



TC04426

Appeal number: TC/2014/05682

INCOME TAX – information notice-enquiry-application for closure notice-non-compliance with information notice-penalties-appeal against penalties

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SACHIN COOSNA

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE MARILYN MCKEEVER
MR IAN ABRAMS**

**Sitting in public at Fox Court, 14 Grays Inn Road London WC1X 8HN on 29
April 2015**

Mr Beecham Koonjah of Noviscom Limited for the Appellant

Ms Harry Jones, for the Respondents

DECISION

1. *Introduction*

5 2. This case concerns the application for a closure notice in relation to an enquiry which HMRC opened into Mr Coosna's tax returns for the years ending 5 April 2012 and 5 April 2013 for the purpose of checking the accuracy of those returns. In addition, Mr Coosna appealed against penalties imposed for the failure to comply with an information notice issued by HRMC under Schedule 36, Finance Act 2008.

10 3. Mr Coosna did not attend the hearing but was represented by Mr Koonjah.

4. *The Law and preliminary issues*

5. The law was not in dispute.

6. Section 9A Taxes Management Act 1970 ("TMA") provides:

15 "(1) An officer of the Board may enquire into a return under section 8 or 8A of this Act if he gives notice of his intention to do so ("notice of enquiry")—

(a) to the person whose return it is ("the taxpayer"),

(b) within the time allowed.

(2) The time allowed is—

20 (a) if the return was delivered on or before the filing date, up to the end of the period of twelve months after the day on which the return was delivered;

(b) if the return was delivered after the filing date, up to and including the quarter day next following the first anniversary of the day on which the return was delivered;"

25 7. By a letter dated 4 April 2014, The Specialist Investigations Technical Team at HMRC opened an enquiry into Mr Coosna's tax return for the year ended 5 April 2012. This return was submitted late, on 21 January 2014, so s9A(1)(b) applied and the enquiry was opened well within the time limit. We did not see the letter to Mr Coosna himself, but only the letter addressed to his accountant which stated that HMRC would be looking at the whole of the return so that it could check it is accurate and complete. A schedule was attached to the letter setting out the information and documents that HMRC requested Mr Coosna to provide to help them with their check.
30 The information and documents were to be provided by 9 May 2014.

8. By a letter dated 24 April 2014, the Specialist Investigation Technical Team opened an enquiry into Mr Coosna's tax return for the year ended 5 April 2013. This had been submitted before the filing date and the enquiry was again made within the time limit. This letter referred to the existing enquiry and stated that no further
5 information was required at that stage and that the letter had been sent in order to protect HMRC's position.

9. Section 28A TMA provides:

“(1) An enquiry under section 9A(1) of this Act is completed when an officer of the Board by notice (a “closure notice”) informs the taxpayer that he has completed his
10 enquiries and states his conclusions.

In this section “the taxpayer” means the person to whom notice of enquiry was given.

(2) A closure notice must either—

(a) state that in the officer's opinion no amendment of the return is required, or

(b) make the amendments of the return required to give effect to his conclusions.

15 (3) A closure notice takes effect when it is issued.

(4) The taxpayer may apply to the tribunal for a direction requiring an officer of the Board to issue a closure notice within a specified period.

(5) Any such application is to be subject to the relevant provisions of Part 5 of this Act (see, in particular, section 48(2)(b)).

20 (6) The tribunal shall give the direction applied for unless ...satisfied that there are reasonable grounds for not issuing a closure notice within a specified period.”

10. Mr Coosna applied for a closure notice in respect of the enquiries into his tax returns for 2012 and 2013. The tribunal must direct HMRC to issue a closure notice unless HMRC shows that there are “reasonable grounds” for not issuing a closure
25 notice.

11. At the hearing, Mr Coosna's representative, Mr Koonjah applied for a postponement of the hearing on the basis that Mr Coosna only found out about the hearing on the day before it was to be held and so had not had a chance to obtain proper advice or provide a witness statement.

12. We noted that the Notice of Hearing had been emailed to Mr Coosna on 30 January 2015 as well as sent to him in the post and Ms Jones produced a copy of an email which HMRC had sent to Mr Coosna on 14 April, referring to the hearing and its date in the heading. Ms Jones also stated that HMRC had spoken to Mr Coosna about the email subsequently. We were therefore not persuaded that Mr Coosna had not had adequate notice of the hearing and, in any event, he had had ample time to obtain representation and could have filed a witness statement at any time.

