. The letter notified the recipients that:

20 'I have noted that to date you have not contacted me with the intention of making a full disclosure. I will now be checking your Tax returns and if I identify any irregularities than I will deal with those matters either by criminal or civil procedures open to HMRC depending on the nature of those irregularities.'

18. The first letter with our papers which is addressed by HMRC to Ms Sheard personally is dated 24 February 2012. The inspector (Mr Quinn) informed Ms Sheard that he had checked her tax returns and that the check had identified potential irregularities which may give rise to additional tax liabilities and a penalty charge. The irregularities included incorrect apportionment of income between entities and inflated/incorrect expense claims. He invited Ms Sheard to give an explanation.

19. There was a telephone conversation between Ms Sheard and Mr Quinn and, in consequence, Ms Sheard wrote the letter dated 22 May 2012 in which she told Mr Quinn that she had looked into her accounts and though her understanding of them was very limited she had done her best to investigate the points required by HMRC. She then gave the information regarding the incorporation of Yazoo TV and change of name to Haricot which we have noted above. She also enclosed a copy of the first invoice issued by Haricot and various other documents, noting that:

35 'it appears that Christopher Lunn have claimed for me as a company from February 2008. I am unaware whether this action is incorrect, inappropriate or illegal but it does seem to have been the case'

20. She also included details of the payments made by her to CLAC in the 3 years when she was a client. These totalled £1,419. When she compared this figure with the figure of £2,780 claimed as accountancy fees for tax purposes she concluded that :

40 'it seems the accountancy fee have [sic] been overstated.'

21. As to the matter of incorrect apportionment of income between entities and other inflated/incorrect expense claims, she stated that she had attempted to understand

these points but they were beyond her capability and would require professional assistance. As she was not able to afford that expense, she left it to HMRC to investigate further, stating that she would very much like to resolve the matter as soon as possible.

5 22. Mr Quinn's investigations showed that the turnover relating to Ms Sheard's sole
trade in the year 2007/08 should have been £44,535, but in fact only a little over
£15,000 had been declared, the balance being credited to Haricot's account. An
adjustment on a similar basis was also required for 2008/09. As to inflated/incorrect
10 expenses, gym membership was singled out by Mr Quinn, as was an escalation in use
of home as office expense following CLAC's appointment, as well as various other
particularised items of expense (including accountancy fees).

23. An additional issue was undeclared rental income in the tax year 2009/10. In
March 2009, Ms Sheard started to rent out a room at £550 per month, but included no
reference to this income in her tax return for the year 2009/10.

15 24. Correspondence passed between Mr Quinn and Ms Sheard in which the various
points in dispute were discussed and arguments were exchanged. It is sufficient for us
to say that it appears from the correspondence that Ms Sheard was entirely candid and
straightforward in her dealings with HMRC following her receipt of their letter dated
24 February 2012. Her 'continued cooperation' was noted with thanks by Mr Quinn.
20 She also made payments on account of her additional tax liabilities and ultimately all
the necessary adjustments to her returns were agreed and the resulting tax and interest
was paid. The only issue remaining between Ms Sheard and HMRC was the position
on penalties.

25 25. Ms Sheard submitted that the bulk of what she was found to have underdeclared
related to the back dating of Haricot and inflated accountancy fees in 2007/08. She
argued that she was completely unaware that CLAC had prepared her accounts
wrongly in these respects, and she therefore thought that CLAC were responsible and
should be liable for any penalties. CLAC had set up Haricot and she was unfamiliar
with the issues involved and she submitted that it is unreasonable to suggest that she
30 should have known what was happening or that she should have seen and understood
how her tax returns had been incorrectly completed. She added that she trusted
CLAC as a professional adviser with many clients who employed them in good faith,
believing that they would act within the law and HMRC guidelines. She also
complained, in relation to the smaller penalties for 2008/09 and 2009/10 that HMRC
35 determined and calculated penalties in a 'vague and unclear way' and she should not
be liable for penalties which were not 'transparent'.

26. In relation to the tax year 2007/08, the penalty is raised under the former
legislation, section 95 TMA (which was replaced with effect from 2008/09 by the
regime set out in Schedule 24, FA 2007).

40 27. Under section 95 TMA, the issue is whether Ms Sheard negligently delivered her
tax return for the year 2007/08. Notwithstanding her contention that CLAC was
responsible for the irregularities in that return, we consider that, as a reasonable

taxpayer, she should have noticed, and queried, and rejected, a reallocation of almost £30,000 of turnover (two thirds of the total) from her sole trader activity in that year to a limited company acquired by her midway through the following tax year and whose first invoice had been issued on 10 January 2009. Also, we consider that the inflation of amounts claimed for accountancy fees was a simple matter that she could, and should, have noticed and corrected.

28. We therefore hold, in relation to the penalty for the year 2007/08 that it was properly charged because the return had been negligently delivered by Ms Sheard. The penalty chargeable under section 95 TMA could have been as much as 100% of the tax in issue, but HMRC had a discretion to reduce it, taking into account the taxpayer's disclosure, her cooperation and the size and gravity of the default. In the event HMRC have allowed an 85% discount for these factors, which we uphold as being reasonable in all the circumstances.

29. For the years 2008/09 and 2009/10, the penalties are charged under Schedule 24, FA 2007. There is an intricate procedure laid down in that Schedule. The penalty chargeable is in principle 30% of the potential lost revenue, in a case of careless (not deliberate) inaccuracy (see: paragraph 4(2)(a), Schedule 24, FA 2007). However, reductions may be given by HMRC for the quality of disclosure, and, in the calculations, the maximum reduction has been given, reducing the penalties from 30% of the potential lost revenue (which was £693) to 15% of that amount. Again, we consider Ms Sheard to have been responsible (that is, she failed to take reasonable care) for careless inaccuracies in her returns for the tax years 2008/09 and 2009/10, particularly in relation to the allocation to Haricot of income accruing before January 2009 and the omitted rental income. We regard the calculation of the penalties to have been reasonable in all the circumstances and we uphold them.

30. The HMRC officer concerned (Mr Ellsbury) considered suspension of the penalties charged under Schedule 24, FA 2007. He rejected that course because Ms Sheard demonstrated a lack of cooperation in not providing a disclosure or reviewing her tax affairs between September 2010 and February 2012, despite repeated HMRC requests. He also took into account the fact that when Ms Sheard's disclosure was received in May 2012, significant adjustments were required to arrive at the final figure of settlement and concluded that these were indications that she was not likely to comply with any penalty suspension that could be set.

31. We did not hear evidence from Mr Ellsbury, and Mrs Newham accepted in argument that this might have been a suitable case for suspension of penalties. However, suspension was only available under the Schedule 24, FA 2007 penalty regime, and therefore only in relation to the small amount of penalties charged for 2008/09 and 2009/10. We considered whether, on the evidence, we should find that the decision not to suspend these penalties was "flawed" in the applicable judicial review sense but concluded that we should not do so.

32. For these reasons, we uphold the penalties and dismiss Ms Sheard's appeal.

33. 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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**JOHN WALTERS QC
TRIBUNAL JUDGE**

RELEASE DATE: 24 September 2014

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