



**TC05265**

**Appeal number: TC/2014/01121**

*Capital gains tax – Entrepreneur’s Relief – substituting agreed valuation for initial valuation – transfer of audit clients a disposal of business assets – partial transfer of premises not the same as a part disposal – penalty notice correctly issued as relief wrongly claimed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DILIP AMIN**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE ALASTAIR J RANKIN  
                          MT TOBY SIMON**

**Sitting in public at Court 13, Fox Court, 5<sup>th</sup> Floor, 30 Brooke Street, London EC1N 7RS on 4 July 2016 at 10.00 am.**

**The Appellant in person**

**Mrs Gill Carwardine, Presenting Officer of HM Revenue and Customs, for the Respondents**

## DECISION

5 1. This is an appeal against a closure notice for the tax year 2008/9 issued in the sum of £14,645.70 in accordance with Section 28A(1) & (2) Taxes Management Act 1970 (TMA). The sum was subsequently reduced to £3,531.78 using property valuation figures subsequently agreed with the Valuation Office. The appeal is also in respect of a penalty notice issued in the sum of £3,954.33 (being 27% of £14,645.70) but subsequently reduced to £953.58 (being 27% of £3,531.78).

10 2. The Tribunal dismissed the appeal and confirmed the amended closure notice in the sum of £3,531.78 and the amended penalty notice in the sum of £953.53.

15 3. The Tribunal at the commencement of the hearing asked Mr Amin whether he objected to Mr Simon hearing the appeal as he had sat on his appeal heard on 30 January 2013 referred to in paragraph 14 below. Mr Amin confirmed he was content for the hearing of his appeal to proceed.

### **The Background**

20 4. Mr Amin conducts an accountancy practice trading as Amin, Patel & Shah operating from business premises at 334-336 Goswell Road, London, EC1V 7RP. The premises were acquired in 1983 and since 1988 Mr Amin has been a sole practitioner and the sole owner of the premises.

5. In three separate transactions Mr Amin purported to sell 50% of his beneficial interest in the premises as follows:

5.1 By deed dated 4 April 2008 Mr Amin sold 22.7% of his beneficial interest in the premises for a consideration of £249,700.00

25 5.2 By deed dated 25 June 2008 Mr Amin sold 22.7% of his beneficial interest in the premises for a consideration of £249,700.00

5.3 By deed dated 23 April 2010 Mr Amin sold 4.6% of his beneficial interest in the premises for a consideration of £43,700.00

30 6. The purchasers in all three transactions were Mr Amin, his wife and his son, as Trustees of the Mini Pension Scheme. The transactions were therefore between connected persons.

7. Mr Amin had submitted his tax return for the year ending 5 April 2009 including a capital gains tax calculation based on a sale price of the premises as at 25 June 2008 of £249,700.00 being 22.7% of £1.1 million.

35 8. HMRC wrote to Mr Amin on 30 September 2010 to advise him that they were checking his tax return for the year ended 5 April 2009 under section 9A of TMA. An information notice was sent on 8 November 2010 which warned Mr Amin that he might be liable to a penalty of £300.00 if he failed to supply the information

requested. Amongst the information sought were details of why Mr Amin believed Entrepreneur's Relief was available.

5 9. Mr Amin replied by letter dated 26 November 2010 in which he advised HMRC of the three disposals referred to in paragraph 5 including the sale prices. In answer to the question concerning Entrepreneur's Relief he replied 'Relief is due on the grounds that building is used in the business'. He also enclosed valuations from Savills and Copping Joyce. Savills valuation dated 1 April 2008 valued the entirety of the premises at £1.1 million but stressed this was 'just a ball park figure which could not be backed up without a full valuation'. The Copping Joyce valuation was a full  
10 'Report and Valuation' which put a value on the premises as at 24 March 2010 of £950,000.00.

10. HMRC replied by letter dated 13 December 2010 stating that it did not consider Entrepreneur's Relief applied as Mr Amin's business as a sole trader had not ceased.