13. We determined to go ahead with the hearing , upon which Mr Koonjah informed us that his instructions were to withdraw the application for the closure notice and to state that Mr Coosna would provide the information requested. It was not clear whether Mr Coosna would provide all or only some of the information.

14. The only issue remaining before the tribunal is therefore the question of the appeal against the penalties for failing to comply with the information notice.

15. Paragraph 1 of Schedule 36 Finance Act 2008 (“Schedule 36”) provides

(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,

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.

16. A notice issued in accordance with paragraph 1 is known as an “information notice” and paragraph 6(2) of Schedule 36 provides that an information notice may specify or describe the information or documents to be provided or produced.

17. Paragraph 29 of Schedule 36 gives the taxpayer a right of appeal against a taxpayer notice or the requirement to produce information or documents contained in it. There is no appeal against a requirement to produce information which forms part of the taxpayer’s statutory records. An appeal must be made within 30 days beginning on the date the notice is given (paragraph 32 Schedule 36).

18. Paragraph 39 of Schedule 36 provides:

(1) This paragraph applies to a person who—

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

...

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

19. Paragraph 40 continues:

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

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

10 20. Paragraph 45 provides:

“(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 that there is a reasonable excuse for the failure ...

(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 21. Paragraphs 47 and 48 provide a right of appeal to the tribunal against the imposition of a penalty and/or its amount:

22. Under paragraph 47(1)” A person may appeal ... against any of the following decisions of an officer of Revenue and Customs—

(a) a decision that a penalty is payable by that person under paragraph 39, 40 or ..., or

(b) a decision as to the amount of such a penalty.”

5 23. By paragraph 48(1)” Notice of an appeal under paragraph 47 must be given—

(a) in writing,

(b) before the end of the period of 30 days beginning with the date on which the notification under paragraph 46 was issued, and

(c) to HMRC.

10 (2) Notice of an appeal under paragraph 47 must state the grounds of appeal.

(3) On an appeal under paragraph 47(a), that is notified to the tribunal, the tribunal may confirm or cancel the decision.

(4) On an appeal under paragraph 47(b), that is notified to the tribunal, the tribunal may—

15 (a) confirm the decision, or

(b) substitute for the decision another decision that the officer of Revenue and Customs had power to make.”

24. *The facts*

20 25. Mr Coosna is an employee of Venture Pharmacies Ltd.. His tax return for the year to 5 April 2012 showed employment income of £29,306 (plus benefits) from Venture Pharmacies. His return for the year to 5 April 2013 showed employment income of £27,948.75 (plus benefits) from Venture Pharmacies and £2,328.22 director’s fees from a company called Qualapharm Limited. Mr Coosna declared no other income.

25 26. The accounts of Qualapharm for the year ended 31 December 2011 show that the company commenced trading with effect from 4 January 2011. Mr Coosna became a director of the company on 1 May 2011. The company’s Annual Return shows that Mr Coosna became the sole shareholder of the company on 31 May 2011. Qualapharm owns 100% of a German subsidiary, PharmaHaus Direkt GmbH.

27. Miss Elizabeth Lundy, an Officer of HMRC within the Specialist Investigation team carried out a check of Mr Coosna's self-assessment return. There were discrepancies between the accounts of Qualapharm and Mr Coosna's tax returns in relation to loans made by the company and director's salaries.

5 28. In addition, the 2011 company accounts showed that Qualapharm's turnover in the year was £29,578,062 and it had shareholders' funds as at December 2011 of £445,757. The accounts to December 2012 showed increased turnover and shareholders' funds of £43,495,877 and £602,554 respectively.

10 29. Miss Lundy had concerns about Mr Coosna's means to acquire Qualapharm. This led to the letter of 4 April 2014 opening the enquiry into Mr Coosna's tax return for 2012. In addition, Miss Lundy made an informal request for the following information and documents ("the Information").

