Neutral Citation: [2026] UKFTT 00800 (TC)

Case Number: TC 09900

FIRST-TIER TRIBUNAL
TAX CHAMBER

In person at Taylor House, London

Appeal reference: TC/2024/05101

TAX – CONSTRUCTION INDUSTRY SCHEME - refusal to make a direction under Regulation 9(5) of the Income Tax (Construction Industry Scheme) Regulations 2005 – had Appellant taken reasonable care to comply with the relevant legislation? - no – appeal dismissed

Heard on: 3 March 2026
Judgment date: 28 May 2026

Before

TRIBUNAL JUDGE MALCOLM FROST
MICHAEL BELL

Between

GEORGE STAR BUILDERS LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Arthur Wong, of counsel, instructed by Raffingers LLP

For the Respondents: Sam Dingley litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This is an appeal against HMRC's refusal to make a direction under Regulation 9(5) of the Income Tax (Construction Industry Scheme) Regulations 2005 ("the CIS Regulations"). The effect of such a direction would have been to relieve the Appellant of liability to make payments pursuant to the Construction Industry Scheme ("CIS") set out in Finance Act 2004 ("FA 2004").

2. HMRC's refusal was on the basis that the Appellant had not taken reasonable care to comply with Section 61 FA 2004.

3. For the reasons set out below, we dismiss the appeal. In short, we find that the Appellant company had an awareness that it had taken steps that were likely to give rise to tax implications but had not taken any steps to confirm what those implications were. The Appellant has therefore failed to satisfy us that it took reasonable care to comply with the relevant legislation.

PROCEDURAL BACKGROUND

4. Unless otherwise stated, references in this decision to Regulations are to the CIS Regulations.

5. In addition to the refusal to make a direction under Regulation 9, HMRC have issued determinations under Regulation 13 of the CIS Regulations for the same period. The appeal in relation to the Regulation 13 determinations has been stood over pending the outcome of this appeal.

6. If this appeal were allowed, then the appeal in respect of the determinations would most likely fall away. The parties have therefore agreed that the Regulation 9 matter (this appeal) ought to be heard first.

BACKGROUND FACTS

7. We were provided with a hearing bundle of 186 pages, along with witness statements from Mr George Jarda and Mr Joel Speilman. Mr Jarda gave evidence in person and was cross examined. From that evidence we find the following facts.

The Appellant company

8. Mr George Jarda is the sole shareholder and registered director of the Appellant company.

9. Mr Jarda was born in Romania on 17 November 1987 and came to the UK in 2007 aged 20. From his arrival in the UK, Mr Jarda worked as a self-employed building subcontractor. He was a hard worker and a quick learner.

10. Mr Jarda suggested in his evidence he had no knowledge of UK tax rules. He said that he paid an accountant that his friend had suggested he use. He said that he just paid the accountant but did not know what deductions if any were being made.

11. We accept that Mr Jarda had no knowledge of the detail of the UK tax system. However, we find that Mr Jarda was aware that UK tax compliance obligations existed and that he appreciated the need to put his affairs in the hands of a suitably competent adviser to deal with such matters.

12. Mr Jarda was registered as a sub-contractor under the CIS Regulations in his personal capacity from 2007.

13. From at least 2014, a Mr Koppel owned and ran a construction company called Five Star Builders Limited ('Five Star Builders'). Amongst Mr Koppel's workforce was Mr Jarda.

14. As a part of his work for Five Star Builders, Mr Jarda supervised the subcontractors on site.

15. In 2015, Mr Koppel's business ran into difficulty. Health and safety proceedings were commenced against Five Star Builders and Mr Koppel decided to liquidate the company.

16. A new company was established to carry on the business previously undertaken by Five Star Builders. This new company was George Star Builders Limited, the Appellant.

17. The Appellant took on most of the workforce of Five Star Builders and became the main contractor for works ongoing at the time of the liquidation of Five Star Builders.

