



TC04787

**Appeal number: TC/2015/02547
and TC/2015/02548**

VAT - penalty notice under Para 39 and 46 of Schedule 36 Finance Act 2008 for non-compliance with an Information Notice - whether reasonable excuse - no - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TAN CARS LIMITED and AHMED TANVEER Appellants

- and -

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

**TRIBUNAL: JUDGE: MICHAEL CONNELL
MEMBER: PETER WHITEHEAD**

**Sitting in public at Tribunals Service – Tax, City Tower, 5 – 7 Hill Street,
Birmingham on 20 July 2015**

**The Appellants did not attend and were not represented
Mr Barry Sellars, Officer of HM Revenue and Customs, for the Respondents**

DECISION

The Appeal

5 1. Tan Cars Limited (“TCL”) appeals against an Information Notice under Schedule 36 FA 2008 (TC/2015/03452) and against a penalty notice of £300 under Para 39 and 46 of Schedule 36 Finance Act (“FA”) 2008 (TC/2015/02547). By Direction of the Tribunal on 3 June 2015 the appeals were consolidated under appeal number TC/2015/02547.

10 2. Ahmed Tanveer (“AT”) appeals against an Information Notice under Schedule 36 FA 2008 (TC/2015/03450) and against a penalty notice of £300 under Para 39 and 46 of Schedule 36 FA 2008 (TC/2015/02548). By Direction, the appeals were consolidated under appeal number TC/2015/02548.

3. The Tribunal further directed that the appeals be enjoined and heard together.

15 4. The Appellants did not attend the hearing and were not represented. AKA Chartered Accountants (“AKA”) acting on behalf of the Appellants had indicated prior to the hearing that neither they nor their clients would be attending and therefore the Tribunal was satisfied that the Appellants had been given notice of the time, date and venue of the appeal hearing and that therefore it was in the interests of justice to proceed.

20 Background

5. In letters dated 17 September 2014 and 2 October 2014, HMRC made informal requests for information about TCL’s and AT’s business activities in relation to whether or not they were or should have been registered for VAT. HMRC said the information was required by 2 November 2014.

25 6. On 9 October 2014, AKA replied to HMRC’s letters that in respect of TCL, they had asked their client to provide them with “*its business records to date and once received we will provide the requested information as soon as possible*”. With regard to AT, AKA said that he had ceased trading on 31 May 2011 and that all of his self-assessment Income Tax returns were up to date.

30 7. On 17 October 2014, HMRC wrote to TCL and AT referring to AKA’s letter and informing each that HMRC required a 64-8, ‘Authorising your agent’, form if it wished AKA to act on their behalf when dealing with HMRC.

35 8. On 4 November 2014, as HMRC had not received the information requested in its earlier letters from either Appellant, a Notice to Provide Information (Information Notice), under FA 2008 Schedule 36 Paragraph 1, was issued to each Appellant requesting the information by 4 March 2014. As HMRC had not received a completed 64-8 form from TCL, the Information Notices were only sent to TCL (and not AKA).

9. On 6 November 2014, HMRC scanned onto their system a completed 64-8 form in respect of TCL which AKA say they sent on 30 October 2014, but which HMRC say was not received until 4 November 2014.

5 10. On 12 November 2014 HMRC wrote to AKA informing it that the requested information had not been provided in respect of TCL and enclosed a copy of the Information Notice dated 4 November 2014.

10 11. On 15 December 2014, as HMRC had not received the information requested in the Information Notices (by the specified date of 4 December 2014), they issued a Penalty Notice to each of TCL and AT for £300 (standard penalty) made under FA 2008 Schedule 36 Paragraph 39.

12. On 22 December 2014 on behalf of TCL, AKA wrote to HMRC saying:

15 “Please accept this letter as an appeal against your penalty notice dated 15 December 2014 on the grounds that in our letter dated 9 October 2014 we informed you that we would provide you with the information requested as soon as possible. However, you did not even acknowledge our said letter.