15 11. HMRC requested the District Valuer to comment on the valuations used in the tax return (it does not appear HMRC forwarded the valuations referred to in para 9 above) and by letter dated 4 January 2011 the District Valuer confirmed a valuation of £1.1 million as 'an informal estimate based on [his] office records'. This letter also refers to the possibility of a 10% deduction 'in line with established practice, to reflect the fact that a share in the freehold interest has been valued'.

20 12. In a letter dated 1 March 2011 Mr Amin advised HMRC that the 'property was in use as offices of Amin, Patel & Shah, Accountancy practice. This qualifies for Entrepreneurs Relief'. HMRC refuted this claim in a letter dated 11 March 2011 by stating that 'you have sold a building that the business used and so ...have not sold a part of your business'.

25 13. Further correspondence ensued between HMRC and Mr Amin including a further information notice dated 26 September 2011. In a letter dated 9 January 2012 HMRC specifically stated after agreeing to accept the valuation of £1.1 million 'but you may want me to ask the DV to negotiate a value for the share of the property which typically is worth less than a straightforward arithmetical share'. In his reply dated 7  
30 March 2013 Mr Patel did not make any reference to obtaining an agreed valuation with the District Valuer.

35 14. Meanwhile HMRC issued another information notice dated 16 February 2012. Mr Amin in reply to this notice requested HMRC to attend at his offices to run through the issues. HMRC issued a penalty notice for £300.00 on 24 April 2012 as Mr Amin had not supplied the information requested. Mr Amin appealed this notice but Tribunal Presiding Member Anne Redston sitting with Mr Toby Simon dismissed his appeal on 30 January 2013.

40 15. HMRC wrote to Mr Amin on 21 May 2013 to advise him that they were proposing to amend his tax return for the year ending 5 April 2009 by removing the claimed Entrepreneur's Relief. As a result, additional tax of £14,645.70 would be due together with interest and a penalty calculated at 27% of the additional tax. HMRC

included a penalty explanation schedule with this letter which explained that HMRC considered Mr Amin's behaviour to be careless.

16. On 24 June 2013 HMRC issued a closure notice under section 28A(1) and (2) TMA which explained that HMRC considered that Mr Amin was not entitled to Entrepreneur's Relief in respect of the sale of 22.7% of the premises on 25 June 2008. HMRC also issued a Penalty calculation summary dated 21 June 2013.

17. By letter dated 22 July 2013 Mr Amin raised two issues – the fact that the District Valuer had stated that the sale price of the property should be less in view of the fact that only 22.7% of the property value was transferred to the Trustees and that the goodwill associated with audit clientele was 'disposed off to N.S. Amin & Co., Chartered Accountants for a nominal consideration as I was unable to carry out the audit work. In my view this is a part disposal and is eligible for the Relief'.

18. By letter dated 30 July 2013 HMRC advised Mr Amin that in the absence of a full response from him HMRC had had no option but to use the figure he had offered in his return as the basis for HMRC's calculation of his capital gains tax liability. HMRC stated that at no point had Mr Amin suggested an alternative figure and had never told HMRC that he wanted to negotiate with the District Valuer.

#### **The evidence and submissions**

19. In his presentation to the Tribunal Mr Amin explained that he had sold part of the premises on 4 April 2008 to his Pension Trustees. He had also sold the goodwill of his audit practice in May 2008. Mr Amin sold a further portion of the premises to his Pension fund on 25 June 2008. As this was a sale between connected persons Mr Amin claimed that it was the duty of HMRC to involve the District Valuer. As HMRC had not opened an enquiry into Mr Amin's tax return for the year ended 5 April 2008 the valuation used by Mr Amin for calculating his capital gains tax liability in respect of the first sale had been accepted by default by HMRC. In view of the subsequent agreed valuation as at June 2008 Mr Amin wished to reopen his capital gains tax liability in respect of the first sale but the Tribunal informed him that this was not part of his appeal.

20. Throughout the hearing Mr Amin complained about the delay by HMRC in consulting the District Valuer, claiming that the onus was on HMRC to do so.

