[2017] UKFTT 693 (TC)

TC06112

Appeal number: TC/2017/01535

VAT – failure to notify liability to register – penalty under Sch 41 FA 2008 – reliance on a third party – statutory exclusion for reasonable excuse – involvement of an agent – relief under para 21 of Sch 41 – whether "reasonable care" by taxpayer to avoid failure – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

GRAEME FAULKNER **Appellant**

- and -

Respondents

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS

TRIBUNAL: JUDGE HEIDI POON
MR LESLIE BROWN

Sitting in public at the Tribunal Centre, 126 George Street, Edinburgh on 9 May 2017

Mr Angus Nicholson of Nicolson Accountancy for the Appellant

Mrs Elizabeth McIntyre, Presenting Officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. The appellant, Mr Faulkner, appeals against the penalty of £2,772.19 imposed under paragraph 1 of Schedule 41 to the Finance Act 2008 in consequence of a failure to notify HMRC of his liability to be registered for VAT when his turnover had exceeded the compulsory registration threshold. The period to which the penalty relates is from 1 January 2014 and 18 February 2016.

2. Mr Nicholson represented Mr Faulkner, who was not present at the hearing. No witness statement was provided; no evidence was adduced or given therefore.

Issues for determination

3. On 19 January 2017, Mr Nicholson lodged an appeal on behalf of Mr Faulkner, and the matters in dispute as stated in the grounds of appeal concerned:

> (a) Whether the applicable percentage for the Flat Rate Scheme ("FRS") to be applied to the appellant's trade should be 8.5% (for vehicles repairs) as contended, or at 14.5% (for labour only construction) as applied by HMRC;
>
> (b) Whether the appellant had a reasonable excuse for the failure to notify his liability to register for VAT.

4. By email communication from Mrs McIntyre to Mr Nicholson on 3 May 2017, HMRC accepted that the applicable FRS rate should be 8.5%, and not the 14.5% originally applied to calculate the potential lost revenue ("PLR") on which the penalty assessment was based.

5. As a result of HMRC's acceptance that the FRS rate is to be at 8.5%, the first issue of the appeal is no longer in front of the Tribunal for determination. The decision addresses only the second issue in this appeal, namely whether the appellant had a reasonable excuse for his failure to notify his liability to register for VAT.

6. The matters that there was a liability to register for VAT, and of the quantum of the net VAT liability on which the calculation of the PLR is based, are not in dispute.

Relevant legislation

7. Paragraph 20 of Sch 41 provides that a liability to a penalty under Sch 41 does not arise in relation to "an act or failure which is not deliberate" if the taxpayer satisfies HMRC or (on appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the act or failure.

8. Specific statutory exclusions for "reasonable excuse" are provided under para 20(2), of which para 20(2)(b) states: "where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the relevant act or failure".

9. Paragraph 14 provides for "Special reduction" as follows:

> "(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any of paragraphs 1 to 4.
> …
> (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to –
> (a) staying a penalty, and
> (b) agreeing a compromise in relation to proceedings for a penalty."

10. An appeal against a penalty imposed under Sch 41 can be brought by provision under para 17, whereby:

> "(1) P may appeal against a decision of HMRC that a penalty is payable by P.
>
> (2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P."

11. The Tribunal's jurisdiction in this respect is provided under para 19:

> "(1) On an appeal under paragraph 17(1) the tribunal may affirm or cancel HMRC's decision.
>
> (2) On an appeal under paragraph 17(2) the tribunal may –
>
> (a) affirm HMRC's decision, or
>
> (b) substitute for HMRC's decision another decision that HMRC had power to make.
>
> (3) If the First-tier tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 14 –
> …."

12. Where agency is involved, para 21(1) provides that:

> "… the reference to a failure by P includes a failure by a person who acts on P's behalf; but P is not liable to a penalty in respect of any failure by P's agent where P satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that P took reasonable care to avoid the failure."

Factual background

The penalty assessment

13. The penalty assessment is based on the value of turnover in the period being £223,599. This figure is not in dispute.

14. The PLR was originally calculated at 14.5% of the turnover to be £29,723, and revised downwards to £16,307 following the reduction of the FRS rate to 8.5%.

15. The behaviour was assessed to be "non-deliberate" and the disclosure was "unprompted" because the appellant notified HMRC about the failure before he had reason to believe HMRC had discovered it, or were about to discover it.

