



TC01524

Appeal number: TC/2011/04871

Closure notice – application made before substantive reply to initial request from HMRC for business records – applicant did not attend hearing of application, despite having confirmed its wish to continue with application – application dismissed – Tribunal considering order for costs of its own volition – order for Applicant to make representations on costs issue within 28 days

FIRST-TIER TRIBUNAL

TAX

T.W.L. (GB) LIMITED

Applicant

-and-

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS (corporation tax)**

Respondents

**TRIBUNAL: KEVIN POOLE (TRIBUNAL JUDGE)
TERENCE BAYLISS FCA**

Sitting in public in Birmingham on 11 October 2011

The Applicant did not appear and was not represented

Philip Osborne, Higher Officer of HMRC for the Respondents

DECISION

Introduction

1. The Applicant carried on business as a Chinese takeaway. On 4 February
5 2011 HMRC issued a notice to the Applicant formally opening an enquiry into the
Applicant's corporation tax return for the accounting period 1 February 2009 to 31
December 2009. At the same time, they requested delivery of a list of business
records of the company for that period.
2. In response to the request for records, the Applicant arranged for a list of sales
10 and purchases to be provided, but essentially ignored most of HMRC's request.
3. HMRC served a first-party notice on the Applicant requiring delivery of the
records and subsequently, on 25 July 2011, imposed daily penalties totalling £840 in
respect of the Applicant's failure to supply the information.
4. In the meantime, the Applicant had informed HMRC that it ceased to trade on
15 12 February 2011 (almost immediately following the receipt of the initial notice of
enquiry) and on 23 June 2011 an application was made on its behalf to this Tribunal
for a direction to HMRC to close the enquiry which had only been opened a few
months previously.
5. The Tribunal listed the application for hearing on 15 September 2011. On 29
20 July 2011 the Applicant's representative (a company called Gold Index Management
Limited, which operated from the same registered office address as the Applicant at
Winston Churchill House, Ethel Street, Birmingham B2 4BG) applied for a
postponement of the hearing of the application on the grounds that "the representative
who is acting on behalf of T.W.S.L. (GB) will be away on annual leave".
- 25 6. The Tribunal then cancelled the hearing listed for 15 September 2011 and
asked the parties to identify "dates to avoid" for the hearing during the period 1
September to 31 October 2011. Following responses from HMRC and the
Applicant's representative, the Tribunal re-listed the case for hearing on 11 October
2011, and notified the parties of that fact on 12 August 2011.
- 30 7. On 19 August 2011 the Tribunal notified the parties that the hearing would
take place as soon as possible after 2 pm on 11 October 2011 (whereas the original
notification was that the hearing would take place as soon as possible after 10 am on
that day).
8. On 22 August 2011 the Applicant's representative wrote to the Tribunal
35 saying: "Due to financial difficulties we have resigned from the above [*the letter was
headed "T.W.L. (GB) Limited"*] as from today's date."
9. On 8 September 2011 the Tribunal wrote to the Applicant, asking if it wished
to continue with the application. By letter dated 9 September 2011 (received by the
Tribunal on 11 September 2011), the Applicant said:

“Thank you for your letter dated 8 September 2011. Please note that due to financial difficulties, we have stopped engaging in the services of Gold Index Management Limited.

5 However, we wish to continue with the Closure Application lodged with the Tribunal ourselves.”

10 10. On 11 October 2011, the Tribunal was convened to consider the application (a Judge and a non-legal member being allocated). Mr Osborne travelled from Nottingham to Birmingham to resist the application. The Tribunals Service incurred the expense of making this Tribunal available to hear the application. The Applicant
10 did not attend or provide any warning or explanation of its failure to do so.

15 11. The Tribunal considers that the facts of the application speak for themselves. It is difficult to see how any taxpayer could justify an application to the Tribunal for a direction to close an enquiry in such circumstances. It is also difficult to see how the Applicant can justify failing to attend at the hearing (or give any warning of its
15 intention not to attend) when it had confirmed its intention to do so. Overall, it is difficult to avoid the conclusion that the Applicant (and the guiding individual or individuals behind it) are guilty of an abuse of the process of the Tribunal, but in any event it has clearly failed to make a case why the Tribunal should make a direction for the closure of the current enquiry and accordingly the application is dismissed.

20 12. Whilst HMRC did not apply for any order for costs, the Tribunal considered it appropriate to consider that issue. On the basis of the facts set out by Mr Osborne on behalf of HMRC, there would appear to us to be a very strong argument that the Applicant has acted unreasonably both in bringing and in conducting the proceedings and therefore the Tribunal may well have power under rule 10(1)(a) of the Tribunal
25 Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”) to make an order for costs against the Applicant.

13. We note that before making an order for costs (which we have power to do of our own volition, under rule 10(2) of the Rules) we are required to give the Applicant the opportunity to make representations.

30 14. We therefore direct that the Applicant shall have 28 days from the date of release of this decision to deliver to the Tribunal in writing (with a copy to HMRC) its representations (if any) on the question of whether it should be ordered to pay the costs of HMRC in respect of this application. Thereafter the Tribunal will make a decision based on its understanding of the facts so far and any such representations
35 received by it within the time limit. We would expect, if relevant, to assess the costs summarily, based on the information provided to us by Mr Osborne at the hearing.

40 15. 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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KEVIN POOLE
TRIBUNAL JUDGE
RELEASE DATE: 27 OCTOBER 2011