



TC02092

Appeal number: TC/2011/07723

*TYPE OF TAX –penalty- paragraph 39 of schedule 36 FA 2008 –
reasonable excuse - no*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

FAIZ DAWAF

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE ALISON MCKENNA
CAROLINE DE ALBUQUERQUE**

Sitting in public at Bedford Square on 15 May 2012

The Appellant did not attend

Ms Orimoloye of HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal against the imposition on Mr Dawaf of a £300 penalty for failure to comply with an information notice. The penalty was imposed, pursuant to paragraphs 39 and 46 of Schedule 36 to the Finance Act 2008, by a Notice dated 7 June 2011. Mr Dawaf lodged a Notice of Appeal with the Tribunal in respect of the penalty, dated 26 November 2011.

2. Mr Dawaf's appeal was allocated to the basic track and set down for a hearing on 15 May 2012. Notice of the hearing was served on Mr Dawaf's representatives, Fox Sharer LLP, by letter dated 12 March 2012. We are satisfied that Mr Dawaf's representatives received notice of the hearing as they wrote to the Tribunal on 14 May to say that they had been unable to ascertain further instructions from their client and would be unable to attend the hearing.

3. The Tribunal considered whether to proceed in Mr Dawaf's absence in accordance with rule 33 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. This rule provides that a Tribunal may proceed in a party's absence if it is satisfied that the party has been notified of the hearing and the Tribunal considers that it is in the interests of justice to proceed with the hearing. Rule 33 must be interpreted in accordance with rule 2's "overriding objective" which is to deal with cases fairly and justly including, inter alia, avoiding delay. In the circumstances of this case, the Tribunal concluded that it was in the interests of justice to proceed to hear this case in Mr Dawaf's absence.

4. HMRC provided the Tribunal with a bundle of documents which provided a full factual history of this matter. This showed that in June 2010 HMRC contacted Mr Dawaf's then agents to request information in respect of offshore accounts. As the information was not provided, a formal information notice was served on 30 November 2010. On 13 January 2011 a penalty warning letter was issued, giving a deadline for the receipt of the requested information of 27 January 2011. After Mr Dawaf informed HMRC that he was no longer represented by the agents, the deadline for compliance was extended by HMRC so that Mr Dawaf had more time to obtain information from his former agents and to comply with the information notice. The deadline was extended until 3 May 2011 and Mr Dawaf was informed of this with a penalty warning letter issued on 12 April 2011. The information was not supplied by the deadline set and so a penalty notice was issued on 7 June 2011. Mr Dawaf provided the information HMRC had requested along with his request for a review of the penalty on 27 June 2011. The review upheld the penalty as there did not appear to have been a reasonable excuse for not complying with the information notice earlier.

5. Mr Dawaf then appealed to the First-tier Tribunal (Tax). His grounds of appeal are succinctly drafted as “Review conclusion does not deal with the concerns of the taxpayer. Information contained within the “Notice to Provide Documentation” was queried. Such concerns were never properly explained and a penalty was issued”. These grounds of appeal are clearly concerned with the information notice (in respect of which there is no appeal) but do not put forward a reasonable excuse for providing the information after the deadline which had been set and was subsequently extended.

6. Paragraph 39 of Schedule 36 to the Finance Act 2008 provides that a person who fails to comply with an information notice is liable to a penalty of £300. Paragraph 45 provides that the penalty under paragraph 39 does not arise if HMRC (or, on appeal, the Tribunal) is satisfied that there is a reasonable excuse for the failure to comply. In this case, neither Mr Dawaf nor his advisers have offered any explanation for the failure to comply with the information notice by May 2011 (the extended deadline). This is Mr Dawaf’s appeal and he bears the burden of satisfying the Tribunal that there was a reasonable excuse for his failure to comply. In the absence of any explanation by the party with the legal responsibility to show that there was a reasonable excuse, we find on the balance of probabilities that there was no reasonable excuse within the meaning of paragraph 45.

7. Paragraph 48 of Schedule 36 to the Finance Act 2008 provides that on determining an appeal the Tribunal may confirm or cancel the decision to impose the penalty. We now confirm the decision to impose the penalty and dismiss this appeal.

8. 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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ALISON MCKENNA
TRIBUNAL JUDGE

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RELEASE DATE: 14 June 2012