Please note that all the information requested was available and is listed below. We were in fact waiting for a reply from your office. Therefore, we request that you waive your penalty and revoke your notice.

- 20
1. HSBC Bank Control Account for the period from 19/02/2013 to 31/08/2014 for A/C 04756010 along with a copy of the bank statement showing closing balance.
 2. Analysis of HSBC Bank Deposits for the period from 19/02/2013 to 31/08/2014 for A/C 04756010.
 - 25 3. Analysis of HSBC Payments for the period from 19/02/2013 to 31/08/2014 for A/C 04756010.
 4. Expense Schedule for the period from 19/02/2013 to 31/08/2014.
 5. Sales Schedule for the period from 19/02/2013 to 31/08/2014, which also shows purchases and related expenses.

30 From point 5 above you can see that our client should have registered for VAT with effect from 01 September 2013 so please let us know if you want us to complete the VAT Registration Form”.

13. On the same date, 22 December 2014, AKA wrote to HMRC on behalf of AT saying:

35 “Please accept this letter as an appeal against your penalty notice dated 15 December 2014 on the grounds that in our letter dated 9 October 2014 we informed you that our client ceased trading on 31 May 2011, yet you are still requesting information after this date. Furthermore, we also stated in our letter dated 9 October 2014 that our client’s affairs are up to date, which means you just needed to view our client’s SA Income Tax
40 Returns for the information you requested. If you still required any information after

our letter dated 9 October 2014 you should have written back to us but you did not even acknowledge our said letter. Therefore, we request that you waive your penalty and revoke your notice immediately.”

5 14. On 9 January 2015, by which date HMRC had still not received a 64-8 from AT authorising AKA to act on his behalf, Mr Chris Nichols, of HMRC, wrote to AT in response to AKA’s appeal against the Notice of Penalty. Mr Nichols said that AKA had appealed against the penalty on the following grounds:

- “Your agent’s letter dated 09 October 2014 informed HMRC that you ceased trading on 31 May 2011, yet we still requested information after this date.
- 10 • Your agent’s letter also explained that your affairs are up-to-date and that we just needed to view your SA Income Tax returns for the requested information.
- We should have written back to your agent after receiving this letter if we still required information, but we did not acknowledge your agent’s letter.”

15. Mr Nichols responded that:

- 15 • “The information notice requested monthly sales figures from 01/04/09 to 03/09/13. While I appreciate that sales figures could not be provided for months after the business had ceased to trade, information up to the date the business ceased trading could have been provided. No attempt at providing any of the requested information has been made. The information notice also requested the trading address and details
- 20 of any other business involvement - information which was not provided.
- While your completed Self-Assessment returns show your business turnover for a 12 month period, it does not give monthly turnover figures, which was requested. We also requested other information about the business which is not shown on your SA returns. Therefore, the information that was requested was not available to HMRC.
- 25 • After receiving your agent’s letter dated 09 October 2014, Carrie Taylor wrote to you to explain that HMRC needed authorisation for your agent to act on your behalf. A form 64-8 was requested but this has not been received. The letter also explained what information was still required. The information notice issued on 4 November 2014 again advised that the requested information was still outstanding.”

30 He concluded that he saw no reason why [AT] was unable to provide the requested information within the specified timescales and that the penalty notice dated 15 December 2014 still stood.

35 16. On 12 January 2015 HMRC received a 64-8 from AT authorising AKA to act on his behalf, but responded to AKA by saying that the information requested on 4 November was still outstanding; HMRC required monthly turnover figures for the period that AT was trading and also the business/background information that was requested in the questionnaire that had been sent.

40 17. On 22 January AKA responded on behalf of AT saying that he had previously sent form 64-8 to HMRC on 1 June 2011 receipt of which had been acknowledged. He added that he had completed and submitted “on line” 2011-12, 2012-13 and 2013-14

SA Income Tax Returns. The 2012-13 return had resulted in an overpayment of tax in the sum of £62.98 on 31 March 2014. AT had ceased trading in May 2011, and all returns were up to date. He nonetheless enclosed a copy spreadsheet showing AT's sales and expenses adding that AT was trading from home between 1 April 2010 and 31 May 2011.