16. The range of penalty for "non-deliberate" and "unprompted" disclosure made more than 12 months after the tax became unpaid is 10% minimum to 30% maximum.

17. The reduction rate for the quality of disclosure is set at 65%, being the aggregate of 15% for telling, 20% for helping, and 30% for giving access to records.

18. The reduction rate for disclosure of 65% is then applied to the difference in the penalty range of 20% (ie minimum 10% to maximum 30%) to arrive at an overall reduction of 13%.

19. The overall reduction of 13% is then taken from the maximum penalty of 30% imposable to arrive at the overall penalty percentage of 17%.

20. The penalty under appeal therefore stands at **£2,772.19**, being the revised PLR of £16,307 at 17%.

Mr Nicholson's representations

21. Mr Nicholson did not act for Mr Faulkner at all material times. Prior to Mr Nicholson's engagement, a chartered accountant by the name Mr Kilgore was acting for Mr Faulkner up to at least the end of July 2016.

22. We do not doubt that Mr Nicholson answered our questions to his best knowledge. Mr Nicholson's answers, however, were not Mr Faulkner's own, and we are unable to make findings of fact based thereon. We have, however, made certain factual inferences to which we relate in the later part of the decision.

23. By way of background, and according to Mr Nicholson, Mr Faulkner is in his mid-thirties, and works as a CIS subcontractor in the repairs and maintenance of road-rail vehicles and has been contracted to both Scots Rail and the Edinburgh Tram. These road-rail vehicles can run on road and are also adapted to run on tracks.

24. The Tribunal asked how long Mr Faulkner has been a sub-contractor. Mr Nicholson informed the Tribunal that Mr Faulkner was an employee before becoming a sub-contractor, and he referred to the period of six years from 2008 to 2014 when Mr Faulkner was an employee.

25. We also heard that Mr Faulkner started on the Tram Project in 2008. Mr Nicholson was somewhat uncertain about Mr Faulkner's contractual capacity in the Tram Project, and had qualified his earlier statement that Mr Faulkner "may have been a sub-contractor" in the Tram Project.

26. We asked for any documentary evidence that may help us establish the contractual capacity of Mr Faulkner on the Tram Project. Mr Nicholson then provided us with a one-page document, which is on the headed note paper of Aspin Foundations Ltd, and the subject matter is stated as "Contract Agreement" between Aspin Foundations and Mr Faulkner. The contract agreement was signed by both parties on 16 December 2008. The agreement states the position as "RRV and Machine Maintenance, RRV Driver" and provides for the "Rates of Pay" for mid-week and weekend RRV and Machine Maintenance or Machine Work. We understand RRV to stand for "Road Rail Vehicle", and Aspin Foundations to be a "solution provider" in a project-management capacity and contracted with workers on behalf of the Tram Project.

27. Mr Nicholson informed us that the contract "does not guarantee the number of hours of work but only to set the pay rates".

Mr Faulkner's appeal to HMRC

28. By letter dated 21 September 2016 Mr Faulkner appealed to HMRC against the penalty assessment, and the main grounds of appeal are stated as follows:

> (1) "Whilst I appreciate that reliance on others is generally not a valid excuse, I believe that reliance on professionals in the exercise of their duty is an acceptable reason for non-compliance."
>
> (2) "I do not have the education, experience or knowledge to understand the finer points of UK tax law, and have to rely on others – including for writing this letter – as I have no formal educational qualifications. I am penalised for the failure of my agents to correctly deal with my requests for advice which were based on conversations with work colleagues. I very reasonably decided these conversations required discussion with professionals before any action."

29. The letter is in effect Mr Faulkner's "pleadings", and he attached a letter by Mr Kilgore to HMRC dated 10 May 2016 to "demonstrate" that his former agent was "wholly responsible for the failure to register on time".

30. Mr Kilgore's May 2016 letter opens with an apology for the delay in replying to HMRC's letters (sent to Mr Faulkner) of 9 March and 28 April 2016, stating that "the fault lies with me and not with my client". Mr Nicholson highlighted this statement as the admission of fault for the failure to register Mr Faulkner for VAT, though we can only read it in its context that the admission of fault is limited to the delay in replying.

