IN THE HIGH COURT OF NEW ZEALAND
TAURANGA REGISTRY

CRI 2009-470-13
CRI 2009-470-14
CRI 2009-470-15

	BETWEEN	BARBARA BROOKS Appellant
	AND	COMMISSIONER OF INLAND REVENUE Respondent

Hearing: 9 December 2009

Appearances: Appellant in person
Catherine Harold for Respondent

Judgment: 9 December 2009

JUDGMENT OF HARRISON J

SOLICITORS
Ronayne Hollister-Jones Lellman (Tauranga) for Respondent
(copy to Appellant in person)

[1] Mrs Barbara Brooks appeals against a sentence imposed upon her in the District Court at Tauranga on 28 October 2008 on 39 charges of failing to provide GST and tax returns: s 143(1)(b) Tax Administration Act 1994.

[2] Mrs Brooks failed to appear in the District Court. In her absence Judge Bidois fined her $100 on each offence; a total of $3,900. He also ordered her to pay Court costs on each offence of $130 and a global figure for solicitor's costs of $150.

[3] Mrs Brooks has submitted a comprehensive and lucid written synopsis of arguments in support of her appeal. She explains that she and her husband were the victims of prolonged hardship over a number of years - financial, emotional and medical. As a result she accepts that they failed to file returns. She also explains that she failed to appear in the District Court due to an oversight.

[4] However, as Ms Harold submits, the offences of failing to file tax returns are of absolute liability; in other words, fault, knowledge or intent, broadly falling within the description of culpability, are irrelevant. The public interest requires that those who fail to file returns are themselves accountable.

[5] Mrs Brooks' appeal against the quantum of fines will be allowed. Judge Bidois, without the benefit of submissions from either party, imposed a fixed fine of $100 on each charge. As a result, he did not consider the totality principle which applies to charges under the Tax Administration Act: see *Beazley v IRD* (2003) 21 NZTC 18,287 at [9] (applied in *Smallridge v Department of Inland Revenue* HC AK CRI 2004-404-342 5 October 2004 and *Arnold v Department of Inland Revenue* HC AK CRI 2007-404-204 6 September 2007) :

> That must, of course, be subject to the totality principle when considering a case like the present one in which there are multiple offences. For these cases it is not sufficient to simply multiply the number of offences by the starting point for a single offence. Rather, the Court must stand back from the totality of the offences and consider the overall impact of the penalty having regard to the overall culpability revealed by the course of conduct over a period. As is perhaps better recognised when dealing with imprisonment, multiple offending will almost invariably result in a reduction in the penalty otherwise attributable to each individual offence in a series.

[6] In each of those three decisions appeals were allowed where the District Court Judges had not applied a totality approach. As a result in *Beazley* fines were reduced from $125 to $50 for each offence; in *Smallridge* from $75 to $40; and in *Arnold* from $100 to $75.

[7] This case is distinguishable from *Arnold* in that the IRD accepts that by the time the sentence was imposed Mrs Brooks had filed 27 of the outstanding 39 returns (Ms Harold advises that two are still outstanding). In those circumstances, and given Mrs Brooks' straightened financial position, I am satisfied that an appropriate fine for each charge is $50. Accordingly the fines imposed in the District Court of $100 per offence are quashed. In substitution fines of $50 per offence are imposed.

[8] Initially Ms Harold, in the best traditions of fairness practised by the Crown, was prepared to concede that the Judge erred in fixing costs of $130 on each of the 39 informations. However, having considered *Dryland v Commissioner of Inland Revenue* HC ROT CRI 2009-463-86 2 December 2009, Ms Harold withdraws that concession. I am satisfied that Judge Bidois was bound to fix Court costs of $130 for each offence.

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Rhys Harrison J