Appellants' submissions

18. In the Notices of Appeal to the Tribunal TCL's grounds of appeal are:

“On 2 October 2014, HMRC requested information. In our letter dated 9 October 2014 we informed HMRC that we would provide them with the requested information as soon as possible. However, HMRC did not acknowledge our letter. We sent them completed form 64-8 on 30 October 2014 but they did not acknowledge that either. They raised the penalties on 15 December 2014, which we believe is unfair and unjust. The appellant's business records and agent's analysis were available but the appellant was waiting for a reply from HMRC.”

15 AT's grounds of appeal are:

“On 2 October 2014 HM Revenue & Customs requested information and in our letter dated 9 October 2014 the Appellant's agents provided them the information they requested. However, HM Revenue & Customs did not even acknowledge the said letter. Furthermore, the agents sent them completed 64-8 form on 30 October 2014 but they did not acknowledge that either and raised the penalties on 15 December 2014, which we believe is unfair and unjust. Please note that the business record and agent's analysis were also available but the Appellant was in fact waiting for a reply from the office of HM Revenue & Customs.”

HMRC's submissions

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22. At the hearing Mr Barry Sellars for HMRC said that the Information Notice relating to TCL was issued by HMRC on 4 November 2014 and required the Company to provide the requested information by 4 December 2014. TCL did not comply with the Notice and therefore became liable for a Penalty for £300 (standard penalty) under FA 2008 Schedule 36 Paragraph 39. The Penalty Notice was issued on 15 December 2014, so was in time under paragraph 46(2) – “*An assessment of a penalty under paragraph 39 or 40 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty...*”

23. AKA contends that as they did not receive an acknowledgement to their letter dated 9 October 2014 or the completed 64-8 form (said to have been sent to HMRC on 30 October 2014 - the 64-8 was signed by Mr Tanveer for TCL on 3 November 2014, and was received by HMRC on 4 November 2014), they believe that this is sufficient grounds for TCL not complying with the Information Notice by the specified date and therefore HMRC should not have issued the initial Penalty Notice.

24. The fact that AKA had not received an acknowledgement to its letter dated 9 October 2014 or submission of the 64-8 form has no bearing on HMRC's decision to issue the Penalty Notice on 15 December 2014. HMRC could not have directly acknowledged AKA's letter dated 9 October 2014 as TCL had not informed HMRC using a 64-8 form that AKA was authorised by TCL to act on its behalf. In any event, HMRC did indirectly acknowledge AKA's letter dated 9 October 2014 by issuing a letter to TCL on 17 October 2014. In this letter TCL was asked to provide a completed 64-8 form if it wished to authorise AKA to act on its behalf when dealing with HMRC and if it did not, was reminded that it should provide the requested information to HMRC by 2 November 2014.

25. The information required by the Information Notice was available prior to the specified date and there is no reason why that information could not have been provided by 4 December 2014. Had the information been provided by that date then HMRC would not have issued the Penalty Notice.

15 **Ahmed Taheer**

26. AKA contends that as they had informed HMRC that AT had ceased trading on 31 May 2011 and that all of his Self-Assessment Income Tax returns were up to date, then all HMRC had to do, to obtain the requested information, was to refer to AT's Self-Assessment Income Tax Returns.

27. The fact that AKA told HMRC that AT had ceased trading on 31 May 2011 and that his Self-Assessment returns were up to date did not amount to compliance with the Information Notice. AT was still required to provide all of the information requested including the turnover and inputs figures for his trading period up to the cessation of trade on 31 May 2011. It was not unreasonable for HMRC to have expected him to have done so by the specified date of 4 December 2014.