18. Mr Jarda explained in his evidence (and we accept) that Mr Koppel had said "You open a company, you be the boss. They told me what to do".

19. When asked at what point Mr Koppel ceased to be involved in the business, Mr Jarda indicated that this occurred shortly after HMRC opened a Code of Practice 9 investigation into the Appellant in 2021.

20. Mr Koppel was curiously absent from the Appellant's case in the papers before us. Mr Jarda's witness statements suggested that the Appellant company was set up as a result of entrepreneurial actions by Mr Jarda. His first statement says:

> "I knew Five Star Builders was likely to cease trading and I saw an opportunity to take on some of the existing work.
>
> With this in mind, and based on the experience I obtained working for Mr Koppel, I formed my own company George Star Builders Limited in January 2015.
>
> The initial interaction between the companies was that the Five Star Builders workers were moved across to George Star Builders Limited with George Star Builders taking on the payroll costs and being reimbursed for this."

21. This is rather at odds with responses given by Mr Jarda in cross examination and in response to questioning from the Tribunal. In those responses Mr Jarda made it clear that his knowledge of business and tax affairs was very limited and that Mr Koppel appeared to have some sort of ongoing role instructing accountants and other professionals.

22. We therefore treat Mr Jarda's evidence with an element of caution. We consider that Mr Jarda's responses in cross examination were straightforward and honest. However, where his witness statements provide a picture that is inconsistent with his oral evidence, we prefer the oral evidence.

23. The Appellant company retained an accountant and bookkeeper, who were responsible for dealing with the accounts, payroll and CIS returns for the Appellant.

24. The Appellant was registered as a CIS subcontractor on 22 February 2017, with a CIS start date of 1 February 2015. The Appellant obtained gross payment status for CIS purposes on 1 March 2017.

25. From around 2017 Mr Jarda had been cashing cheques intended for the Appellant using a cheque cashing service. Mr Jarda would get customers to give him cheques where the payee section was left blank and cash these at a money service bureau. He used the funds received to pay construction subcontractors. Neither the accountant nor the bookkeeper were made aware of these payments.

26. Mr Jarda maintained that he thought it was okay to pay the workers in cash as he believed they would take care of their own tax. We do not accept this contention at face value and comment further below.

27. The Appellant was registered as a contractor for CIS purposes on 30 September 2020 and made nil monthly returns stating that no payments had been made to subcontractors. It is common ground that in fact substantial payments were being made throughout that time.

28. On 16 February 2021 HMRC opened a Code of Practice 9 (COP 9) investigation into Mr Jarda as HMRC considered they had reason to suspect that Mr Jarda had committed tax fraud.

29. Mr Jarda made various disclosures to HMRC as a part of the investigation process.

30. On 2 February 2024, HMRC issued a letter to the Appellant warning that HMRC considered that the Appellant had engaged subcontractors within the scope of the Construction Industry Scheme without making the necessary deductions and that HMRC intended to issue determinations for the additional tax due (under Regulation 13 of the CIS Regulations).

31. On 5 February 2024, HMRC issued an amended Regulation 13 warning letter with additional liabilities calculated for the tax year 2019/20.

32. On 1 March 2024 the Appellant's Agent responded to the Regulation 13 Warning Letter, this response included a claim for relief in the form of a direction under Regulation 9 of the CIS Regulations.

33. On 13 March 2024, HMRC issued a letter refusing to make a direction under Regulation 9.

34. On 21 March 2024, the Respondents issued Regulation 13 Determinations for the years 2015/16 to 2020/21.

35. On 22 March 2024 and 26 March 2024, the Appellant formally appealed the Regulation 13 Determinations.

36. On 8 April 2024, the Appellant requested an independent review of HMRC's refusal to make a Regulation 9 Direction.

37. On 29 August 2024 HMRC issued their Review Conclusion Letter. The decision to refuse to make a Regulation 9 Direction was upheld.

