



TC03523

Appeal number: TC/2013/04373

Capital Gains Tax penalties – complaint that penalties calculated on basis of incorrect assessments – assessments appealed against and appeal lost – permission to appeal refused – impossibility of going behind previous tribunal decision – taxpayer’s remedy – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOHN REGAN

Appellant

- and -

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

**TRIBUNAL: JUDGE MALACHY CORNWELL-KELLY
MRS SUSAN HEWETT OBE JP**

Sitting in public at City Gate House, Dyke Road, Brighton on 1 April 2014

The taxpayer in person

Ms Yeen Taylor of HMRC for the Crown

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DECISION

1 This a very unhappy case. In form, it is an appeal against penalties of £17,704 and
£16,639 for failure to declare chargeable gains in the years 1998-99 and 2001-02
respectively. Mr Regan appealed against the assessments underling the penalties and
5 his appeal was unsuccessful: *Regan v RCC* [2012] UKFTT 569 TC. Permission to
appeal further was refused by the judge on 19 November 2011 and the application
was not, it seems, renewed before the Upper Tribunal. The penalties in question were
subsequently assessed on 14 November 2012 and upheld on review on 4 June 2013.

2 The grounds for the present appeal were stated as follows:

- 10 (a) penalty for £17,704 is based on an HMRC CGT assessment the quantum of
which is excessive and not accepted as being correct.
- (b) penalty £16,639 is based on an HMRC CGT assessment the quantum of
which is excessive and not accepted as being correct.

3 The appeal was lodged by Mr Regan's accountant and on his advice. It emerged at
15 the hearing that Mr Regan wished to reopen the appeal against the assessments which
were the subject of the now final decision of the tribunal. We explained to Mr Regan
that this was not possible and he specifically confirmed that, if he were to accept the
figures in the tribunal's decision as correct, then he would not be contesting the
amount of the penalties we have referred to. In other words, Mr Regan's grievance
20 relates solely to the amount of the assessments which have now been definitively
determined, and not to the amount of these penalties – except in so far as they were
based on what he still regards as incorrect assessments.

4 Clearly, in these circumstances we have no jurisdiction to entertain Mr Regan's
complaints, because the penalties themselves are not at issue, and it is surprising that
25 he was not so advised by his accountant. What further emerged was that Mr Regan
believes that the tribunal which determined his appeal was actually misled by the
Revenue as to material facts, and he demonstrated why he believed that was the case.
It is not within our jurisdiction to address that complaint either, but it is a serious
allegation which may well warrant investigation and we therefore directed Mr Regan,
30 if he wishes to pursue the matter, towards the Revenue Complaints Adjudicator and,
eventually if need be, to the jurisdiction of the Parliamentary Commissioner for
Administration. In formal terms, this appeal must therefore be dismissed.

5 This document contains full findings of fact and reasons for the decision. Any party
dissatisfied with this decision has a right to apply in writing for permission to appeal
35 against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax
Chamber) Rules 2009. The application must be received by the tribunal no 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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**MALACHY CORNWELL-KELLY
TRIBUNAL JUDGE**

RELEASE DATE: 23 April 2014

