



## FIELD COURT TAX CHAMBERS

### ***Kaczmarczyk: penalties for failure to file return***<sup>1</sup>

*Failing to submit your tax return can give rise to some serious penalties, even if you have no taxable income*

The recent case of *Kaczmarczyk v HMRC* [2017] UKFTT 262 (TC) has some hair-raising implications.

Mr Kaczmarczyk was issued with a tax return but he did not send it back because he had no taxable income or gains for the year. However, HMRC still imposed a penalty of £3500 for failing to submit a zero return. Their grounds derived from TMA 1970 s 8:

“...he may be required by a notice given to him by an officer of the Board to make and deliver to the officer a return containing such information as may reasonably be required in pursuance of the notice”.

The tribunal held that upon receipt by a person of a notice under s 8, the recipient has an obligation to file a tax return for the year – and failure to do so gives rise to a penalty under FA 2009 Sch 55.

Such penalties used to be limited to the amount of tax payable; however, that limit was abolished in 2010 and there seems to be no defence to a penalty for not submitting a nil return. (I wonder if this reasoning extends to failing to send a cheque for £0.00?)

That seems clear enough. But hold on: can this really be right?

There are a billion people in China, another billion in India (and so on); none of them have any UK income or gains or any UK liability. So HMRC can send them all s 8 tax return notices and fine them £3500 for failing to send them back. The deficit would be gone in an instant.

But that would be silly, wouldn't it? Well, yes. But do they fall within the legislation? On a strict reading, they do. Under the circumstances, one might think another interpretation would be appropriate – you know, like when a literal interpretation gives rise to absurdity.

It is no good saying that because such penalties would be irrecoverable, that is a reason why the s 8 obligations should not fall on them. We know that argument does not work from *Agassi v Robinson* [2006] STC 1056, where the House of Lords held that a withholding tax obligation for a payment outside the UK, by a foreign company with no UK presence, to another foreign company. Their Lordships held that difficulties in collection were no impediment to the proper interpretation of the legislation.

Similarly, there is no requirement for the recipient to be resident in the UK. Indeed, I am aware of tax returns being issued to non-residents and penalties being imposed on the above grounds.

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There are no longer any difficulties for HMRC in collecting tax debts in EU countries by reason of the EU Directive 2001/44/EEC and FA 2002 Sch 39, nor from people in other countries which have signed up to the OECD Convention on Mutual Administration Assistance in Tax Matters (which is most of them). Accordingly, s 8 is clearly a cash machine for HMRC on which there is no restraint.

Or maybe there ought to be another interpretation.

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