



**TC04089**

**Appeal number: TC/2014/01255**

*Information Notice – penalties for non-compliance – reasonable excuse –  
Finance Act 2008 Sch 36 paras 1, 39, 40 & 45 – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**VICTOR TEE**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE MALACHY CORNWELL-KELLY  
MR CHARLES BAKER FCA**

**Sitting in public at Southampton Appeals Service, Barrack Block, 83-  
85 London Road, Southampton on 14 October 2014**

**The taxpayer in person**

**Ms Gill Cawardine of HMRC for the Crown**

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**DECISION***Introduction*

1 This appeal is against penalties for non-compliance with an information notice issued in the course of a Revenue enquiry.

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*Facts*

2 Mr Tee was interviewed under caution by police officers in the presence of officers of New Forrest District Council on 29 January 2008 and 31 March 2008. In the course of both interviews he admitted to earning some  
15 £80,000 yearly and to not having paid any tax or national insurance contributions on those earnings. It is not clear what tax years are involved.

3 On 21 January 2010, Mr Tee was sentenced by Southampton Crown Court to five years' imprisonment for his part in various benefit and mortgage frauds. On 28 February 2013, the Revenue wrote to Mr Tee  
20 saying that he had been issued with self-assessment tax returns for 2009-10 and 2011-12 but had not filed them. The Revenue indicated that they wished to meet Mr Tee to discuss these matters, and to explore also whether he should be registered for VAT.

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4 Mr Tee replied by telephone and declined a meeting, but said that he would reply to questions by correspondence; he claimed that he had not traded as a financial adviser since January 2010 and, while he was due to receive a state pension from June 2013 when he became 65, his income  
30 consisted only of two occupational pensions. The Revenue maintained that they had information indicating that Mr Tee had traded as a financial adviser prior to January 2010 and sought information about it.

5 Mr Tee did not reply and an information notice was issued to him under paragraph 1 of Schedule 36 to the Finance Act 2008. The notice demanded the following:

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Full details of your income as a Financial Advisor from the date you commenced to 31 December 2009.

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Details of payments made to workers from the date you commenced as a Financial Advisor to 31 December 2009.

The names and addresses of any workers you engaged from when you commenced in business to 31 December 2009.

6 Mr Tee did not provide any information in response to this notice. Being awarded a penalty of £300 pursuant to paragraph 39 of Schedule 36 on 29 July 2013, Mr Tee appealed to the Revenue against it on the ground that "I did not receive a tax return at the correct time. Moreover, I don't believe  
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any tax is payable or capable of being paid.” The Revenue replied that this was not a valid ground of appeal and invited compliance with the notice.

7 Nothing further was heard from Mr Tee, so daily penalties totalling £600  
5 were awarded on 25 October 2013 under paragraph 40 of Schedule 36 to the Finance Act 2008. Mr Tee again appealed to the Revenue, this time on the ground that “Your decision is inconsistent with recent correspondence from HMRC and a self-assessment statement issued.”

8 The Revenue again replied that this ground was invalid, and Mr Tee  
10 suggested reference to the tribunal. On 15 February 2014, an appeal to the tribunal was lodged. The grounds of appeal may be summarised by saying that Mr Tee claimed that he had never traded as financial adviser, which the Revenue would have realised had they checked with the Financial Services Authority with whom he had never been registered, and the that Revenue  
15 had accepted that self-assessment returns for 2009-10 and 2011-12 were not required. Mr Tee sought the cancellation of the penalties and the end of the inquiry.

9 At the hearing, it was clarified that the source of the Revenue’s  
20 information was the police interviews to which we have referred. Mr Tee said, for the first time, that the reason he had not provided any information in response to the notice was that he had none: all his papers were still with the police, who had returned nothing to him. In a brief adjournment, it was not possible to verify this claim.

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10 We put it to Mr Tee that he had been as uncooperative with the Revenue as possible and that this explanation could have been offered at the outset. His reply was that since the Revenue wouldn’t reveal the source of their information, he saw no reason to be forthcoming. As it was, he claimed a  
30 reasonable excuse for not complying with the information notice.

### *Legislation*

11 Schedule 36 to the Finance Act 2008 provides as follows:

#### 35 *Power to obtain information and documents from taxpayer*

1(1) An officer of Revenue and Customs may by notice in writing require a person (“the taxpayer”)—

(a) to provide information, or

(b) to produce a document,

40 if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position.

(2) In this Schedule, “taxpayer notice” means a notice under this paragraph.

#### 45 *Penalties for failure to comply or obstruction*

39(1) This paragraph applies to a person who—

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

(b) deliberately obstructs an officer of Revenue and Customs in the course of an inspection under Part 2 of this Schedule that has been approved by the  
50 tribunal.

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

(3) The reference in this paragraph to a person who fails to comply with an information notice includes a person who conceals, destroys or otherwise disposes of, or arranges for the concealment, destruction or disposal of, a  
55 document in breach of paragraph 42 or 43.

*Daily penalties for failure to comply or obstruction*

5 40(1) This paragraph applies if the failure or obstruction mentioned in paragraph 39(1) continues after the date on which a penalty is imposed under that paragraph in respect of the failure or obstruction.

(2) The person is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure or obstruction continues.

*Reasonable excuse*

10 45(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]<sup>1</sup> that there is a reasonable excuse for the failure or the obstruction of an officer of Revenue and Customs.

(2) For the purposes of this paragraph—

15 (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,

(b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure or obstruction, and

20 (c) where the person had a reasonable excuse for the failure or obstruction but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied, or the obstruction stops, without unreasonable delay after the excuse ceased.

25 *Submissions and conclusions*

12 We have indicated the positions Mr Tee has adopted at the various stages of this simple matter, and his response to the suggestion that he has been uncooperative. For the Revenue's part, Ms Cawardine was willing to examine further Mr Tee's claim that all his documents were in the  
30 possession of the police, and that he could not therefore comply with the information notice, and she asked for an adjournment accordingly.

13 We decided in the circumstances that, although we could see no fault in the procedure adopted by the Revenue, the terms of the information notice  
35 itself were vague and unlimited in point of time and that it was therefore bad for uncertainty. It follows that there would be very likely to be a reasonable excuse for not complying with it, whether or not Mr Tee's claim is verified. In the circumstances therefore, we concluded that the most satisfactory way of dealing with the matter would be to allow the  
40 appeal and leave it to the Revenue to start afresh if so advised. Clearly, any further information notice would need to be more precise, at least as to its time coverage.

*Further appeal rights*

45 14 This document contains the full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply in writing 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 the tribunal no later than 56 days after this  
50 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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**MALACHY CORNWELL-KELLY  
TRIBUNAL JUDGE**

**RELEASE DATE: 21 October 2014**