31. Turning to the significant part of Mr Kilgore's letter for the purposes of this appeal, it reads as follows:

> "(2) The delay in informing HM Revenue & Customs that my client should have been registered for VAT was due to the following reasons:
>
> (a) My client is a subconstractor who has operated in the construction industry for many years.
>
> (b) My client's turnover had always been substantially below the VAT turnover limits until year ended 5 April 2014.
>
> (c) I receive all of my client's books and records for each year at some stage after the tax year end, at which stage I prepare the Accounts.
>
> (d) When I prepared his Accounts for the years ended 5 April 2014 and 5 April 2015 I failed to notice that he had exceeded the VAT Compulsory Registration Limits. It was only when preparing accounts for another client operating in the same line of work that I revisited Mr Faulkner's Accounts and discovered my error.
>
> (e) I immediately calculated the date at which the turnover limit had been exceeded and informed HM Revenue &

> Customs accordingly and registered Mr Faulkner from that date.
>
> (f) There was never any intention to deliberately avoid registering for VAT. Mr Faulkner had no knowledge of VAT registration and relied on me to deal with such matters for him. Unfortunately I failed to take notice of his turnover exceeding the limits."

Agent's communications with HMRC over the penalty assessment

32. Included in the bundle is a facsimile transmittal sheet with the contents of the fax sent on 29 July 2016 by a Mr Hyland from Mr Kilgore's office to VAT Registration Service in respect of the penalty imposed on Mr Faulkner, and it states:

> "I have been attempting to contact your office by phone to speak to someone regarding a penalty which you intend to charge my client.
>
> I have called 0300 … 322 to speak to M Bridges but there has been no answer to my repeated calls.
>
> I have called 0300 … 536 to speak to Paul Daddy or Dawn Goodhand but the phone does not even ring.
>
> The deadline for discussing this is today (per letter from M Bridges to my client) and therefore I ask that someone calls me today to discuss this matter."

33. On 20 September 2016, Mr Kilgore wrote to HMRC to request an internal review of the penalty assessment, stating the following as the grounds for review:

> "(1) I believe, based on the facts detailed in my letter of 10 May 2016, the level of penalty to be excessive.
>
> (2) You will note that [HMRC] intended to apply a Flat Rate percentage of 9.5% in this case. As an indication of my client's honesty and intention not to avoid tax, HMRC were informed that the correct rate should in fact be 14.5%."

34. The second ground was a reference to the FRS rate of 9.5% (general building or construction service), which was applied by Mr Kilgore when he first registered Mr Faulkner for VAT. Mr Kilgore subsequently changed the FRS rate to 14.5% (labour-only building or construction service) when he completed the questionnaire from HMRC to quantify the VAT arrears.

35. The questionnaire was completed by Mr Kilgore and sent with his letter of 10 May 2016, giving the reasons for the delay in registering Mr Faulkner, and the documents were transmitted to HMRC by fax on the same day.

The appellant's case

36. The grounds of appeal as drafted by Mr Nicholson on the Notice of Appeal are as follows:

> (1) The previous agent has accepted that they provided incorrect advice to the taxpayer, despite his repeated requests for them to consider the VAT position.

(2) The taxpayer is an uneducated manual labourer and we believe that our client attempted to discharge his responsibilities to the best of his abilities, and that the admitted receipt of incorrect advice from qualified professionals, should mitigate any penalty.

(3) Finally, no loss of tax arose, as our client issued a VAT only invoice which was settled promptly and the VAT remitted by the due date.

37. At the hearing, we asked Mr Nicholson what he meant by Mr Faulkner having made repeated requests to his former accountant to consider his VAT position. Mr Nicholson informed us that Mr Faulkner had asked on more than one occasion "whether he needed to be registered for VAT" because Mr Faulkner was aware that many of his colleagues were VAT registered.

38. We then asked Mr Nicholson what he meant by "his colleagues", and Mr Nicholson clarified that Mr Faulkner's colleagues were his "fellow sub-contractors", who were "working together as part of a team" with Mr Faulkner.

39. In summary, Mr Nicholson averred that Mr Faulkner "took the steps necessary"; had "acted in good faith"; "accepted information as accurate [from Mr Kilgore], albeit that his work-colleagues are registered for VAT"; that Mr Faulkner is a "reasonable individual" as shown by his experience in business and "doing better than expected"; that Mr Faulkner had every reason to believe that the advice given to him was "accurate and complete unless he had strong reasons to question the completeness of the advice"; that it is "part and parcel of an engagement of a professional" that he gives accurate and complete advice; and that "if we start questioning every professional, the whole nature of society would change".

40. Mr Nicholson referred the Tribunal to Mr Kilgore's letter of 10 May 2016, which was addressed to HMRC and highlighted to us that Mr Kilgore had admitted that "the fault lies with me and not with my client".