- 15 • A narrative description of Mr Coosna's role and responsibilities for Qualapharm and confirmation whether he was a signatory on any company bank account.
- A statement as to whether he held any other positions (eg shareholder, director, employee) of any other entity and details of any such position and the entity
- 20 • A schedule of any loans or other benefits received because of holding a position in an entity
- Details of any director's loan accounts including amounts, repayments and evidence of repayments
- A narrative description of his role and responsibilities at Venture Pharmacies
- 25 • Copy sale agreement for the acquisition of Qualapharm showing the cost and date of acquisition and bank statements showing payment of the purchase price
- Bank or building society statements showing the receipt of the employment income from Venture Pharmacies.

30

30. A copy of the letter was sent to Mr Coosna's accountants, Dewanis Chartered Accountants.

35 31. On 24 April Miss Lundy sent the notice of enquiry into Mr Coosna's tax return for 2013 to Mr Coosna and to the accountants, but no further information or documents were requested.

40 32. Miss Lundy made attempts to contact the accountant, but for various reasons, they did not speak until 7 May 2014 when Mr Dewani said that neither he nor Mr Coosna had received the 4 April letter. Copies were faxed to Mr Dewani. On 9 May, Mr Dewani sent a fax to Miss Lundy requesting that she send no further correspondence to him as Mr Coosna would be handling the matter himself.

33. On 13 May 2014, Miss Lundy sent Mr Coosna a formal taxpayer notice to provide information and produce documents under schedule 36 (“the schedule 36 notice”). The information and documents requested were identical to the Information. The notice required the Information to be produced by 17 June 2014 and made clear that if the Information was not provided, a penalty of £300 might be charged. The letter also set out Mr Coosna’s rights to appeal against the notice.

34. Also on 13 May, Miss Lundy received an undated letter from Mr Coosna in response to the **informal** request for information sent on 4 April, but received on 7 May. The letter asked for a copy of the compliance risk assessment which had led to the Specialist Investigation team being involved. It stated that Mr Coosna regarded the request for information as indicative of punitive action because of his complaints against HMRC and that it was an abuse of power. He requested that the letter be registered as a formal complaint. This letter was acknowledged on 16 May and a substantive reply promised by 3 June.

35. A reply was sent on 22 May to Mr Coosna responding to the formal complaint and dealing with the other matters raised in Mr Coosna’s letter. Miss Lundy explained that, having reviewed his self-assessment tax returns, she had concerns regarding his means. The letter also stated that “I have treated this letter [Mr Coosna’s letter received on 13 May] as...an appeal against my request for information and documents”.

36. Some confusion seems to have arisen because of the concurrent correspondence in relation to the informal request for information and the formal schedule 36 notice requiring information and documents. Mr Coosna’s letter received on 13 May had been treated as an appeal against the **informal** request for information. It could not have been an appeal against the schedule 36 notice as the notice had not been issued at the time when the letter was written.

37. Mr Coosna did not make any appeal against the schedule 36 notice.

38. Mr Coosna did not respond to the schedule 36 notice and on 27 June, ten days after the deadline for compliance, Miss Lundy issued a penalty notice for £300. The penalty notice made it clear that if the Information was not provided by 26 July, HMRC could charge daily penalties of up to £60 from the date of that letter.

39. Mr Coosna replied on 27 June implying that he had not received the letter of 22 May and enquiring why a penalty had been imposed when HMRC had not yet responded to his letter (received on 13 May). As indicated above, Mr Coosna had confused the correspondence about the informal request with the schedule 36 notice.

40. The letter also appealed against the penalty.

41. Miss Lundy replied on 11 July, enclosing a copy of the 22 May letter. She pointed out that she had still not received the Information required by the schedule 36 notice and stated that if he failed to produce the Information by 26 July, he could face further penalties of up to £60 per day.

42. There was some further correspondence about a possible meeting, but no information or documents were produced. On 6 August 2014 a further penalty notice was issued charging £20 a day from 28 June to 27 July, a total of £600. The notice gave an extended deadline for the provision of the Information of 26 August and warned of further penalties for failure to comply with the notice.