21. Mr Amin then referred to the three deeds by which he had purported to sell a total of 50% of the premises to his Pension Trustees. All three deeds of assignment are similar except for the percentages. In the April deed Mr Amin sold a 22.7% share of the premises for £249,700.00. As a result, the assignment declared that Mr Amin owned 77.3% and his Pension Trustees owned 22.7%. In the June deed Mr Amin purported to sell a further 22.7% share of the premises for £249,700.00. As a result, the assignment declared that Mr Amin owned 54.6% and his Pension Trustees owned 45.4%. Mr Amin confirmed that his Pension Trustees had actually made two payments to him each of £249,700.00.

22. The third deed dated 23 April 2010 showed that Mr Amin had purported to sell a further 4.6% share of the premises to his Pension Trustees for £43,700.00 and declared that Mr Amin now owned 50% and his Pension Trustees the other 50%.

5 23. Mr Amin informed the Tribunal that he now realised that there were errors in the second and third deeds as in June 2008 a further 22.7% of his beneficial interest was not of the same value as his original 22.7% by reason of the fact that in June he only owned a 77.3% share. He had therefore instructed his solicitors to draft amending deeds to correct the percentages. He claimed that in view of the agreed valuation he was also duty bound to amend the April deed and to refund the amounts overpaid by  
10 his Pension Trustees.

15 24. A meeting had taken place on 16 March 2016 between HMRC and Mr Amin to try to resolve the issues. Mr Amin was informed that as over four years had passed he could not re-open his 2007/8 capital gains tax liability. Mr Amin has refused to agree the note of this meeting as prepared by HMRC as they have refused or been unable to produce the original hand-written notes made at the meeting.

20 25. During the hearing, arguing that he needed time to produce the amended deeds and HMRC should produce their hand-written notes of the meeting on 16 March 2016 Mr Amin requested an adjournment. Mr Amin did not inform the Tribunal as to when he had instructed his solicitors to draft the amending deeds, only that his solicitor was currently unavailable. He confirmed that the amending deeds had not yet been executed.

25 26. The Tribunal rejected the request for an adjournment as Mr Amin had been aware of the valuation used by HMRC in 2010 and in June 2014 had agreed with the District Valuer a valuation of £187,956.00 in respect of a 22.7% share. He had therefore had two years in which to amend the deeds. The Tribunal could only reach a decision on the basis of the documentary evidence before it, and not on the possibility that deeds might be amended. The production of the hand-written notes was not necessary – Mr Amin could simply indicate which parts of the typed note he objected to but had not done so. The Tribunal was of the opinion that to allow an adjournment  
30 now to enable Mr Amin to produce amending deeds and thus re-open his capital gains tax liability for the years ending 5 April 2008 and 2009 would be an abuse of the judicial process.

35 27. As he was no longer able to carry out audit work (due to not being qualified to do so) Mr Amin had no option but to sell this part of the business but in order to keep his clients he met with them individually and told them that Mr N S Amin would carry out their audits. This way Mr Dilip Amin ensured that he retained these clients for their non-audit accountancy work.

40 28. Mr N S Amin confirmed in verbal evidence to the Tribunal that he had agreed to acquire Mr Dilip Amin's audit work for a nominal consideration of 99 pence. It was a verbal agreement not evidenced in writing. However, Mr N S Amin did send letters of engagement to each new audit client. He believed there were nine such clients in total

and his fees since the transfer were of the order of £70,000.00. Mr N S Amin does all the audit work himself.

29. Mr Dilip Amin advised the Tribunal that he believed he was entitled to Entrepreneur's Relief as he had sold part of his business. The transfer of his audit clients took place during April and May 2008. Mr Amin did not elaborate on his belief or explain to the Tribunal why he thought he was entitled to the relief.

30. Lastly Mr Dilip Amin addressed the question of the penalty. He believed penalties should only be raised where the taxpayer was at fault. He maintained that everything was submitted to HMRC on a factual basis. He again complained of delay by HMRC in instructing the District Valuer.