38. On 23 September 2024 the Appellant submitted their Notice of Appeal to the Tribunal.

THE LAW

39. This decision is confined to HMRC's refusal to make a direction under Regulation 9 of the CIS Regulations. As noted above, the effect of such a direction would have been to relieve the Appellant of liability to make payments pursuant to the CIS.

40. Regulation 9 provides (so far as is relevant):

> "Recovery from sub-contractor of amount not deducted by contractor
>
> (1) This regulation applies if—
>
> (a) it appears to an officer of Revenue and Customs that the deductible amount exceeds the amount actually deducted, and
>
> (b) condition A or B is met.
>
> (2) In this regulation— "the deductible amount" is the amount which a contractor was liable to deduct on account of tax from a contract payment

> under section 61 of the Act in a tax period; "the amount actually deducted" is the amount actually deducted by the contractor on account of tax from a contract payment under section 61 of the Act during that tax period; "the excess" means the amount by which the deductible amount exceeds the amount actually deducted.
>
> (3) Condition A is that the contractor satisfies an officer of Revenue and Customs—
>
> (a) that he took reasonable care to comply with section 61 of the Act and these Regulations, and
>
> (b) that—
>
> (i) the failure to deduct the excess was due to an error made in good faith, or
>
> (ii) he held a genuine belief that section 61 of the Act did not apply to the payment.

THE ISSUE

41. It is common ground between the parties that the only issue to be determined by this Tribunal is the test in Regulation 9(3)(a) - whether or not the Appellant took reasonable care to comply with Section 61 FA 2004 and the Regulations.

42. Section 61 FA 2004 is the operative provision of the CIS that obliges a CIS contractor to make deductions from payments to CIS subcontractors.

MEANING OF "REASONABLE CARE"

43. Mr Wong, for the Appellant, sought to argue the case by reference to the case of *Perrin v HMRC* [2018] UKUT 156 (TCC). This case sets out the leading formulation of the approach to be applied to determining if a taxpayer has a reasonable excuse for a default. The key section for our purposes being (in paragraph [81]) for the Tribunal to:

> "decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question 'was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?'"

44. Mr Wong argued (supported by the case of *Hextall v HMRC* [2023] UKFTT 390 (TC)) that the test for 'reasonable excuse' is practically indistinguishable from the question of whether the Appellant took reasonable care.

45. HMRC relied on the formulation put forward in *HMRC v David Collis* [2011] TC 01431 that (at paragraph 29, emphasis added):

> "that penalty applies if the inaccuracy in the relevant document is due to a failure on the part of the taxpayer (or other person giving the document) to take reasonable care. We consider that <u>the standard by which this falls to be judged is that of a prudent and reasonable taxpayer in the position of the taxpayer in question</u>"

46. In our view there is very little practical difference between these formulations. However, there may be circumstances where the two formulations produce different results.

47. We remind ourselves that the statutory wording obliges the Appellant to show that they took reasonable care to comply with Section 61 FA 2004 and the Regulations. It is clear that

we must take into account the taxpayer's particular circumstances and judge their behaviour against what would be objectively reasonable in the circumstances. In our view, the test was summed up well in *PDF Electrical v HMRC* [2012] UKFTT 708 (TC) at [18]:

> "The standard required by Regulation 9 is that the business must take reasonable care in its compliance with the CIS. It does not require that mistakes must never be made. We consider that the standard of 'reasonable care' is one that must be appropriate and proportionate to the particular contractor's business. The compliance systems to be expected of a substantial multi-national contractor with a large and sophisticated accounting department are very different from the systems to be adopted by a small business."

SUBMISSIONS OF THE PARTIES

48. Mr Wong cited a number of first instance decisions in which findings had been made as to whether particular appellants had taken reasonable care (or had a reasonable excuse). None of these cases (aside from *Perrin*) purport to establish principles of broad application but we have taken them into account so far as they are relevant to our application of the test.