28. The information requested on the Information Notice was a request for monthly turnover figures and other information including monthly input figures, AT's trading address and details of whether he was involved in any other business. This information could not be obtained from AT's Self-Assessment records. HMRC required the information in order for it to be established whether AT should have been VAT registered and if so from when. Monthly figures are required because a person's VAT registration is reviewed on a rolling 12 month basis; a trader is liable to be registered for VAT when at the end of any month, the total value of the taxable supplies he made in the previous 12 months or less is more than the VAT registration threshold. This information cannot be obtained from the annual turnover values declared on Self-Assessment returns.

29. If as AKA said, AT ceased trading on 31 May 2011 then clearly he would not be able to provide the requested information for the period from 1 June 2011 to 3 September 2013 but he would still be able to comply with the Information Notice by providing the requested information for the period up until the date he ceased trading on 31 May 2011.

30. AKA contends that the Information Notice had “...*incorrect dates and common sense suggests that you should have corrected your schedule immediately*”. The fact that the period for which the information was required, that is 1 April 2009 to 3 September 2013, covered a period after AT had ceased trading as a sole proprietor, has no bearing on the validity or otherwise of the Information Notice.

31. The fact that the requirement for 64-8 forms may have caused some delay in AKA receiving copies of HMRC’s letters would not have had an impact on the matter as it was still AT’s responsibility to comply with the Information Notice by the specified date. He had ample opportunity and time to comply with all of HMRC’s requests for information but did not do so prior to the specified deadline in the Information Notice.

Conclusion

Tan Cars Limited

32. TCL contend that the Company has a reasonable excuse under FA 2008 Schedule 36 paragraph 45 for not complying with the Information Notice.

33. A person will not be liable to a penalty for a failure to comply with an Information Notice if they can show that they have a reasonable excuse for their failure and they remedied that failure without unreasonable delay after the excuse has ended. A reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond a person’s control. The onus is on the taxpayer. Whether there is a reasonable excuse is a matter of judgment based upon the evidence provided.

34. The fact that HMRC did not directly acknowledge AKA’s letter dated 9 October 2014 or the completed 64-8 form is neither relevant nor a reasonable excuse. Following the issuing of the Information Notice on 4 November 2014 and the receipt of the 64-8 form HMRC wrote to AKA on 12 November 2014 and provided them with a copy of the Information Notice that had been issued to TCL. AKA was therefore aware of the specified date by which TCL was required to provide the information requested by HMRC.

35. The information required by the Information Notice was available prior to the specified date and there is no reason why that information could not have been provided by 4 December 2014.

36. TCL did not provide the requested information by 2 November 2014, as requested in HMRC’s informal request of 17 September 2014, or by 4 December 2014, being the date specified in the Information Notice and as such became liable to a penalty under Schedule 36 paragraph 39(1). We therefore agree with HMRC’s decision to issue the penalty for a failure to comply with the Information Notice issued on 4 November 2014.

37. The appeal by TCL is therefore dismissed and the penalties confirmed.

Ahmed Taheer

5 38. Although AT has not specifically claimed that he has a reasonable excuse under FA 2008 Schedule 36 paragraph 45, for not complying with the Information Notice by the specified date, that is the ground on which he appeals the penalties.

39. Although AT had ceased trading on 31 May 2011 and his Self-Assessment returns were up to date, that did not amount to compliance with the Information Notice. The information required regarding AT's turnover could not be obtained from his Self-Assessment records. The reasons are set out in paragraph 28 above.

10 40. AT did not provide the requested information by 2 November 2014, an informal request having been made in HMRC's letter dated 17 September 2014. AT was allowed a further opportunity of providing the information by 4 December 2014, being the date specified in the Information Notice. He did not comply with the Notice and consequently became liable to a penalty under Schedule 36 paragraph 39(1). The
15 Appellant has not shown a reasonable excuse for his failure to comply with the Information Notice.

41. AT's appeals are therefore dismissed and the penalties confirmed.

42. 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
20 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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MICHAEL CONNELL

TRIBUNAL JUDGE
RELEASE DATE: 15 DECEMBER 2015

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