41. In a nutshell, as we understand it, Mr Nicholson's point is that Mr Faulkner had a reasonable excuse for his failure because he had every good reason to believe that he was not liable to be registered, having relied on his accountant's advice.

HMRC's case

42. HMRC's review of the penalty decision was issued on 1 December 2016, and addressed the points raised in Mr Faulkner's letter of 21 September 2016 as follows:

(1) Registering for VAT at the correct time is a fundamental issue and not a finer point of UK tax law.

(2) At no point did Mr Faulkner check the advice of his agent, despite his apparent misgivings about the advice given.

(3) Mr Faulkner had appointed a new agent when he was issued with a penalty but at no point during the period of failure to register, which lasted over 2 years, did he seek advice from another accountant or even HMRC.

(4) Information regarding when a person needs to be registered is available on the internet or by ringing HMRC's VAT advice helpline.

(5) Mr Faulkner therefore did not take reasonable care to avoid the failure.

Discussion

Appeal as brought under para 17(1)

43. Given that the matter as respects the FRS rate has been conceded by HMRC to be 8.5%, the quantum of the PLR is not in dispute. In other words, the element of the appeal as "against the amount of a penalty payable by P" under para 17(2) has fallen away. Accordingly, we determine this appeal as "against a decision of HMRC that a penalty is payable by P" under para 17(1).

44. Paragraph 19(1) provides that on an appeal under para 17(1), the tribunal may affirm or cancel HMRC's decision. We do not need to consider any substitution for HMRC's decision that is only applicable to an appeal brought under para 17(2).

Findings of fact

45. From documents provided to us we find primary facts and draw factual inferences therefrom, which we summarise as follows:

(1) Mr Faulkner has been a CIS subcontractor for a significant number of years; that he was contracted by Aspin Foundations as a self-employed and not an employee; that his engagement in the Tram Project starting in 2008 would have been in a self-employed capacity; (we reject Mr Nicholson's representations that Mr Faulkner had been an employee until 2014).

(2) By 1 January 2014 when Mr Faulkner's turnover threshold exceeded the threshold for mandatory VAT registration, he would have been a sub-contractor for at least 6 years.

(3) Mr Kilgore is a chartered accountant. We find Mr Kilgore's account of how he discovered his error entirely credible – that the discovery of the error was prompted by the preparation of accounts for another client.

(4) The timing of the discovery would have been around 18 February 2016 when Mr Kilgore registered Mr Faulkner online for VAT.

(5) The due dates for submission of the self-assessment returns for the years ended 5 April 2014 and 2015 were 31 January 2015 and 2016. Mr Kilgore failed to notice that the VAT registration threshold had been exceeded by Mr Faulkner when the 2013-14 return was due in January 2015. It was probably around January 2016 when the 2014-15 return was due that he picked up on the fact that the registration threshold had been continually exceeded.

(6) Mr Faulkner had discussed the VAT registration matter with his work colleagues, and he was aware that his work colleagues in similar circumstances as he was, were VAT registered.

(7) Mr Faulkner is in his mid-thirties, and of the generation for which ready access to the internet, and reliance on the internet as the first port of call for information of all kind can be assumed.

(8) While emphasis has been placed on Mr Faulkner's lack of formal educational qualifications, we do not accept that Mr Faulkner is a mere labourer with little understanding or engagement with the procedural and compliance matters that his position would have required of him.

(9) Mr Faulkner holds a responsible position that brings him an average monthly income of £8,768 in the period concerned. We infer that his work in servicing the RRV and machine maintenance would have required him to carry out diagnostics and safety checks at technical levels. He would have to document his diagnostics, to record his work schedules, and to sign off any repairs he had carried out. He would have been extremely aware of health and safety issues and compliance requirements in his field.

(10) That the milieu of Mr Faulkner's work place engenders an awareness of tax-related issues relevant to being a sub-contractor, and that VAT registration is not a complex area of tax law that requires special knowledge or expertise to understand.

46. In addition to our findings of fact, we note Mr Kilgore's readiness to assume responsibility for the delay in registering Mr Faulkner for VAT, as he had also done for the delay in replying to HMRC's letters sent direct to Mr Faulkner.

47. Mr Kilgore was open about his mistake and made a full disclosure on Mr Faulkner's behalf, but he had mentioned nothing about Mr Faulkner having specifically asked him to check out his VAT position.