49. Mr Wong's overall case was that there was what he described as an 'information gap' between Mr Jarda and the bookkeeper and accountant employed by the Appellant. Mr Wong suggested that Mr Jarda did not know that he needed to notify his advisers of payments to subcontractors, and for their part, the advisers had knowledge of CIS but did not know they needed to ask Mr Jarda about subcontractor payments. It follows, Mr Wong submits, that Mr Jarda acted in reasonable ignorance in not being aware of his obligations and therefore was reasonable in not complying with them.

50. More specifically, Mr Wong put forward the following factors as meeting the statutory test:

(1) The standard of care: Mr Wong submitted that Mr Jarda's limited knowledge of English, lack of formal education in the UK, and lack of understanding of the UK tax system (and correspondingly of the CIS Regulations) taken together demonstrate that he had a low level of knowledge and expertise. Thus, Mr Wong suggests, the standard of care required of him must be assessed in light of those circumstances. In particular, the systems for compliance that he should be expected to put in place should not be the same as those of a sophisticated taxpayer.

(2) Reasonable reliance: Mr Wong submitted that it was reasonable for Mr Jarda to rely on the advice of his accountants.

(3) Not put on notice: Mr Wong argued that Mr Jarda did not realise that tax needed to be deducted from payments made to sub-contractors. Mr Wong submitted that Mr Jarda was not informed of this by his accountants as there was nothing to prompt him to raise these issues with them (or indeed with HMRC). Instead, Mr Wong's case was that Mr Jarda reasonably believed that it would be for sub-contractors to handle their own tax affairs such as through filing their own self-assessment tax returns.

(4) Obscurity of the CIS: Mr Wong suggested that the CIS Regulations are not a straightforward, intuitive area of tax law. He pointed out that the obligation on contractors to make deductions has previously been described as "obscure" by the FTT (Judge Thomas) in *Scowcroft v HMRC* [2018] UKFTT 295 (TC) at [144]. Mr Wong described the CIS as representing a targeted exception that Parliament has specifically carved out in respect of the construction industry, and there was nothing to alert Mr Jarda to this deviation from the general, commonsense understanding that self-employed persons are responsible for their own taxes.

(5) Reasonable care persisted throughout relevant period: Mr Wong pointed out that Mr Jarda was first made aware of the CIS when an enquiry notice was received from HMRC in February 2021 and promptly took remedial action by submitting a voluntary disclosure in April 2021.

51. Mr Wong also argued that the facts of the present case are closely analogous to those of *Barrett v HMRC* [2015] UKFTT 329 (TC). There, the taxpayer, Mr Barrett, was an individual who previously worked as a CIS sub-contractor but later began trading as a contractor and failed to make CIS deductions. He relied on his accountant Mr Aspros to bring to his attention any tax obligations that he might have, having "simply provided Mr Aspros [his accountant] with the relevant paperwork, and signed, without question, everything which Mr Aspros put in front of him" (per [159] of *Barrett*). Mr Wong submitted that nonetheless, this was held to be enough given Mr Barrett's low level of expertise and sophistication and limited resources.

52. The *Barret* case is a First-tier decision and so not strictly binding upon us. In any event we do not agree that the present case is analogous to that case.

53. Firstly, *Barrett* does not relate to a Regulation 9 Direction, so the case does not consider whether Mr Barrett took reasonable care to comply with the CIS legislation.

54. More significantly, the facts of *Barrett* do not resemble Mr Wong's 'information gap' characterisation of the present case. In Barrett, the taxpayer had provided full information to his advisers at every stage. The difficulty arose because his adviser was not themselves aware of CIS. The question was whether Mr Barrett ought to be penalised because of his adviser's lack of knowledge. In other words, this was a case where a taxpayer had appointed an ostensibly competent adviser, had provided that adviser with the full facts, and followed the (deficient) advice. This is very different from the present case.