43. Mr Coosna appealed the penalty on 22 August and made a further complaint.

44. On 29 August 2014 a third penalty notice was issued charging £40 a day from 28 July to 25 August 2014, a total of £1,200. Mr Coosna's appeal against this penalty was contained in his application for the closure notice submitted on 17 October 2014. Strictly, this was outside the 30 day time limit, but we were prepared to allow a late appeal.

45. *Submissions*

46. HMRC's submissions are that:

- The schedule 36 notice was validly issued and the Information was reasonably required in order to check Mr Coosna's tax position
- No appeal was made against the schedule 36 notice and the Information requested was not supplied
- Mr Coosna therefore became liable for the initial penalty and further daily penalties for continued non-compliance
- The amounts of the daily penalties were reasonable, starting at a low level and escalating for continued non-compliance
- Mr Coosna had no reasonable excuse for failing to provide the Information

47. Mr Coosna did not expressly state grounds for appealing against the penalties as required by schedule 36, but we infer from his letters and the application for a closure notice that his grounds are as follows:

- In the case of the £300 penalty, that HMRC had not responded to his original letter in relation to the informal request for information
- In the case of the first daily penalty, HMRC had not provided him with the compliance risk assessment and had therefore abused its powers
- The application for the closure notice confused the correspondence relating to the informal request for information and the schedule 36 notice and Mr Coosna considered that, because HMRC had issued the penalty notice in relation to the latter before he had received a reply to the former, HMRC were abusing their authority and the penalties were unreasonable.

48. *Discussion*

49. Under paragraph 47 of schedule 36, a person may appeal against the decision that a penalty is payable and/or the amount of the penalty. Although Mr Coosna did not

state what aspect of the penalties he was appealing, we will assume that he intended to appeal against both the fact that the penalties were imposed and the amount.

50. The jurisdiction of the tribunal in relation to an appeal against the charging of penalties is either to confirm or cancel the decision. In the case of an appeal against
5 the amount of the penalties, the tribunal can either confirm the decision or substitute its own decision, as long as it one that HMRC had power to make.

51. We find that the schedule 36 notice was validly issued. The contrary was not argued and Mr Coosna did not appeal against the notice. In the light of the evidence about Mr Coosna's apparent means and his acquisition of a very substantial business,
10 it was plainly reasonable of HMRC to have concerns about the funds used to purchase Qualapharm and whether Mr Coosna had income which he had not declared in his tax return. It was also reasonable for them to seek information from Mr Coosna about these matters. We cannot regard HMRC's requests for information, formal or informal, as being an abuse of HMRC's powers.

15 52. It is also not disputed that Mr Coosna did not comply with the schedule 36 notice.

53. Accordingly, Mr Coosna became liable for penalties under paragraphs 39 and 40 of schedule 36 and all of the penalties were validly imposed.

54. HMRC gave Mr Coosna fair warning that he would become liable for the penalties and the possible level of the penalties if he did not comply. The amount of
20 the initial penalty is mandatory. The daily penalties could be up to £60 per day. The first daily penalty was £20 a day and the second increased to £40 for continued non-compliance. We do not consider that the imposition of the penalties or the amount of the penalties was unreasonable in the light of Mr Coosna's continuing failure to provide any Information at all.

25 55. Paragraph 45 of schedule 36 provides that a person is not liable to a penalty under paragraph 39 or 40 of schedule 36 if he satisfies HMRC (or on appeal the tribunal) that he had a reasonable excuse for the failure to provide the information or documents specified in the taxpayer notice. HMRC was not so satisfied and neither
30 are we. However unfair Mr Coosna might have felt the information notice to be, that is not a reasonable excuse in law for not complying with it and Mr Coosna's letters did not disclose anything which could amount to a reasonable excuse for non-compliance. Nor did Mr Coosna's representative make any submissions in this regard at the hearing.

56. *Decision*

35 57. For the reasons set out above, we find that the penalties were validly imposed, that they were reasonable in amount and that the Appellant had no reasonable excuse for failing to provide the Information.

58. Accordingly, we confirm HRMC's decision that penalties were payable under paragraphs 39 and 40 of schedule 36 and we confirm HMRC's decision as to the
40 amount of the penalties.

59. We dismiss the appeal.

60. 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.

10

**MARILYN MCKEEVER
TRIBUNAL JUDGE**

RELEASE DATE: 28 May 2015

15