48. From the fax communication of 29 July 2016 to HMRC, we note the assiduousness with which Mr Kilgore's office had dealt with the penalty matter. On the balance of probability, if Mr Kilgore had been asked on more than one occasion to review Mr Faulkner's VAT position on the basis that his work colleagues were VAT registered, Mr Kilgore would probably have treated it with similar assiduousness.

49. Whilst it has been repeatedly asserted by Mr Faulkner (in his pleadings) and by Mr Nicholson (in his representations), that Mr Faulkner "had asked [his] agents if [he] should be VAT registered on a number of occasions, as work colleagues were registered", we are unable to make any findings of fact as regards the timing or the frequency Mr Faulkner had requested Mr Kilgore to review his VAT position, or what information would have been provided by Mr Faulkner for Mr Kilgore to advise him.

Whether reliance on a third party can be a reasonable excuse

50. Reliance on a third party is specifically excluded from being a reasonable excuse under para 20(2)(b) of Sch 41, and Parliament's intention for incorporating this statutory exclusion was evidenced by the minister's statement as recorded in *Hansard*: "If all one had to do to have a reasonable excuse was to find an accountant who would delay everything, there would be easy pickings to be made."[1]

51. That said, where agency is involved, the statute clearly provides under para 21 that the tribunal has a discretionary power to give relief where the taxpayer has taken "reasonable care to avoid the failure".

---

[1] *Hansard* 21 May 1985 (HC Official report) SC B (Finance Bill) 21 May 1985, col 173. The statutory exclusion referred to in the minister's statement was in respect of a provision under the Finance Bill, which became legislated as s 33(2)(b) of Finance Act 1985. To all intents and purposes, s 33(2)(b) is the predecessor provision of s 71(1)(b) of VATA 1994, which provides against reliance on any other person being a "reasonable excuse" within the VAT regime. The exclusion provision under para 20(2)(b) of Sch 41, which applies to the current case, is analogue to s 71(1)(b) of VATA 1994. See also the decision *Profile Security Services (South) Ltd v C&E Commissioners* [1996] STC 808.

Definition of "reasonable care"

52. There is no statutory definition for "reasonable care". However, as a starting point, the term necessarily implies that a taxpayer has a statutory obligation to take such care. The standard of such care is referential to that of a prudent and reasonable taxpayer, and we agree with the formulation in *Collis v HMRC* [2011] UKFTT 588 (TC) ("*Collis*") at [29], that "the standard by which this falls to be judged is that of a prudent and reasonable taxpayer in the position of the taxpayer in question".

53. The standard of care is therefore objective, and the question for the Tribunal to address is what a prudent and reasonable taxpayer, with the experience and attributes of Mr Faulkner, would have done in his situation.

54. The central tenor in Mr Faulkner's pleadings is that he does not have "the education, experience or knowledge to understand the finer points of UK tax law", and he has to rely on others. In effect, this is a plea of ignorance of the law. We reject this argument for two reasons.

55. First, we do not accept that the law in relation to the liability to be VAT registered is so complex that only a professional would have the knowledge to advise. In *Keith Edward Jenkinson v C & E Comrs* [1988] VATTR 45, the tribunal considered the extent whereby ignorance of the law can amount to a reasonable excuse. The tribunal concluded that while it is not a case that "the eyes of the court are to be bandaged by the application of the maxim as to *igornatia legis*"[2], there can be no doubt where a failure is the result of basic ignorance of the law, that cannot be a reasonable excuse.

56. Simon Brown J's comment in *Jo-Ann Neal v C & E Comrs* [1988] STC 131 at page 317 is particularly pertinent to our consideration:

> "In this case, however, there could be no doubt. The default was entirely the product of basic ignorance of value added tax law. That cannot be construed as a reasonable excuse. I add only this. Value added tax is surely now well enough established in our daily commerce that anyone, however inexperienced, ought to recognise the need to become acquainted with its basic requirements when embarking upon a career."

57. We consider the law relevant to whether a liability to register for VAT exists as within the "basic" knowledge of a trader. A prudent and reasonable taxpayer will have acquainted himself with the basic requirements when VAT registration becomes mandatory. The registration threshold in force at any time is information readily available on the internet or HMRC's official website. The registration threshold is referential to the running total of turnover in the preceding 12-month period, and is well within a taxpayer's ability to monitor.