DISCUSSION

55. The test to be applied is whether or not the Appellant company took reasonable care to comply with the relevant legislation. The standard by which this falls to be judged is that of a prudent and reasonable taxpayer in the position of the Appellant company.

56. Where a taxpayer is unable to deal with their own tax affairs, the taking of reasonable care would normally involve seeking appropriate advice, providing their advisers with a full account of the facts and adhering to that advice.

57. When considering the facts against that standard, the Appellant is in some difficulty.

58. On the Appellant's own case, they operated in ignorance of their legal obligations, took no advice and made no attempt to comply with their obligations. Indeed, for part of the period in dispute, Mr Jarda was obtaining cash through a cheque cashing service in order to pay subcontractors 'off the books' without informing the Appellant's accountants. This is not a course of action that is consistent with taking reasonable care to comply with obligations.

59. Mr Jarda professes not to have been aware of the tax obligations upon the Appellant company. However, we find it stretches the bounds of credibility to suggest that a builder of almost 20 years' experience was not aware that paying subcontractors on a 'cash in hand' basis had tax consequences. We do not make a finding that Mr Jarda was aware of his company's CIS obligations, but we do find that he had an awareness that payments to subcontractors would have potential tax implications.

60. When he first arrived in the UK, Mr Jarda was acutely aware of his own inexperience with the UK tax system and dealt with that inexperience by paying an accountant to deal with his tax affairs.

61. In the case of the Appellant, Mr Jarda felt that he had sufficient experience to make positive assumptions about the correct tax treatment of payments made to subcontractors. Mr Jarda believed that there were tax obligations but that it was sufficient for those obligations to be left in the hands of the relevant subcontractors.

62. Mr Jarda therefore made incorrect assumptions, he did not seek to confirm those assumptions with his advisers and so failed to comply with his obligations. This is not consistent with the taking of reasonable care.

63. Mr Wong's 'information gap' analysis proceeds from the premise that it was reasonable for Mr Jarda to rely on his own assumptions as to the workings of the UK tax system as a basis for not providing his advisers with a full factual picture. We reject that premise. In order to discharge the burden upon the Appellant to positively demonstrate the taking of reasonable care, it is not enough for the Appellant to rely upon untested assumptions.

64. A taxpayer who has an awareness that they have taken steps that are likely to give rise to tax implications will not normally be able to demonstrate the taking of reasonable care unless they have also positively sought to follow up on that awareness. Where a taxpayer makes assumptions as to the correct tax treatment, they should be able to demonstrate that they have taken some steps to satisfy themselves that their assumptions are correct. This may not always mean appointing professional advisers. It may be sufficient to rely on HMRC guidance or knowledgeable staff. However, in this case the Appellant had professional advisers available but nonetheless did not take advice.

65. Overall, having considered the circumstances of the present case, we find that the Appellant has failed to demonstrate that it took reasonable care.

66. It follows from the above that we reject the factors put forward by Mr Wong to support his argument that reasonable care was taken. Briefly:

(1) The standard of care expected relates to the Appellant company, not simply Mr Jarda himself. Mr Jarda was aware that he did not possess tax expertise, but his company had retained suitable advisers. The standard expected must encompass that professional advice was readily available but that advisers were not consulted.

(2) We do not consider that Mr Jarda reasonably relied upon his advisers because he did not appraise them of the full facts or seek advice.

(3) The submission that Mr Jarda was not put on notice falls away given our factual finding that he would have been aware of some tax implications and was unreasonable in not seeking to follow up on that awareness.

(4) The suggestion that CIS is obscure is difficult to accept when we are considering the position of someone who has worked in the building trade in the UK for almost 20 years, but in any event Mr Wong's point simply supports the position that Mr Jarda had a perception as to the correct tax treatment of subcontractor payments and chose not to test that perception by taking advice.

CONCLUSION

67. For the reasons set out above we consider that the Appellant did not take reasonable care to comply with the relevant legislation and we therefore dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

68. 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.

Release date:
28 May 2026