



**TC03759**

**Appeal number: TC/2014/00450**

*INHERITANCE TAX - failure to lodge inheritance tax return on death of life tenant – trustee’s failure to respond to all correspondence from 13 August 2010 including appearing at the hearing – case heard in appellant’s absence- penalty £100 for initial failure, a further penalty of £100 for the continuing failure and a penalty of £60 per day incurred from the date of the hearing until the return is lodged.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**THE COMMISSIONERS FOR HER MAJESTY’S  
REVENUE & CUSTOMS.                      Appellants**

**-and -**

**RICHARD EVANS.                              Respondent**

**TRIBUNAL: JUDGE DAVID S PORTER**

**Sitting in public at Phoenix House, Leeds on 15 April 2014**

**Mr Robert Brown, a grade 7 officer appearing for the Appellant**

**No one appearing for the Respondents.**

## DECISION

1. We were advised that the Appellants (HMRC) had written six letters to the Respondent (Richard Evans) and a further two letters advising of the proposed application to the tribunal. On 13 January 2013 HMRC had also sent a letter, by recorded delivery, together with an assessment of the tax due as a result of exercising its best judgment to Mr Evans. Receipt had been acknowledged for that letter. On 14 February 2014 the tribunal service had notified Mr Evans of the date of the hearing today. HMRC has left numerous telephone messages with Mr Evans but none had been returned. Judge Porter asked the Clerk to telephone Mr Evans but she was unable to get a response. HMRC are aware that Mr Evans is still alive and living at the address as they had been so advised by Messrs Hunt & Wrigley, solicitors to the estate of John B R Sootheran Deceased. I decided to proceed with the hearing under Rule 33 of The Tribunal Procedure (First-tier) (Tax Chamber) Rules 2009 as the Respondent had been notified of the hearing and failed to attend and that it was in the interest of justice to proceed with the hearing.
2. Mr Robert Brown, a grade 7 officer, appeared on behalf of HMRC and I was provided with a bundle of documents.

### **The law**

3. Section 200 .1 (b) of the Inheritance Tax Act 1984 (the Act) provides that the Trustee of the settlement is liable for any inheritance tax arising on the death of the life tenant.
- Section 216. 1 (b) provides that the Trustee must deliver to the Board an account specifying to the best of his knowledge and belief, all appropriate property and the value of that property and the account is to be delivered within 12 months from the date of the death. Section 216. (6) (c).
- Section 245 of the Act provides that a penalty of £100 arises if the Trustee has failed to render an account and a further liability to be awarded by the tribunal from the date of the hearing of an amount not exceeding £60 for each day that the failure continues until the account is rendered. A further £100 is also due if a further 6 months has passed since the first penalty of £100 and the account has still not been rendered.
- Section 245 97) of the Act provides for a reasonable excuse and the account must be rendered as soon as reasonably practical after the excuse has ceased.

### **The facts**

4. Mrs Constance Sootheran died on 30 October 1976. After various specific legacies, Clause 5 of her Will, dated 20 September 1963, left the property 'Cartref' to Mr John Benn Righton Sootheran (Mr Sootheran), her husband, for life. Clause 6 left the residue of the estate to Mr Sootheran for life and on his

death the residuary estate passed to her nephews and nieces. Mr Sootheran and her brother, Herbert Evans, were appointed executors.

5. By a deed of appointment dated 21 July 1977, Hugh Warwick Evans and Richard Evans were appointed as trustees with the original executors. Hugh Warwick Evans died on 8 August 1991. Mr Woodall, the solicitor at Hunt & Wrigley, stated that Herbert Evans had died leaving Richard Evans as the sole surviving trustee.
6. Mr Sootheran died on 1 January 2010 and probate to his will was granted on 25 June 2010. In accordance with the Act the property comprised in the Constance Sootheran Will Trust (the Will Trust) to which Mr Sootheran was beneficially entitled, falls to be treated as part of his estate at his death.
7. As sole surviving Trustee of the Will Trust, Richard Evans is liable for the inheritance tax payable on the property held in the Will Trust and is obliged to deliver an account in respect of the Will Trust. That account has to be rendered before the 1 February 2001 being 12 months from Mr Sootheran's death. Form IHT416 prepared by Mr Woodall reveals assets of at least £65,473 although he advises that he does not believe that information is complete as he too was unable to obtain any information from Mr Evans.
8. HMRC has written to Mr Evans on the following occasions; 13 August 2010, 21 July 2011, 22 October 2012, 8 February 2013, 10 May 2013 and 6 August 2013. It has attempted to follow up the letters by telephone calls but after leaving a message received no response to either the telephone calls or the letters. HMRC wrote to Mr Evans on 13 January 2014 advising that an application would have to be made by HMRC to the tribunal to seek authorisation to raise penalties arising from his failure to respond. The letter included a Notice of Determination which states the value of the property at the date of Mr Sootheran's death was at least £65,473 (using Mr Woodall's figure) and that inheritance tax of £22,550.28 together with interest of £2,332.66 was due. The letters were sent by recorded delivery and evidence of the same was provided to the tribunal.

### 30 **Submissions by Mr Brown**

9. Mr Brown submitted that section 245 of the Act provides for a fixed penalties and HMRC has to apply to the tribunal to enforce the same. Section 250 of the Act specifies the time limit for the recovery of penalties; no proceedings are to be brought 'after the expiry of three years beginning with the date on which the amount of the tax properly payable in respect of the chargeable transfer concerned was notified by the Board to the person or one of the persons liable to for the tax or any part of it'.
10. He submitted that the assessment to best judgment dated 13 January 2014 was such notification. If the Tribunal took the view that that was only an estimate as the judgment stated that the estate was at least £65,473, then the application today is within 3 years as the time only starts to run from the date of the hearing.

He accepted that Mr Evans might have a reasonable excuse, but as he has neither attended the Tribunal nor written to HMRC such an excuse cannot be considered. He requested the tribunal to:-

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1. declare that Mr Evans has failed to deliver an account following the death of Mr Sootheran.
  2. confirm the award against Mr Evans of a penalty of £100 in accordance with the Act and the further penalty of £100, and
  3. award a penalty of £60 for each day after the release of this decision up to the day that the account is delivered, the account to specify to the best of his knowledge and belief all the appropriate property of the Will Trust at 4 January 2010 and the value of the property.
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### **The decision**

11. I have considered the law and the facts and I grant Mr Brown's request and impose two penalties of £100 and further penalty of £60 to be paid for each day from the date of the release of this decision until an appropriate account is submitted. I expressed some concern at the lack of response from Mr Evans. Given the ages of his uncle and father I suspected that he might be over 70 years old. It may well be that he is unwell and that is why there has been no response, although I accept that somebody could have responded on his behalf. I urged Mr Brown to see if he could arrange for a representative from the local tax office to visit Mr Evans to ascertain what the problem might be as to why he fails to respond to HMRC's letters and telephone calls.
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12. 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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**DAVID S PORTER  
TRIBUNAL JUDGE**

35 **RELEASE DATE: 25 June 2014**