58. Secondly, we have regard to the subjective attributes and experience of Mr Faulkner. The fact that Mr Faulkner has been a sub-contractor for "a significant number of years" means that a person in his position can be expected to have the awareness of a liability to become registered for VAT once the running 12-month turnover exceeds the registration threshold.

---

[2] Citing Clauson J in the High Court decision of *Holland v German Property Administrator* [1936] 3 All ER 6 at page 12.

59. Quite apart from what we have inferred from his position of responsibility that Mr Faulkner must have a professional level of awareness of the necessity for complying with regulations, his response to the penalty assessment leaves us in no doubt that if he had the same regard for his statutory duty as a taxpayer in respect of the VAT registration, and had exercised the same due diligence and foresight in taking appropriate action, he would have avoided the failure.

60. Mr Faulkner's letter of 21 September 2016 demonstrates the initiative, the foresight, and diligence, he was able to exercise in dealing with the penalty assessment. Mr Kilgore had been acting as his agent over this matter up to at least the end of July 2016. By September 2016, Mr Faulkner was writing directly to HMRC, albeit, as he claimed, he had to "rely on others".

61. The last two paragraphs of Mr Faulkner's letter illustrate the level of engagement he could bring to the matter:

> "I am advised that this penalty may meet the grounds for suspension, based upon my continuing compliance with the VAT Regulations, but I would request you consider annulment, given the evidence of my personal compliance and failure of my agents to deal with the matter at the correct time.
>
> I also wish to advise that I do not agree with the FRS of 14.5%, and I am taking further independent advice on this matter."

62. Mr Faulkner has sought advice on appealing against the penalty; he is aware of "annulment" as a possible outcome, and has also requested HMRC to consider suspension. If Mr Faulkner was able to find out about the prospects for his penalty appeal, and was able to make an appeal direct to HMRC, he would have been able to find out whether he had exceeded the registration threshold, and could have taken action on his own accord to become registered, if he had acted with equal diligence and proper regard for his obligations as a taxpayer.

63. As respects the FRS rate, Mr Faulkner clearly did not agree with Mr Kilgore's judgment, and stated that he would seek independent advice on this matter. In his pleadings, Mr Faulkner said he had "on a number of occasions" asked Mr Kilgore if he should be VAT registered, "as work colleagues were registered". The Tribunal draws a parallel between the two situations. If Mr Faulkner had indeed been given advice that did not accord with what his work colleagues were doing, as a prudent and reasonable taxpayer, he would have sought independent advice.

No provision to suspend a Schedule 41 penalty

64. Mr Faulkner has raised the matter of suspension of the penalty in his pleadings. Where relevant, the suspension of a penalty as a form of relief is expressly provided for in the legislation; for instance, under para 14 of Sch 24 to FA 2007 in respect of a penalty imposable for an inaccuracy caused by "careless" behaviour. However, there is no statutory provision in Sch 41 to FA 2008 for a penalty imposed under that Schedule to be suspended.

65. Instead, para 14 of Sch 41 provides for "staying a penalty" only, which falls under the heading of "Special reduction". The legal meaning of "staying" a penalty does not equal "suspending" a penalty, which in tax terms usually would have conditions attached. Staying a penalty is in relation to the proceedings for a penalty

only. In the present appeal, if the liability to register for VAT was a matter in dispute, the penalty imposed in relation to the failure to notify could be stayed until the matter on registration had been determined. There is no dispute that Mr Faulkner was liable to register for VAT, and the consideration of staying the penalty is not in point.

Special circumstances

66. Under para 14 of Sch 41, special reduction applies if there are special circumstances. HMRC's review conclusion letter of 1 December 2016 has stated that "being required to register for VAT due to your turnover is not uncommon or exceptional", and no special reduction is applicable. We agree. Since a failure to notify is clear-cut, and Mr Faulkner had been trading for some time when the failure occurred, we are unable to envisage any special circumstances that could apply.

Decision

67. We have stated that the appeal is determined on the basis that it is brought under para 17(1) of Sch 41to FA 2008, which means the outcome of the appeal can only be binary as provided under para 19(1) of Sch 41. The Tribunal can either affirm or cancel HMRC's decision.

68. For all the reasons stated, we affirm HMRC's decision in imposing the penalty.

69. The appeal is accordingly dismissed. The penalty in the sum of £2,772.19 is confirmed.

Application for permission to appeal

70. 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.

DR HEIDI POON
TRIBUNAL JUDGE

RELEASE DATE: 13 September 2017