### **The evidence of HMRC**

31. Mrs Carwardine explained that the original assessment of additional tax had been calculated using Mr Amin's submitted valuation of £1,100,000.00. Eventually when Mr Amin had agreed a valuation with the District Valuer the assessment had been reduced to reflect the reduced valuation figure. The reason why HMRC had raised the additional assessment in the first place was because HMRC considered Mr Amin was not entitled to Entrepreneur's Relief.

32. In order to claim this relief Mr Amin had to show that he had sold a separate, distinct and identifiable part of his business. Mr Amin had produced no evidence of the sale of goodwill and there was no evidence that the audit work was a distinct part of the rest of Mr Amin's practice.

33. Mrs Carwardine explained the rationale behind HMRC's decision to allow a 20% disclosure reduction in the penalty which equated to a reduction of the penalty rate from 30% to 27%.

### **The Law on Entrepreneur's Relief**

34. Section 169I of the Taxation of Chargeable Gains Act 1992 states:

(1) There is a material disposal of business assets where –

- (a) an individual makes a disposal of business assets (see subsection (2)), and
- (b) the disposal of business assets is a material disposal (see subsections (3) and (7)).

(2) For the purposes of this Chapter a disposal of business assets is –

- (a) a disposal of the whole or part of a business,
- (b) a disposal of (or of interests in) one or more assets in use, at the time at which a business ceases to be carried on, for the purposes of the business, or

(c) a disposal of one or more assets consisting of (or of interests in) shares in or securities of a company.

5 **The Decision**

35. The Tribunal notes that HMRC opened the investigation on 30 September 2010. Mr Amin did not reply to the initial enquiries until 26 November 2010 when the two valuations referred to in paragraph 8 were sent to HMRC. HMRC requested the District Valuer to review the values used in the return on 15 December 2010 and the  
10 District Valuer replied on 4 January 2011.

36. HMRC repeatedly drew attention to the question of valuation over the following three years but Mr Amin did not respond to the various requests by HMRC that he open discussions with the District Valuer until 2014 when he agreed a valuation for the entire premises as at June 2008 of £920,000.00 resulting in a valuation of  
15 £187,956.00 for a 22.7% share. This figure was arrived at by reducing the whole valuation of £920,000.00 by 10% to £828,000.00 to allow for the fact that only part of the premises was being sold and then applying 22.7% to this figure.

37. The Tribunal decided that it agreed with HMRC's interpretation of Entrepreneur's Relief. While the Tribunal accepts that Mr Dilip Amin did dispose of his audit practice to Mr N S Amin, the legislation does not allow Mr Amin to claim relief for  
20 the partial disposal of his premises as a result of the disposal of his audit practice.

38. If Mr Amin had sold distinct office space in the premises such as the second floor on the basis that he no longer needed this office space as a result of no longer carrying out audit work he might have been entitled to the relief; but we agree with HMRC that  
25 the sale of the premises and of the goodwill have to be seen as wholly unconnected transactions.

39. The Tribunal considers that disposing of a 22.7% share of the entire premises does not fall within the terms of section 169I (2)(b). HMRC was therefore correct to issue an amended assessment ignoring Mr Amin's claim for Entrepreneur's Relief. Having  
30 raised an amended assessment HMRC rightly issued a penalty notice in accordance with schedule 24 of the Finance Act 2007.

40. Having studied the reasons given by HMRC to Mr Amin for reducing the percentage of the penalty from 30% to 27% the Tribunal can see no reason to interfere with the reduction. Mr Amin's responses to any request for information and his  
35 conduct of these proceedings has been dilatory and matters have been raised at the last moment without any justification.

41. The Tribunal is satisfied that the correct valuation figures have been used in amending the assessment of additional tax to £3,954.33. Mr Amin has agreed the valuation figure with the District Valuer and cannot now dispute the value. It follows  
40 that the amended penalty assessment of £953.58 is also correct.

42. The appeal is dismissed and the assessment of £3,954.33 and penalty of £953.58 remain due for payment.

43. 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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**ALASTAIR J RANKIN  
TRIBUNAL JUDGE**

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**RELEASE DATE: 21 JULY 2016**